

HEALING THE SACRED YONI IN THE LAND OF ISIS: FEMALE GENITAL MUTILATION IS BANNED (AGAIN) IN EGYPT*¹

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* This Article is dedicated to Johnnie and Mary Jo Dillon. Special thanks to Mona Grant for translation of original documents from Arabic into English.

1. Yoni is the “[v]ulva,” the primary Tantric object of worship, symbolized variously by a triangle, fish, double-pointed oval, horseshoe, egg, fruits, etc.” BARBARA G. WALKER, *THE WOMAN’S ENCYCLOPEDIA OF MYTHS AND SECRETS* 1097 (1983). “Egyptian scriptures said, ‘In the beginning there was Isis, Oldest of the Old. She was the Goddess from whom all becoming arose.’” *Id.* at 453 (quoting MERLIN STONE, *WHEN GOD WAS A WOMAN* 219 (1976)).

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I. INTRODUCTION

Egypt is the second most populous African nation and the most populous Arab nation.² Egypt is a leader in Islamic jurisprudence,³ and its citizenry is 90% Muslim.⁴ Female circumcision (female genital mutilation or FGM) has been practiced in Egypt for thousands of years⁵ and perhaps as many as 97% of Egyptian “ever-married” women have endured the practice.⁶ Although there is disagreement among theologians, fundamentalists continue to promote FGM as an Islamic mandate for the preservation of women’s chastity.⁷

In December 1997, the Egyptian High Administrative Court upheld a ministerial ban on female genital mutilation, effectively putting an end to a lengthy legal battle.⁸ This decision has been hailed as a victory in the battle to eradicate FGM. However, successful eradication efforts in other countries, where the practice also has a stronghold, reveal

2. See Imani Ellis, *The Legal System of the Arab Republic of Egypt*, in 5 MODERN LEGAL SYSTEMS CYCLOPEDIA, at 5.70.7 (Kenneth Robert Redden ed., 1990).

3. See UNICEF: UNICEF Chief Hails Curb on Female Genital Mutilation, M2 PRESSWIRE, Jan. 9, 1998, available in 1998 WL 5045178.

4. See Ellis, *supra* note 2, at 5.70.8.

5. See Fran P. Hosken, *Female Genital Mutilation: Strategies for Eradication*, TRUTH SEEKER (July/Aug. 1989) <<http://www.nocirc.org/symposia/first/hosken.html>>. The practice was recorded in ancient Egypt more than 2,000 years ago. See *id.*

6. See 1995 EGYPTIAN DEMOGRAPHIC AND HEALTH SURVEY 171 (On file with the *Houston Journal of International Law*) [hereinafter EDHS].

7. See Dina Ezzat, *Battle Won, But FGM War Goes On*, AL-AHRAM, Jan. 1–7, 1998, at 3 (quoting an FGM supporter who asserts that female circumcision is meant to preserve the dignity of women) (On file with the *Houston Journal of International Law*).

8. See Seham Abd el Salam, *A Comprehensive Approach for Communication About Female Genital Mutilation in Egypt*, presented at The Fifth International Symposium on Sexual Mutilation (Aug. 5–9, 1998) (On file with the *Houston Journal of International Law*).

that a multi-faceted educational approach, sensitive to the specific practice and beliefs within the culture, is more effective than a legal attack.⁹ This paper concludes that while the court ruling lends credibility to anti-FGM campaigners, it will not abolish the practice. Even more organized, comprehensive, and collaborative efforts by Non-Governmental Organizations (NGOs) fighting FGM are necessary.

Parts II and III define FGM and explain why it is practiced. Part IV explains the short and long term health risks of FGM. Part V describes the process by which FGM came to international attention. Part VI describes eradication efforts outside Egypt. Part VII describes the practice of FGM in Egypt. Part VIII traces the history of non-legal eradication efforts within Egypt. Part IX briefly explains pertinent aspects of the Egyptian legal and judicial systems. Part X describes the recent legal battle over FGM within Egypt. Part XI explains why success in the Egyptian High Administrative Court will not be completely effective, legally or socially.

II. WHAT IS FEMALE CIRCUMCISION?

Circumcision is never even mentioned in the Qur'an.

The omission is remarkable, and Muslim writers do not attempt any explanation of it. It is held to be *sunnah*, or founded upon the customs of the Prophet, . . . and dating its institution from the time of Abraham It is recommended to be performed upon a boy between the ages of seven and twelve The circumcision of females is also allowed, and is commonly practised in Arabia.¹⁰

It is estimated that at least 84 million,¹¹ and perhaps as many as 130 million,¹² women and girls have been subjected to female genital mutilation worldwide. As many as

9. See *id.*; Cesar Chelala, *An Alternative Way to Stop Female Genital Mutilation*, LANCET, July 11, 1998, at 126; Hosken, *supra* note 5, at 5. One method of ending FGM is to explain to the men, who usually make family decisions, about FGM and how it is unacceptable. Another method is to increase educational programs for practitioners of FGM to demonstrate its harmful effects. See *id.*

10. THOMAS PATRICK HUGHES, DICTIONARY OF ISLAM 57 (1977) (citations omitted).

11. See Hosken, *supra* note 5, at 1.

12. See Michael Ntabaazi, *Preventing Female Mutilation—Not So Easy*, Afr. News Serv., Aug. 3, 1998, available in 1998 WL 14361837.

2,000,000 girls undergo the procedure each year,¹³ approximately 6,000 per day.¹⁴ Female genital mutilation is still practiced in at least twenty-six of the forty-three African countries.¹⁵ There are numerous variations in the practice of FGM.

“Ritual” circumcision is piercing the clitoral prepuce (foreskin) to release a bit of blood.¹⁶ “*Sunnah*” circumcision is “the removal of the clitoral prepuce and the tip of the clitoris.”¹⁷ “Excision” or “clitoridectomy” is the removal of the entire clitoris and usually the labia minora.¹⁸ “Infibulation” or “pharaonic” circumcision also involves removal of the clitoris and labia minora.¹⁹ In addition, part or all of the labia majora may be removed and the two sides fastened together with catgut, thorns, or a paste of gum arabic, sugar, and egg.²⁰ Where the two sides are not fastened together, the same effect can be achieved by tying a girl’s legs together until the two sides have adhered to one another in the healing process.²¹ When these wounds finally heal, the introitus of the vagina is almost completely blocked.²² A very small opening is maintained by inserting a small piece of wood or bamboo.²³ Of necessity, these definitions are generalizations, as the practices and nomenclature can vary among regions, countries, and practitioners, as well as over time.

13. See Chelala, *supra* note 9, at 126; *World Organizations Try to Stop Female Circumcision in Africa*, CNN WORLD REP., Oct. 5, 1997, available in LEXIS, News Library, CNN File.

14. See *Female Circumcision; UN Begins 3-Year Campaign to Have Operation Banned*, CHI. TRIB., Mar. 10, 1998, at C7 [hereinafter *3-Year Campaign*].

15. See Chelala, *supra* note 9, at 126.

16. See Lois S. Bibbings, *Female Circumcision: Mutilation or Modification?*, in *LAW AND BODY POLITICS: REGULATING THE FEMALE BODY* 151, 152 (Jo Bridgemen & Susan Millns eds., 1995).

17. Hosken, *supra* note 5, at 1.

18. See *id.* at 2.

19. See *id.*

20. See *id.*

21. See *id.* at 3. Hosken describes the results of this procedure:

On a visit to Ouagadougou, Burkina Faso, in 1977, while I was at the maternity hospital, a woman in labor with her first child was brought in; she could not deliver; she was almost completely closed. There was nothing at all left of her external genitalia. She had evidently conceived through a tiny opening.

Id.

22. See Hosken, *supra* note 5, at 1–2.

23. See *id.* at 2.

Although FGM is not practiced in much of the Islamic world,²⁴ where the most severe form, infibulation, occurs, it is practiced primarily by Moslems, reportedly because of the high value placed on virgin brides.²⁵ “Successful” infibulation makes intercourse impossible.²⁶ Traditionally, infibulated women would be cut open (deinfibulated)²⁷ to allow sexual intercourse, conception, and childbirth and then reinfibulated several times throughout life.²⁸ Geographically, infibulation is found in Djibouti, Somalia, Sudan, Egypt, Ethiopia, Kenya, Mali, Mauritania, Niger, Nigeria, and Senegal.²⁹ It is also known as pharaonic circumcision because the 2000 year-old practice can be traced to pharaonic Egypt³⁰ and pre-Islamic African religious practices.³¹

III. WHY IS FEMALE GENITAL MUTILATION PRACTICED?

The reasons given in support of female genital mutilation are numerous and varied. It is proposed as a way of increasing fertility;³² making women more aesthetically attractive to men;³³ correcting hypertrophy of the clitoris;³⁴ promoting cleanliness and purity;³⁵ preventing transmission

24. See EFUA DORKENOO & SCILLA ELWORTHY, *FEMALE GENITAL MUTILATION: PROPOSALS FOR CHANGE 13* (Minority Rights Group International Report 92/3, 3d ed. 1992). “[T]his custom is no longer observed in leading Arab countries such as Saudi Arabia, the cradle of Islam and the centre of the Holy Lands.” *See id.*

25. *See Hosken, supra* note 5, at 2. Hosken describes the practice:

Infibulation is performed to guarantee that a bride is intact—the smaller her opening, the higher the bride price. A girl is often inspected by the female relatives of the husband-to-be before the bride price is paid. The bride price, whereby the husband or his father pays the father of the girl a considerable sum in cash or kind, is still a marriage requirement almost everywhere in Africa and the Middle East.

