

A Threat to Democracy: Government control over Canadians' thoughts, beliefs and opinions

Submissions on Motion 103

Brief to the Standing Committee on Canadian Heritage

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About the Justice Centre

Founded in 2010 as a voice for freedom in Canada's courtrooms, the Justice Centre for Constitutional Freedoms defends the constitutional freedoms of Canadians through litigation and education.

The Justice Centre's vision is for a Canada where:

- each and every Canadian is treated equally by governments and by the courts, regardless of race, ancestry, ethnicity, age, gender, beliefs, or other personal characteristics
- all Canadians are free to express peacefully their thoughts, opinions and beliefs without fear of persecution or oppression
- every person has the knowledge and the perseverance to control his or her own destiny as a free and responsible member of our society
- every Canadian has the understanding and determination to recognize, protect and preserve their human rights and constitutional freedoms
- people can enjoy individual freedom as responsible members of a free society.

About the Authors

Jay Cameron – Jay Cameron earned a Bachelor of Arts in English from Burman University, and an LLB from the University of New Brunswick. After articling at a large national law firm and being called to the bar in 2008, Jay worked for the Attorney General of British Columbia as a provincial Crown Prosecutor. His practice included bail hearings, *Charter* Applications, and prosecuting various offences. He returned to Alberta and civil litigation in 2012, and has since appeared at every level of court in four provinces, as well as the Ontario Court of Appeal. In addition to criminal law, Jay's extensive and varied litigation practice has included construction, oil and gas, child protection, administrative law, real estate, family, insurance, land development, personal injury, defamation and constitutional law. Jay joined the Justice Centre in early 2015.

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Introduction

On March 23rd 2017, the Canadian House of Commons passed M-103 (the “Motion”), a non-binding Motion that condemns “Islamophobia”, racism and religious discrimination. The text of the Motion states:

That, in the opinion of the House, the government should: (a) recognize the need to quell the increasing public climate of hate and fear; (b) condemn Islamophobia and all forms of systemic racism and religious discrimination and take note of House of Commons’ petition e-411 and the issues raised by it; and (c) request that the Standing Committee on Canadian Heritage undertake a study on how the government could (i) develop a whole-of-government approach to reducing or eliminating systemic racism and religious discrimination including Islamophobia, in Canada, while ensuring a community-centered focus with a holistic response through evidence-based policy-making, (ii) collect data to contextualize hate crime reports and to conduct needs assessments for impacted communities, and that the Committee should present its findings and recommendations to the House no later than 240 calendar days from the adoption of this motion, provided that in its report, the Committee should make recommendations that the government may use to better reflect the enshrined rights and freedoms in the Constitution Acts, including the Canadian Charter of Rights and Freedoms.¹ [emphasis added]

The Motion presupposes as fact that there is a “rising public climate of hate and fear” in this country which the government needs to quell. To “quell” is to “thoroughly overwhelm and reduce to submission or passivity”², “to stop something, especially by using force”³, “to put down forcibly; suppress”.⁴ Canadians are concerned about the Motion and the potential infringement of their constitutional freedoms. The word “quell” only serves to increase concerns – it is a harbinger of compulsion, with an implied use of force.

The contention that there is a “rising public climate of hate and fear” in Canada is foundational to the Motion. This Committee should be exceedingly wary of presupposing this statement as representative of reality. No evidence has been produced of the existence, scope or severity of the supposed “rising climate of hate and fear” in this nation, or its nature or character. It remains

¹ M-103, *Systemic Racism and Religious Discrimination*, 1st Sess, 42nd Parl, 2017.

² [<https://www.merriam-webster.com/dictionary/quell>]

³ [<http://dictionary.cambridge.org/dictionary/english/quell>]

⁴ [<http://www.thefreedictionary.com/quell>]

entirely unclear what this “rising climate of hate and fear” refers to, or what facts form its basis. Laws should target specific problems or injustices. A vague and ill-defined problem cannot lead to the creation of just laws. It would be irresponsible as a Committee to take the existence of this alleged state of affairs at face value in its study of the Motion. Suppositions of unestablished and undefined facts make for bad recommendations of law.

The reality of a peaceful, harmonious Canada

According to the 2017 Global Peace Index⁵ presented at the United Nations on June 21, 2017,⁶ Canada is the eighth safest country out of 163 nations globally, a figure which improved slightly in 2016.⁷ Canada scored particularly well in regard to the absence of internal conflicts, violent crime and political instability.⁸ On a yearly basis, Canada is repeatedly voted one of the most desirable countries in which to live.⁹ The largely peaceful day-to-day co-existence of millions of people from various races, cultures and religions in Canada contradicts the assertion that there is a “rising climate of hate and fear” in Canada that requires a new and forceful legislative response.

Current laws address real problems, while respecting fundamental *Charter* freedoms

There are legitimate concerns that any legislative action resulting from M-103 would unjustifiably infringe the *Charter*¹⁰ freedoms of Canadians. Existing *Criminal Code* provisions against violence and hate speech, human rights legislation (provincial and federal), the law of defamation, and various other torts (e.g. personal injury, negligence) provide abundant means to address real problems that actually arise in the lives of citizens. These laws place carefully tailored limits on lawful conduct between Canadians while respecting *Charter* freedoms. As John Stuart Mill noted: “[t]he third, and most cogent reason for restricting the interference of government, is the great evil of adding unnecessarily to its power.”¹¹ In the absence of a specific problem that is clearly defined, along with an explanation as to how and why current laws fail to address it, it is neither desirable nor possible to legislate as proposed by M-103 in a manner consistent with the Constitution.

⁵[<http://visionofhumanity.org/app/uploads/2017/06/GPI-2017-Report-1.pdf>]

⁶[<http://economicsandpeace.org/events/2017-global-peace-index-release-at-the-united-nations/>]

⁷ Global Peace Index, p. 2

⁸ Global Peace Index, pp.

⁹[<https://globalnews.ca/news/3293192/canada-2nd-best-country-2017-world-rankings-survey/>];

¹⁰ *The Constitution Act, 1982, Schedule B to the Canada Act 1982 (UK)*, 1982, c 11 (the “*Charter*”)

¹¹[<http://www.econlib.org/library/Mill/mlLbty5.html>]

Attempting to do so would be a transformative and critical step across a line that no government which respects the freedoms of its citizens may cross.

Attempting to “completely eliminate racism and religious discrimination including Islamophobia” in Canada’s multicultural society would require a despotic government oppression and control of not only speech and expression, but thought itself. **In proposing to eliminate racism, discrimination and Islamophobia, the government necessarily makes itself the sole arbiter of what constitutes those things, and tasks itself with their elimination.** If M-103 is legislatively codified, the unconstitutional infringement of freedom of thought, belief, expression, conscience and religion is inevitable.

The Charter Protects Freedom of Thought, Belief and Expression

Section 2(b) of the *Charter* states:

Everyone has the following fundamental freedoms:

(b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.

The Supreme Court of Canada has stated that “the very lifeblood of democracy is the free exchange of ideas and opinions”.¹² Cory J., writing for the majority of the Supreme Court in *Edmonton Journal v. Alberta (Attorney General)*,¹³ stated:

It is difficult to imagine a guaranteed right more important to a democratic society than freedom of expression. Indeed a democracy cannot exist without that freedom to express new ideas and to put forward opinions about the functioning of public institutions. The concept of free and uninhibited speech permeates all truly democratic societies and institutions. The vital importance of the concept cannot be over-emphasized... It seems that the rights enshrined in s. 2(b) should therefore only be restricted in the clearest of circumstances.¹⁴

Speech begins in the mind; it is a reflection of the workings of the inward person. The *Charter* protects freedom of expression “so as to ensure that everyone can manifest their thoughts, opinions, beliefs, indeed all expressions of the heart and mind, however unpopular, distasteful or

¹² *Committee for the Commonwealth of Canada v. Canada*, [1991] 1 SCR 139 [*Commonwealth*], p. 182, citing *R. v. Kopyto*, 1987 CanLII 176 (ON CA), p. 89.

¹³ [1989] 2 S.C.R. 1326 [*Edmonton Journal*]

¹⁴ *Ibid*, para. 2

contrary to the mainstream”.¹⁵ Speaking for a unanimous Supreme Court in *Sierra Club of Canada v. Canada (Minister of Finance)*,¹⁶ Iacobucci J. stated:

Underlying freedom of expression are the core values of (1) seeking the truth and the common good; (2) promoting self-fulfilment of individuals by allowing them to develop thoughts and ideas as they see fit; and (3) ensuring that participation in the political process is open to all persons: *Irwin Toy Ltd. v. Quebec (Attorney General)*, [1989] 1 S.C.R. 927, at p. 976; *R. v. Keegstra*, [1990] 3 S.C.R. 697, at pp. 762-64, *per* Dickson C.J. *Charter* jurisprudence has established that the closer the speech in question lies to these core values, the harder it will be to justify a s. 2(b) infringement of that speech under s. 1 of the *Charter*: *Keegstra*, at pp. 760-61.

Focus on behaviour or on thoughts?

Criminal racist and discriminatory actions, including those directed against Muslims, are already illegal in Canada.

