



Editors

Giulia Daniele, Manuel João Ramos, Pedro Figueiredo Neto

Border Crossings in and out of Europe

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Title

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CHAPTER 8

WOMEN'S RIGHTS AND FGM/C CROSSING BORDERS: "VIOLENT" TRADITIONS, CULTURAL DIFFERENCES, AND JURIDICAL CONUNDRUMS

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Abstract

In this article we look briefly into some of the conundrums around the practice of FGM/C. The practice, existent in dozens of countries, is often categorized as a “harmful traditional practice”, and a framework of “zero tolerance to FGM/C” has been created to combat it. We will describe how it became an agenda in the human rights framework, before we can discuss how the connections between Portugal and Guinea Bissau, have helped institutionalize an anti-FGM/C agenda in Portugal. We will also discuss the first condemnation for the practice of FGM/C in the country. This example will allow us to make some interpretations on how the juridical approach to the ban on this practice, despite seemingly consensual, is in reality contributing to new forms of invisibility (by pushing the practice underground), discrimination (association of certain groups to the practice) and double victimization (by punishing victims). We will also question the way policy is produced and intervention takes place.

Keywords: FGM/C; criminalization; Portugal; violence

Violence today is embedded in a world of reasons. It must have or be given a rationale, even—often especially—when it is deemed to be senseless (Mehta, 2018).

Everyone thinks they know what violence is, because we have all been witnesses (and possibly victims) to some form of it. We are all aware of how widespread it can become, and how senseless it may seem, just by following daily reports in most contemporary media, or learning History. Yet, even if violence is ubiquitous, we are less prone to think of violence in its less visible forms, namely the violence that lurks underneath social norms and daily life and affects individuals because it has been internalised (Han, 2018). Often, this is not even recognised as violence by the majority. However, for certain groups, or categories of people, violence is more systematic than for others. It is structural, because it forms patterns and is ingrained in social organization; and it also is contingent, because it is embedded in social practices. Violence comes in many forms. It can be symbolic, psychological, domestic, interpersonal, ethnic, and so on. Because it is deeply entrenched in the exercise of power it is rather difficult to analyse. Actually, it eludes analysis, especially if we are not aware of how imbalances are constitutive of certain social relations. Many authors have tried to make the concept more operative for a long time (see Benjamin, 2009; Žižek, 2008; Han, 2018) but have, for the most part, been unable to come up with a clear-cut definition, helpful enough to tackle the idea of how violence is also culturally meaningful. Definitions often circle around legitimacy (legitimate violence), social ramifications and impacts on individuals and their subjectivity, and rely mostly on abstraction. Abstraction distances us from contingency and concreteness.

When considering cultural practices like FGM/C, violence is one of the main concepts on top of which narratives are construed. Conscious of how women's lives are limited by social norms and structural violence, women's movements, especially on the second half of the 20th century, have sought to re-imagine women's rights, pushing for increased political participation and especially protection for women against violence. Anti-FGM/C agendas would emerge from this push. In consequence, a whole set of beliefs emerged in the international scene targeting cultural practices considered to be unacceptable in a globalised world – practices like FGM/C, but also child marriage, forced marriage, breast ironing, *gavage* or forced feeding, to name a few. The expression 'harmful traditional practice' was proposed at some point, firstly by African Feminists, and was intended to be less derogatory than "mutilation". The need to discuss semantics denounces some uneasiness about the way these practices become associated with the representation of the society where they exist.

In international venues (especially in the West), the term mutilation remains the currency, and what is discussed all around is the degree to which these “traditions” can be violent, and how they are based on a perverse patriarchal order. Individual sensibilities clash with carefully crafted languages.

Supported by both Western and African feminists (Sow, Fatou, 1997; Thiam, Awa, 2014; Hosken, Fran P., 1976), the fight against FGM/C became prominent and visible by the end of the 1970s. The main narrative looks at how the practices subsumed under the acronym are violent and abhorrent in a myriad of ways, sounding moral alarms (see Shweder, 2014: 360) while linking them to conceptions of honor, purity and the social institutions of marriage and reproduction (see Hernlund and Shell-Duncan, 2007). This discourse often turns around ideas of choice, free will and equality, against the backdrop of constraining social norms and cultural imperatives. Furthermore, the rationality of the international human rights apparatus is clear in its protection of the individual and its rights, against their chronically unprotected lives – the bareness of their lives in Agamben's (1998) formulation - facing ingrained discrimination and structural violence.

For Jacques Rancière, human rights are formulated as the right of the rightless, the rights of all those who face grievous limitations to the exercise of citizenship (Rancière, 2004), victims of the arbitrary use of power and the normalization of inequality. By invoking a shared humanity to all people, human rights transformed “those without rights” into political subjects. Although

full participation in the life of the community means different things in different cultures” (Bernstein, 2018), “rights claims project an egalitarian social framework that authorizes individuals, gives social authority to them as individuals, with respect to their social fellows and encompassing institutional habitat (*idem*).