Id.

26. *See id.* at 2–3.

27. *See Bibbings, supra* note 16, at 152.

28. *See Hosken, supra* note 5, at 2. *See also* DORKENOO & ELWORTHY, *supra* note 24, at 9. “Custom demands that a woman be re-infibulated . . . after each delivery, and this may be done 12 times or more.” *See id.*

29. *See* Ntabaazi, *supra* note 12, ¶18; Hosken, *supra* note 5, at 2.

30. *See Hosken, supra* note 5, at 2–3; Bibbings, *supra* note 16, at 152.

31. *See* Mohamed Badawi, *Epidemiology of Female Sexual Castration in Cairo, Egypt*, TRUTH SEEKER (July/Aug. 1989) <<http://www.nocirc.org/symposia/first/badawi.html>>.

32. *See Hosken, supra* note 5, at 4–5.

33. *See id.*

34. *See id.*

35. *See id.* at 5–6. Hosken observes:

of disease, drug use, promiscuity,³⁶ incurable illness, and death; warding off attacks by evil spirits;³⁷ facilitating childbirth;³⁸ enhancing male sexuality;³⁹ guaranteeing paternity;⁴⁰ and reaffirming cultural identity.⁴¹ Some proponents maintain that religious doctrine requires FGM. Again, although much of the Islamic world does not know the practice, it has become associated most often with Islam.⁴² In fact, FGM is also practiced by Catholics, Protestants, Copts, and Animists.⁴³ In addition, where Western colonists have

[T]he wish of most women is to have as many children as possible, especially sons, on which their status in society depends It is said that women's external genitalia are ugly and must be removed to make her acceptable to a man Hypertrophy of the clitoris—by which is meant an unusual enlargement of the organ—is cited as a reason for excision in Ethiopia and also in parts of Nigeria A woman is considered dirty and polluted unless she is mutilation [sic].

Id.

36. See Sami A. Aldeeb Abu-Sahlieh, *Jehovah, His Cousin Allah, and Sexual Mutilations*, in *SEXUAL MUTILATIONS: A HUMAN TRAGEDY* 41, 51 (George C. Denniston & Marilyn Fayre Milos eds., 1997) [hereinafter *SEXUAL MUTILATIONS*]. Adherents credit FGM with almost limitless benefits:

[I]t maintains cleanliness; it prevents diseases; and it is believed that there is less promiscuity among circumcised women. This prevents the transmission of deadly diseases to the husband. Female circumcision prevents vaginal cancer, it also prevents swelling of the clitoris, which could drive the woman to masturbation or homosexual relations. Female circumcision brings calm and gives radiance to the face. Female circumcision shields the girl from nervousness at an early age and prevents her from acquiring a yellow face Female circumcision is also believed to keep married couples together and prevents drug use With age, male sexual instinct lessens. His circumcised wife will then be at the same level as he. If she were not, her husband would be unable to satisfy her, which then would lead him to drug-use in order to succeed.

Id.

37. See Ntabaazi, *supra* note 12, ¶ 7.

38. See *id.* ¶ 13.

39. See *id.*

40. See Bibbings, *supra* note 16, at 155.

41. See *id.* Bibbings points out that this practice is often rooted in fear:

Another justification is that the clitoris is believed to be a dangerous part of the body which could prevent conception, kill a baby at birth or harm a husband. Elsewhere it is a commonly held belief that uncut genitals will grow to hang down between the legs hindering movement and mimicking the male member.

Id.

42. See DORKENOO & ELWORTHY, *supra* note 24, at 13.

43. See *id.* "Among Moslem communities in Egypt and the Sudan . . . it is not uncommon to find that female circumcision . . . has been traditionally practised under the pretext of adherence to religious principles." *Id.*

been most vehement in attacking FGM, it has been staunchly defended as an anti-colonial demonstration of national liberation, as in Kenya.⁴⁴

In some countries, infibulation was, and perhaps still is, practiced as an important rite of passage into adulthood.⁴⁵ The ceremony was marked by:

[S]pecial songs, dances and chants intended to teach the young girl her duties and desirable characteristics as a wife and mother; with ritual rich in symbolism; with special convalescent huts for the girls attended only by the instructress and cut off from the rest of society until their emergence, healed, as marriageable women; or simply with special clothes and food.⁴⁶

In some regions today, FGM is being practiced on younger and younger girls for two reasons. First, the younger the child, the easier it is to avoid detection, important as more negative attention and legal action are focused on the practice.⁴⁷ Second, there is a fear that older girls are more likely to resist as they are exposed to school and anti-FGM campaigns.⁴⁸

In some countries, FGM is not practiced on children, but rather on adult women.⁴⁹ An adult woman may “consent” due to pressure from her husband, in-laws, and co-wives.⁵⁰ For example, among the Meru of Tanzania, the bridegroom was traditionally attendant at his bride’s circumcision, to which she submitted as a demonstration of respect for him and his family.⁵¹ The Meru viewed women as sexually

44. See *id.* at 15; Berhane Ras-Work, *Female Genital Mutilation, in* SEXUAL MUTILATIONS, *supra* note 36, at 137, 146.

45. See DORKENOO & ELWORTHY, *supra* note 24, at 14.

46. *Id.*

47. See *id.* at 7, 12. A traditional Egyptian *daya* (midwife) has said:

A year ago, when rumours spread around the village that female circumcision will be forbidden, and the government will enforce strict control, families went out at night by lamplight, seeking the help of operators in nearby towns. Many circumcised their daughters before they reached the right age

Id. at 26.

48. See generally Hosken, *supra* note 5.

49. See DORKENOO & ELWORTHY, *supra* note 24, at 7; Ntabazzi, *supra* note 12, para. 1.

50. See Ntabaazi, *supra* note 12, para. 6.

51. See Astrid Nypan, *Revival of Female Circumcision: A Case of Neo-Traditionalism, in* GENDER AND CHANGE IN DEVELOPING COUNTRIES 39, 45–46 (Kristi Anne Stølen & Mariken Vaa eds., 1991).

insatiable.⁵² Circumcision was promoted as a way to prevent wives from making unreasonable sexual demands on their husbands.⁵³ This event was marked by a degree of care and attention for the bride that she would experience at no other time in her life, except perhaps at childbirth.⁵⁴ Finally, circumcision was an absolute prerequisite to marriage (or perhaps constituted the actual marriage ceremony), and only through marriage could a woman have access to resources such as land.⁵⁵

IV. HEALTH RISKS TO VICTIMS OF FGM

Most FGM is performed under septic conditions and without anesthetic.⁵⁶ Knives, razor blades, glass,⁵⁷ sharp stones, or scissors⁵⁸ may be used time after time without ever being sterilized.⁵⁹ "Health risks and complications depend upon the gravity of the mutilation, hygienic conditions, the skill and eyesight of the operator, and the struggles of the child."⁶⁰ Short-term risks to the child include hemorrhage, shock, tetanus, septicemia, and death.⁶¹ Because one instrument may be used in numerous procedures, there is an increased risk of passing any infection, including HIV, from child to child.⁶²

If the child survives FGM, numerous long-term health risks are possible. In the case of infibulation, only a small opening has been maintained for the elimination of urine and menstrual blood, which can accumulate and result in chronic infection.⁶³ Keloid scars large enough to impair

52. *See id.* at 45.

53. *See id.* at 45–47.

54. *See id.* at 46.

55. *See id.* at 42–46.

56. *See* DORKENOO & ELWORTHY, *supra* note 24, at 7. *See also* Ras-Work, *supra* note 44, at 137.

57. *See* Ras-Work, *supra* note 44, at 137.

58. *See* Ntabaazi, *supra* note 12, ¶ 20.

59. *See id.*

60. DORKENOO & ELWORTHY, *supra* note 24, at 8.

61. *See id.*

62. *See id.* at 9.

63. *See id.* at 7–8.

Dr. Ollivier (a military doctor in Djibouti) describes a 16-year-old girl brought to the hospital with unbearable abdominal pains. She had not menstruated for several months, and had not had intercourse, but her abdomen was swollen and sensitive, with the signs of a uterus in labour. She was infibulated, with a minuscule opening. Penetration would appear to have been impossible and there was no sign of beating of a foetal heart. Dr. Ollivier performed

walking and grapefruit-sized dermoid cysts can form at the wound site.⁶⁴ Kidney stones, clitoral cysts, sterility,⁶⁵ dysmenorrhea (extremely painful menstruation), neuroma (permanent, unbearable sensitivity), dyspareunia (extremely painful intercourse), and vulval abscesses can all result from FGM.⁶⁶ Genitally mutilated women may experience prolonged labor and childbirth, causing fetal brain damage and death of mother, child, or both.⁶⁷

V. INTERNATIONAL ATTENTION ON FGM

By at least the 1950s, Western countries were aware of female genital mutilations occurring in Africa.⁶⁸ However, they were not ready to become involved in studying, much less opposing, “cultural” practices. In 1959, the World Health Organization (WHO) refused an invitation by the Economic and Social Council of the United Nations to study “ritual operations” on girls because the study of social and cultural traditions was “outside the competence of the World Health Organization.”⁶⁹ It would be another twenty years before a true international dialogue on the topic would erupt.⁷⁰

Despite the WHO’s reservations, individual researchers and independent organizations undertook research and publication on the subject.⁷¹ For example, in March 1975, the Sudan Family Planning Association (SFPA) conducted a seminar on “The Role of Sudanese Women in Development.”⁷² The SFPA’s magazine published several articles on FGM that were presented at the seminar. Later, the SFPA published a separate collection of the FGM articles that was widely distributed throughout Sudan.⁷³

a disinfibulation (opening of the scarred vulva), and released 3.4 litres of blackish foul-smelling blood.