Enforcing some kind of unspecified ban on racism that goes beyond prohibiting behaviour that is already unlawful would require the government to police personal sentiments based on government definitions of what constitutes racism. Thought control by government, whether achieved or merely attempted, is antithetical to a free society. It is not government’s role to compel everyone to like or love each other, or each others’ religions and ideologies, nor does government have ability to bring this about. The role of civil government is to provide a framework of order in which people can practice and exercise their freedom of conscience, religion, expression, association, and freedom of peaceful assembly. Requiring citizens to adhere to “correct” or “approved” opinions, or to pretend to do so, is one of the features of totalitarian states.

The criminal law, for example, makes a distinction between *mens rea* (the required mental state) and *actus reus* (the action of committing a crime), and requires both to be established beyond a reasonable doubt to result in a conviction. There is no such thing as a crime where the *mens rea* alone is sufficient to convict. A person cannot be punished for merely intending to steal because the prohibited act has not been committed. In similar fashion, racist or bigoted thoughts should not be punished.

¹⁵ *Saskatchewan (Human Rights Commission) v Whatcott*, 2013 SCC 11, at para 50.

¹⁶ [2002] 2 SCR 522 at para. 75.

In a free society, thoughts about other people should not be punishable. Since racism and discrimination are fundamentally a state of mind, the “quelling” of racism and discrimination requires government interference in the very thoughts of the citizen.

Unacceptably vague terms

Compounding the unconstitutionality of such state interference with personhood is the vagueness and subjectivity of what constitutes “racism and discrimination”, not to mention the undefined term “Islamophobia”. Without any definition, it will be the responsibility of the Committee to define “Islamophobia” as it considers appropriate. A main concern with the word “Islamophobia” is that it may encompass critique or satire of the religious tenets of Islam.¹⁷

What is “Islamophobia”?

Words matter, especially in the crafting of laws. M-103 is a direction from the House for this Committee to make recommendations for the purposes of further government action; presumably the creation of new legislation.

The crafting of laws requires certainty. As the Supreme Court of Canada noted in *Greater Vancouver Transportation Authority v. Canadian Federation of Students — British Columbia Component*,¹⁸ the “prescribed by law” requirement in section 1 of the *Charter* exists to protect the public from arbitrary state limitations on *Charter* rights.¹⁹ The Supreme Court of Canada quoted constitutional law professor Peter W. Hogg in regard to the protection against arbitrary state action:

The requirement that any limit on rights be prescribed by law reflects two values that are basic to constitutionalism or the rule of law. First, in order to preclude arbitrary and discriminatory action by government officials, all official action in derogation of rights must be authorized by law. Secondly, citizens must have a reasonable opportunity to know what is prohibited so that they can act accordingly. Both these values are satisfied by a law that fulfils two requirements: (1) the law must be adequately accessible to the public, and (2) **the law must be formulated with sufficient precision to enable people to regulate**

¹⁷ Barbara Kay, “How Long Until my Honest Criticism of Islamism Constitutes a Speech Crime in Canada?” *National Post*, (7 Feb 2017), see online: [<http://nationalpost.com/opinion/barbara-kay-how-long-until-my-honest-criticism-of-islamism-constitutes-a-speech-crime-in-canada/wcm/7b02b5c0-e409-480d-b30a-78fd98681d9e>]; Rex Murphy, “M-103 Has Passed. And What Today Has Changed for the Better?” *National Post*, (24 March 2017), online: [<http://nationalpost.com/opinion/rex-murphy-m-103-has-passed-and-what-today-has-changed-for-the-better>]

¹⁸ [2009] 2 SCR 295 [*Translink*]

¹⁹ *Translink*, para. 51

their conduct by it, and to provide guidance to those who apply the law.²⁰
[emphasis added]

Constitutionalism and the Rule of Law are key values to Canada's liberal democracy. Both require certainty in regard to the use of state power and precision in the crafting of laws.

Motion M-103 does not define the term "Islamophobia." Yet "Islamophobia" is a key component of the Motion, because MP Iqra Khalid, who tabled M-103, refused to remove it from the proposed wording.²¹ The word remains undefined in the Motion. Presumably, in order to study how to eliminate "Islamophobia" (and provide legislative recommendations), the Committee needs to know what "Islamophobia" is. The Committee cannot make recommendations to quell "Islamophobia" without specifically defining it.

Ms. Khalid proposed to this Committee that "Islamophobia" is the "irrational fear of Islam."²² This definition creates several problems, not the least of which is whether Parliament can constitutionally legislate against an irrational fear. Laws can and do prohibit bad actions. But irrational fears cannot be outlawed. Should it be against the law in Canada to be irrational? Or fearful? About anything? And if there is an irrational fear of Islam, does that mean that there may be rational fears or concerns that are not "Islamophobic"? Where would the line between the two propositions be?

Section 2(b) Protects Listeners Also

Section 2(b) of the *Charter* protects not only the speaker's right to speak, but also the listener's right to hear. The Supreme Court of Canada has held repeatedly that the public, the intended recipients of the expression, have the right to receive and access information.²³ This right of listeners is as important as the right of the expressing party.²⁴

²⁰ *Translink*, para. 50

²¹ <https://openparliament.ca/debates/2017/2/15/iqra-khalid-2/>

²² [<http://parl.vu.parl.gc.ca/XRender/en/PowerBrowser/PowerBrowserV2/20170918/-1/27847?Language=English&Stream=Video&useragent=Mozilla/5.0>]

²³ See, for example, *Ford v. Quebec (Attorney General)*, [1988] 2 S.C.R. 712 [*Ford v. Quebec*]; *Harper v. Canada (Attorney General)*, [2004] 1 SCR 827 [*Harper v. Canada*]; *Edmonton Journal*.

²⁴ *Canadian Broadcasting Corp. v. New Brunswick (Attorney General)*, [1996] 3 S.C.R. 480 [*Canada Broadcasting Corp.*], at para. 23. See also *Ruby v. Canada (Solicitor General)*, [2002] 4 SCR 3 at para. 53.

In *Harper v. Canada (Attorney General)*, the majority of the Court noted “the right of the people to discuss and debate ideas forms the very foundation of democracy”.²⁵ In speaking specifically of the need for citizens to hear, the majority of the Court stated:

Freedom of expression protects not only the individual who speaks the message, but also the recipient. Members of the public — as viewers, listeners and readers — have a right to information on public governance, absent which they cannot cast an informed vote; see *Edmonton Journal*, supra, at pp. 1339-40. Thus the *Charter* protects listeners as well as speakers; see *Ford v. Quebec (Attorney General)*, 1988 CanLII 19 (SCC), [1988] 2 S.C.R. 712, at pp. 766-67.

This is not a Canadian idiosyncrasy. The right to receive information is enshrined in both the Universal Declaration of Human Rights, G.A. Res. 217 A (III), U.N. Doc. A/810, at 71 (1948), and the International Covenant on Civil and Political Rights, Can. T.S. 1976 No. 47. Canada is a signatory to both. American listeners enjoy the same right; see *Red Lion Broadcasting Co. v. Federal Communications Commission*, 395 U.S. 367 (1969), at p. 390; *Martin v. City of Struthers*, 319 U.S. 141 (1943), at p. 143. The words of Marshall J., dissenting, in *Kleindienst v. Mandel*, 408 U.S. 753 (1972), at p. 775, ring as true in this country as they do in our neighbour to the south:

[T]he right to speak and hear — including the right to inform others and to be informed about public issues — are inextricably part of [the First Amendment]. The freedom to speak and the freedom to hear are inseparable; they are two sides of the same coin. But the coin itself is the process of thought and discussion. The activity of speakers becoming listeners and listeners becoming speakers in the vital interchange of thought is the means indispensable to the discovery and spread of political truth. [Citations omitted.]

...

It is clear that the right here at issue is of vital importance to Canadian democracy... The ability to speak in one’s own home or on a remote street corner does not fulfill the objective of the guarantee of freedom of expression, which is that each citizen be afforded the opportunity to present her views for public consumption and attempt to persuade her fellow citizens. Pell J.’s observation could not be more apt: “[s]peech without effective communication is not speech but an idle monologue in the wilderness”; see *United States v. Dellinger*, 472 F.2d 340 (7th Cir. 1972), at p. 415.²⁶

²⁵ *Harper v. Canada*, at para. 12.

²⁶ *Harper v. Canada*, paras. 17-20.

The prosecution of ideas that are expressed peacefully by citizens

Michel Juneau-Katsuya appeared as a witness before this Committee on Wednesday, September 20, 2017, and illustrated why so many Canadians are deeply concerned about M-103. Mr. Juneau-Katsuya, formerly of CSIS and the RCMP, currently operates in the realm of private security. His testimony was concerning. He minimized the constitutional rights of Canadians both to speak and to hear, and advocated for the removal of broadcast licenses of radio stations that aired concerns about immigration and Islam, calling such stations “trash radio” to justify censorship (i.e. such stations have nothing legitimate to say, in his opinion, so they should be censored). He stated that there is “too much shyness and political correctness when it comes to the prosecuting process, letting it go under the blanket of free speech and letting things go too far.”²⁷ It is apparent that Mr. Juneau-Katsuya thinks the government should be far more involved in policing the expressions (and therefore the thoughts) of Canadians, and that the *Charter* is an inconvenient barrier to this end. Mr. Juneau-Katsuya could advance arguments as to why some radio programs are “trash,” but in a free society this determination is made by individual radio listeners, not by government.