However, today's political landscapes and societies have changed since the inception of human rights. After a clear boom in the second half of the 20th century, the last decades saw a new global framework of hyper-communication that globalised spread of moral sentiments that justify humanitarian intervention. For Didier Fassin, those moral sentiments have become a considerable driving force in contemporary politics (Fassin 2012). For both liberals and conservatives, themes that drive passion are politically useful. The FGM/C debate is an example where the continuous mobilization of moral sentiments blurs the debates and creates ambiguities in the framework of human rights. In this article we will look briefly into some of the conundrums around this cultural practice.

This practice, existent in dozens of countries, is officially categorised as a “harmful traditional practice”, and a framework of “zero tolerance to FGM/C” has been created to combat it. We will describe how it became an agenda in the human rights framework before we can discuss the link between Portugal and Guiné Bissau in this particular subject. This example will allow us to make some interpretations on how the juridical approach to the ban on this practice, despite seemingly consensual, is contributing to new forms of invisibility (by pushing the practice underground), discrimination (association of certain groups to the practice) and double victimization (by punishing victims). We will question the way policy is produced and intervention takes place.

Some historical and critical notes on SRHR

During the last half century, the right of women to determine the lives of their bodies is being negotiated in the framework of human rights and, as pointed out by Elizabeth Heger Boyle, “a critical component of the feminist argument was to expand the idea of human rights to incorporate a positive requirement on states to protect individuals against harmful actions that occur in the “private” realm.” (Boyle, 2002: 53). Domains such as the body, gender, or interpersonal relations made their way to the human rights discourse. The concepts underlying what we know today as gender violence, for example, were first introduced in the international scene with the CEDAW (Convention for the Elimination of all Forms of Discrimination against Women), which was signed in 1979. From then onward, violence against women and gender violence would become main concerns in human rights. Contexts of action were, afterwards, globalised (see Berkovich, 1999). At the same time reproductive health was becoming a central matter of concern for women’s rights. Beyond the recognition of the importance of education in eliminating violence against women, the CEDAW also introduced in the framework the right to reproductive health (to curb mortality rates giving birth, or promote family planning by insisting on contraception). However, if this Convention was intended to be an “international bill of rights for women”, the acceptance of universalism and liberal individualism has, since the start, seen controversy between secular and religious ideologies (cf. Berkovich, 1999).

Women’s rights (as human rights) would only become consolidated during the 1990’s. Between the 1970’s and the 90’s the focus on reproduction echoed previous concerns with population and development, on one side, and health, on the other.

The four United Nations World Conferences on Women have represented important steppingstones in achieving visibility for the multidimensionality of discriminations faced by women. Mexico (1975), Copenhagen (1980), Nairobi (1985) and Beijing (1995), have helped raise awareness to the necessity of worldwide recognition of women's fundamental rights. Even though these new instruments were advances in agenda setting, they also represent an increasing engagement of the States (see Paige, 2014) and the creation of specific structured funds to help further these rights, both at international and local levels. Also contributing to a new momentum, and paramount to the generalization of these rights, the International Conference on Population and Development in Cairo 1994, was where women's rights were affirmed as human rights. That was also the moment the language of sexual and reproductive rights entered the scope of International Treaties in a more straightforward fashion (see Starrs, 2018) alongside the fight against gender inequality and violence.

These rights comprise the right to education and information, informed decision making concerning reproduction and sexual life, and healthcare before and after childbirth, as well as during pregnancy.

Sexual and reproductive health is a state of physical, emotional, mental, and social well-being in relation to all aspects of sexuality and reproduction, not merely the absence of disease, dysfunction, or infirmity. Therefore, a positive approach to sexuality and reproduction should recognize the part played by pleasurable sexual relationships, trust, and communication in the promotion of self-esteem and overall well-being. All individuals have a right to make decisions governing their bodies and to access services that support that right (Starrs, 2018: 2646).

These and other important specifications have been widely and profusely discussed in the negotiations conducting to the aforementioned Treaties and Conventions. According to Bhatia *et al* (2020), following political scientist Paige Whaley Eager, the 1994 Cairo Conference represented a paradigm shift, from the language of "population control" to the language of "reproductive rights and health" (see, Bhatia *et al*, 2019:2). This Conference is considered by many as one of the marks for the international agenda on Sexual and Reproductive Rights. In Cairo, the Protocol for Action was adopted by 179 Governments, and represented a paradigm shift from a focus in population targets and development to a focus on the needs, aspirations, and reproductive rights of men and women. The Program of Action has put at the centre of development sexual and reproductive rights. The process, though, was complex and many concessions had to be made while discussing the text semantics. Eager

(2014) reminds us that the chapter 7.1 of the Cairo Declaration was rather contentious, specifically pertaining to the expression “sexual and reproductive rights”, mostly due to the concern that certain countries would not sign the Declaration if this language was not reviewed and rendered less concrete.

The concurrent codification and paradoxical juxtaposition of sovereignty and universal human rights norms did not go unnoticed by the GWHRM [Global Women’s Human Rights Movement]. On the one hand, Cairo called for the full respect of religious and cultural traditions. Conversely, the document simultaneously recognised the need to undo cultural norms and religious practices that perpetuate violations of women’s reproductive rights. Despite this dilemma, the GWHRM still viewed Cairo as a major paradigm shift (Paige, 2014: 160).