There are other accounts of similar complications, with more tragic results: the increased size of the abdomen together with the absence of menstruation leads the family to think a girl is pregnant. She is therefore killed for the prestige of the family.

Id. at 8.

64. *See id.*

65. *See* Abu-Sahlieh, *supra* note 36, at 52.

66. *See* DORKENOO & ELWORTHY, *supra* note 24, at 8.

67. *See id.* at 8–9.

68. *See id.* at 17.

69. *Id.*

70. *See id.*

71. *See id.* at 17–18.

72. *See id.* at 18.

73. *See id.*

Twenty years after retreating from the topic of FGM, in February 1979, the WHO conducted a seminar on “Traditional Practices Affecting the Health of Women and Children.”⁷⁴ Ten African nations participated and made recommendations to their respective governments for achieving abolition of FGM.⁷⁵ In addition to legislation, the seminar advocated the adoption of national policies, the establishment of national commissions, and the development of national education programs for both the general public and practitioners of traditional medicine, who perform the majority of FGM.⁷⁶ The need to enlist their support in eradication efforts was recognized.⁷⁷

In December 1979, the International Institute for Labour Studies organized the African Symposium on “The World of Work and the Protection of the Child,” at which the International Institute of Social Sciences was urged to initiate a data bank on FGM practices and attitudes.⁷⁸

In March 1980, the World Health Organization and United Nations Children’s Fund (UNICEF) issued a joint “plan of action” to address FGM and its attendant risks.⁷⁹ Although the plan enumerated ambitious recommendations, it also revealed ambivalence on behalf of the WHO and UNICEF. No funds were allocated to sponsor eradication efforts and all implementation of the plan was deemed the responsibility of member nations and governmental agencies.⁸⁰

Awareness of FGM was, by now, quite widespread, but the subject was still a hot potato. During the United Nations Decade for Women, the topic was given cursory treatment at the July 1980 U.N. conference on health, education, and employment in Copenhagen.⁸¹ A concurrent conference, the Copenhagen Non-Governmental Organizations Forum, was attended by 8000 women from 120 nations to discuss issues of concern to women.⁸² At the conference, workshops to address the topic head-on were planned and more had to be scheduled impromptu to meet unexpected demands.⁸³ The depth of emotion and potential divisiveness of the issue, even

74. *See id.*

75. *See id.*

76. *See id.*

77. *See id.*

78. *See id.*

79. *Id.*

80. *See id.* at 19.

81. *See id.*

82. *See id.*

83. *See id.* at 19–20.

among women who may have been expected to share some common concerns, were clearly revealed. West African delegates expressed resentment in the face of criticism by European and American women who had never lived in Africa.⁸⁴ The West African women felt that their communities' needs for adequate food and potable water were far more urgent than abolition of FGM.⁸⁵ Representatives from Burkina left one meeting in protest.⁸⁶

Meanwhile, the worldwide medical community was gaining awareness. In June 1982, the International Council of Nurses passed a resolution denouncing female circumcision.⁸⁷ The WHO took one more tentative step forward. In August 1982, it issued a statement to the United Nations Human Rights Sub-Commission, assuring governments of its readiness to support eradication efforts.⁸⁸ However, the WHO would only dispense funds to *government sanctioned* programs and in the absence of government endorsement, would not support grass-roots efforts within the affected countries.⁸⁹

In December 1982, the Commission Internationale pour l'Abolition des Mutilations Sexuelles conducted an international seminar and voted to promote abolition of FGM in Senegal through establishment of a research and education center.⁹⁰

In February 1984, the United Nations Working Group on Traditional Practices sponsored a seminar attended by representatives from twenty-one African nations.⁹¹ This resulted in formation of the Inter-Africa Committee (IAC) to promote the abolition of harmful traditional practices.⁹² At its inception, the IAC warned against "untimely haste, which would result in rash legal measures that would never be enforced."⁹³ However, in 1987 it requested, and in 1990 reiterated the need for, laws against FGM, especially directed at health professionals.⁹⁴

84. *See id.* at 20.

85. *See id.*

86. *See id.*

87. *See id.*

88. *See id.* at 18.

89. *See id.*

90. *See id.* at 20.

91. *See id.*

92. *See id.*

93. Abu-Sahlieh, *supra* note 36, at 56 (quoting Rapport sur les pratiques traditionnelles, DAKAR, 1984, at 71).

94. *See id.*

In March 1985, the Non-Governmental Organization Working Group convened for the first time to study “female genital mutilation, the preference of the male child, and traditional birthing practices.”⁹⁵ Its recommendations to the United Nations Commission on Human Rights called for government policies, legislation, education, and support of grass-roots efforts aimed at eradication.⁹⁶ In response, the Commission requested that other U.N. agencies and NGOs provide assistance and support to government initiatives.⁹⁷

In 1997, the WHO, UNICEF, and the U.N. Population Fund issued a joint statement describing FGM and strategies for its eradication.⁹⁸ In March 1998, the United Nations began a three year campaign to eliminate FGM worldwide.⁹⁹

In July 1998, the Journal of the American Academy of Pediatrics contained a statement in opposition to all forms of FGM and recommended that pediatricians dissuade families from having their daughters circumcised.¹⁰⁰ The policy statement proposed that pediatricians educate families about the attendant health risks of FGM, and act to protect the physical and mental health of girls.¹⁰¹

VI. ERADICATION EFFORTS OUTSIDE EGYPT

A. *Eradication Efforts Outside Africa*

The United States,¹⁰² as well as France, Great Britain, and Sweden, have enacted legislation that specifically prohibits female genital mutilation.¹⁰³

In January 1996, the German organization International Action Against the Circumcision of Girls and Women ((I)NTACT) was founded to raise money inside Germany for

95. Ras-Work, *supra* note 44, at 145.

96. *See id.*

97. *See id.*

98. *See UN: Secretary-General Hopes Female Genital Mutilation ‘Will be but a Memory,’* M2 PRESSWIRE, June 15, 1998, available in 1998 WL 12975654.

99. *See 3-Year Campaign,* *supra* note 14, at 7.

100. *See* Committee on Bioethics, *Female Genital Mutilation*, 102 AM. ACAD. PEDIATRICS, July 1998, at 153, 155.

101. *See id.* at 155–56.

102. *See* 18 U.S.C. § 116 (a) (Supp. III 1998).

Except as provided in subsection (b), whoever knowingly circumcises, excises, or infibulates the whole or any part of the labia majora or labia minora or clitoris of another person who has not attained the age of 18 years shall be fined under this title or imprisoned not more than 5 years, or both.

Id.

103. *See* Ras-Work, *supra* note 44, at 146.

use by African organizations combating FGM in Africa.¹⁰⁴ (I)NTACT does not design or implement eradication campaigns, but lobbies the German government to make a clear policy statement against FGM and to make financial aid contingent on government campaigns against FGM.¹⁰⁵ There is no German law or case specifically addressing FGM, but under existing legislation on bodily harm and child abuse, it is criminal to perform FGM or allow it to be performed on one's child.¹⁰⁶

B. Eradication Efforts Within Africa

1. The Inter-African Committee (IAC)

The Inter-African Committee (IAC) has national committees in twenty-six countries, including Egypt, involved in activities aimed at eradication of harmful traditional practices.¹⁰⁷ The IAC Training and Information Campaign provides health education workshops that prepare members of the community to educate and inform others on FGM, reproduction, pregnancy, and childbirth.¹⁰⁸ Traditional birth attendants' training is designed to reach rural women, who play an important role in encouraging and carrying out cultural practices, and to enlist them in the campaign against FGM.¹⁰⁹ Research and multi-media educational materials are developed for various audiences, including women, secondary school boys and girls, teachers, religious and community leaders, and paramedical staff.¹¹⁰

The Alternative Employment Opportunities projects are directed at providing other employment, such as baking or dyeing, to circumcisers.¹¹¹ This is a novel strategy, thus far being employed only in Ethiopia and Sierra Leone, and should be evaluated for its impact on reducing FGM.¹¹²

104. See Christa Muller, *Female Genital Mutilation in Germany: An Update from (I)NTACT*, in *SEXUAL MUTILATIONS*, *supra* note 36, at 159, 160.

105. *See id.*

106. *See id.* at 161.

107. *See* Ras-Work, *supra* note 44, at 149–50.

108. *See id.* at 149.

109. *See id.*

110. *See id.* at 150. These materials include female anatomical models, flannelgraphs, slides, videos, newsletters, and leaflets. Some of these portray normal female genitals, circumcised female genitals (*sunnah*, excision, and infibulation are represented), scar formation, childbirth to circumcised and uncircumcised women, fertilization, pregnancy, and a child injured in a difficult birth. *See id.*

111. *See id.*

112. *See id.*

Circumcisers not only make their livelihood, but also maintain social status, by continuing traditional practices.¹¹³ When informed of the considerable health risks of FGM, proponents often defend the practice by inferring that inept practitioners in other places are the cause of the problem, but that their circumcisers know how to do their work properly.¹¹⁴ A truly effective eradication campaign must consider the tremendous influence that circumcisers possess as community leaders and their complex motives for persisting in FGM.