In a multicultural, multi-religious society such as Canada, the ideas of its citizens are as diverse as its people. Many of these ideas necessarily conflict with each other in regard to culture, morality and spirituality, social structure and philosophy. People adhere to a diversity of religions or worldviews (including non-theistic belief systems such as materialism, relativism, and atheism). Each individual believes that her or his worldview offers a superior, or more correct, interpretation of the world. Each person, in turn, has the right to share her or his beliefs with each other and with the public.²⁸ The stifling of this expression, as advocated by Mr. Juneau-Katsuya, would criminalize lawful conduct that is necessary for Canada’s liberal democracy.

Is having or voicing concerns about some Islamists “Islamophobia”

As detailed by Global Peace Index, Canada is the eighth safest country in the world. Much of the world’s population is not so fortunate.

²⁷ <http://parlvu.parl.gc.ca/XRender/en/PowerBrowser/PowerBrowserV2/20170920/-1/27874?useragent=Mozilla/5.0>

²⁸ *R. v. Big M Drug Mart Ltd.*, [1985] 1 SCR 295, paras. 94-96.

The Middle East and North Africa (“MENA”) is ranked by the Institute for Economics and Peace²⁹ as the least peaceful region in the world for the fifth successive year. Saudi Arabia, followed by Libya, recorded the largest deteriorations in the region. Both Saudi Arabia and Libya are countries where Islam is the predominant religion. According to the Global Peace Index, “Saudi Arabia fell in the rankings because of its involvement in the Syrian and Yemen conflicts and increased terrorist activity, mainly conducted by ISIL and its affiliates, while the fall for Libya was due to its increased level of internal conflict.”³⁰

For the year 2016, the domain³¹ that deteriorated the most over the ten-year period was Safety and Security, with 61 per cent of MENA countries recording a deterioration. The major declines in this domain occurred in the sub-Saharan Africa region “due to increases in terrorism impact and political instability.”³² In 2016, 94% of the world’s peace keeping forces were deployed to Middle East North Africa and Sub-Saharan Africa.³³ The countries these peacekeeping forces are deployed to are predominantly Islamic.

Is it “Islamophobic” for Canadians to be concerned about how the immigration of persons from these nations may impact the safety of Canada? Is it “Islamophobic” to conclude that the nations which are ruled by a combination of “mosque and state” are far less safe than Canada, and are repeatedly and consistently ranked among the most dangerous countries in the world? Should it be illegal to express such concerns?

WADI (Arabic for “Valley”) is an NGO operating in the Middle East and focused on women’s issues, that started working in Iraqi Kurdistan (Iraqi Kurds are typically Sunni Muslims³⁴) in 2003. After gaining the trust of the local women through medical work their patients revealed that female genital mutilation (“FGM”) was common.³⁵ The procedure was reported to be performed with unsterilized instruments or even broken glass and without anesthesia on girls four to twelve years

²⁹ The Institute for Economics and Peace produces the Global Peace Index, considered the world’s leading benchmark for measuring the peacefulness of nations, is used by many leading organisations and presented yearly to the United Nations.

³⁰ Global Peace Index, p. 2

³¹ One of the criterion used to calculate the Global Peace Index

³² Global Peace Index, p. 3

³³ Global Peace Index, p. 51, table 2.26

³⁴ [<http://www.pewresearch.org/fact-tank/2014/08/20/who-are-the-iraqi-kurds/>]

³⁵ [<http://www.meforum.org/1629/is-female-genital-mutilation-an-islamic-problem>] See Appendix “A” for full article.

old, with the extent of the mutilation “dependent on the experience of the midwife and the luck of the girl.” The cutting of the clitoris is performed according to the “sunnat excision”, i.e. the excision according to the tradition of the prophet.³⁶ The locals reported that the wound is then treated with ash or mud with the girls then forced to sit in a bucket of iced water. Many Kurdish girls die, and others suffer chronic pain, infection, and infertility.”³⁷

In subsequent studies in the area it was determined that approximately 60% of the women in the area had undergone FGM, stated it was “normal” and that it was both a tradition and religious obligation.³⁸ Despite the fact that the United Nations has made the prevention of female genital mutilation a priority for three decades, the practice is expanding.³⁹ The clitoris is considered dirty (haram), and “women fear that they cannot find husbands for their daughters if they have not been mutilated; many believe men prefer sex with a mutilated wife.”⁴⁰

Interestingly, when the widespread use of female genital mutilation by Iraqi Kurds was reported, “some members of influential Islamic and Arabic organizations in the diaspora scandalized the findings, accusing WADI of trying to insult Islam and spread anti-Islamic propaganda.”⁴¹ Members of the “Initiative of Muslim Austrians called the data part of an “**Islamophobic campaign**” and declared no FGM exists in Iraq.”⁴²

Is it “Islamophobia” to voice concerns about the safety and security of Muslim women? Is it irrational for a Canadian to be concerned about child female genital mutilation, and its continued occurrence in some Canadian Islamic communities,⁴³ or that there has never been a conviction for female genital mutilation in Canada?⁴⁴ Is it rational, or irrational, to believe that the Constitution of Canada protects a little girl’s right not to have her genitals mutilated? Is it rational or irrational

³⁶ [<https://wadi-online.org/2017/03/06/the-campaign-against-female-genital-mutilation/>] See Appendix “A” for full article.

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

⁴⁰ *Ibid.*

⁴¹ *Ibid.*

⁴² *Ibid.* And see Julia M. Masterson and Julie Hanson Swanson, *Female Genital Cutting: Breaking the Silence, Enabling Change* (Washington, D.C.: International Center for Research on Women and the Center for Development and Population Activities, 2000), p. 5.

⁴³ [<http://www.metronews.ca/news/canada/2017/08/21/women-in-ismaili-muslim-sect-say-they-have-had-fgm-in-canada.html>] See Appendix “A” to this report for full article.

⁴⁴ [<http://www.metronews.ca/news/ottawa/2017/07/18/ottawa-says-no-commitment-on-tracking-cases-female-genital-mutil.html>]

to be concerned about the safety and autonomy of Canadian women who may be compelled to wear a burka, hijab or niqab against their wills, in a society that respects the equality, opinions and rights of women? Is it rational or irrational to be concerned about suicide bombers and terrorism? Is it racist to express concerns about these issues? Is it discriminatory? Is it “Islamophobic”?

Further, there are different beliefs and factions within Islam, and these ideological conflicts are sometimes expressed by violence.⁴⁵ Is a Shiite “Islamophobic” for expressing strong disagreement with Sunni teachings or practices? Can a Muslim be “Islamophobic” if he criticizes the practice of female genital mutilation? Tarek Fatah, a Muslim, testified before this Committee on Wednesday, September 20th, 2017, and stated that “so-called” experts in Islam (whom he likened to Islamic popes who pretend to infallibility), who are in favour of jihad and burkhas and female genital mutilation, must be challenged.

Is Mr. Fatah an “Islamophobe” because he thinks that it is repugnant for women to be compelled to wear a burkah? Should his ability to think or say this be quelled? Does the Committee know the answers to any of these questions? Should it pretend to?

Islam is not a single, united, coherent and uniform whole. Instead, there are different factions, movements and ideologies within Islam. Which one of those factions are Canadians free to be concerned about? Canadian Muslims have the constitutional right to criticize the positions of those within their own religion, with whom they disagree. Likewise, non-Muslims also have the constitutional freedom to criticize Islam. All Canadians enjoy the freedom to criticize all religions (including worldviews and belief systems such as atheism, agnosticism and other “isms”). The Supreme Court of Canada has ruled that the state is not to make itself the arbiter of religious dogma.⁴⁶ The myriad questions are proof of the wisdom of the *Charter* and the Supreme Court of Canada’s holding that the state is to be neutral in regard to debates about religion.

⁴⁵ [<http://www.bbc.com/news/world-middle-east-16047709>]

⁴⁶ *Syndicat Northcrest v. Amselem*, [2004] 2 SCR 551, para. 50: “In my view, the State is in no position to be, nor should it become, the arbiter of religious dogma. Accordingly, courts should avoid judicially interpreting and thus determining, either explicitly or implicitly, the content of a subjective understanding of religious requirement, “obligation”, precept, “commandment”, custom or ritual. Secular judicial determinations of theological or religious disputes, or of contentious matters of religious doctrine, unjustifiably entangle the court in the affairs of religion.”

Conclusion

When a Parliamentary Committee is asked by the House of Commons to study something, the Committee should know what that “something” is. So should Canadians. There are three main problems with M-103. First, the Motion is vague and lacks the certainty for proper legislative recommendations. Second, the state has no business in attempting to control the minds and thoughts of its citizens, as is implicitly proposed by the Motion; the *Charter* stands as a guardian between the citizen and oppressive state action. Third, “Islamophobia” is not capable of constitutional legislative prevention for the reasons set out herein.

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Female genital mutilation is happening in Canada, study finds

A study found that 80 per cent of Bohra women surveyed have undergone FGM and two of the study's 18 Canadian participants said it happened within Canada's borders.



