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**Thematic report on rape as a grave and systematic human rights violation**

The Egyptian law has several shortcomings in its definition of rape. Rape crimes committed against vulnerable persons in Egypt happen often and are almost never reported. The most common of which are corrective rape[[1]](#footnote-1), marital rape against LBQ [[2]](#footnote-2)women in forced marriages as well as rape of gay men and trans-women [[3]](#footnote-3)in detention places upon their arrest using the law on combating prostitution (Law 10/1961) Article 9(c)[[4]](#footnote-4). In this report, The Alliance of Queer Egyptian Organizations (AQEO), focuses on rape as part of **SOGIESC**-**based violence** which is a form of gender-based violence that targets those who are, or perceived as LGBTIQ+[[5]](#footnote-5).

**(1) Criminal law provisions on rape of the Egyptian Penal Code[[6]](#footnote-6), Book Three, Part 4: Indecent Assault and Corruption of Moral. Article 267**; whoever **liesAnchorwith a female without her consent** shall be punished with the death penalty or with permanent hard labor. **If the female victim is younger than eighteen** complete years of age, or **if the perpetrator is the victim’s father or grandfather, or from those in charge of her** rearing or observation, or those who have power over her, or is a paid servant to her or to the aforementioned persons, or in case of **multiple perpetrators**, the perpetrator shall be punished with the **death penalty**[[7]](#footnote-7).

**Article 268**; whoever indecently assaults a person by force or threat, or attempts such an assault, shall be sentenced to hard labor (Three to fifteen years). If the victim of the said crime has not attained eighteen complete years of age, or if the perpetrator or one of the perpetrators of the crime is among those prescribed in the second clause of Article 267, the sentence shall be hard labor for not less than seven years, and if these two conditions were combined together, the sentence shall be permanent hard labor.

**Article 269**; whoever indecently assaults a boy or a girl who have not yet attained eighteen complete years of age, without force or threat shall be punished with imprisonment (Three to fifteen years). If he or she has not yet attained twelve complete years of age, or the person committing the crime is one of those specified in the second clause of Article 267, the penalty shall be hard labor for a minimum of seven years.

**Article 290**; The perpetrator of the kidnapping felony shall be sentenced to the death penalty if it was accompanied by the felony of lying with the kidnapped female or indecent assault of the kidnapped.

**(2) Based on the wording of those provisions:**

* Articles are **covering women only** (not including trans-women) and does not cover all persons
* Articles are **based on the lack of consent of victim** and not based on the use of force or threat or some combination of the above
* **Covers only vaginal rape** using male genetalia and does not cover all forms of penetration

**-Marital rape is not explicitly included** in general provisions or by legal precedent and the law is silent on it. It is excluded in the provisions and is not considered a crime also Egyptian legislation does not recognize extramarital relationships. LBQ women experience marital rape in forced (corrective) marriages.

*’They beat me and took me to a gynecologist for a virginity test; they insisted on marrying me off...I was raped by the so-called husband. The latter called me “a cold and frigid woman”, and told my family that I don’t fulfil his sexual desires -despite that he raped me repeatedly’* A lesbian survivor in Egypt[[8]](#footnote-8).

(3) **The age of consent** to sex is determined by [Penal Code Article 269](http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/57560/111585/F1337119832/EGY57560.pdf), which makes the ‘indecent assault’ of a person - male or female - under the age of 18 a criminal offense.

(4)**The law does not provide any reparation to victims of rape or sexual violence.** General laws related to reparations are applied the same way as other crimes; the victim has the right to claim reparation.

**Aggravating and mitigating circumstances**

(5) **Article 267** specifies the aggravating circumstances. **Marital rape is not punished by aggravating circumstances**. **Gay men and trans-women are vulnerable** to rape in prisons and detention places by state actors or inmates, and can face further violence if rape is reported. Coercive anal examinations by the state also reported[[9]](#footnote-9).

*‘I was taken to a police station...I was subjected to rape and beatings from prisoners and police officers..A Police officer summoned me and asked me to suck his penis and forced me to have anal sex with him. I could not refuse or tell anyone. He would kill me or order inmates or other policemen to torture me.’* A gay man survivor in Egypt[[10]](#footnote-10).

(6) **Reconciliation is permitted in practice without provisions.** In the case of LBQ women, state actors informally pressure women to reconcile with perpetrators without filing a report. Sometimes, women get threatened that the case will violate their privacy.

**Prosecution**

(7) **The statute of limitations for prosecuting rape is indicated in** the Code of Criminal Procedure of 1950 Article3, reporting of misdemeanors and felonies, should be **three years for misdemeanor cases and ten years for felonies** and **no provisions allowing child to report** **after reaching adulthood**.Moreover; Article 17**,** used to reduce rape sentences[[11]](#footnote-11) also, **there are no shields to prevent judges and defense lawyers** from exposing the sexual history, sexual orientation or gender identity of victims during trial. **No law provisions aimed prevent re-victimizations** during the prosecution and court hearing although the prosecutor should inform the victim if the perpetrator was released on bail.

