

## Towards a solution concerning female genital mutilation?

### An approach from within according to Islamic legal opinions

#### Introduction

I don't need my razor blades anymore. . . A few years ago to say that was unthinkable. No woman spoke about what happened during circumcision. They said our stomachs would swell and burst if we did. But nobody was actually harmed. I'm not afraid anymore to speak up. I was maybe thirteen years old when I became a circumciser. For me that was a chance to learn something. . . I didn't pity the girls. To us the pain was a test. We can show that we are strong and courageous. When the girls have babies themselves later on, they have to endure the pain as well. I also circumcised my three daughters myself. Because I love them. Only through circumcision do girls become real women; an uncircumcised woman is considered dirty and debauched—that's what tradition has taught us, I've never doubted it. . . All of a sudden they said our tradition was wrong. . . Even the imam in the mosque said that we circumcisers are unworthy; there's nothing in the Quran about circumcision. I was confused. Have I believed in an illusion all my life? (Translated from Fofanah & Heimbach 2010: 54.)<sup>1</sup>

- 1 Meine Rasierklingen brauche ich nicht mehr. [...] Das war vor ein paar Jahren noch unmöglich. Keine Frau sagte, was bei einer Beschneidung passiert. Es hieß, unser Bauch würde sonst anschwellen und platzen. Aber niemandem ist etwas passiert. Ich habe keine Angst mehr zu sprechen. [...] Ich hatte kein Mitleid. Für uns ist der Schmerz eine Prüfung. Wir können zeigen, dass wir stark und mutig sind. Wenn die Mädchen später Kinder bekommen, müssen sie auch die Schmerzen ertragen. Ich habe auch meine drei Töchter selbst beschnitten. Weil ich sie liebe. Erst durch die Beschneidung werden Mädchen zu richtigen Frauen, eine unbeschnittene Frau gilt als schmutzig und zügellos – so hat es uns die Tradition gelehrt, ich habe nie daran gezweifelt. [...] Auf einmal hieß es, unsere Tradition sei falsch. [...] Dann sagte auch noch der Imam in der Moschee, dass wir Beschneiderinnen unwürdig sind, im Koran stehe nichts über Beschneidung. Ich war verwirrt. Hatte ich mein ganzes Leben an ein Trugbild geglaubt?*

These are the words of a woman from Sierra Leone who gave a report about her job as a circumciser in a German Christian monthly magazine and, more importantly, how she quit it with the help of a non-governmental organization (NGO). From the quote it becomes clear that she is Muslim like the majority of Sierra Leone's population, but also that she considered her job or activity as part of the tradition in her area. It is a tradition that is widespread and not restricted to predominantly Muslim countries. There is also contemporary evidence for the practice of female genital cutting in some Latin American ethnic groups (Akashe-Böhme 2006: 91) and among the adherents of natural religions in Australia (Badry 1999: 213). From a historical perspective, archaeologists have found well-preserved corpses of circumcised bog women from the Neolithic era in northern Germany, although the vast majority of bog bodies do not admit the conclusion that female circumcision was customary in central Europe at any time (Rosenke 2000: 60).<sup>2</sup> It is, however, prevalent among all religious groups in many parts of Africa and Western Asia, whether they are Coptic Christians, Ethiopian Jews, or Arab Muslims (*The Encyclopaedia of Islam* 1997: 913; Badry 1999: 213).

Female genital cutting or—more to the point—female genital mutilation (FGM), generally referred to as circumcision, occurs in at least five different forms. First, there is the so-called clitoridotomy, which means removing the clitoral hood, or prepuce. This is

effectively analogous to the removal of the penile foreskin that constitutes male circumcision. This delicate operation . . . is rare, especially in Africa, and, in any event, is extremely difficult to perform on small girls where it can be difficult to distinguish between the clitoris and its prepuce. (Ali 2008: 101.)

Second, the so-called clitoridectomy entails the cutting of part or all of the clitoris and/or the prepuce. This is the most common type of FGM in predominantly Muslim areas. Third, in addition to the removal of the clitoris, the labia minora can also be removed. Fourth, there is the so-called infibulation (or 'Pharaonic circumcision'), which results not only in the cutting of the clitoris, but also the sowing together of the labia with only a small hole left for urine and menstruation blood to flow through. Finally, there is a more or less

2 Interestingly enough, there has been a trend in Europe for plastic surgery to reduce the labia, correct the clitoris, or narrow the vulva according to temporary fashion (Rahmsdorf & Verlinden 2010: 29).

symbolic circumcision with a mere piercing or cutting of the female genitalia (Osten-Sacken & Uwer 2007; WHO 2010: 1). In any case, according to the World Health Organization (WHO 2010: 10) FGM refers to any 'injury to the female genital organs for non-medical reasons'. Furthermore, the WHO report states that

[t]he word 'mutilation' emphasizes the gravity of the act. Some United Nations agencies use the term 'female genital mutilation/cutting' wherein the additional term 'cutting' is intended to reflect the importance of using non-judgemental terminology with practising communities. Both terms emphasize the fact that the practice is a violation of girls' and women's human rights. (WHO 2010: v.)