JESSE WINTER / TORSTAR NEWS SERVICE [Order this photo](#)

Lawyer Dilshad Tavawalla is a staunch advocate against female genital mutilation. She has campaigned against the practice even among her own religion, Dawoodi Bohra. The faith are alleged to practice FGM worldwide, including in Canada.

By: Torstar News Service Published on Mon Aug 21 2017

Women from a small sect of Ismaili Muslims called the Dawoodi Bohras have reported that female genital mutilation has been performed on them in Canada, a study given to the federal government reveals.

The first research of its kind to probe the practice within this tightly knit South Asian community, the study found that 80 per cent of Bohra women surveyed have undergone FGM and two of the study's 18 Canadian participants said it happened within Canada's borders.

In Canada, FGM was added to the Criminal Code under aggravated assault in 1997. The study does not provide additional information on the two cases it uncovered.

Most commonly associated with communities in sub-Saharan Africa, FGM is also practised among members of this Muslim sect who trace their roots to Yemen in the 11th century and who migrated to Gujarat, India, in the 1500s.

Authored by Sahiyo, an organization of anti-FGM activists and members of the Dawoodi Bohra community, the study was completed in February. Preliminary results went to officials from Canada's Foreign Affairs Department in June 2016. The federal government says it is looking into the issue.

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The researcher's findings show that [reddit this!](#) 30 per cent of the 385 Dawoodi Bohra women surveyed — including all 18 Canadian participants — want the practice to end and would not do it to their daughters.

Female genital mutilation, also known as female genital cutting or female circumcision, is a procedure that intentionally alters or causes injury to external female organs. It can be inflicted on girls as young as 1 and varies in severity from partial removal of the clitoris to excising the clitoris and labia and stitching up the walls of the vulva to leave only a tiny opening.

Khatna is the South Asian term for genital cutting and, according to the study, the sect's practice of removing a woman's clitoris is done for reasons including "religious purposes," to curb sexual arousal, for cleanliness and to maintain customs and traditions.

The Dawoodi Bohras have recently made FGM-related headlines. A Detroit emergency room doctor charged in April with alleged performing of FGM on 100 young girls is a Dawoodi Bohra. The doctor, Jumana Nagarwala, is in jail awaiting trial. In 2016, a Dawoodi Bohra priest in Sydney, Australia, was convicted for his role in performing FGM.

"The findings (of the study) demonstrate that FGC (female genital cutting) is deeply rooted in the community's culture," the authors write. Sahiyu means "friends" in Gujarati.

"Understanding the complex social norms and cultural values systems that shape the meaning and significance of the practice within this community is critical work of anti-FGC advocates."

For this story, the Star also spoke with three local Dawoodi Bohra women who described what it's like to undergo khatna in their native countries of India and Kenya at the hands of "practitioners," not doctors, in non-medical environments such as kitchens, with unsterile razors.

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- [Thousands of Canadian girls are at risk of female genital mutilation: officials](#)
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A continuing Star investigation has revealed that Canadian girls have been taken overseas to have the procedure and that thousands more could be at risk of being sent abroad to be subjected to FGM.

Practitioners who perform FGM are "almost certainly entering Canada" to engage in the practice, says an internal report from Canada Border Services Agency, as reported by Global News in July.

FGM is a cultural practice dating back hundreds of years, and organizations including the United Nations say that although it is often perceived as being connected to some Islamic groups, it also occurs in other religious communities, including Christians, Ethiopian Jews and certain traditional African religions.

In Ontario, some women have asked their doctors to reverse the most severe type of FGM. Provincial records show that in the past seven years, Ontario has performed 308 "repairs of infibulations," a surgery that creates a vaginal opening where it has been sewn mostly shut. There are currently no known procedures in Canada that replace tissue.

Canada has recently given \$350,000 to a small Quebec organization to fight FGM in at-risk communities, but critics say little has been done to understand the problem's scope and that Canada is lagging far behind other developed countries in prevention. Experts say there is a lack of support services available for women living with the physical and psychological effects of FGM, regardless of when and where it happened to them.

An email exchange between federal Foreign Affairs officials in Canada and India discussing the report said it will be "helpful" as the government is "in the midst of examining how Canada can engage on this file internationally. One government lawyer, the emails state, is "looking at the domestic implications of this practice."



Considered progressive in some are [reddit this!](#) li Bohras have a “high level of education and wealth,” according to the federal emails, and the community has “political and cultural influence that exceeds its size.” The emails — correspondence between government officials over the past two years — were released to the Star through an access to information request. They reference cases the government is aware of in which Canadian girls have undergone or are alleged to have undergone cutting abroad, in addition to the report about the Dawoodi Bohras.

The emails say officials learned from the report how over the past two decades there has been a regression of gender equality in the Dawoodi Bohra community worldwide and there is “significant hidden violence against women.” There are roughly 20,000 to 40,000 Dawoodi Bohras in Canada, according to the federal emails.

Titled “Understanding Female Genital Cutting in the Dawoodi Bohra Community,” the Sahiyo study surveyed 385 Dawoodi Bohra women across the globe, including women in Canada, the U.S., Australia and the United Kingdom, in an attempt to shed light where “little or no data” exists. It aims to inform policy makers and health professionals in order to “end the practice,” the study said, that has left most of its participants with emotional scars — anger, haunting memories and frustration in their sexual lives.

“I feel robbed and cheated of my sexuality,” one respondent told the study’s researchers.

Shaheeda Tavawalla-Kirtane, Sahiyo’s Canadian co-founder, who works in India to raise awareness about FGM, said she has been tweeting to Canadian ministers because Canada should be aware this “crime” is happening on its soil. The Sahiyo study suggests creating a hotline for at-risk girls and education about FGM for front-line workers, such as teachers.

Some of the study’s participants reported that, typically at the age of 7, they were told they were having the procedure to remove a “worm” and that khatna was part of the religion.

The religious justification for this practice may come from passages in the Da’aim al-Islam, a sacred Islamic text that informs the tenets and traditions of the Dawoodi Bohras. According to *The Pillars of Islam*, a respected translation of the text, cutting will lead to “greater purity.”

Though most study participants said they do not want the practice to continue, breaking the cycle is a challenge because women are afraid of the backlash they’ll face if they don’t keep up with the social norm, Tavawalla-Kirtane said.

Worldwide, there are an estimated 1.5 to two million Dawoodi Bohras, living mainly on the west coast of Gujarat and Maharashtra states in India, and in Pakistan.

The sect’s India-based spiritual leader, referred to as the Sayedna, enjoys centralized power and access to the properties and assets of his communities around the world, the federal emails state.

As Dawoodi Bohras settled in the GTA, the Sayedna in the early 1990s notably tried — but failed — to incorporate himself in Canada as a “corporation sole,” a company of one person. The designation may have given the Sayedna decision-making power over the resources, land and money, of the Dawoodi Bohra communities in Canada.

A local member of the Bohra community, writing to a Canadian senator about the issue at the time, said the Canadian Dawoodi Bohras had questionable practices, including “actively enforcing” female genital cutting. The writer alleged that “a lady with medical background or qualifications visits Ontario regularly to conduct these procedures on little girls of the community.”

In April 2016, a sermon leaked to the media shows the current Sayedna talking about khatna and, according to the federal documents, reportedly saying: “The act has to happen. If it is a man (male circumcision), then it is right, it can be openly done, but if it is a woman then it must be done discreetly, but then the act has to be done.”

Two months later, as described in the federal emails, the Sayedna released a further statement saying that “male and female circumcision ... are religious rites that have been practiced by Dawoodi Bohras throughout history” and religious texts, “written over a thousand years ago, specify the requirements for both males and females as acts of religious purity.” But he noted that Bohras must abide “by the laws of the countries in which they reside.”

Faizan Ali, a member of the Mississauga [+ reddit this!](#) congregation who said he is overseeing the construction of the community's new 50,000-square-foot mosque, said local Dawoodi Bohras don't practise FGM in Canada because it is against the law.

As far as he knows, khatna is not practised in the GTA, he said, but "if someone is going at their own discretion, obviously we cannot control it."

Ali said he does not agree with pushing the practice on a child. But if an adult woman who is 18 or older consents, he said, it is "fine."

Unlike in other cultures that celebrate FGM, throwing parties and lavishing money and gifts onto young girls as part of the procedure, the Dawoodi Bohra practice has traditionally been done clandestinely, said Dilshad Tavawalla, a lawyer and anti-FGM activist in Toronto whose daughter is the Sahiyo co-founder.

Tavawalla, who underwent the procedure in Mumbai when she was 7, calls it "a women's secret" even though today it is being "medicalized" and sometimes done overseas by health professionals in clinics and hospitals.

Women who openly oppose the practice are perceived as attacking the community and culture, Tavawalla said, and could face consequences such as being socially ostracized. Friends and family members cut ties — a fate that feels catastrophic in this small, loyal and closely knit religious sect, sources have told the Star.

The three Dawoodi Bohra women who spoke to the Star underwent FGM overseas before coming to Canada.

They were all about 7 years old when their mothers took them to a "cutter," an older woman operating in a non-medical environment, such as a kitchen. The women were told to remove their underwear before the cutter swiped a razor at their clitorises.