2. Sudan

Eighty percent of women in Sudan have been infibulated, although the practice was declared illegal there in 1946.¹¹⁵ In anticipation of legislation, families hurriedly had their daughters infibulated before it was “too late.”¹¹⁶ Under the original legislation, infibulation was punishable by a fine and prison sentence of up to seven years.¹¹⁷ This did not reduce the incidence of infibulation, but merely drove the practice underground and discouraged families from seeking professional medical attention for suffering daughters.¹¹⁸ The law was later amended, to allow *sunnah* (removal of the tip of the clitoris and the prepuce) by professional midwives,¹¹⁹ in response to violent public protests of the first arrests.¹²⁰ *Sunnah* circumcision remains lawful.¹²¹ Government-sanctioned press and radio campaigns, supported by religious leaders, decrying infibulation as cruel and harmful were initiated over fifty years ago.¹²² Midwifery and nursing programs educate students about the psychological and medical consequences of infibulation.¹²³ However, the practice persists.¹²⁴ Men will marry only women who have been infibulated.¹²⁵ Women perpetuate it on their daughters

113. *See id.* at 149.

114. *See NPR All Things Considered: Female Circumcision Educators*, NPR, July 22, 1998, available in LEXIS, News Library, Script File [hereinafter *NPR*].

115. *See DORKENOO & ELWORTHY*, *supra* note 24, at 28.

116. *See id.*

117. *See id.*

118. *See Ras-Work*, *supra* note 44, at 146.

119. *See Abu-Sahlieh*, *supra* note 36, at 56.

120. *See DORKENOO & ELWORTHY*, *supra* note 24, at 28.

121. *See id.* at 29.

122. *See id.* at 28.

123. *See id.* at 29.

124. *See id.*

125. *See id.*

to make them marriageable, and it remains a source of income to traditional midwives.¹²⁶ Perhaps the initial direct legal attack forced people to become so entrenched in their positions that the impact of subsequent educational and social tactics was diminished.

In February 1979, Ahfad University College for Women sponsored a symposium on “The Changing Status of Sudanese Women,” at which several recommendations were made on the issue of FGM.¹²⁷ They included stopping FGM in all forms, mass media educational campaigns on the health risks to girls and women, education of religious and political leaders by the medical community, and education and training of traditional midwives in other medical and health practices that would provide them with a source of income.¹²⁸

3. *Senegal*

A recent program that is achieving success in eliminating FGM in Senegal is Tostan, conceived by Texan Mollie Melching, who has lived in Senegal for twenty-three years.¹²⁹ After years of consulting with people in hundreds of villages, Melching concluded that the best campaign would utilize storytelling, proverbs, and discussion.¹³⁰ Tostan, which means “break through,” is conducted in the native Wolof tongue, rather than the formal French, and is run by Senegalese.¹³¹ It is comprised of eight two-month-long modules on a wide variety of subjects.¹³² Module seven is devoted to women’s health and does not criticize FGM, but presents the health risks to women and children.¹³³ A total of thirty-one villages have renounced FGM.¹³⁴ Tostan is being conducted in another 250 villages and Mollie Melching has been invited to develop programs for five other West African nations.¹³⁵

126. *See id.*

127. *See id.* at 30.

128. *See id.*

129. *See NPR, supra* note 114.

130. *See id.*

131. *See id.*

132. *See id.*

133. *See id.*

134. *See id.*

135. *See id.*

4. *Somalia*

In 1977, the Somali Women's Democratic Organization (SWDO) was formed, which later became the implementing agent for the government appointed Commission Concerned with the Abolishment of the Operations.¹³⁶ In Somalia, families can arrange for their daughters' circumcisions to be performed in private, but not government, hospitals under anesthetic.¹³⁷ The official policy is to encourage *sunnah*, in order to satisfy the demand for female circumcision and simultaneously avoid the more serious health and psychological effects of traditional infibulation.¹³⁸

At the 1979 WHO Seminar, representatives of the SWDO made recommendations for successful eradication of FGM in Somalia.¹³⁹ They noted that "[a]ny law must be supported by a day-to-day action campaign, throughout the country Religious leaders should speak out publicly against infibulation."¹⁴⁰ This action campaign should include education in hospitals, discussion groups among women, reliable medical data on health risks, and wide use of the mass media to persuade people to accept change in the practice.¹⁴¹

5. *Kenya*

In 1982, President Daniel arap Moi of Kenya announced a ban on FGM, which was being performed in hospitals under the auspices of the Kenyan Health Services.¹⁴² Without additional government intervention, FGM was practiced surreptitiously.¹⁴³ A 1991 survey revealed that 100% of women over fifty years and 78% of adolescents had been subjected to FGM.¹⁴⁴

A more effective method of combating FGM may be Ntanira Na Mugambo or "circumcision through words."¹⁴⁵ The Kenyan Maendeleo Ya Wanawake Organisation and the Program for Appropriate Technology in Health conducted

136. See DORKENOO & ELWORTHY, *supra* note 24, at 30.

137. See *id.* at 30–31.

138. See *id.*

139. See *id.* at 31.

140. *Id.*

141. See *id.*

142. See Melissa A. Morgan, *Female Genital Mutilation: An Issue on the Doorstep of the American Legal Community*, 18 J. LEGAL MED. 93, 104 (1997); see also Hosken, *supra* note 5, at 5.

143. See Hosken, *supra* note 5, at 5.

144. See Chelala, *supra* note 9, at 126.

145. *Id.*

years of research into the extent of FGM and its role in rural society prior to introducing Ntanira Na Mugambo in one community.¹⁴⁶ This week-long counseling, training, and educational program for young women culminates in a “coming of age” celebration. Music, dancing, feasting, and gift exchange are enjoyed as an alternative to the traditional practice.¹⁴⁷ “The key to its success is that it involves not only the adolescents going through the ceremony but their mothers, fathers, brothers and sisters, and other members of the community, all of whom participate in the design of the project.”¹⁴⁸ The program has been conducted in thirteen communities, and about 300 girls have received their certificates of completion.¹⁴⁹

6. Tanzania

Astrid Nypan has studied the incidence of FGM among the Meru of Tanzania and observed periods of both decline and increase in the practice.¹⁵⁰ From 1902 through 1960, Lutheran missionaries in Tanzania influenced religious practices in such a way as to reduce the importance of FGM among the Meru, for whom this was a wedding and rite of passage ceremony.¹⁵¹ Christian weddings, taking place in churches, did not accommodate circumcision.¹⁵² Although sometimes FGM would take place prior to the Christian wedding, other times it was completely displaced.¹⁵³ In addition, the missionaries expressed disdain for the practice and offered a substitute rite of passage in confirmation ceremonies.¹⁵⁴ Finally, the missionaries introduced formal education, the influence of which would grow over time. By the 1960s, a club of educated young people formed and made a pact to remain uncircumcised and to marry only the uncircumcised as a form of social protest.¹⁵⁵ Their influence spread throughout their community, and even many uneducated girls were able to ride the wave of opposition and resist circumcision.¹⁵⁶

146. *See id.*

147. *See id.*

148. *Id.*

149. *See id.* at 1-2.

150. *See Nypan, supra* note 51, at 47.

151. *See id.* at 44, 47.

152. *See id.* at 47.

153. *See id.*

154. *See id.* at 48.

155. *See id.* at 50.

156. *See id.* at 51.

In the late 1980s a revival of FGM, of uncertain magnitude, seemed to be taking place among the Meru.¹⁵⁷ It was occurring among educated girls, some of whom were going to the village “nrine” (traditional female practitioner) secretly, in opposition to their parents’ wishes.¹⁵⁸ By this time, circumcision was completely altered from its previous form as part of the wedding ceremony conferring adult status.¹⁵⁹ Much younger girls were deciding to undergo the practice in response to influence from peers or grandparents, who encouraged it as a way of preserving traditional Meru custom.¹⁶⁰ Nypan opined that for these young girls, “Education ha[d] either no particular meaning for [their] cultural identity, or a meaning which does not free [them] from the requirement of being circumcised.”¹⁶¹ She concluded that the declining quality and value of education, land scarcity, a competitive marriage market, disenchantment with national government, and neo-traditionalism¹⁶² have influenced educated girls to choose circumcision because “[n]ational development has not proved to offer this category of girls the opportunities once expected, including greater independence from local institutions.”¹⁶³

7. Uganda

In 1992, the Sabinu Elders Association (SEA) was formed in eastern Uganda.¹⁶⁴ The members are representatives of 161 clans whose goals are to preserve the beneficial and abolish the harmful traditional practices of their culture.¹⁶⁵ Working with the U.N. Population Fund and the blessings of the Ugandan government, the SEA undertook to eradicate FGM among their people.¹⁶⁶ Their campaign, sensitive to Sabinu culture and the deeply held beliefs surrounding FGM, uses education and information on the health consequences to change social attitudes.¹⁶⁷ The first target of the campaign

157. *See id.* at 47, 52.

158. *See id.* at 54.

159. *See id.* at 55.

160. *See id.* at 56–57.

161. *Id.* at 57.

162. *See id.* at 59.

163. *Id.* at 64.

164. *See UN Population Award Shared by Uganda Health Group, Family Planning Pioneer in Jamaica*, M2 PRESSWIRE, July 10, 1998, available in LEXIS, News Library Group File [hereinafter *UN Population Award*].