Many reasons for performing FGM are usually identified, all of which can be characterized to be 'secondary rationalizations'. What is understood by these health, cosmetic, and hygienic reasons? People claim that female genital cutting increases sexual pleasure for both men *and* women, makes sexual intercourse easier, or increases fertility (Badry 1999: 213). The clitoris is believed to be 'dirty' in nature as the introductory example has shown. From a more socially oriented perspective, uncircumcised women have a bad reputation and difficulties in finding a husband (Osten-Sacken & Uwer 2007).

One also finds the argument that FGM preserves virginity and thus underlines the 'virginity cult' practiced in an Islamic context (Badry 1999: 219). For instance, there was a big uproar in 2007 when the Egyptian grand *mufti* Ali Gomaa ruled that women are allowed to have their hymens restored in surgery if they wanted to prove their alleged virginity to their newly-wed husbands. The *fatwa* (Islamic legal opinion) can be traced back to the former dean at al-Azhar University and *mufti* Souad Ibrahim Saleh, whose opinion Gomaa supported (Saleh 2007; cf. Gomaa Mohammed 2007).

All of this must be seen against the background of the established fact that Muslim women may also experience sexual pleasure (Badry 1999: 217). Several *fatwas* from IslamiCity.com support this when the *muftis* state that 'Islamic law protects a woman's right to sexual enjoyment, as demonstrated by the fact that a woman has the right to divorce on the grounds that her husband does not provide sexual satisfaction' (Doueiri 1997a–c, 1998 a–b). However, some claim that women's sexual desire is too great and that therefore the clitoris must be removed (cf. Akashe-Böhme 2006: 92). This leads straight to a statement the renowned Muslim jurist Khaled Abou El Fadl made about women's rights in Saudi Arabia:

To claim that a woman visiting her husband's grave, a woman raising her voice in prayer, a woman driving a car, or a woman travelling unaccompanied by a male is bound to create intolerable seductions, strikes me as morally problematic. If men are so morally weak, why should women suffer? (Abou El Fadl 2001: 269 f.)

In the end, circumcision is a powerful bodily sign of the human—male *and* female—covenant with God. According to the biblical Book of Genesis (17:10 ff.) this covenant was first made between God and Abraham. In the Quran it is reaffirmed in *sura* al-Nahl (16:123) and *sura* al-Nisā' (4:125) and quoted as example in the *fatwas* endorsing circumcision. It seems to be true that men are hardly involved in the actual decision in favour of female genital cutting. A man should not interfere in the decision of women to be circumcised. It is practiced and transmitted among women and midwives. Only sometimes is a (male or female) physician involved (*The Encyclopaedia of Islam* 1997: 913 f.; Osten-Sacken & Uwer 2007; cf. Slackman 2007: 3).

### **Normative prerequisites: between custom and law**

On the basis of Islamic normativity, mirrored in *fatwas*, this paper aims to examine a very ambivalent approach concerning female genital mutilation. It might be preferable to speak of the *sharia* not as Islamic *law* because the binding and coercive character of law as understood in the European context does not exist in this legal tradition to the same extent (cf. Rohe 2009: 9 ff.). To illustrate the ambivalent approach, it serves well to look at the 'World Conference of Ulama Towards the Prohibition of the Mutilation of the Female Body' in November 2006. The German and international press praised the outcome of the conference, which had gathered together Muslim scholars from different backgrounds in Cairo, to ban FGM as un-Islamic (cf. e.g. El Ahl 2006; Al-A'sar 2006; Frank 2006). Among the participating scholars were Sayyid Muhammad al-Tantawi, the late *Sheikh* of al-Azhar University, which is one of the highest institutions in the Sunni branch of Islam, and Ali Gomaa, the Egyptian grand *mufti* and thus formally the highest-ranking religious jurist of the country. And again it was an NGO, the German human rights organization Target, which had helped to initiate the conference. In the end, the scholars passed a list of 'recommendations'. It contained eight points, which can be summarized as follows:

1. The human body is inviolable.
2. There is no basis in the Quran or in the prophetic traditions, the so-called *hadiths*, for the practice of FGM.
3. The practice causes pain to the women's bodies and souls.
4. The assembled scholars call for an end to the practice.
5. They call for education of the people to raise awareness.
6. And they call for legislation to outlaw the practice if performed 'in a dangerous manner' (*bi-l-shakl al-dārr*) (Dār al-Iftā' al-Misriyya 2006).