Two of the women the Star spoke with said they tried to run when they realized what was happening but they were held down, their legs forcefully spread by female elders.

Luby Fidaali was 7 years old when her mother kept her home from school one morning and took her to someone she believed was a healer — an elderly woman who said prayers over her sore tummy from time to time when she was not feeling well.

But when she got to the cutter's house, Fidaali was told to sit on a small kitchen stool like those traditionally used to knead chapatis, she said, and was instructed to pull her legs apart.

She glanced at the fire burning in a charcoal stove in the corner and didn't see the cutter take out a razor blade. "Even when I think about it, it hurts," she said recently, telling the story for only the second time in her life. She was instructed to sit near the stove and "take in the heat to help the healing."

Fidaali's mother told her never to speak about her experience to anyone, including her father and siblings. She doesn't begrudge her mother, she said, because she was simply "following societal norms in order to stay in the community."

Fidaali's family was excommunicated several years later for challenging the Sayedna's orders, and since, she said, she feels emboldened to speak out against an "oppressive clergy."

"The clergy is very powerful and can intimidate their followers into all kinds of acts for fear of social boycott," she said.

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News / Ottawa

Feds won't commit to tracking cases of female genital mutilation

Practitioners of FGM are "almost certainly" entering Canada to perform the procedure, according to an internal report from the Canada Border Services Agency.



IVAN LIEMAN / BARCROFT MEDIA VIA GETTY

A woman shows the razorblade she uses to cut girls' genitals , on June 25, 2015, in Mombasa, Kenya. Canada Border Services Agency officials warn that FGM practitioners are "almost certainly" entering Canada to perform the ritual.

By: Staff Torstar News Services Published on Tue Jul 18 2017

Days after a continuing Toronto Star investigation revealed that Canadian girls are being sent abroad to be subjected to female genital mutilation, the federal government is not yet committing to track the cases, nor will it provide details on initiatives it is undertaking to prevent FGM from happening.

"Female genital mutilation is an abhorrent and unacceptable practice. It is one of the most severe violations of the human rights of women and girls," said a joint statement from Status of Women Minister Maryam Monsef and International Development Minister Marie-Claude Bibeau. It added that Canada's government is committed to addressing FGM "both at home and abroad."

The ministers' statement went on to say that Canada "has and will continue to" make efforts to prevent and address FGM. It cited \$101 million set aside in June for a strategy to prevent and address gender-based violence, and \$150 million over five years to be given to local women's organizations. This is in addition to \$650 million over the next three years to support programs for sexual and reproductive health abroad.

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When pressed on exactly what the Canadian government is doing right now to address FGM, and whether it will start tracking known cases as other developed countries do, a spokesperson said the original statement stood.

(The Star has previously reported on one initiative funded by Justice Canada: \$350,000 to a Quebec organization now working to raise awareness around FGM.)

Last week, the Star revealed that federal government officials are aware of cases in which Canadian girls are being taken abroad and subjected to FGM, an illegal practice known as vacation cutting. These same officials believe, based on the "limited information available," that a few thousand girls are at risk.

Canada has done little to understand the scope of the problem and is lagging far behind other developed countries in efforts to prevent it.

For example, earlier this summer, U.S. Homeland Security launched a pilot program to help prevent vacation cutting. The program is based on an initiative at London's Heathrow airport, where security agents are trained to identify girls at risk.



(SALA LEWIS/IRISH AID / PRESS ASSOCIATION FILE PHOTO)

Canada Border Services Agency officials included this 2001 photograph, of blunt tools used to carry out female genital mutilation in Tanzania, in a report warning that FGM practitioners are "almost certainly" entering Canada to perform the ritual.

The U.S., Britain and Australia have all undertaken research to determine the number of girls at risk: 507,000 in the U.S., 197,000 in the U.K. and 83,000 in Australia, according to an internal report from the Canada Border Services Agency.

The CBSA report, initially reported [reddit this!](#) News, deals primarily with what is strongly suspected by Canadian officials but, as yet, unknown: whether FGM is happening on Canadian soil.

In the U.S., a doctor in Michigan was recently charged with carrying out the practice on up to 100 young girls, according to federal prosecutors, who say that no Canadian victims have so far been identified. There have also been cases in the U.K., France and Australia.

Those who perform female genital mutilation, called FGM practitioners, are “almost certainly entering Canada” to engage in the practice, according to the five-page report, which was prepared by Canadian border intelligence for employees.

“According to the Royal Canadian Mounted Police (RCMP) and Canadian health-care providers, it is almost certain that FGM is also happening in Canada,” despite it being illegal, the report says.

A spokesperson for CBSA did not respond to a request for comment Monday.

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- [‘I just remember screaming’: Toronto FGM survivor recalls the day she was cut](#)
- [Thousands of Canadian girls are at risk of female genital mutilation: officials](#)

Female genital mutilation, also known as female genital cutting or female circumcision, is a procedure that intentionally alters or causes injury to external female organs. It can be inflicted on girls as young as 1 and varies in severity from partial removal of the clitoris, to excising the clitoris and labia and stitching up the walls of the vulva to leave only a tiny opening. (The latter practice is known as infibulation.)

FGM has [no health benefits for girls and women](#). It can cause severe bleeding, problems with urination, and later cysts, infections, complications in childbirth and an increased risk of death for newborns, according to the World Health Organization.

It can also deny women sexual pleasure.

FGM affects more than 200 million women worldwide, according to UNICEF.

In 1997, Canada’s Criminal Code was amended to include female genital mutilation as a form of aggravated assault. It’s not just the person performing the mutilation who can face justice. Provisions in the code also allow for others to be charged: for example, a parent who participates in the offence by holding a child’s hands or requests that someone perform it. And the amendments make it illegal to remove a child from Canada for the purpose of female genital mutilation.

There has never been a criminal conviction for female genital mutilation in Canada.



Photo 1: Scissors, razor blades, needle and string, awls



Photo 2: an FGM toolbox from Kenya



Photo 3: an FGM toolbox including a ritual belt tied around the female’s waist during the procedure.



Photo 4: knife and razor blade

TORSTAR/ CBSA

Screenshots of tools used for female genital mutilation acquired from Canada Border Services Agency (CBSA).

A practitioner of FGM would enter Canada with the purpose of committing a crime (aggravated assault), but "may not have the awareness that they are doing so," the CBSA document says. It adds that, in Canada, the practitioner is most likely to be called to the home of a woman to be re-infibulated (re-sewn) after having a child, or to perform the practice on a young girl.

Women who are at risk of FGM "do not present with the typical criteria for child abuse" and the practitioners "believe they are promoting the long-term well-being and social acceptability of the child." The reception at airports is "likely to include the future 'patient' or their family members."

The report also includes photographs of tools that can be used to perform FGM, including razor blades, scissors and special herbs to place on the wounds. (The photos are presumed to be intended to assist border officials by depicting items they should look out for.)

FGM is practised in 29 countries, mainly in Africa, the Middle East, India and other parts of Asia. It is seen by some as a rite of passage into womanhood or a condition of marriage. It occurs in both Islamic and Christian communities, but is largely a cultural tradition that dates back hundreds of years. In many areas, there is huge social pressure on families to have their daughters cut in this way.

Some women who have had the procedure have asked their doctors to reverse it, [the Star revealed](#). According to provincial records, in the past seven years Ontario has performed 308 "repairs of infibulations," a surgery that creates a vaginal opening where it has been sewn mostly shut.

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The Campaign against Female Genital Mutilation

andistahl on 06/03/2017 / Comments closed

Iraqi women are subject to a strict moral code that dominates their patriarchal society. Most of these rules of social control are an unspoken and deeply-rooted code of rules of behavior. Domestic violence, forced marriages and “honor killings” are the common reality of women in Northern Iraq. They are dependent on their male relatives and subjected to their will. This reality hasn’t been publicly discussed and thousands of women suffer in silence. The rate of suicides committed by women in Northern Iraq is very high.

Female Genital Mutilation (FGM) is one important mechanism, among others, of tight social control over women. Female Genital Mutilation (FGM), like sexuality in general was considered an absolute taboo. In 2004, WADI Garmyan mobile teams succeeded to break the silence and discovered that female genital mutilation is widespread in northern Iraq. A pilot study gave evidence that 907 out of 1544 questioned women were victims of FGM. Up till then FGM was considered an “African practice”.



The staff of WADI Garmyan team were indeed shocked by their discovery. Following the evidence that FGM is widespread in northern Iraq, WADI’s staff initiated the first campaign against FGM in the country. Local mobile teams found out that FGM in northern Iraq is usually practiced by female family members or traditional midwives on girls aged between 4 to 12 years.

Instruments like razors and knives are used to cut girls' clitoris according to the "sunnat excision", i.e. the excision according to the tradition of the prophet. The wound is usually covered with ash to stop the bleeding, but no drugs are given. Sometimes girls have to sit in a bowl of icy water.

Women justify this practice either by religion, tradition or medical reasons. Uncircumcised girls are not allowed to serve water or meals. Many women said that their daughter would not be able to get married uncircumcised. Most of the women are not aware of the long-term medical and psychological consequences of FGM. FGM can cause infertility, incontinence, complications in labor and even death.