165. *See id.*

166. *See id.*

167. *See id.*

was conservative groups. Later, youth and the wider community were addressed.¹⁶⁸ An annual cultural day of dancing, music, plays, and mimes incorporates information on FGM and other health issues.¹⁶⁹ People are encouraged to give gifts, such as cows, to girls passing into adulthood.¹⁷⁰ As a result, the SEA achieved a 36% reduction in FGM in the Kapchorwa district and was co-recipient of the 1998 United Nations Population Award.¹⁷¹

VII. FGM AS PRACTICED IN EGYPT

In Egypt, female genital mutilation is known as “tahara” or purification.¹⁷² A 1995 health survey reported an average incidence of 97%, and an 81.6% expression of support for continuation of FGM among the 14,779 female participants.¹⁷³ One particularly striking fact emerges from the results of the survey. Regardless of a woman’s age, place of residence, her mother’s education, or her work status, as an Egyptian she is more likely than not to have been subjected to FGM.

Women in the thirty to thirty-four year age range reported the lowest incidence of FGM at 95.8%.¹⁷⁴ This group of women, at 79.2%, was also the least likely to express continued support of FGM.¹⁷⁵ Surprisingly, teenagers had a higher incidence at 98.1% and more strongly endorsed the practice with an 84.8% response rate.¹⁷⁶ Moreover, teenagers were surpassed in the incidence of FGM only by women in the twenty to twenty-four year age range, who reported a 98.3% incidence, and by no other age group in terms of support expressed for the practice.¹⁷⁷ Ninety-three percent of

168. *See id.*

169. *See* Ntabaazi, *supra* note 12.

170. *See id.*

171. *See UN Population Award, supra* note 164; Ntabaazi, *supra* note 12.

172. *See* Sarah Gauch, *In Egypt, Movement to Ban Ancient Practice Expands*, CHRISTIAN SCI. MONITOR, Dec. 19, 1996, at 7; Sarah Gauch, *Modern Egypt Says Ancient Rite is Wrong*, CHI. TRIB., Sept. 10, 1995, at CN1 [hereinafter *Rite is Wrong*].

173. *See* EDHS, *supra* note 6, at 171.

174. *See id.*

175. *See id.* The group comprised of women ages 30–34 was the only one whose approval of FGM was less than 80%. *See id.*

176. *See id.*

177. *See id.* Women ages 20–24 had the second highest approval rating for FGM at 83.9%. *See id.* Perhaps the youngest women in the report, ages 15–24, have the most vivid memories of their circumcision and the strongest need to see the practice as legitimate. Otherwise, their quite recent, painful experience

teenagers expressed the intention to circumcise their own daughters.¹⁷⁸ Clearly, there is not a wave of opposition to FGM among young women, whose circumcision experiences were the most recent.

Women who live in urban areas are only slightly less likely to have been circumcised than their rural counterparts (94.0% compared to 99.5%), but are much less likely to express continued support of circumcision (70.3% compared to 91.2%).¹⁷⁹ The level of education of a woman's mother has less impact on whether she will be circumcised than may be expected. Women whose mothers had no formal education reported a 99.4% rate of FGM, while women whose mothers completed secondary or higher education reported an 89.6% rate.¹⁸⁰ However, there is a significant correlation between the mothers' level of education and the daughters' expression of support for circumcision. Over 93% of women whose mothers had no formal education support the practice.¹⁸¹ Less than 57% of women whose mothers completed secondary or higher education support the practice.¹⁸² Likewise whether a woman does or does not work for cash has less impact on whether she is circumcised (97.7% compared to 92.8%) than on her attitude toward continuation of the practice (65.3% support compared to 84.6% support).¹⁸³

Over 77% of respondents were circumcised between the ages of seven and twelve.¹⁸⁴ For 14,330 respondents, dayas (traditional birth attendants) performed 61.8% of procedures, most often in the home (89.3%).¹⁸⁵ The dayas instrument of choice is a blade or razor blade (66.0%), and most

was unnecessary. Perhaps the increasing medicalization of circumcision makes the experience less traumatic and easier to endorse.

178. *See id.* at 174.

179. *See id.* at 171.

180. *See id.*

181. *See id.*

182. *See id.* Even a mother's modest educational achievement can have a significant effect on her daughter's attitudes. Women whose mothers had primary through secondary education were 16.4% less approving of FGM than women whose mothers had no formal education (76.7% compared to 93.1%). *See id.*

183. *See id.*

184. *See id.* at 175. The median age at circumcision for both respondents and their daughters was 9.8 years. *See id.*

185. *See id.* at 176. Even ghagaria (gypsies) performed more circumcisions than did doctors (14.5% compared to 13.1%) in the case of respondents. However, among their daughters, FGM is more medicalized. Over 45% of daughters were circumcised by doctors, and over 27% were circumcised in a clinic or hospital. *See id.* at 175.

respondents did not have the benefit of any anesthetic (69.4%).¹⁸⁶

It appears that less than 1% of women were subjected to the most severe form of circumcision (pharaonic).¹⁸⁷

VIII. EGYPTIAN EDUCATION EFFORTS AIMED AT ERADICATION OF FGM

A. *The Egyptian Society for the Prevention of Traditional Practices Harmful to Woman and Child*

In October 1979, the Cairo Family Planning Association (CFPA) conducted a seminar on Bodily Mutilation of Young Females.¹⁸⁸ Subsequently, CFPA outlined a “national plan of action” to effect the eradication of FGM.¹⁸⁹ Their strategy was to prompt mass media agencies, women’s organizations, and educational institutions to disseminate information to their constituents.¹⁹⁰ Since 1992, the Female Circumcision Project of CFPA has existed independently as the Egyptian Society for the Prevention of Traditional Practices Harmful to Woman and Child, under the direction of Aziza Kaamel.¹⁹¹ Between the years 1987 and 1996, almost 6,000 community leaders and decision-makers attended four-day workshops and training sessions to sensitize them to the role they can play in eradicating FGM.¹⁹² From 1985 through 1996, almost 48,000 citizens attended one-day seminars.¹⁹³

B. *The Care for Girls Committee*

In 1978, Dr. Maurice Assad raised the topic of FGM through the Coptic Orthodox Church.¹⁹⁴ In 1981, the Care for Girls Committee was formed in the diocese of Beni

186. See *id.* at 175–76. Over 38% of respondents’ daughters were circumcised by scalpel; over 72% had some type of anesthetic. See *id.*

187. See *id.* at 177.

188. See Aziza Hussein, *Preface* to CAIRO FAMILY PLANNING ASSOCIATION, FACTS ABOUT FEMALE CIRCUMCISION 4 (Mar. 1991) [hereinafter CAIRO FAMILY PLANNING ASSOCIATION].

189. See *id.*

190. See *id.* at 4–5.

191. See AZIZA HUSSEIN ET AL., NGO FORUM ’94 ICPD 2, 3 (The Role of NGOs in Eliminating Harmful Traditional Practices effecting Woman and Child) (Sept. 4–13, 1994) (On file with the *Houston Journal of International Law*).

192. See THE EGYPTIAN SOCIETY FOR PREVENTION OF HARMFUL PRACTICES TO WOMAN AND CHILD, ACTIVITY REPORT 8 (1997) (On file with the *Houston Journal of International Law*) [hereinafter ACTIVITY REPORT].

193. See *id.* at 9.

194. See EFUA DORKENOO, CUTTING THE ROSE—FEMALE GENITAL MUTILATION: THE PRACTICE AND ITS PREVENTION, 96 (Minority Rights Group 1994).

Sueif,¹⁹⁵ with Mrs. Hedy Banoub as its leader.¹⁹⁶ The organization realized that FGM was only one expression of girls' inferior status in Egyptian society.¹⁹⁷ Other issues, such as marriage "defloration,"¹⁹⁸ arranged marriages for young girls, and inheritance customs also needed to be addressed.¹⁹⁹ In trips to local villages, the Committee uses plays, picture books, posters, slide shows, audio tapes, and discussion groups to introduce these sensitive subjects.²⁰⁰ The dramas depict the harmful results of traditional practices (i.e., the death of an eight-year old girl following circumcision) and positive alternatives.²⁰¹ The Committee also conducts home visits, in which they can offer support and hear the concerns of families pressured to conform to traditional expectations.²⁰²

C. *The Egyptian National Female Genital Mutilation Task Force*

In November 1994, in response to the Health Minister's lift of the 1959 ban on FGM, the Egyptian National FGM Task Force was formed.²⁰³ Its primary goal is to raise public awareness and encourage dialogue, and not to promote legislation:

First, laws cannot change traditions. People perform FGM in obedience to a cultural tradition, not to a law. This tradition is based on certain beliefs about female sexuality. Changing a belief comes through dialogue and information rather than through

195. See *Meetings to Change Minds*, ACTION, June/July 1996. (On file with the *Houston Journal of International Law*).

196. See DORKENOO, *supra* note 194, at 96.

197. See *id.*

198. Described as:

[C]hecking the genitals of a young woman at marriage to make sure her hymen is intact; breaking the hymen and showing a blood-stained towel to the public as a proof of her virginity. "In many instances, the father kills his daughter if there is no blood shown on this towel," says Mrs. Banoub.

DORKENOO, *supra* note 194, at 96.

199. See *id.* at 96-97.

200. See *id.* at 97.

201. See *A Broad Approach, and a Variety of Media Combat Female Genital Mutilation*, ACTION, Apr. 1994. (On file with the *Houston Journal of International Law*).