(7) There are many **barriers to reporting rape** against LGBTQI+ persons, are of both a social and structural nature, this led to lack of documented cases.

b- Homophobia and transphobia within healthcare service provision form barriers in the face of seeking justice for marital rape, and male rape victims.

b- Social assumptions that marital rape is not a crime, rape is inevitable and inescapable. That rape is a natural result of perpetrators’ sexual urges, rather than an intentional act of violence.

c- Social stereotypes and prejudices include how women are likely to make false accusations and are assumed to be sexually available and responsible for rape because of where and when they were, and/or clothing. Those victims of rape (including gay men) are shamed and blamed for the rape. Male victims of rape will not be believed, will be ostracized and face homophobia.

*‘I could not tell the police about my sexuality, they would arrest me. There is no law to protect me. The lawyer filed a lawsuit against the perpetrator for blackmail, defamation, sexual assault and harassment against a minor even though I was kidnapped and raped’ A gay survivor in Egypt[[12]](#footnote-12).*

**War and/or conflict Egypt do not consider rape** as a war crime or crime against humanity**, and did not ratify Rome Statute**.

**Recommendations**: Legislative Recommendations

1. Omission of any reference to the victim’s sex/gender in all sexual crimes, and provision of general applicability for all persons and urging the Egyptian government to ratify Rome Statute.
2. Developing a clear definition of rape that includes all other forms of rape such as oral and anal rape, as well as, rape using fingers or tools.
3. Issuing a domestic violence law that includes the criminalization of marital rape.
4. Renaming Part 4 of Book 3 in the Penal Code to “Sexual Violence Crimes” instead of “Indecent Assault and Corruption of Morals”, as the association of rape and sexual assault to honor and morality blurs and undermines the severity of those crimes, and as a result, offenders are not held accountable pursuant to the violent nature of the crimes.
5. Repeal Article 262 of the abortion law which imposes penalties on women if they resort to illegal abortion and introduce Article that allows safe abortion for rape victims.
6. End arrests and prosecutions of gay, bisexual men and transgender women based on law 10/1961, as that persecution is a main enabler of the rape culture in detention places and prisons.

Administrative & Policy Recommendations

1. Assigning separate detention places for transgender people, due to the dangers associated with their placement with the general population.
2. Amending prison regulations to include a clear protocol for rape in prisons and detention places that includes a safe and anonymous channel for reporting rape and sexual violence.

1. Corrective rape or homophobic rape is considered a hate crime in which one or more people are raped because of their perceived sexual orientation or gender identity. The common intended consequence of the rape, as seen by the perpetrator, is to turn the person heterosexual or to enforce conformity with gender stereotypes. [↑](#footnote-ref-1)
2. LBQ is used short for Lesbian, Bisexual, and Queer (gender non-conforming) women. [↑](#footnote-ref-2)
3. Transwomen is a term to refer to transgender and transsexual women [↑](#footnote-ref-3)
4. Article 9 states, “A term of imprisonment no less than three months and no more than three years and a fine no less than 25EGP and no more than 300EGP, or either penalty separately, shall be levied against…(c) anyone who habitually engages in **debauchery** or **prostitution**.” [↑](#footnote-ref-4)
5. LGBTQI+ is used short for Lesbian, Gay, Bisexual, Transgender, Transsexual, Queer, Intersex, and other non-conforming sexual orientations and gender identities.  [↑](#footnote-ref-5)
6. Full translation of The Egyptian Penal Code: <http://www.ilo.org/dyn/natlex/docs/ELECTRONIC/57560/111585/F1337119832/EGY57560.pdf> [↑](#footnote-ref-6)
7. Aggravating sentence. [↑](#footnote-ref-7)
8. “The Struggle of the LGBTIQ Community in Egypt,” Page 63, see <https://docdro.id/C1G9ACR> [↑](#footnote-ref-8)
9. <https://www.hrw.org/report/2016/07/12/dignity-debased/forced-anal-examinations-homosexuality-prosecutions> [↑](#footnote-ref-9)
10. “The Struggle of the LGBTIQ Community in Egypt,” Page 18, see <https://docdro.id/C1G9ACR> [↑](#footnote-ref-10)
11. In felony counts, if the conditions of the crime for which the action is brought necessitate the judge's lenity, the penalty may be substituted as follows: - Capital punishment penalty may be replaced by a permanent hard labor or temporary hard labor penalty.

    - A permanent hard labor penalty may be replaced by a temporary hard labor penalty or by imprisonment.

    - A temporary hard labor penalty may be replaced by imprisonment or confinement penalty that may not be less than six months.

    - An imprisonment sentence may be replaced by a confinement penalty which may not be less than three months. [↑](#footnote-ref-11)
12. “The Struggle of the LGBTIQ Community in Egypt,” Page 57, see <https://docdro.id/C1G9ACR> [↑](#footnote-ref-12)