However, a *fatwa* issued by the notorious, Egyptian-born *sheikh* Yusuf al-Qaradawi<sup>3</sup> and circulated on the internet at about the same time illustrates the contradictory ways in which Muslim jurisconsults address the issue—despite the fact that this *sheikh* himself also participated in the aforementioned conference. '[T]he most moderate opinion and the most likely one to be correct is in favour of practising circumcision in the moderate Islamic way indicated in some of the Prophet's hadiths—even though such hadiths are not confirmed to be authentic' (al-Qaradawi 2006b). This seems to constitute a contradiction which many other scholars have not been able to resolve. In another *fatwa*, of 2009, al-Qaradawi suggests that FGM is actually forbidden because of the pain inflicted on women and because it would be a severe alteration of God's creation (al-Qaradawi 2009). So why is it so difficult for Muslim authorities to forbid the circumcision of girls and women?

One can find some evidence supporting the practice of FGM in Islamic sources. While not in the *Quran*, there are a few prophetic traditions that mention the circumcision of women (see below). Muslim legal scholars often refer to these texts in order to justify the practice in terms of the Islamic deontology (*ahkām*) as mandatory (*wājib*) or virtuous (*mustahabb*).

At the same time, scholars acknowledge that female circumcision is a pre-Islamic practice (e.g. Doueiri 1997a–c), integrated into the corpus of Islamic normativity through the concepts of *'urf* and *'āda* (customary or common law). Often it is these very customs and habits that present disadvantages to women, where the application of *sharia* norms would have meant an improvement in their situation (Rohe 2009: 68 f.). Regional and tribal customs are also closely related to the principle of *maslaha* (community interest or common welfare), on whose basis they may well have been 'islamized' (Ebert 2005: 202; cf. Schacht 1964: 2; cf. Rosenke 2000: 71). In this context a quite remark-

3 Al-Qaradawi has been in the focus of controversial scholarly attention. See Skovgaard-Petersen & Gräf 2009 and Gräf 2010.

able argument in favour of female genital cutting should be noted. The *sharia* provides for the inviolability of the human body (*hurma*, cf. Krawietz 1991: 223 ff., 320; cf. Doueiri 1997a–c) and thus contradicts the practice of circumcision. In order to justify the breach of the *hurma*, the interest (*maslaha*) of the community in general, or of the individual in particular, must be greater than the expected harm inflicted on the woman. This harm could be considered less significant than the social unrest resulting from the abstention from the practice precisely *because* it is a respected custom (Badry 1999: 218). The argument is supported by real events. When a girl died from genital cutting in Egypt in 2007, the attempted legal ban of female genital mutilation by the Egyptian ministry of health caused a public ‘outrage’ in her village (Slackman 2007: 3). In the same vein, the aforementioned list of recommendations was described by the local press as ‘a move that is likely to win international support but fuel domestic dissent’ (Al-‘Asar 2006).

It might not seem to be surprising that life under different circumstances in different regions of the Islamic world was guided by customary law. One learns from the writings of the medieval traveller and judge (*qādi*) Ibn Battuta how (Islamic) law was understood and applied differently at the various destinations of his journey. Even though he tried to uphold Islamic law as he had learnt it, he faced local customs and established politics that often proved more prevalent than his ‘imports’. That ‘medieval Islamic regimes had no place for non-Shari‘a jurisdictions. . . was far from being the case’ (Harvey 2007: 111). In short, the law of the land has always quite flexibly been incorporated into the *sharia*—a fact expressly acknowledged by al-Qaradawi in his above-mentioned 2009 *fatwa*—as long as it did not interfere with the basic principles of the Islamic faith. Circumcision did *not*. And even though the practice has been labelled as ‘barbaric crime’ (*jarīma wahshiyya*, quoted in al-Qaradawi 2006a) or ‘bad habit’ (*al-‘āda al-sayyi‘a*, Dār al-Iftā’ al-Misriyya 2006), *muftis* still refrain from classifying it as prohibited (*harām*) or abominable (*makrūh*).