202. See DORKENOO, *supra* note 194, at 97.

203. See el Salam, *supra* note 8, at 8-9; *Minister of Health's Position on Female Circumcision* (visited Jan. 26, 1999) <<http://www.ncpd.org.eg/TFGs/fgm/minister.html>>.

legislation. Second, the current increasing conservatism in Egypt will result in the publication of compromising legislation. Third, the items of the regular criminal law are relevant to the issue of FGM and, if used appropriately, are sufficient to deter and punish FGM perpetrators.²⁰⁴

Today, under the direction of Marie Assaad,²⁰⁵ the Task Force is a coalition of about sixty non-governmental organizations (NGOs).²⁰⁶ The NGOs conduct grass-roots education and awareness programs and are supported by the researching and networking resources of the Task Force.²⁰⁷

Seham Abd el Salam has documented the evolution of her approach as a guest speaker at NGO seminars. She describes five models, the first of which is “Direct Medical Education” which followed a lecture and question format.²⁰⁸

Her second model, “Critical Medical Approach with Emphasis on the Physical Hazards of FGM,” varied from the first model by encouraging the audience to infer the correct conclusions about the harmful physical effects of FGM from data presented.²⁰⁹ This approach coincided with suspension of the 1959 ministerial ban. el Salam observed “that although law cannot change traditions, nevertheless, inappropriate legislation can compromise and delay the effect of FGM eradication efforts.”²¹⁰ Her audiences doubted their own reasoning in the face of official sanction of FGM.²¹¹

The third model, called the “Integrated Critical Health Approach” introduced information about the function of the brain in sexual desire, instead of focusing solely on the physical dangers of FGM.²¹²

The fourth model, the “Theoretical Socio-Medical Approach,” added information about the origins of FGM as an African religious ritual that is not practiced in most of the Islamic world.²¹³

The fifth model, the “Comprehensive Approach” begins by asking the audience, “What do we wish for our daughters?” The answers to this question—good health, successful

204. *el Salam, supra* note 8, 8–9.

205. *See id.* at 17.

206. *See id.* at 10.

207. *See id.* at 10–11.

208. *See id.* at 11–12.

209. *See id.*

210. *Id.*

211. *See id.* at 13.

212. *See id.*

213. *See id.* at 14.

marital and maternal life, good morals, education, etc.—provide a focal point and help the participants to examine “the validity of FGM as a procedure that may achieve such objectives; given the information they get through the session.”²¹⁴

El Salam notes that there are several recurring themes that cause concern among participants. First is suspicion that eradication efforts reflect a Western conspiracy or agenda. The second is that inconsistent government action and legal rulings lend credibility to proponents of FGM. A third theme revolves around religious justifications for FGM or lack of a uniform point of view among religious scholars. Fourth is comparison to male circumcision. Fifth is preservation of female chastity.²¹⁵ She concludes that understanding is achieved by:

[P]roviding the people with different interpretations for their justifications. I argue that such an interpretation, which takes the girls’ best interests as a reference point, may shake the people’s belief in the timeless validity of their traditional attitude. This acquired skepticism could be considered as the first step towards affecting a change of attitude and eradication of FGM in Egypt.²¹⁶

IX. THE EGYPTIAN JUDICIAL SYSTEM

In Egypt, Islam is the state religion and Islamic jurisprudence (Shari’a: “the highway of good life”)²¹⁷ is the “principle source of legislation.”²¹⁸ The civil code is an effort to “synthesize Islamic principles of law”²¹⁹ with the Napoleonic code.²²⁰ There are five sources of Shari’a: Holy Qur’an (“the sacred text of Islam, considered by Muslims to contain the revelations of God to the prophet Muhammad”),²²¹ *Sunnah* (traditions), *Ijtihad* (interpretation or “original thinking”),²²² *Riwaj* (custom), and *Maslahat*

214. *Id.* at 14–15.

215. *See id.* at 15–17.

216. *Id.* at 18.

217. Noor Mohammad, *An Introduction to Islamic Law*, in 5A MODERN LEGAL SYSTEMS CYCLOPEDIA 5A.100.5 (Kenneth Robert Redden ed., 1990).

218. Ellis, *supra* note 2, at 5.70.41.

219. *Id.* at 5.70.42.

220. *See id.* at 5.70.25.

221. AMERICAN HERITAGE DICTIONARY 465 (3d ed. 1994) [hereinafter DICTIONARY].

222. Mohammad, *supra* note 217, at 5A.100.10.

(expedience).²²³ In 1955, the separate Shari'a courts were merged with the National Courts.²²⁴ "Sharia law has not been abolished, it has simply been absorbed and integrated into the National Courts."²²⁵

Egypt's judicial system is based primarily on French legal concepts.²²⁶ The judiciary does not have jurisdiction to nullify administrative decrees.²²⁷ Therefore, in 1946 the Council of State (Maglis al-Daula)²²⁸ was established in Cairo as one of the Courts of Justice (Mahkamas).²²⁹ This court presides over cases of administrative law²³⁰ and is capable of revoking "illegal, arbitrary, or abusive decrees issued by governmental officials and ministers."²³¹

X. LEGAL EFFORTS WITHIN EGYPT

Today's efforts to abolish female genital mutilation in Egypt are only the most recent in a much longer tradition of such campaigns. Evidence of educational efforts supported by the Egyptian Doctors' Society, sheikhs (the leaders of Arab or Muslim tribes, villages, or families),²³² governmental doctors, and the press, date back to the 1920s.²³³ Anecdotal accounts from families in which FGM was abandoned in the 1930s and 1940s demonstrate the effectiveness of some early efforts.²³⁴ During the 1950s, articles in health reviews, periodicals, and a women's magazine continued to urge eradication.²³⁵ But perhaps the best evidence of early success in the battle against FGM came in the June 24, 1959 ministerial decree, Number 74, which prohibited FGM by lay persons and government doctors.²³⁶ It stated:

1. It is forbidden that persons other than physicians perform female circumcision. Circumcision should be partial and not of the severe kind to those who request it.

223. See Ellis, *supra* note 2, at 5.70.41.

224. See *id.* at 5.70.42.

225. *Id.* at 5.70.43.

226. See *id.* at 5.70.25.

227. See *id.* at 5.70.41.

228. See *id.*

229. See *id.* at 5.70.38.

230. See *id.*

231. *Id.* at 5.70.41.

232. See DICTIONARY, *supra* note 221, at 753.

233. See el Salam, *supra* note 8, at 4.

234. See *id.* at 5.

235. See *id.* at 6.

236. See *id.*; CAIRO FAMILY PLANNING ASSOCIATION, *supra* note 188, at 17.

2. Female circumcision is not to be performed in the Ministry health units in an effort to eradicate it [sic] because of its harmful effects.
3. "Dayas" are not allowed to perform any surgical procedures, including circumcision.
4. Female circumcision, as performed in Egypt now, has its harmful effects on females before and after marriage. Religious authorities "Fouahaa" have decided that it is against Islamic law (shria) to excise wholly these organs, but they differed regarding partial circumcision.²³⁷

The decree was widely misconstrued, within the Egyptian medical community and internationally, as outlawing FGM completely.²³⁸ In fact, "it allowed medical doctors to perform a 'partial' variety of FGM in their private clinics at the request of the parents."²³⁹ The public, and traditional practitioners, largely ignored the decree.²⁴⁰

In September 1994, the International Conference on Population and Development (ICPD) was held in Cairo, Egypt.²⁴¹ On September 6, Dr. Ali Abd el Fattah, the Health Minister, stated, "FGM is rarely practiced in Egypt."²⁴² On September 7, Cable News Network (CNN) aired footage of FGM being performed on a ten-year old girl by a barber in a Cairo slum.²⁴³ Her ankles were tied to her wrists and her family observed as she screamed in pain.²⁴⁴ The footage embarrassed public officials,²⁴⁵ outraged much of the citizenry, and resulted in several arrests²⁴⁶ and a private suit against CNN for "blacken[ing] the image of Egypt."²⁴⁷ However, a subsequent cover photo of the semi-official Al

237. CAIRO FAMILY PLANNING ASSOCIATION, *supra* note 188, at 17.

238. See HUSSEIN, *supra* note 191, at 2.

239. el Salam, *supra* note 8, at 6.

240. See *id.* at 7.

241. See HUSSEIN, *supra* note 191, at 1.

242. el Salam, *supra* note 8, at 9.

243. See *Plan to Ban Female Circumcision*, MIDDLE EAST TIMES, Oct. 2-8, 1994 (On file with the *Houston Journal of International Law*); Eileen Alt Powell, *Female Circumcision Hits Headlines*, NEW ORLEANS TIMES PICAYUNE, Oct. 9, 1994, at A22.

244. See *Cairo Barber, Three Others Arrested in Illegal Circumcision of Girl, Ten*, CHI. TRIB. WIRES, Sept. 13, 1994, at N6 [hereinafter *Cairo Barber*].

245. See el Salam, *supra* note 8, at 9.

246. See *Cairo Barber*, *supra* note 244. Police arrested the barber who cut the girl, the plumber who assisted him, a florist accused of helping to arrange the video taping, and the girl's father. See *id.*

247. *Plan to Ban Female Circumcision*, *supra* note 243.

