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FGM... let's end it.

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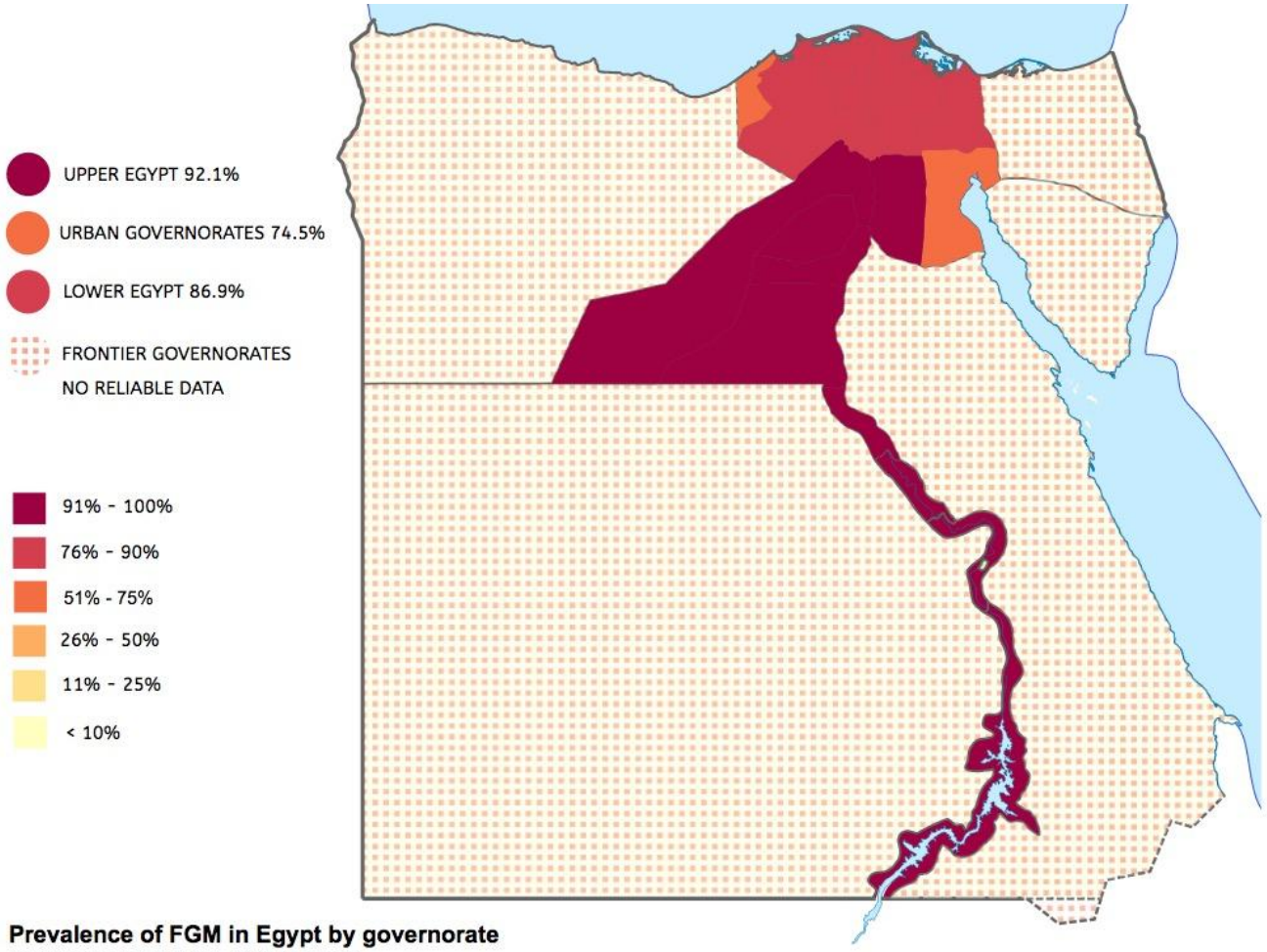
EGYPT:

THE LAW AND FGM/C

June 2018

With an FGM/C prevalence of 87.2% among all women aged 15–49 in a population of nearly 95 million, Egypt has the greatest number of women and girls who have experienced FGM/C of any country in the world.

There is a markedly higher prevalence among women and girls living in Upper Egypt than among those living in Lower Egypt and the Urban Governorates.