This paper argues that with this very ambivalent approach Muslim legal scholars try to accommodate *social* rather than *religious* constraints—or so it seems. As mentioned before, FGM is a phenomenon prevalent in African countries among Muslims and non-Muslims alike. By contrast, it is almost unheard of, for instance, in countries perceived to be firmly Islamic, such as Saudi Arabia or Afghanistan. However, this does not imply that the practice is non-existent in these places. In fact, the Arabian Peninsula is frequently named among the regions where FGM is or was common (Wensinck 1986:

20; Badry 1999: 211; Birch 2005; Salmān 2007;<sup>4</sup> Osten-Sacken & Uwer 2007). Circumstantial evidence also stems from the fact that the prophet knew about it, if the *hadiths* to this effect are authentic. Some studies suggest that the practice of FGM is also prevalent in Iraqi Kurdistan, Oman, Yemen, and Gaza—areas outside the African continent. Hence, the silence on the practice might not be so much a sign of the non-incidence of the problem, as of the strength of the taboo imposed on sexuality (Osten-Sacken & Uwer 2007).

That female circumcision is known in regions of the Islamic periphery may very well be traced to the fact that in those regions Muslims are less scriptural and more attached to rituals, customs, and religious feasts. One can almost safely conclude that female genital cutting is a pre-Islamic practice which the early Muslim community adopted—perhaps because the social forces were so strong or because it was a useful means of distinguishing Muslims from non-Muslims, or for both reasons. With the spread of Islam it was exported to the other regions. In later centuries, Islam was then instrumentalized to embed the practice into the context of marriage, family, and social honour (cf. Badry 1999: 213).

## Female genital mutilation in the legal sources

The efforts of countless human rights activists, NGOs, and circumcised women such as Waris Dirie<sup>5</sup> and others demonstrate the desire for religious and legal scholars to disclose ways of condemning and abolishing the practice of female genital mutilation from within. Western involvement instead is sometimes seen as anti-Islamic propaganda or as espionage for Israel, which was the case in both a 2004 and a 2005 Iraqi-Kurdistan study on FGM (Birch 2005; Osten-Sacken & Uwer 2007). For this reason several examples from *fatwas* will be given, pointing to and elaborating on the problems Muslim scholars face. Unfortunately, there is no available record of how *female muftis* argue in the case of female genital mutilation.

A review of the legal sources yields mixed results. These sources include the Quran, the *sunna* of the prophet (*hadiths*), the consensus of the scholars (*ijmā'*), and deductive analogy (*qiyās*). To start with, circumcision is not

4 For an excerpted English translation see MEMRI 2007.

5 In early 2010, there was a feature on female genital mutilation in the German youth culture magazine *Bravo*, which is probably best known for its efforts at sexual education. A portrayal of Waris Dirie formed part of the series. Cf. e.g. Dirie nd.

mentioned expressly in the Quran. Generally, *sura* al-Nahl (16:123) can be related to circumcision: ‘Then We revealed to thee: “Follow thou the creed of Abraham, a man of pure faith and no idolater”’ (Arberry 1964: 272). To follow the example that Abraham set—see also *sura* al-Mumtahana (60:4)—means to be circumcised, because it is narrated in the *hadiths* that Abraham was circumcised when he was 80 years old (Muslim ibn al-Hajjāj al-Qushayri 2000: 1013). Therefore there is no dispute concerning *male* circumcision, even though Sami Aldeeb argues that it should be prohibited for the same reasons (*hurma*, Aldeeb Abu-Sahlieh 2006: 48). But the Quran does not explain female circumcision satisfactorily.

Consequently, the prophetic traditions must be considered. There are four relevant *hadiths* which are usually quoted in the context of female genital mutilation. First, ‘[w]hen a man sits between the four parts (arms and legs of his wife) and the two circumcised parts meet, then ghusl [ritual washing] is obligatory’ (Islam Q&A nd.a). Referring to the practice in pre-Islamic Arabia, many scholars claim that the formulation of the phrase ‘when the circumcised parts meet’, which is to say, when the couple engage in sexual intercourse, indicates that the woman is circumcised as well. Another (minority) reading, though, implies that in the Arabic version the phrase ‘the two circumcised parts’ (*al-khitānān*) is just a doubling of the male circumcision. For example, one finds the same grammatical construction in *al-wālidān*, which is the male dual form for two fathers, hence parents (Ali 2008: 106; cf. Rosenke 2000: 71; cf. al-Qaradawī 2006a). It must, however, be noted that ‘iltiqā al-khitānayn’ is only part of the chapter title (Muslim ibn al-Hajjāj al-Qushayri 2000: 152). The proper translation of the available *hadith* would have to read ‘If he sat between her four parts and the circumcision touched the circumcision (*wamassa al-khitānu al-khitāna*), then ghusl would be mandatory’ (p. 153).