In 2010, WADI published a study on FGM in the Kurdish region of Iraq, which found that 72% of women and girls were circumcised. Two years later, a similar study was conducted in the province of Kirkuk with findings of 38% FGM prevalence giving evidence to the assumption that FGM was not only practiced by the Kurdish population but also existed in central Iraq. According to the research, FGM is most common among Sunni Muslims, but is also practiced by Shi'ites and Kakeys, while Christians and Yezidi don't seem to practice it in northern Iraq.

In February 2006, WADI organized the first Iraqi conference against FGM in Arbil, which was successful in attracting the interest of the Kurdish Regional Government (KRG). WADI's campaign „STOP FGM in Kurdistan“ obtained more than 14,000 signatures for a petition to ban FGM. It was presented to the Kurdish Regional Government. Recommendations for a law to ban FGM in Iraqi Kurdistan were prepared by local lawyers and members of WADI's mobile teams. They were presented to the KRG and the Kurdish women's parliament in spring 2007. At first parliamentarians were hesitant to discuss the topic. Finally, in 2010 the Health Ministry of the KRG published its own study according to which 41 percent of women were mutilated. In June 2011, the bill against domestic violence banning FGM was passed by the parliament of the Kurdish Autonomous Region.



While FGM is now outlawed in the Kurdish Autonomous Region it is still legal in central Iraq. Together with the Iraqi Women's organization Pana, WADI is now lobbying for a law banning FGM in central Iraq. On February 6th 2013, the International Day of Zero Tolerance against FGM, Pana activists handed a draft law to parliamentarians in Baghdad.

Educating villagers and midwives

The major reason for the persistence of this practice is the lack of education and information among the women population. A majority of Kurdish women is illiterate. Findings show: The higher the educational level, the lower the FGM rate. In addition, sexual education is generally not provided to girls and boys by their parents. Youngsters generally marry without any idea about sexuality. Therefore, education is a key in combatting FGM.



In cooperation with the local filmmaker Nabaz Ahmed WADI produced the awareness film "A handful of ash" and several TV-spots about FGM. The film is shown daily by WADI's mobile teams across northern Iraq, giving information and an opportunity to discuss the problem. In the discussions, participants are encouraged to join the FGM-Free Community Program. The government facilitated the regular screening of the TV-spots on various Kurdish channels. This gives extra credibility to WADI's campaign.



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"If the Iraqi Kurds are leading the way (against FGM) today, it is partially thanks to a handful of local women's organizations that have struggled for greater awareness of the issue since the early 1990s. But the real breakthrough came in 2005 when WADI, a German non-governmental organization, published the results of its survey of 39 villages in the Germian region, east of Kirkuk." (Time Magazine, 2008)

Lobbying beyond Iraq

Not only in Iraq WADI is pushing for a ban of FGM. In February 2008, "A Handful of Ash", WADI's documentary about FGM in Iraqi Kurdistan, produced by the local director Nabaz Ahmed, was presented in Germany for the first time. Additional screenings took place in Switzerland. In January 2012, WADI and Hivos organized a conference on FGM in the Middle East in the Lebanese capital Beirut. It was the first of its kind. Experts and activists from Iraq, Yemen, Indonesia and Egypt took part setting the foundation of a region-wide network to fight FGM in the Middle East. In 2013, WADI launched the campaign "Stop FGM in the Middle East" modeled after the successful "STOP FGM in Kurdistan" campaign.



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The Middle East Quarterly

Is Female Genital Mutilation an Islamic Problem?

by Thomas von der Osten-Sacken and Thomas Uwer

Middle East Quarterly

Winter 2007, pp. 29-36

<http://www.meforum.org/1629/is-female-genital-mutilation-an-islamic-problem>

Among social activists and feminists, combating female genital mutilation (FGM) is an important policy goal. Sometimes called female circumcision or female genital cutting, FGM is the cutting of the clitoris of girls in order to curb their sexual desire and preserve their sexual honor before marriage. The practice, prevalent in some majority Muslim countries, has a tremendous cost: many girls bleed to death or die of infection. Most are traumatized.

Those who survive can suffer adverse health effects during marriage and pregnancy. New information from Iraqi Kurdistan raises the possibility that the problem is more prevalent in the Middle East than previously believed and that FGM is far more tied to religion than many Western academics and activists admit.

Many Muslims and academics in the West take pains to insist that the practice is not rooted in religion^[1] but rather in culture. "When one considers that the practice does not prevail and is much condemned in countries like Saudi Arabia, the center of the Islamic world, it becomes clear that the notion that it is an Islamic practice is a false one," Haseena Lockhat, a child clinical psychologist at North Warwickshire Primary Care Trust, wrote.^[2] True, FGM occurs in non-Muslim societies in Africa. And in Arab states such as Egypt, where perhaps 97 percent of girls suffer genital mutilation,^[3] both Christian Copts and Muslims are complicit.

But at the village level, those who commit the practice believe it to be religiously mandated. Religion is not only theology but also practice. And the practice is widespread throughout the Middle East. Many diplomats, international organization workers, and Arabists argue that the problem is localized to North Africa or sub-Saharan Africa,^[4] but they are wrong. The problem is pervasive throughout the Levant, the Fertile Crescent, and the Arabian Peninsula, and among many



Although female genital mutilation in Africa has gained much attention in the West, it is practiced elsewhere in the Islamic world.

immigrants to the West from these countries. Silence on the issue is less reflective of the absence of the problem than insufficient freedom for feminists and independent civil society to raise the issue.

Detecting Female Genital Mutilation

It is perhaps understandable that many diplomats and academics do not recognize the scope of the problem. Should someone wish to understand the sexual habits of Westerners, he would not face a difficult task. He could survey personal advertisements, watch talk shows, and read magazine articles explaining the best ways to enhance sexual experience, not to mention numerous scientific publications on sex and gender relations. Public knowledge of trivial and even painful matters is incumbent in Western culture. The multitude of sexual habits and gender relations represents a vital element of life in the West, much the same as the economy, politics, sports, and culture.

If, however, someone wants to study sexual relations and habits in Middle Eastern societies, it would be difficult to find comparable traces in public. Almost everything connected with sexuality and personal relations is hidden in a private sphere. Advisory books and research on sexual habits are almost nonexistent beyond comprehensive rules and prohibitions outlined by Islamic law or, in Shi'ite societies, beyond the questions and responses submitted to senior ayatollahs. Sex education is not taught at the university, let alone in any high school. Psychology remains a shadow discipline, almost absent in the eastern Middle East and only slightly more present in North Africa where more than a century of French rule offered more opportunity for it to take root. The Library of the British Psychoanalytical Society, for example, holds only one journal on psychotherapy or psychoanalysis in Arabic. Arab psychoanalyst Jihad Mazarweh gave an interview in the German weekly *Die Zeit* in which he said, "For most people, speaking about sexuality, as it happens in psychoanalysis, is almost unthinkable."^[5] It would be a mistake to interpret lack of public discussion of many sexual issues in the Middle East as indicative of a lack of problems. Rather, the silence only reflects the strength of taboo.

Female genital mutilation has been a top priority for United Nations agencies and nongovernmental organizations (NGOs) for almost three decades. As early as 1952, the U.N. Commission on Human Rights adopted a resolution condemning the practice.^[6] International momentum against the practice built when, in 1958, the Economic and Social Council invited the World Health Organization to study the persistence of customs subjecting girls to ritual operations.^[7] They repeated their call three years later.^[8] The 1979 Convention on the Elimination of All Forms of Discrimination against Women denounced the practice,^[9] and the 1989 Convention on the Rights of the Child identified female genital mutilation as a harmful traditional practice.^[10] According to the Demographic and Health Surveys Program, a project funded by the United States Agency for International Development to assist in undertaking medical and reproductive health surveys, FGM

affects 130 million women in twenty-eight African countries.^[11] Rather than diminishing as countries modernize, FGM is expanding.^[12]

Anthropologists and activists identify three main types of FGM. Pharaonic circumcision refers to the removal of the entire clitoris; the labia minora and medial part of the labia majora are cut with both sides of the organ stitched together to leave only a small opening. Clitorectomy requires the removal of the entire clitoris along with part of the labia minora. Sunna circumcision, the most common form in the Islamic world, requires removal of the prepuce of the clitoris.

Genital Mutilation: An African Phenomenon?

Many experts hold that female genital mutilation is an African practice. Nearly half of the FGM cases represented in official statistics occur in Egypt and Ethiopia; Sudan also records high prevalence of the practice.^[13] True, Egypt is part of the African continent but, from a cultural, historical, and political perspective, Egypt has closer ties to the Arab Middle East than to sub-Saharan Africa. Egypt was a founding member of the Arab League, and Egyptian president Gamal Abdel Nasser came to personify Arab nationalism between 1952 until his death in 1970. That FGM is so prevalent in Egypt should arouse suspicion about the practice elsewhere in the Arab world, especially given the low appreciation for women's rights in Arab societies. But most experts dismiss the connection of the practice with Islam. Instead, they explain the practice as rooted in poverty, lack of education, and superstition.