Prevalence of FGM in Egypt by governorate
[Data source EHIS 2015] © 28 Too Many

- Prevalence among young girls is low, but it increases dramatically from the age of nine; most girls undergo the practice at or before puberty.
- Type I and Type II are the most common types of FGM/C practised.
- Among girls aged 0–14, 78.4% of incidences of FGM/C are carried out by a health professional.

Source of data: Ministry of Health and Population [Egypt], El-Zanaty and Associates [Egypt], and ICF International (2015) *Egypt Health Issues Survey 2015*, p.104. Cairo, Egypt and Rockville, Maryland, USA: Ministry of Health and Population and ICF International. Available at **https://dhsprogram.com/pubs/pdf/FR313/FR313.pdf**.

*For further information on FGM/C in Egypt, see **https://www.fgmcri.org/country/egypt/.***

Domestic Legal Framework

Overview of Domestic Legal Framework in Egypt	
The Constitution explicitly prohibits:	
✓	Violence against women and girls
X	Harmful practices
X	Female genital mutilation/cutting (FGM/C)
National legislation:	
✓	Provides a clear definition of FGM/C
✓	Criminalises the performance of FGM/C
X*	Criminalises the procurement, arrangement and/or assistance of acts of FGM/C
X	Criminalises the failure to report incidents of FGM/C
X**	Criminalises the participation of medical professionals in acts of FGM/C
X	Criminalises the practice of cross-border FGM/C
✓	***Government has a strategy in place to end FGM/C***

* *Provision only for 'requesting' FGM/C.*

** *Ministerial Decree 271/2007 (see below) prohibits physicians and nurses from performing FGM/C but does not carry a criminal penalty.*

What is The Law Against FGM/C?

An overview of the international and regional treaties signed and ratified by Egypt can be found in Appendix I of this report.

Egypt has a mixed legal system based on Napoleonic civil and penal law, Islamic religious law and vestiges of colonial-era laws; judicial review of the constitutionality of laws is undertaken by the Supreme Constitutional Court.

Egypt has signed many of the international rights conventions and treaties related to FGM/C and, although it ratified the **Convention for the Elimination of All Forms of Discrimination Against Women (*CEDAW*)**, it did so with reservations that demonstrate how Islamic Sharia takes precedence over any international law or treaty. The new **Constitution** is also based on Islamic Sharia principles.

The Egyptian Constitution (2014)[1] does not explicitly mention FGM/C, but it has several provisions that are relevant to protecting women and girls from the practice. **Article 11** commits the State to achieving equality between women and men and 'to the protection of women against all forms of violence.' **Articles 51 and 52** protect human dignity and prohibit all forms of torture respectively,

and, significant to the practice of FGM/C, **Article 60** states, 'The human body is inviolable. Any assault, defilement or mutilation thereof is a crime punishable by law.' Finally, **Article 80** affirms the rights of the child (i.e. persons under 18 years of age) and provides, 'The state shall care for children and protect them from all forms of violence and abuse, mistreatment and commercial and sexual exploitation.'

The main law criminalising FGM/C in Egypt is set out in Article 242-*bis*[2] and Article 242-*bis*(A) of Law No. 58 of 1937 promulgating the Penal Code (as amended by Law No. 78 of 2016).

What The Law Covers

The development of FGM/C-related law in Egypt has been a lengthy and complex process (see Country Profile: FGM in Egypt at **https://www.fgmcri.org/country/egypt/).** New FGM/C legislation was introduced in Egypt in 2008 through amendments to the **Child Act (1996)** and the **Penal Code**. In September 2016, **Law No. 58** was further strengthened and penalties were increased. This main law includes the following provisions:

- **Article 242-*bis*** defines FGM as 'acts of female genital mutilation, by removing any of the external female genital organs, whether in part or in whole, or by inflicting any injuries to these organs without medical justification.' The law does not, however, define what constitutes 'medical justification'.
- **Article 242-*bis*** criminalises the performance of FGM/C; and
- **Article 242-*bis*(A)** makes it a criminal offence for anyone to 'request' FGM/C. It does not make reference to anyone aiding or abetting the practice.

The failure to report FGM/C, whether it has taken place, is taking place or is planned, is not specifically referred to in this law. More generally, anyone who learns of the commission of a crime in Egypt is obliged to report it to the authorities under **Article 25 of the Code of Criminal Procedure Act No. 150 of 1950**.