According to the second *hadith*, Muhammad said to a midwife who circumcised women in Medina: ‘Reduce the size of the clitoris but do not exceed the limit, for that is better for her health and is preferred by husbands’ (al-Qaradawī 2007; cf. Doueiri 1998a–b). The transmission chain (*isnād*) of this *hadith*, however, is considered to be weak (*da‘if*) and not authentic. Even if one deems it to be valid then it merely describes the way in which a woman should be circumcised, but does not locate its status within Islamic deontology. According to al-Qaradawī’s (2006a) opinion, female genital cutting is neither mandatory (*wājib*) nor recommended (*mustahabb*), but a matter of guidance (*irshād*) and preference of the couple involved. Hence it is permissible (*jā‘iz*), but by no means forbidden (*harām*).



Third, '[c]ircumcision is Sunnat for men and an honour for women' (Desai 2004; cf. Al-Munajjid nd). The transmission chain (*isnād*) of this *hadith* is also considered to be weak (*da'if*). Again, even if it were authentic, circumcision would only be a recommended customary operation for women (*'shay' mustahsan 'urfan*). However, this opinion is subject to change depending on time and place, because human civilization is in continuous change (al-Qaradawi 2006a).

The strongest point probably comes from the fourth *hadith*: 'Five are the acts quite akin to *fitrah* [pure human creation or nature]: circumcision, shaving the pubic areas, cutting the nails, plucking the hair under the armpits, and clipping (or shaving) the moustache' (A Group of Islamic Researchers 2004; cf. al-Bukhārī 2000: 1213 f.; cf. Muslim ibn al-Hajjāj al-Qushayri 2000: 125). To start with the inclusion of the irreversible circumcision in this sequence of personal hygiene concerning hair and nails, which grow back again, is at least interesting to note. Nevertheless, it underlines the importance of purity in Islam, based on *sura* al-Baqara (2:222): 'Indeed Allah loves those who keep to Him constantly as He loves those who keep themselves pure' (quoted in Desai 2004). The tradition is narrated in all six authoritative collections and therefore recognized as *sunna* (recommended or established in accordance with prophetic tradition, cf. Krawietz 2002: 115).<sup>6</sup> One can, however, argue that it refers to men only. Besides, it leaves much leeway when it comes to exactly how a woman should be circumcised. Consequently, the legal schools in Islam differ as to the degree of the practice. It may be considered a duty as much as a recommended act (cf. A Group of Islamic Researchers 2004; cf. Krawietz 1991: 227 f.).

Furthermore, according to Yusuf al-Qaradawi (2006a) there is no consensus among the scholars (*ijmā'*) regarding female genital mutilation. The only agreement he derives from the absence of a formal consensus is that it is permissible in principle because scholars would usually consider it mandatory or recommended, or at least an honourable custom, all of which implies the general permission (*jawāz*) of the practice.

Finally, al-Qaradawi argues that deductive analogy (*qiyās*) is not useful in this context. Even if God usually refers to both genders equally in the Quran (e.g. *yā ayyuhā al-nās*), several other principles of analogy would be violated. For instance, one must neither discriminate between the origin of the analogy

6 Especially in the context of circumcision it is understood to mean 'recommended' (cf. Rohe 2009: 10, 426, endnote 6).

or its conclusion, or violate the divine creation. Al-Qaradawi summarizes his findings as follows:

Without doubt, when we looked at the evidence in the Quran, the Sunna, the consensus, and the analogy, we did not find in them a proof for female circumcision to be mandatory or recommended. Nor did we find in them a proof for it to be forbidden or abominable. (Translated from al-Qaradawi 2006a.)<sup>7</sup>

### A survey of relevant legal opinions

The *fatwas* in this survey have all been published on four large Muslim websites.<sup>8</sup> One of the most prominent portals has been IslamOnline.net, which was set up under the auspices of *sheikh* Yusuf al-Qaradawi, and features news as well as a *fatwa* service. The same is true for IslamiCity.com, which is a California-based Muslim web portal, whose *fatwa* service is mainly run by Dani Doueiri and his team. In contrast to these two portals there are two *fatwa*-only websites. AskImam.org is based in South Africa and operated by *sheikh* Ebrahim Desai, while IslamQA.com (Islam Question & Answer) is the *fatwa* website of the Saudi Arabian *sheikh* Muhammad Salih al-Munajjid. In their English language sections one can search for the truncated word circumcis\*, which yields a total of 94 *fatwas* dealing with the subject in question. Of course, not all of them deal with female circumcision. Only those which can be considered characteristic of Muslim scholars' attitudes towards FGM have been chosen for presentation.