Few reports mention the existence of FGM elsewhere in the Middle East, except in passing. A UNICEF report on the issue, for example, focuses on Africa and makes only passing mention of "some communities on the Red Sea coast of Yemen." UNICEF then cites reports, but no evidence, that the practice also occurs to a limited degree in Jordan, Gaza, Oman, and Iraqi Kurdistan.^[14] The German semigovernmental aid agency, the Gesellschaft für Technische Zusammenarbeit, reports that FGM is prevalent in twenty-eight African countries but only among small communities "in a few Arab and Asian countries (e.g., Yemen, a few ethnic groups in Oman, Indonesia, and Malaysia).^[15] Some scholars have asserted that the practice does not exist at all in those countries east of the Suez Canal.^[16] Such assertions are wrong. FGM is a widespread practice in at least parts of these countries.^[17]

Latest findings from northern Iraq suggest that FGM is practiced widely in regions outside Africa. Iraqi Kurdistan is an instructive case. Traditionally, Kurdish society is agrarian. A significant part of the population lives outside cities. Women face a double-burden: they are sometimes cut off from even the most basic public services and are subject to a complex of patriarchal rules. As a result, living conditions for women are poor. Many of the freedoms and rights introduced by

political leaders in Iraqi Kurdistan after the establishment of the safe-haven in 1991 are, for many women, more theoretical than actual.

In early 2003, WADI, a German-Austrian NGO focusing on women's issues,[\[18\]](#) started to work with mobile teams to take medical aid and social support to women in peripheral Kurdish areas such as in the Garmian region of Iraqi Kurdistan. These all-female teams consisting of a physician, a nurse, and a social worker built trust and opened doors in local communities otherwise sealed against outsiders. After more than a year of working in the area, women began to speak about FGM. Kurds in the area practice Sunna circumcision. Midwives often perform the operation with unsterilized instruments or even broken glass and without anesthesia on girls four to twelve years old. The extent of mutilation depends on the experience of the midwife and the luck of the girl. The wound is then treated with ash or mud with the girls then forced to sit in a bucket of iced water. Many Kurdish girls die, and others suffer chronic pain, infection, and infertility. Many say they suffer symptoms consistent with posttraumatic stress disorder syndrome.[\[19\]](#)

Subsequent research found that 907 out of 1,544 women questioned had undergone genital circumcision, a cutting rate of nearly 60 percent.[\[20\]](#) Follow-up research in the Irbil and Kirkuk governorates suggests rates of FGM consistent with those in Garmian. Nearly every woman questioned declared FGM to be a "normal" practice. Most women referred to the practice as both a tradition and a religious obligation. When asked why they subject their daughters to the operation, many women respond "it has always been like that." Because the clitoris is considered to be "dirty" (haram, the connotation is forbidden by religion), women fear that they cannot find husbands for their daughters if they have not been mutilated; many believe men prefer sex with a mutilated wife. Others stress the religious necessity of FGM even though Islamic law is unclear with regard to FGM. While Western scholars may dismiss the religious roots of the practice, what counts is that many Islamic clerics in northern Iraq advise women to practice FGM. Should a woman consider abandoning the practice, she must be aware that she could appear as disreputable in the public eye.[\[21\]](#) Men usually avoid offering a clear statement about whether FGM is a good practice; rather, they refer to FGM as a female practice in which men should not interfere. None of the men said he had ever discussed the question with his wife.[\[22\]](#)

The reaction of locals to the findings has been instructive. When confronted with the study results, only a few women's activists in the Iraqi Kurdish city of Sulaimaniya expressed surprise although most said they did not realize just how high a proportion of women was affected.[\[23\]](#) While a local researcher and women's rights activist Ronak Faraj had published a study on female circumcision in Sulaimaniya in 2004,[\[24\]](#) the fact that an international NGO had become aware of the problem bolstered public attention. While many Kurdish authorities were at first reluctant to address the issue for fear that the Kurdish region might appear backward, they now acknowledge the problem and are working to confront it with both an awareness campaign and with legislation.[\[25\]](#) But some

members of influential Islamic and Arabic organizations in the diaspora scandalized the findings, accusing WADI of trying to insult Islam and spread anti-Islamic propaganda. Tarafa Baghajati and Omar al-Rawi, both members of the Initiative of Muslim Austrians, called the data part of an "Islamophobic campaign" and declared no FGM exists in Iraq.^[26] That Islamic and Arabic organizations in Austria, for example, make such arguments is indicative of the problem affecting FGM data: these groups believe that if there are no such anti-FGM campaigns or studies, then they can bypass an embarrassing problem.

Such campaigns take time. In Egypt, anti-FGM education campaigns inaugurated in the mid-1990s are only now bearing fruit.^[27] The idea that rooted practices cannot be changed is false. For centuries, foot-binding crippled Chinese women. An anti-foot-binding society formed only in 1874, but the activists were successful in scaling back and, eventually, eliminating the practice.^[28] In Western societies, too, open public discourse on sexuality became possible only by persistent struggle in the face of stark opposition. The heated reactions to the 1948 *Kinsey Report*—and the portion concerning female sexuality published in 1953—are a case in point.^[29]

How Widespread Is Female Genital Mutilation?

The discovery of widespread FGM in Iraqi Kurdistan suggests the assumption to be incorrect that FGM is primarily an African phenomenon with only marginal occurrence in the eastern Islamic world. If FGM is practiced at a rate of nearly 60 percent by Iraqi Kurds, then how prevalent is the practice in neighboring Syria where living conditions and cultural and religious practices are comparable? According to Fran Hosken, late founder of the Women's International Network News and author of groundbreaking research on FGM in 1975, "There is little doubt that similar practices—excision, child marriage, and putting rock salt into the vagina of women after childbirth—exist in other parts of the Arabian Peninsula and around the Persian Gulf." ^[30] That no firsthand medical records are available for Saudi Arabia or from any other countries in that region does not mean that these areas are free of FGM, only that the societies are not free enough to permit formal study of societal problems. That diplomats and international aid workers do not detect FGM in other societies also should not suggest that the problem does not exist. After all, FGM was prevalent in Iraqi Kurdistan for years but went undetected by the World Health Organization, UNICEF, and many other international NGOs in the region. Perhaps the most important factor enabling an NGO to uncover FGM in Iraqi Kurdistan was the existence of civil society structures and popular demand for individual rights. Such conditions simply do not exist in Syria, Saudi Arabia, or even the West Bank and Gaza where local authorities fight to constrain individual freedoms rather than promote them.

But the problem is not only that autocratic regimes tend to suppress the truth. There also must be someone in place to conduct surveys. Prior to Iraq's liberation, it was impossible to undertake

independent surveys on issues such as malnutrition and infant mortality. Saddam Hussein's regime preferred to supply data to the U.N. rather than to enable others to collect their own data which might not support the conclusions the Baathist regime desired to show. The oft-cited 1999 UNICEF study claiming that U.N. sanctions had led to the deaths of 500,000 children was based on figures supplied by Saddam's regime, not an independent survey.^[31] The U.N. undertook its first reliable statistical research on the living conditions in Iraq only after liberation.^[32] Syrian, Saudi, and Iranian authorities simply do not let NGOs operate without restriction, especially when they deal with sensitive social issues.

Taboo—not social but political—is another factor undercutting research on FGM in Arab countries. Many academics and NGO workers in the region find it objectionable to criticize the predominant Muslim or Arab cultures. They will bend over backwards to avoid the argument that FGM is rooted in Arab or Muslim cultures even though no one argues that FGM is exclusively an Arab or Muslim problem. Statistical data from African countries indicate no clear relationship between FGM and a specific religion.^[33] Still, this does not mean that the causes of FGM do not vary across regions and that religion has no influence. As California State University anthropologist Ellen Gruenbaum has explained, "People have different and multiple reasons [for FGM] ... For some it is a rite of passage. For others it is not. Some consider it aesthetically pleasing. For others, it is mostly related to morality or sexuality."^[34] Hanny Lightfoot-Klein, an internationally known expert on FGM who spent years in Kenya, Egypt, and Sudan, explains that "it is believed in the Sudan that the clitoris will grow to the length of a goose's neck until it dangles between the legs, in rivalry with the male's penis, if it is not cut."^[35]

Most studies speak of "justifications"^[36] and "rationalizations"^[37] for FGM but do not speak of causes since this could implicate Islamic rules relating to women and sexual morality. Islam is regarded as a wrong "justification," often with a citation that the Qur'an does not require FGM. That many women in northern Iraq—and presumably many women in Egypt—believe that the practice is rooted in religion is a factor ignored by Western universities and international organizations.

Islamic Scholars on Female Genital Mutilation

Islamic scholars disagree on FGM: some say no obligatory rules exist while others refer to the mention of female circumcision in the Hadith. According to Sami A. Aldeeb Abu Sahlieh, a Palestinian-Swiss specialist in Islamic law:

The most often mentioned narration reports a debate between Muhammed and Um Habibah (or Um 'Atiyyah). This woman, known as an exciser of female slaves, was one of a group of women who had immigrated with Muhammed. Having seen her, Muhammad asked her if she kept practicing her profession. She answered

affirmatively, adding: "unless it is forbidden, and you order me to stop doing it."