In addition to the main law, the **Child Act No. 12 of 1996 (as amended by Law No 126 of 2008)**[3] prohibits FGM/C on children (under 18 years of age). **Article 7-*bis*** provides that 'the State shall ensure the right of the child, in all settings, to a suitable, healthy, and clean environment and shall take all effective measures to eliminate harmful practices to his health.' **Article 7-*bis*(a)** states further that it is prohibited for a person responsible for the care of a child 'to intentionally expose the child to any illegitimate physical abuse or harmful practice.'

Medicalised FGM/C

Since at least 2008, there has been a significant shift in Egypt away from traditional practitioners and towards health professionals performing FGM/C. Overall, 78.4% of incidences of FGM/C are medicalised. The use of health professionals is more common in urban than in rural areas.

There is currently no national legislation in place in Egypt specifying that the performance of FGM/C by a health professional is medical malpractice (a draft law is reportedly under consideration). Historically, there have been several ministerial decisions and decrees around FGM/C being performed in government hospitals or private clinics:

- **Ministerial decisions 261 and 518 in 1996** reportedly banned FGM/C from being performed in hospitals and public or private clinics except under the supervision of specialised physicians and in cases of medical conditions.
- **Ministerial Resolution No. 238, issued by the Ministry of Health and Population (*MOHP*) in 2003**, stated that a physician must inform the competent authorities of injuries and accidents of criminal suspicion. Though not specifically referring to FGM/C at the time, it became applicable once FGM/C was criminalised.
- **Ministerial Decree No. 2714, issued by the MOHP in 2007**, closed a former loophole, whereby non-government medical practitioners could perform FGM/C in a private home, by prohibiting nurses or physicians from performing 'any cut or modification to any natural part of the female genital reproduction system, whether this occurred in public or in private hospitals or other places.' Breach of this decree is treated as a violation of the code of conduct of the medical profession, but can also implicate the criminal code.

These various bans were not accompanied by penalties, however, and do not have the power of enforcement that laws have once passed through the national legislature.

At the time of writing, it is also noted that activists in the country report that the House of Representation in Egypt is due to discuss further amendments to the law to ensure doctors and medical facilities that perform FGM/C are criminalised. No further details are publicly available yet.

Cross-Border FGM/C

In some countries where FGM/C has become illegal, the practice has been pushed underground and across borders to avoid prosecution. There is an absence of information on whether any Egyptian girls are being taken across borders to be cut in other countries or whether families from neighbouring countries cross into Egypt for FGM/C.

Existing national laws do not directly address cross-border FGM/C. More generally, Egyptian law prohibits cross-border crimes under **Article 3 of Law No. 58**, which states:

> Any Egyptian committing abroad a deed considered to be a felony or a misdemeanour under the present law shall be liable for punishment by virtue of its provisions if he/she returns to the country and the deed is punishable by virtue of the law of the country where it is committed.

Penalties

The penalties for violation of the law in Egypt are as follows:

- **Article 242-*bis*** – the performance of FGM/C is punishable with imprisonment for between five and seven years.
- **Article 242-*bis*** – where the performance of FGM/C results in permanent disability or death, the punishment is increased to 'aggravated' imprisonment for between three and fifteen years.
- **Article 242-*bis*(A)** – anyone who requests FGM /Cis punishable with imprisonment from one to three years if the mutilation is carried out.

In addition, under the **Child Act No. 12 of 1996 (amended)**, penalties are set out if a child is put at risk or the FGM/C is perpetrated by parents or guardians of the victim:

- **Article 96** – anyone putting a child at risk will be punished with imprisonment for a minimum of six months or a fine of between EGP2,000 and EGP5,000 (US$112–279[5]), or both.
- **Article 116-*bis*** – the minimum penalty is doubled

  > if the crime is committed by an adult against a child, or if it is committed by one of the parents, or by one of 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.

Implementation of The Law

Cases

While some arrests have been made and isolated cases brought to court in Egypt, generally, implementation of the national law and its enforcement remain a challenge.

Between 2007 and 2013, several girls died undergoing FGM/C, which led to calls for strengthened legislation and improved law enforcement.

Despite this, very few prosecutions appear to have been carried out in recent years, and the following two high-profile cases remain those most widely discussed in public and the media.