The questions range from 'How do women have to be circumcised?', which already implies that the practice would be permissible, to 'What does the tradition of the Prophet have to say about it?', which refers to the *hadiths*, to 'What is the opinion of the *mufti*, that is, the legal scholar?' As will be seen, all of the above-mentioned *hadiths* are usually repeatedly quoted in the *fatwas*.

On November 23, 2006, a *fatwa* by Yusuf al-Qaradawi was simultaneously published in Arabic and English at IslamOnline.net, where he signals his support for the circumcision of women 'under the current circumstances in the

7 *Lā shakka annanā 'indamā nazarnā ilā al-adilla min al-Qur'an wa-l-sunna wa-l-ijmā' wa-l-qiyās, lam najid fihā dalīlan 'alā wujūb khitān al-ināth wa-lā 'alā istihbābihi. Kamā annanā lam najid fihā dalīlan 'alā tahrīmihi aw karāhiyyatihi.*

8 For a more detailed presentation of the websites in question see Kutscher 2008: 228 ff. and Kutscher 2009a: 138 ff.

modern world'. He does not elaborate on this statement. Yet he rules that the abstention from female circumcision is not sinful in contrast to the mandatory male circumcision (al-Qaradawi 2006b). The same *fatwa* was published again on July 1, 2007 with the identical wording. The much longer Arabic version includes, among others, also the records of *sheikh* Mahmud Shaltut, the former president of al-Azhar University (d. 1963), who in his *fatwa* collection defends the practice of female genital cutting because the Arabs were used to it and Muhammad reported it. And yet he only lists counter-arguments: even if the cutting of the clitoris reduces the sexual desire of women, it might lead to the men's use of forbidden substances such as addictive drugs (cf. *The Encyclopaedia of Islam* 1997: 914). The *muftis* conclude that the calls for a prohibition of female circumcision would contradict the *sharia* and that they could merely distinguish between duty and recommendation (Majmū'a min al-muftīn 2006).

The ambivalence of their position becomes clear when al-Qaradawi states that the related *hadith* 'Do not exceed' cannot be regarded as strong, but at the same time considers the position in favour of 'circumcision in the moderate Islamic way' to be most probably correct. Circumcision would strengthen a woman's health and marriage (al-Qaradawi 2006b and 2007). This serves to illustrate the internal conflict that there is about the issue in the Islamic world.

In another IslamOnline.net *fatwa*, dated August 28, 2002, the Canadian *sheikh* Ahmad Kutty emphasizes the words 'prescribed' and 'obligatory', referring to female genital mutilation. In both instances, however, he adds an almost invisible 'not' in the concrete contexts. It is noteworthy, though, that due to the absence of an unambiguous prophetic tradition he refrains from calling female genital mutilation an Islamic ritual:

[I]f the Prophet, peace and blessings be upon him, had wanted female circumcision to be an integral aspect of religious practice in Islam the same way that male circumcision is, he would have said so clearly. Since he did not do so, we can safely assume it is not a prescribed ritual of Islam. (Kutty 2002; also quoted in Doueiri 2005.)

Another *fatwa* by Yusuf al-Qaradawi from December 13, 2004, already contains the essential points he made in his previously quoted *fatwas*. A few additional remarks point to the differences regarding female genital mutilation in the four Sunni legal schools (*madhāhib*). The Mālikī school considers it to be *sunna*, while the Hanafiyya and some Hanbalites hold it to be a 'meritorious action or noble deed' (*makrūma*, cf. Aldeeb Abu-Sahlieh 2006: 56). It is

the Shāfiites and most Hanbalites who consider it to be *wājib* (mandatory) in accordance with *sura* 16:123. The latter group also brings forth another argument in favour of FGM with regard to the *hadith* of the midwife who talked with Muhammad in Medina (see above). They argue that Muhammad implicitly allowed the midwife to see another woman's most private parts. These parts are, however, only to be exposed in mandatory cases. Consequently, the circumcision of women must be mandatory as well. In contrast to this opinion other scholars argue 'that exposing one's private parts for unnecessary medical treatment is allowed, as long as the benefit sought by such treatment is greater than the benefit of keeping the private parts covered'. Al-Qaradawi himself follows the *sunna* opinion (cf. also al-Qaradawi 2004a). Furthermore, he believes that any analogy between male and female would not be suitable in this case.