Musawwar, showing the pained face of a second girl undergoing circumcision, was impossible to dismiss as merely a Western media attack on the country.²⁴⁸ Subsequently, at an ICPD seminar, Dr. Ali Abd el Fattah “promised the international community—and not his own people—to issue a law that will penalize the practice of FGM.”²⁴⁹ The Population Minister, Maher Mahran, announced that Parliament would consider a new law specifically targeting FGM and providing for sanctions.²⁵⁰

Public debate ensued. The Great Imam (“[t]he caliph who is successor to Mohamed as leader of the Islamic community”),²⁵¹ Sheikh Mohamed Sayed Tantawi stated that the Qur’an has no mention of FGM. In addition, those ahadith (sayings) attributed to the prophet Mohamed in support of the practice are “unauthenticated, badly worded and were passed on by men who have little credibility.”²⁵² He solicited medical advice on the practice from doctors and later gave support to the 1996 ban.²⁵³ Conversely, the Grand Sheikh Gad-El-Haq Ali Gad-El-Haq, leader of the Al-Azhar Islamic Institute, issued a religious decree supporting FGM as an Islamic practice.²⁵⁴

On October 9, 1994, the Health Minister appointed twenty-one members to the Higher Committee for Eliminating Female Genital Mutilation, which met only once.²⁵⁵ The Committee defeated a motion to encourage new legislation aimed at criminalizing FGM.²⁵⁶ They denounced the practice, but predicted that a legal ban would simply drive it underground and discourage parents, fearful of penalties, from seeking medical treatment for daughters who needed it following the procedure.²⁵⁷

On October 19, 1994, under pressure resulting from statements by the Grand Sheik Gad-El-Haq Ali Gad-El-Haq,

248. *See id.*

249. el Salam, *supra* note 8, at 9 (quoting THE NATIONAL NGO COMMISSION FOR POPULATION AND DEVELOPMENT, 1998 FGM POSITION PAPER).

250. *See Rite is Wrong*, *supra* note 172.

251. DICTIONARY, *supra* note 221, at 417.

252. *Putting Awareness First*, AL-AHRAM, Oct. 13–19, 1994 (On file with the *Houston Journal of International Law*).

253. *See EL-WAFD*, July 25, 1997 (On file with the *Houston Journal of International Law*).

254. *See Ezzat*, *supra* note 7.

255. *See Minister of Health’s Position on Female Circumcision*, *supra* note 203.

256. *See Ezzat*, *supra* note 7.

257. *See id.*

the same Health Minister issued a statement to all health directorates with the following instructions:

To forbid the performance of circumcision by any one other than physicians, and in no other places than hospitals, and to put into force the law regulating medical practice. Strict legal action should be immediately taken against those who break this law.

All government hospitals, (general training, or local) should specify two days a week to perform male circumcision, and another day a week to receive the families desiring female circumcision.

Each hospital should form a committee consisting of a gynecologist, anesthetist, social worker, nurse and religious leader to receive the families wishing to circumcise their daughter on that set day. This reception committee should clearly explain the physical and psychological harmful effects of the operation, and the religious views on the practice. The committee should try several times to persuade the family against the operation and help it to review its decision, and not accept to perform the operation except after many and repeated attempts of persuasion. This step may help to contain the practice and if necessary perform the operation under good medical condition in preparation for its final elimination.²⁵⁸

Groups that had rejoiced in the earlier promise to ban FGM responded in disbelief and outrage. In January 1995, Cairo University students produced "Silent Scream," a documentary film on FGM.²⁵⁹ It showed young girls talking about the horror of their own circumcisions juxtaposed with the barber who confidently claims, "It is good for the girl."²⁶⁰ Despite guidelines in the decree, there were reports that hospitals performed circumcisions daily and that no reception committees were formed to advise families against FGM.²⁶¹ A coalition of seventeen activists, journalists, and lawyers filed suit against the Health Minister for encouraging illegal, unnecessary surgery.²⁶² The plaintiffs claimed that

258. See *Minister of Health's Position on Female Circumcision*, *supra* note 203.

259. See *Rite is Wrong*, *supra* note 172.

260. *Id.*

261. See *id.*

262. See *id.*

the new decree led the public to believe there was a difference between bad circumcision (performed by lay persons) and good circumcision (performed by doctors in hospitals).²⁶³

In April 1995, nine members of the Egyptian Organization for Human Rights initiated suit against the Grand Sheik Gad-El-Haq Ali Gad-El-Haq, leader of the Al-Azhar Islamic Institute.²⁶⁴ He had issued a fatwa (religious edict), that “whoever opposes circumcision (of girls) is opposing a religious obligation, and the leader of the country must kill him.”²⁶⁵ In October 1995, state hospitals were secretly told to cease performing FGM.²⁶⁶ Pressure from human rights groups and fear of U.S. aid sanctions led to the private reversal.²⁶⁷

In 1996, Dr. Ismai'l Sallam took office as the new Health Minister.²⁶⁸ On July 18 of that year, he issued order number 361/96,²⁶⁹ banning FGM by government and private hospitals and clinics²⁷⁰ except in cases where it is medically necessary as diagnosed by a “head of the gynecology department.”²⁷¹ This decision was immediately hailed by the Syndicate of Doctors as long overdue.²⁷²

Dr. Mouneer Fawzy and Sheikh Youssif El-Badri, an Islamist lawyer and preacher, filed a suit in opposition to the Health Minister's ban.²⁷³ Their petition attacked the ban as a violation of Islamic law and therefore of the Egyptian constitution, “which states that the Islamic shari'a is the main source of legislation.”²⁷⁴ On June 24, 1997, a lower administrative tribunal ruled in favor of the fundamentalists and revoked the ministerial ban on FGM.²⁷⁵ Judge Abdul Aziz Hamade declared the ban an illegal infringement by the government on doctors' authority to make medical

263. *See id.*

264. *See Islamic Practice Challenged; Lawsuit Brought in Egypt Over Female Circumcision*, CHI. TRIB., July 9, 1995, at N20.

265. *Id.*

266. *See Egypt Female Circumcision Fight Rages; Regime Bars Hospitals from Doing Operation*, CHI. TRIB., Dec. 31, 1995, at C7.

267. *See id.*

268. *See el Salam, supra* note 8, at 10.

269. *See* ACTIVITY REPORT, *supra* note 192, at 10.

270. *See* Ezzat, *supra* note 7, at 3.

271. *el Salam, supra* note 8, at 10.

272. *See The Syndicate of Medical Doctors: The Decision of Banning Female Circumcision is for Women's Benefit*, AL-AHRAM, July 26, 1996 (On file with the *Houston Journal of International Law*).

273. *See el Salam, supra* note 8, at 10.

274. *Id.*

275. *See id.*

decisions.²⁷⁶ The court also accused Health Minister Sallam of “abuse of power”²⁷⁷ because of the court’s understanding that only parliament could outlaw the practice.²⁷⁸ Dr. Ismai’l Sallam appealed with support from the Doctors’ Syndicate and the Prime Minister.²⁷⁹

On December 28, 1997, the Supreme Administrative Court of Egypt, (the Council of State) overturned the lower administrative tribunal and upheld the ministerial ban on FGM.²⁸⁰ Medical and paramedical personnel are prohibited from performing FGM, even with consent of the girl or her parents because it “is not a personal right sanctioned by Shari’a.”²⁸¹ The court held that the Qur’an did not authorize female circumcision and also said there is no clear proof that the practice was sanctioned by the prophet Mohamed or ordained in Islam.²⁸² Egypt does not have any legislation specifically targeting FGM, but the court held that under the existing penal code, FGM is considered intentional infliction of bodily harm, punishable by three years imprisonment.²⁸³ The ruling is not subject to appeal.²⁸⁴

Fundamentalist proponents have not been deterred by the holding, as demonstrated by the zeal of Sheikh Youssef El-Badri:

The judge is a man, and a man can take the right decision or make a mistake Islam will be applied as it is, and not as some Western forces like it to be The world has not seen the last of Youssef El-Badri’s efforts to uphold the banner of Islam. Female circumcision—and not mutilation as those Westernised people like to call it—is meant to safeguard the dignity of women by checking their sexual drive and thus preserving their chastity

276. See *Egyptian Court Overturns Ban On Cutting of Girls’ Genitals*, N.Y. TIMES, June 26, 1997, at A12.

277. See Ezzat, *supra* note 7.

278. See el Salam, *supra* note 8, at 10.

279. See *id.*

280. See *id.*; see also *Human Rights: Egypt Ends Female Genital Mutilation*, INTER PRESS SERVICE, Aug. 11, 1998, available in 1998 WL 5988706 (citing 1997 report to the Subcommission on Prevention of Discrimination and Protection of Minorities, under the U.N. Human Rights Commission, by Halima Embarek Warzazi, U.N. special rapporteur on traditional practices that affect the health of women and girls); Ezzat, *supra* note 7.

281. See Ezzat, *supra* note 7.

282. See *id.*

283. See *id.*

284. See *Court Upholds Ban on Female Circumcision*, CHI. TRIB., Dec. 29, 1997 at N14.

This is the wicked ploy of the enemies of Islam; they want us to abandon our religion piece by piece on the pretext that this or that was not mentioned in the Qur'an but, God willing, I am going to fight on.²⁸⁵

In his campaign to see all Egyptian women undergo FGM, El-Badri also filed suit against Hussien Kamel Bahaeddin, the Education Minister.²⁸⁶ El-Badri wants the courts to compel removal of statements that describe FGM as "an unhealthy practice that causes girls physical and psychological harm" from elementary school texts.²⁸⁷ In its place he seeks curriculum that describes FGM as compulsory for all Muslim women.²⁸⁸

XI. CONCLUSION

Had the Council of State affirmed the lower administrative tribunal in opposition to the Health Minister's ban on FGM, it would certainly have been a setback to anti-FGM campaigns. However, affirmation of the decree will not, in and of itself, accomplish much toward abolition of this thousand-year old tradition for several reasons: the decree provides for broad exceptions that make circumcision easy to obtain; the Health Minister's decree is not *law*; the relationship between the penal code and Shari'a provides an outlet for non-prosecution in FGM cases; and the social forces that motivate Egyptians to continue FGM are still endemic.