- Following the death of 13-year-old Soheir al-Batea in June 2013, the doctor who performed the FGM/C, Raslan Fadl, was finally prosecuted in 2015 under **Articles 238 (manslaughter) and 242-bis (prohibiting FGM) of the Penal Code**. He was sentenced to two years for manslaughter and three months' imprisonment for FGM/C, and his clinic was closed for one year. He was also fined EGP500 (US$28[6]). The father, who requested the FGM/C, was given a three-month suspended sentence.[7]
- In May 2016, shortly before the law was further strengthened, 17-year-old Mayar Mohamed Mousa from Suez died in a private hospital while undergoing FGM/C. The primary physician, nurse, anaesthetist and victim's mother were all found guilty of FGM/C under various articles of the Penal Code and charged in January 2017. The doctor, anaesthetist and mother were all given one-year suspended prison sentences and fines of between EGP1,000 and EGP5,000 (US$56–279). The attending nurse, who fled the country, was given a five-year suspended sentence and an EGP50,000 (US$2,794) fine, which will be reduced if she voluntarily attends court.[8, 9]

The most recent report published by the UNFPA-UNICEF Joint Programme confirms that just two cases were brought to court and six convictions made in Egypt during 2016.[10]

Relevant Government Authorities and Strategies

The Egyptian Government's *Sustainable Development Strategy: Egypt Vision 2030*, which is closely aligned with the Sustainable Development Goals Agenda document, lists improving gender equality as a key strategic goal. There are several government authorities and associated committees responsible for tackling gender issues and harmful practices such as FGM/C, including the following.

- Government departments responsible for protecting women and girls from FGM/C in Egypt include the **Ministry of Health and Population**, the **National Population Council (*NPC*)** and the **Ministry of Justice**.
- **The National Council for Women** was established in 2000 by presidential decree, with the aim of addressing issues faced by Egyptian women such as FGM/C, sexual harassment and domestic violence. It works to increase awareness of women's and girls' rights, combat gender-based violence and enhance women's access to public services.
- **The National Council for Childhood and Motherhood**, affiliated with the Ministry of Health and Population, is officially responsible for matters relating to FGM/C and, together with the UNDP, launched Egypt's national **FGM-Free Village Model** in 2003. It has also been responsible for mobilising various campaigns that led to changes in FGM/C legislation.
- **The National FGM Abandonment Strategy 2016–2020**[11] is the State's official strategy for eradicating FGM/C. Its goals are to address 'inconsistencies within the legal culture' and enforce existing laws against FGM/C. It also aims to build a culture that supports human rights and develop a system to monitor the abandonment process.

In 2008, Egypt was one of the first countries to become part of the **UNFPA-UNICEF Joint Programme to end FGM (*UNJP*)**. It has supported programmes and services, which include launching a training programme in 2014 for prosecutors, in partnership with the NPC and the Office of the General Prosecutor, to raise awareness of FGM/C issues and improve reporting and documentation.

In May 2018 the Egyptian **Dar Al-Iftaa** (Centre for Islamic Legal Research) made a significant ruling that FGM/C is religiously forbidden and that the practice is not required under Islamic laws and should be banned, as it mutilates the most sensitive organ in the female body.[12] The Minister of Health and the Administrative Court of Justice has also stated that 'FGM should be banned in hospitals and public/private clinics' (except in circumstances of serious disease and specific approval from the Minister of Health).

The Egyptian Minister of Health, Ahmed Emad, presented six steps to eliminate FGM/C by 2030:

1. criminalise and punish FGM/C in the Penal Code;
2. the attorney general to record crimes as a reference in the investigation of FGM/C incidents;
3. require hospitals to inform the police when they receive FGM/C cases;
4. require the Ministry of Health's sectors to carry out training and educational programmes on the law, covering the penalties and negative consequences of FGM/C;
5. implement the Supreme Council of Universities' approval in 2017 of adding educational material on the crime of FGM/C into the curriculum of obstetrics students in medical school programmes; and
6. commit all ministries and agencies to integrating the curriculum against FGM/C within their training and service programmes.

For further information on responsibilities and strategies to end FGM/C in Egypt see Country Profile: FGM in Egypt at **https://www.fgmcri.org/country/egypt/**.

Civil Society Observations

There are many international and national non-governmental organisations (*INGOs* and *NGOs*) working throughout Egypt and striving to build strong partnerships in practising communities; for example, since it started in 2009, the **NGOs Coalition against FGM/C** has brought together a network of 120 expert organisations from different sectors across Egypt to advocate for an end to FGM/C. The challenges to continuing this work and ending the practice are significant, however, particularly in light of the Egyptian Government's potential tightening of NGO operating laws. Many Egyptian women still lack the power to make decisions in the home or about their own health, and yet activists who are working to protect the rights of women and girls and enforce the state laws against FGM/C are increasingly finding their operations restricted by the Government.