If unbiased experts prove that it really has harmful effects on females, it should be banned so as to ward off such effects. At the same time, if it is proved by some specialized doctors that some females are physically in need of being circumcised, this operation can be performed. (Al-Qaradawi 2004b, cf. also al-Qaradawi 2004a.)

He goes on to quote a physician who says that '[t]his operation violates a human right for women' on the grounds that they would lose their ability to feel an orgasm. This in turn would displease them and their husbands and hence disturb or even end their marriage. Still, al-Qaradawi concludes by saying that circumcision is permissible—regardless of all the contrary evidence given before.

Even though IslamOnline.net—despite the quarrels at its Cairo headquarters in early 2010 and the ensuing reconstruction of its online services—as well as al-Qaradawi personally are among the most prominent authorities in contemporary Islam, they are not the only ones where rulings about female genital mutilation can be found. *Mufti* Ebrahim Desai, an Indian-born scholar from South Africa, endorses female circumcision on AskImam.org on the grounds of its 'numerous physical benefits', its prevention of illnesses, its support of cleanliness, and its 'benefit for men'. Hence it is an honour for women (*makruma*) in accordance with prophetic tradition. Therefore it is permissible and recommended (*mustahabb*) according to him. Similarly to al-Qaradawi, Desai explains that only a light circumcision (clitoridotomy) should be performed (Desai 2004; cf. Krawietz 1991: 223). Besides, the *hadith* 'Do not exceed' is authentic in his opinion (Desai 2000 and 2002).

Since Desai also serves as a teacher for Muslims who study to become scholars themselves, his opinion is of some additional relevance. That it gains followers can be seen from the *fatwa* one of his students issued concerning female genital mutilation. On an extensive quotation of the *hadith* ‘Do not exceed’ and with reference to the *hadith* ‘Five are the acts’, he also comes to the conclusion ‘that “female circumcision” will be regarded as *Mustahab*’ (recommended). He explicitly acknowledges the controversial discussion about the issue in Islamic scholarship and restricts the permission to clitoridotomy (bin Said 2010).

*Mufti* Muhammad Salih al-Munajjid from Saudi Arabia, who hosts IslamQA.com, generally represents a traditional view. Like Desai and his student he states in one *fatwa* entitled ‘Circumcision for women is not obligatory’, that FGM ‘is an honour for women, but it is not obligatory’ (Al-Munajjid nd). Also, in his opinion the *hadith* ‘Five are the acts’ ‘includes circumcision of both males and females’. He acknowledges, though, that the prophetic traditions concerning that matter are not without ambiguity (Islam Q&A nd.a).

What makes al-Munajjid’s rulings noteworthy beyond the usual scholarly reasoning is the voices he quotes which are almost exclusively in favour of FGM and, moreover, several decades old. Such is the case with a 1986 *fatwa* by the Egyptian *Dār al-Iftā’*, which claims that people condemning female genital cutting represent ‘individual opinions which are not derived from any agreed scientific basis’ (Islam Q&A nd.a). Furthermore, he even quotes the supportive physician Hāmid al-Ghawābī, who identifies several medical and sexual benefits of female circumcision and denies that it results in frigidity ‘except in the case of Pharaonic circumcision’ (Islam Q&A nd.b). According to Islam Q&A this medical opinion was copied from a 1950s issue of *Liwā’ al-Islām* magazine, where it was printed as a response to the controversy surrounding FGM at the time (cf. Krawietz 1991: 223; Aldeeb Abu-Sahlieh 2006: 59).<sup>9</sup> Their perhaps principal witness is a female Muslim gynaecologist who maintains that

[i]f the benefits [of female circumcision] are not apparent now, they will become known in the future, as happened with regard to male circumcision—the world now knows its benefits and it has become widespread among all nations despite the opposition of some groups (Islam Q&A nd.b).

9 Al-Ghawābī’s article is translated and reprinted in Abdu’r-Razzaq 1998: 30 ff.

Unfortunately, al-Munajjid's *fatwas* are published without giving the date. They can, however, be traced back at least to September 2006, which is prior to the world conference of *ulama* in Cairo mentioned in the beginning (see above).

In contrast to these rather favourable voices, according to *Mufti* Dani Doueiri and his team at *IslamiCity.com* there is no mention of FGM in the Quran and hence there is no duty to be circumcised as a woman. When the circumcision does not harm the woman, however, a small circumcision is permitted. They admit that this would be a recognition of pre-Islamic customs (Doueiri 1997a–c).