First, although the Health Minister's decree and its affirmation by the Council of State have received a lot of attention, they are a perfect example of the type of "compromising legislation" that the FGM Task Force declines to support.²⁸⁹ The provision in the Minister's order allowing doctors to perform FGM whenever it is "medically necessary," as they define that necessity, will simply give doctors a monopoly in the field. It will not eliminate FGM or its attendant medical and psychological hazards.

Following the issuance of the Health Minister's decree, one girl died as a reaction to anesthetic and another almost bled to death, both while under the care of licensed

285. Ezzat, *supra* note 7.

286. *See id.*

287. *Id.*

288. *See id.*

289. *See el Salam, supra* note 8, at 9.

physicians performing FGM.²⁹⁰ In December 1997, Dr. Rabie Ibrahim Malgoub was fined \$150 and sentenced to one year in jail by a provincial court in Qalyub for “immense medial negligence” when a fourteen-year old girl died as a result of FGM, performed by him in April 1996.²⁹¹ She hemorrhaged to death following the surgery, for which her father paid six dollars.²⁹² In July 1998, two doctors were charged with circumcising three girls in a hospital, in violation of the ministerial ban, and face up to three years in prison.²⁹³ One of the three girls died as a result of the procedure.²⁹⁴ Although the incidence of FGM has not waned over time, doctors have replaced dayas as practitioners in significant numbers.²⁹⁵ These cases show that there are doctors willing to find medical necessity for FGM quite often and that surgical precautions do not eliminate the risks.

Second, the Health Minister’s decree, upheld by the Council of State is not a law. A vote in Parliament (Maglis El Shaab), approval by the Supreme Constitutional Court, and the highest religious council are needed to make the decree into law and to “unify the Sharia code to be applied in all cases and not to be left to the jud[g]es personal religious interpretation.”²⁹⁶

Third, the influence of Shari’a on the interpretation and application of the penal code can be manipulated to preclude conviction in FGM cases. Clause 240 of the penal code indicates that whoever causes a wound, the loss of an organ, or the loss of use of an organ is subject to three to five years imprisonment.²⁹⁷ Articles in the penal code prohibit doctors from causing any permanent disability or a surgical wound “in the absence of a medical necessity.”²⁹⁸ In addition,

290. See Diana Digges, *A Deadly Custom; Female Genital Mutilation*, WORLD PRESS REVIEW, Nov. 1, 1998, available in 1998 WL 10055532.

291. *Current Events*, National Organization of Circumcision Information Resource Centers (NOCIRC) (visited Sept. 21, 1998) <<http://www.nocirc.org/news/>> [hereinafter *Current Events*].

292. See *Doctor Arrested When Girl Dies After Circumcision*, CHI. TRIB., Sept. 8, 1996, at NW9.

293. See *Charges Made in Circumcision Case*, ASSOCIATED PRESS, July 21, 1998, available in 1998 WL 6699172.

294. See *id.*; see also *Current Events*, *supra* note 291.

295. See EDHS, *supra* note 6, at 175–76.

296. MAHMOUD KARIM, FEMALE GENITAL MUTILATION 155 (1988).

297. See *Female Circumcision Is a Crime Punished by Imprisonment*, AL-AKHBAR, Aug. 28, 1996 (On file with the *Houston Journal of International Law*).

298. NATIONAL NGO COMMISSION FOR POPULATION AND DEV., FGM TASK FORCE POSITION PAPER 5 (Oct. 1997 Cairo, Egypt) (On file with the *Houston Journal of International Law*).

doctors take an oath that “prohibits the use of medical knowledge or skill except for the prevention and cure of illness and promotion of health” as a prerequisite to acquiring a license.²⁹⁹

Since the Egyptian medical community has overwhelmingly denounced FGM as *medically unnecessary*, doctors practicing FGM can be convicted of violating penal law.³⁰⁰ A lay practitioner (i.e. a barber) would also be guilty of “causing an intentional simple wound” and unlicensed practice of medicine.³⁰¹ The child’s consenting guardian could be charged as an accomplice and subjected to imprisonment.³⁰² Each of these parties—doctor, barber, or parent—would be liable under civil law, which requires “*fedia*”³⁰³ (payment to the victim of a sum “proportionate with the material and moral harms that befalled [sic] the female on whom he had acted”).³⁰⁴

Although the present Egyptian penal and civil codes provide for the means to prosecute FGM practitioners and accomplices, there are numerous loopholes and obstacles in the courts. For example, the criminal defendants who performed the circumcision filmed by CNN were originally charged with “practising surgery without a license and inflicting an intentional wound (Codes 415 and 242 1954) as well as exposing the private parts of the young girl without reason or permission (Article 268 and 269).”³⁰⁵ However, the charges were dropped because “[t]he circumciser did not know that FGM was illegal . . . [and] FGM is an orf (a tradition or custom), which is accepted by the Egyptian constitution.”³⁰⁶ It is true that circumcision is an orf,³⁰⁷ but it is also *contra legem*, “against existing laws”.³⁰⁸ This contradiction leaves room for judges to dismiss charges against defendants in FGM cases.³⁰⁹

In addition, despite these provisions in the penal code, Islamic law has a “divine mandate” that makes it less flexible

299. *Id.*

300. See CAIRO FAMILY PLANNING ASSOCIATION, *supra* note 188, at 16.

301. *Id.*

302. *See id.*

303. *See* KARIM, *supra* note 296, at 151.

304. CAIRO FAMILY PLANNING ASSOCIATION, *supra* note 188, at 16.

305. KARIM, *supra* note 296, at 150.

306. *Id.*

307. *See id.* at 208.

308. *See id.* at 151.

309. *See id.* at 151–152 (stating that the interpretation of Shari’a as it relates to female circumcision is not clear-cut).

and responsive to changes in modern society.³¹⁰ In the tenth century, Muslim scholars announced that the third source of Shari'a, Ijtihad (interpretation or "original thinking") was complete and no longer subject to change.³¹¹ This policy forecloses re-examination of traditions, such as FGM, even when there is debate among scholars. However, because one of the most important principles promulgated by the Shari'a is "improving the status of women and minors,"³¹² some modern scholars have called for revival of Ijtihad.³¹³

Finally, in the United States, numerous states and Congress have enacted statutes making FGM a criminal offense. This very well may prevent FGM from being performed in the United States, however, immigrants can and do temporarily return to their countries of origin to have their daughters circumcised. The demographics of Egypt indicate that legal solutions will not have the same effect there. In Egypt, the adult population has a literacy rate of 44% and life expectancy is fifty-seven years.³¹⁴ In addition, Egyptian society is comparatively homogeneous.³¹⁵

The results of the 1995 Egyptian Demographic and Health study are particularly revealing in regard to social attitudes about FGM. Eighty-two percent of the 14,779 female respondents, 97% of whom were circumcised, want the tradition to continue.³¹⁶ Only 13% responded that FGM should be abolished.³¹⁷ Five percent were unsure whether FGM should continue.³¹⁸ Women supported the continuation of FGM because it is a "good tradition" (58.3%), is "required by religion" (30.8%), promotes cleanliness (36.1%), allows better marriage prospects (8.9%), provides greater pleasure for husbands (3.8%), promotes preservation of virginity (9.1%), and prevents adultery (5.6%).³¹⁹ The majority of women opposed to FGM cited medical complications as their reason (45.7%), but fully 37.8% desired eradication because

310. See Mohammad, *supra* note 217, at 5A.100.6.

311. See *id.* at 5A.100.10.

312. *Id.* at 5A.100.7.

313. See *id.* at 5A.100.10.

314. See Ellis, *supra* note 2, at 5.70.8.

315. See *id.* (stating that Egypt is populated primarily by people of Hanitic origin).

316. See EDHS, *supra* note 6, at 171.

317. See *id.* at 171-172.

318. See *id.* at 172.

319. See *id.* at 173.

FGM is a “bad tradition.”³²⁰ Neither proponents nor opponents cited legal reasons for their stand on FGM.

A legal ruling may create an atmosphere in which people feel freer to examine their beliefs, but does not alter convictions about “good” or “bad” traditions overnight. As was the case with the Eighteenth Amendment to the United States Constitution (the prohibition of alcoholic beverages), people will ignore a law they perceive as “bad,” or simply unenforceable. The current Egyptian ban of such a culturally pervasive practice is unenforceable, and if not accompanied by concurrent social programs, will be ignored, as was the 1959 ban.

Groups working for the elimination of FGM would benefit from better coordination and information sharing.³²¹ Women, and particularly young mothers, have been easier to target, for example, when they seek maternal and child health care services. Men, who are affected as fathers and husbands, need to be enlisted in the campaign.³²² In addition, respected authority figures, such as doctors and religious leaders, some of whom are still FGM proponents, need to be brought on board to battle the perception of FGM as a currently safe “medical” procedure or mandatory Islamic practice.³²³

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320. *See id.*

321. *See The Next Step*, EGYPT TODAY, Dec. 4, 1998, available in 1998 WL 8404621 (reporting on research by Samiha El Katsha of the American University in Cairo).

322. *See id.*

323. *See id.*

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