The Centre for Egyptian Women Legal Assistance (*CEWLA*) is one such organisation that has worked across Egypt to combat discrimination against women and has undertaken activities including raising awareness of the FGM/C law, advocating for the strengthening of legislation and offering legal training and advice. Organisations such as CEWLA have fought for justice in the high-profile FGM/C cases that have reached court, but have received much opposition to their work, and members have been directly targeted by the authorities.

Civil society in general comments that there is a continuing failure to protect women and girls from FGM/C in Egypt and a lack of political will to implement and enforce the law. Punishments given to date do not reflect the penalties set out in the legislation and are not adequately followed through. Raslan Fadl, for example, who was eventually convicted to two years and three months in prison following the death of Soheir al-Batea in 2013, reportedly only served three months in total.[13] The UNJP also notes that doctors who continue to perform FGM/C have actually raised their prices in response to higher penalties set out by the law; it is a lucrative business, often practised secretly outside office hours.[14]

Regarding the application of the law, it has also been observed that courts in Egypt to date appear to have only applied Article 242-*bis*, without accompanying criminal charges such as assault or gross negligence (except in cases where the victim has died). Most notably, the courts have failed to apply Article 116-*bis* of the Child Act during Article 242-*bis* cases. Article 116-*bis* calls for doubled penalties if the crime of FGM/C is committed by an adult on a child (see Penalties above).

At the time of writing, a case reached the media of a 12-year-old girl being admitted to hospital with severe vaginal bleeding following FGM/C performed by a doctor from a public-health clinic in the governorate of Sohag.[15] Following a decision by the Public Prosecutor's Office to release the doctor and the girl's father, the recently formed Anti-FGM Task Force (a coalition of Egyptian human-rights organisations) condemned the lack of adequate law enforcement and highlighted the need for state institutions to assume full responsibility for confronting the crime of FGM/C. NGOs point out that releasing the doctor not only exempts him from prosecution, but also sends a message of encouragement to the medical profession to continue the practice. They have called on the State to 'rehabilitate police forces, prosecutors and judges to deal with FGM, raise legal awareness among them, punish any doctor found to be involved in this crime, and extend the scope of sanctions to the medical facility and its administration.'

Conclusions and Suggestions for Improvement

Conclusions

- Current national legislation in Egypt criminalises and punishes the performance of FGM/C and anyone requesting the practice under Article 242-*bis* and Article 242-*bis*(A). The law does not explicitly set out punishments for aiding or abetting the practice, nor addresses failure to report FGM/C, whether it is planned or has taken place.
- Despite the high rate of medicalised FGM/C in Egypt, laws still do not explicitly address medical malpractice and the performance of FGM/C by health professionals, whether in government or private hospitals, clinics or private homes.
- The law also fails to directly criminalise and punish instances of cross-border FGM/C.
- Laws in Egypt have not been adequately implemented and enforced to date: convictions are rare and sentences are lenient. In the few cases that have been brought to court, the judiciary and local law enforcers have failed to reflect the severity of the crime or the content of national laws.
- Strategies are in place to tackle FGM/C, but NGOs and their networks face increasing pressure and restrictions on their work, which impedes progress in disseminating and enforcing the content of the law.

Suggestions for Improvement

National Legislation

- The definition of FGM/C in the law needs tightening to ensure that there is no potential loophole around what constitutes 'medical justification'.
- The law in Egypt requires clearer definition of and punishment for aiding and abetting FGM/C (not just 'requesting' FGM/C).
- The law urgently needs strengthening around medicalised FGM/C to clearly define and strictly punish any member of the medical profession who performs, attempts to perform or assists FGM/C in any location or premises, whatever the age of the woman or child.
- The law should specifically criminalise and punish the failure to report FGM/C to the relevant authorities, whether it has taken place, is taking place or is planned.
- Laws need to be made accessible to all members of society across Egypt and easy to understand in all local variations of Arabic.