Muhammed replied: "Yes, it is allowed. Come closer so I can teach you: if you cut, do not overdo it, because it brings more radiance to the face, and it is more pleasant for the husband."[\[38\]](#)

Abu Sahlieh further cited Muhammad as saying, "Circumcision is a *sunna* (tradition) for the men and *makruma* (honorable deed) for the women."[\[39\]](#)

While some clerics say circumcision is not obligatory for women, others say it is. "Islam condones the sunna circumcision ... What is forbidden in Islam is the pharaonic circumcision,"[\[40\]](#) one religious leader explained. Others, such as the late rector of Al-Azhar University, Sheikh Gad al-Haq, said that since the Prophet did not ban female circumcision, it was permissible and, at the very least, could not be banned.[\[41\]](#)

In short, some clerics condemn FGM as an archaic practice, some accept it, and still others believe it to be obligatory. It is the job of clerics to interpret religious literature; it is not the job of FGM researchers and activists. There is a certain tendency to confuse a liberal interpretation of Islam with the reality women face in many predominately Islamic regions. To counter FGM as a practice, it is necessary to accept that Islam is more than just a written text. It is not the book that cuts the clitoris, but its interpretations aid and abet the mutilation.

Conclusions

There are indications that FGM might be a phenomenon of epidemic proportions in the Arab Middle East. Hosken, for instance, notes that traditionally all women in the Persian Gulf region were mutilated.[\[42\]](#) Arab governments refuse to address the problem. They prefer to believe that lack of statistics will enable international organizations to conclude that the problem does not exist in their jurisdictions. It is not enough to consult Islamic clerics to learn about the mutilation of girls in Islamic societies—that is like asking the cook if the guests like the meal. U.N. agencies operating in the region ignore FGM statistics saying they have no applicable mandate to gather such data. Hosken describes it as a cartel of silence: men from countries where FGM is practiced "enjoy much influence at the U.N."[\[43\]](#) and show no interest in tackling pressing social problems.

To tackle the problem, Western countries and human rights organizations need to continue to break down the wall of silence and autocracy that blights the Arab Middle East and better promote the notion of individual rights. They should withhold conclusions about the breadth of FGM and, for that matter, other social problems or political attitudes until they can conduct independent field research.

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Update from June 17, 2010: In this fresh [study by Human Rights watch](#), which examines FGM in Kurdistan, the striking and disturbing thing is the extent to which Kurdish authorities have gone to [minimize the problem and to ridicule](#) the report's conclusion. This is a repeated feature of official responses to this and other problems across the region, where fear of embarrassment before world opinion carries greater weight than the damage done to women, young girls, and babies. -- The Editors

Update from February 4, 2016: The *New York Times* [reports](#) on a "new global assessment [that] documents for the first time that [FGM] is widespread in one of the most populous countries in Asia: Indonesia." This underscores that authors' claim that lack of reporting on the problem in a given country is not evidence that it doesn't exist.

Notes

[1] See, for example, Marie José Simonet, "[FMG](#): Sunna oder Verbrechen aus Tradition," stopFMG.net, Vienna, June 24, 2005.

[2] Haseena Lockhat, *Female Genital Mutilation: Treating the Tears* (London: Middlesex University Press, 2004), p. 16.

[3] *Weibliche Genitalverstümmelung: Geschichte, Ausmaß, Formen und Folgen* (Vienna: Renner Institut, 2004), p. 6.

[4] See, for example, *Innocenti Digest: [Changing a Harmful Social Convention](#): Female Genital Mutilation/Cutting* (Florence: UNICEF, 2005).

[5] *Die Zeit* (Hamburg), May 11, 2006.

[6] See, for example, [Changing a Harmful Social Convention](#), p. VII.

[7] "Fact Sheet no. 23, [Harmful Traditional Practices](#) Affecting the Health of Women and Children," U.N. Office of the High Commissioner for Human Rights, Geneva, accessed Aug. 11, 2006.

[8] ECOSOC resolution 821 II (XXXII); *ibid.*

[9] "Convention on the Elimination of All [Forms of Discrimination against Women](#)," U.N. General Assembly resolution 34/180, Dec. 18, 1979.

[10] "Convention on the [Rights of the Child](#)," U.N. General Assembly resolution 44/25, Nov. 20, 1989, art. 24, 3.

[11] Dara Carr, *Female Genital Cutting: Findings from the Demographic and Health Surveys Program* (Calverton, Md.: Macro International, 1997), p. 1.

[12] Gerry Mackie, "[A Way to End Female Genital Cutting](#)," Female Genital Cutting education and Networking Project, Tallahassee, Fla., accessed Aug. 4, 2006.

- [13] Eiman Okro, "Weibliche Genitalverstümmelung im Sudan," PhD dissertation, Humboldt University, Berlin (Hamburg: Akademos Science Publishing House, 2001); "[Female Genital Mutilation in Africa](#): Information by Country," Amnesty International, accessed Sept. 1, 2006.
- [14] [Changing a Harmful Social Convention](#), p. 3.
- [15] "[What Is Female Genital Mutilation?](#)" Gesellschaft fuer Technische Zusammenarbeit, Frankfurt, Ger., 2005, accessed Aug. 4, 2006.
- [16] See, for example, "[Female Genital Mutilation](#) (FGM) in Africa, The Middle East and Far East: Where, Why and How It Is Done," Ontario Consultants on Religious Tolerance, updated Mar. 2005.
- [17] Fran P. Hosken, *The Hosken Report: Genital and Sexual Mutilation of Females* (Lexington: The Women's International Network News, 1993), pp. 275-8.
- [18] [WADI](#), offices in Frankfurt and Sulaimaniya.
- [19] Janet Menage, "Post-Traumatic Stress Disorder in Women Who Have Undergone Obstetric and/or Gynecological Procedures. A Consecutive Series of 30 Cases of PTSD," *Journal of Reproductive and Infant Psychology*, 11(1993): 221-8.
- [20] Data derived from WADI field research in the Garmian region of Iraqi Kurdistan, 2005; *Christian Science Monitor*, [Aug. 10, 2005](#); Radio Free Europe/Radio Liberty, [Jan. 21, 2005](#); "Widespread FGM in Northern Iraq," Global Health Council, [Jan. 6, 2005](#); "Iraq: Decades of Suffering, Now Women Deserve Better," Amnesty International, London, [Feb. 22, 2005](#).
- [21] Mackie, "[A Way to End Female Genital Cutting](#)."
- [22] WADI field research, 2005.
- [23] U.N. Integrated Regional Information Networks (IRIN), [Mar. 16, 2005](#).
- [24] Ronak Faraj, "Female Circumcision," Women Information and Culture Center, Sulaimaniya, Iraq, 2004.
- [25] *The Irish Times* (Dublin), Oct. 25, 2005.
- [26] Judith Götz, "[Anmerkungen zu einer Veranstaltung](#) Die politische Lage im Irak," Jan. 28, 2005, accessed Oct. 11, 2006.
- [27] *NBC News*, Oct. 21, 2004.
- [28] Mackie, "[A Way to End Female Genital Cutting](#)"; Marie Vento, "[One Thousand Years of Chinese Footbinding](#): Its Origins, Popularity and Demise," paper, City University of New York, Mar. 7, 1998.
- [29] "[American Experience: Kinsey in the News](#)," Public Broadcasting Service, Jan. 27, 2005.
- [30] Hosken, *The Hosken Report*, p. 278.
- [31] Michael Rubin, "[Sanctions on Iraq: A Valid Anti-American Grievance?](#)" *Middle East Review of International Affairs*, June, 2002.
- [32] "Iraq Living Conditions Survey 2004," United Nations Development Program, Baghdad, 2005.
- [33] *Female Genital Mutilation/Cutting. A Statistical Exploration* (New York: UNICEF, 2005), p. 10.
- [34] Ellen Gruenbaum, *The Female Circumcision Controversy: An Anthropological Perspective*.

(Philadelphia: University of Pennsylvania Press, 2000), p. 33.

[35] Hanny Lightfoot-Klein. "[Prisoners of Ritual](#): Some Contemporary Developments in the History of Female Genital Mutilation," presented at the Second International Symposium on Circumcision in San Francisco, Apr. 30-May 3, 1991.

[36] Julia M. Masterson and Julie Hanson Swanson, *Female Genital Cutting: Breaking the Silence, Enabling Change* (Washington, D.C.: International Center for Research on Women and the Center for Development and Population Activities, 2000), p. 5.

[37] "Female Genital Mutilation: A Joint WHO/UNICEF/UNFPA Statement," Geneva, 1997.

[38] Sami A. Aldeeb Abu Sahlieh, "To Mutilate in the Name of Jehovah or Allah: Legitimization of Male and Female Circumcision," *Medicine and Law*, July 1994, pp. 575-622.

[39] *Ibid.*

[40] *Razor's Edge: The Controversy of Female Genital Mutilation*, IRIN, Mar. 2005; [Sheikh Omer](#), interview, IRINnews.org, U.N. Office for the Coordination of Humanitarian Affairs, Mar. 8, 2005.

[41] "Appendix: [Is Female Circumcision Required?](#)" Jannah.org, accessed Aug. 11, 2005.

[42] Hosken, *The Hosken Report*, p. 277.

[43] *Ibid.*, p. 375.