It is quite interesting to note that over the course of more than sixteen months, these muftis answered different questions pertaining to female circumcision with the very same *fatwa* text. The only passage that changes is the question. People want to know what the *hadiths* mention about the practice (Doueiri 1997a), whether it is allowed and if so, how much should be cut (Doueiri 1997b), and whether it is mandatory for women based on the *hadith* 'When the two circumcised parts meet' (Doueiri 1998b). One question even recurs to the anti-Western bias: 'What is Islam's position on the assertion by non-Muslims that "circumcision" of women is prescribed by the religion of Islam' (Doueiri 1997c)?

In conclusion, Doueiri and his team suggest that the *sharia* prohibits partial or complete clitoridectomy or infibulation, 'or any genital mutilation which impairs the woman's ability to enjoy sexual relations' (Doueiri 1997a–c). There is no mention of a symbolic circumcision, which might be left as a loophole as long as the practice of FGM has not come to an end (cf. Ali 2008: 101).

Finally, Doueiri and his team refer the readers to an article on their website which clearly mentions FGM in the title: 'Female Genital Mutilation: An Islamic Perspective' (Doueiri 1997a–c). The author is even quoted in the *fatwas* though without proper reference. His *fatwa*-like article seems to have been written against the background of immigrant Muslims in the United States, whom he encourages to leave FGM behind. He defends attempts to declare FGM prohibited (*harām*), or at least abominable (*makrūh*) in the ongoing struggle 'to fight against superstition and oppression' adding that it 'would be wise to remember that there is a great burden of proof that Islam puts upon those who wish to prohibit a practice, and that the requirement for such a proof is a strength of the Islamic law' (Ahmad 2004).

## Conclusion

In the past, several steps and attempts at legally banning FGM failed repeatedly. An undated *fatwa* requested by a questioner who gave Germany as his country of residence seems to be as symptomatic as it is provocative in asking about female genital mutilation: ‘So was it *harām* when people have performed the circumcision of their daughters for decades?’<sup>10</sup> His insinuation clearly reveals the strength of traditional practices, habits, and customs (*‘urf*, *‘āda*). Consequently, it is not surprising that already in the 1950s contradictory *fatwas* were issued on that question (Aldeeb Abu-Sahlieh 2006: 59).

The reason for the ambivalent approach of *muftis* presented in this paper may well be a tribute to social constraints. On the other hand, it is also likely that the ambiguity really is a balance of weighing pros and cons and a mere compilation of the religio-legal evidence. Thus reflecting the tradition of *iftā’* the *muftis* might not actually intend to give a clear answer, but leave it to the discretion of the questioners to choose what is suitable in their specific situations. After all, a *fatwa* is not a binding court verdict. The historical nature of *fatwas* is rather to instruct and inform (cf. Skovgaard-Petersen 1997: 385).

There is, however, some evidence that *muftis* in the late twentieth and early twenty-first centuries compete for the conclusive authority over Muslim minds by providing clear behaviour guidelines or religious guidance (*hudā*, cf. Kutscher 2009b: 33 ff.). Hence positioning themselves on one side of the spectrum also leads to a certain reputation within their respective contexts which again reflects a certain social accommodation. The one-sidedness of some of their *fatwas* with arguments either in favour of or against female circumcision supports this point of view. This seems to be true of IslamiCity.com where reference to Muslims in minority contexts is made. And it holds true for IslamQA.com where the Wahhabi principle to follow the virtuous early Muslim community is implicitly emphasized. Aside from this, the target audience does not seem to play a decisive role in formulating the *fatwas*. Al-Qaradawi as well as al-Munajjid have published *fatwas* on FGM in both Arabic and English. Yet their opinions remain consistent regardless of whether the reader is Arab or European. Hence, the ambiguity in one *fatwa* might be an attempt to appease both audiences.

In practice, two solutions seem to be possible if one discards the option of proving the mentioned *hadiths* and their transmission chains (*isnāds*) to be

10 Translated from IslamOnline.net (nd): *Fa-hal mā qāma bi-hi al-nās mundhu ‘asharāt al-sinīn min khitān banātihim kāna harāman?*

faulty and unreliable. On the one hand it might be helpful if the recognized exceptional cases of medical necessity could be emphasized as such even though, strictly speaking, medical necessity does not require religious justification. On the other hand, the historical context of those *hadiths* could be stressed more prominently. For instance, a woman's right to experience sexual pleasure has been established. Historically as well as relating to the hierarchy of the legal principles (e.g. *hurma*) there are newer and stronger arguments against female genital mutilation.

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