Implementation of the Law

- Judges and local law enforcers need adequate support and training around the law and should be encouraged to fully apply the sentences provided for by the legislation, including Article 116-*bis* of the Child Act.
- Adequate monitoring and reporting of FGM/C cases in Egypt would improve efficiency and inform policy-makers, the judiciary, the police, civil society and all those working to implement and enforce the law.
- Anti-FGM/C programmes should disseminate clear, easy-to-understand and accurate information around the law.
- Increased involvement of local and religious leaders in education around the law, including their responsibilities and the importance of the law in protecting women and girls in their communities, would also be beneficial.
- Tribunals could be encouraged to make sure any prosecutions relating to FGM/C are clearly reported, including through local media such as community radio.
- Increased support and protection for victims and witnesses in FGM/C cases is needed.
- All professions need training around the law and their responsibilities to respond to women and girls who are affected by or at risk of FGM/C.
- Where literacy rates are low, information around the law needs to be made available through different media channels and resources.
- Where they are currently unavailable and a need is identified, appropriate protection measures (for example, the provision of emergency telephone lines or safe spaces) should be put in place for girls at risk of FGM/C.

Appendix I: International and Regional Treaties

EGYPT	Signed	Ratified	Acceded	Reservations on reporting?
International				
International Covenant on Civil & Political Rights (1966) (*ICCPR*)	✓ 1967	✓ 1982		
International Covenant on Economic, Social & Cultural Rights (1966) (*ICESCR*)	✓ 1967	✓ 1982		
Convention on the Elimination of All forms of Discrimination Against Women (1979) (*CEDAW*)	✓ 1980	✓ 1981		Reservations on Articles 2, 9, 16 and 29
Convention Against Torture & Other Cruel, Inhuman or Degrading Treatment or Punishment (1984) (*CTOCIDTP*)			✓ 1986	
Convention on the Rights of the Child (1989) (*CRC*)	✓ 1990	✓ 1990		
Regional				
African Charter on Human & Peoples' Rights (1981) (*ACHPR*) (Banjul Charter)	✓ 1981	✓ 1984		
African Charter on the Rights and Welfare of the Child (1990) (*ACRWC*)	✓ 1999	✓ 2001		
African Charter on Human and Peoples' Rights on the Rights of the Women in Africa (2003) (*ACHPRRWA*) (Maputo Protocol)				Not signed

'**Signed**': a treaty is signed by countries following negotiation and agreement of its contents.

'**Ratified**': once signed, most treaties and conventions must be ratified (i.e. approved through the standard national legislative procedure) to be legally effective in that country.

'**Acceded**': when a country ratifies a treaty that has already been negotiated by other states.

#NOFGM

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1 *Egypt's Constitution of 2014* (2014). Available at https://www.constituteproject.org/constitution/Egypt_2014.pdf.
2 ***In legal terms, 'bis' refers to the second version of a protocol.***
3 The National Council for Childhood and Motherhood (1996) Law No. 12 OF 1996 Promulgating the Child Law (Amended by Law No. 126 of 2008). Available at http://www.africanchildforum.org/clr/Legislation%20Per%20Country/Egypt/egypt_children_2008_en.pdf.
4 - Population Reference Bureau (2007) *Egypt Bans Female Genital Cutting*, 17 July. Available at https://www.prb.org/egyptbansfgc/.
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6 ***Currency conversion as at 31 May 2018 (https://www.xe.com/currencyconverter/).***
7 aswatmasriya (2015) *Court sentences doctor to 2 years' hard labour for FGM charges*, 26 January. Available at http://en.aswatmasriya.com/news/details/6258.
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13 Ruth Michaelson (2016) 'First doctor convicted of FGM death in Egypt only spent three months in jail', *The Guardian*, 2 August. Available at https://www.theguardian.com/world/2016/aug/02/egyptian-doctor-convicted-of-fgm-death-serves-three-months-in-jail.
14 UNFPA-UNICEF Joint Programme on Female Genital Mutilation/Cutting (2017) 17 Ways to End FGM/C, p.49. Available at https://www.unfpa.org/sites/default/files/pub-pdf/17ways-web.pdf.
15 Arab 48/The New Arab (2018) *New Egypt circumcision crime without punishment for criminals*, 25 May. Available at https://www.arab48.com/شباب-ومجتمع/أخبار/2018/05/25/جريمة-ختان-جديدة-في-مصر-دون-عقاب-للمجرمين .

Cover image: Egyptian Studio (2016) *Young Egyptian Girl.* Shutterstock photo ID: 509707807.
Please note that the use of a photograph of any girl or woman in this report does not imply that she has, nor has not, undergone FGM/C.

This report was prepared in collaboration with TrustLaw, the Thomson Reuters Foundation's global, legal pro bono service that connects law firms and legal teams to NGOs and social enterprises that are working to create social and environmental change.

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