Nonetheless, even if omitted from the final document, reproductive rights were widely discussed on the background and seemed to be granted a relevant status. Conversely, sexual rights have been almost out of the question and consensus is still to be achieved¹. For example, when the Millennium Development Goals were made public in 2000, the expression sexual and reproductive health was omitted by fear that certain countries wouldn’t sign the texts otherwise. In the same sense, the 2030 Agenda for Sustainable Development has included the expression sexual and reproductive health and reproductive rights, but still excludes the mention to sexual rights (cf. Starrs 2018: 2646).

Since the historical International Conferences in Cairo and Beijing, the actual implementation of sexual and reproductive rights has been boosted by a number of different concurrent factors. Among these factors we can account the paramount importance of political will to create infrastructures that coordinate, provide framework, guidance, and funding to local actors from the civil society with country wide programs. In these Conferences one of the main propositions, at the time, was the recognition of the centrality of gender inequality, which should be fought through concrete political measures in key areas. These have highlighted Government ethical responsibility in ensuring full support to the implementation of the agendas discussed (Pilai and Gupta, 2011). After Cairo (1994) a global network dealing with women’s rights and, particularly, with sexual and reproductive rights was consolidated.

¹ In the project SEXRWA, hosted by CEI-ISCTE and financed by FCT (PTDC/SOC-ANT/31675/2017), we have been focusing on the resistances to such rights, especially happening in Guinea Bissau and Senegal. LGBTIQ people’s rights and the right to abortion are two domains where Sexual and Reproductive Rights provoke some social tensions in Western African societies.

Also, following these important International Conferences in the 1990s, civil society organizations have well received the guiding principles purported by the Plans for Action, from both Cairo and Beijing, and have shifted the focus from population control to women's empowerment.

However, on the international scene, any sort of Convention or Treaty that sees the light of day is the object of endless discussions, negotiations, and lobbying. That is why a critical approach to human rights, like the one proposed by Sally Engle Merry, considers human rights, first and foremost, as the legal instruments they are. For Merry, we have to bear in mind, at all times, that this language originates in the heart of international organizations as a formula to describe and regulate very complex realities (see Merry, 2006: 39). The degree of abstraction normally attained, can't be properly translated onto different belief systems which have their own set of references and ways of dealing with social relations.

Furthermore, lest not forget that those negotiating international agendas are also prone to have their own biases. As they dwell and inhabit socio-political spheres composed of donors, fundraising activities, and the mastery of this form of bureaucratic coded language, they often find themselves detached from local contexts and "local ideas on humanness, personhood, and how one ought to behave towards others" (Brkovic, 2017). These biases, focused on the formulaic nature of human rights language, disregard vernacular forms of humanitarianism, which "are embedded into the very particular local frameworks of morality and sociality" (Brkovic, 2017). Furthermore, besides this problem in translation, we are also faced with the tension between the sites where recommendations are made and those where these are implemented. This is especially critical because at the heart of international institutions' concern for women's rights is the focus, according to Abu-Lughod, on the "third-world woman", her body and her reproduction. This bears continuity, somehow, with populationist visions, and therefore Françoise Vergès points to how the "discourse on birth control was deployed in the context and era of decolonization, the Cold War, the reorganization of global capitalism, and the rise of the American empire" (Vergès, 2018: 265) and cannot be detached from the continued need for labor in capitalist societies and the movement of a gendered, racialised, workforce.

Highlighting the focus of these rights on the «third world woman» adds some critical notes to these debates, especially those pertaining to practices like FGM/C, child marriage and other practices deemed harmful. That particular focus has spiked much criticism and has, ever since, been underlined by feminists, especially those from the Global South.

The stress of sexual and reproductive rights on individual choice is seen as a difficult problem to resolve in societies where the social structure still relies heavily on hierarchy and family relations. Because “the individual only makes sense within a community”, in many societies from the Global South, deep rooted practices aim at socialising the body through multiple rites of passage. If some of these are questionable and involve bodily suffering, others promote social and existential well-being, albeit not using neither the language of human rights, nor its legal instruments. The question is, thus, much more complex than just pinpointing which practices seem legitimate or not.

The fight against FGM/C crossing borders

In line with what has been said so far, the current agenda of the fight against the practice of FGM/C has been the product of decades of policymaking and awareness raising. Throughout the 20th century, a change in perception about this practice occurred and this would lead to an increased consciousness of the problem as one of human rights. If during the first half of the 20th century FGM/C was considered mainly as a health issue - and most international institutions didn't want to meddle in what was then seen as the cultural domain questions – the growing perception of FGM/C as a problem of the “private realm”, culminated in the belief that it should be dealt with by policy. Until the 1970s, with little information available and institutional reluctance to deal with sociocultural backgrounds (see Hosken, 1976), FGM/C remained a rather unknown issue. No one had a clear idea about the dimension of the issue and doing something about it was correlated with each country's political will to do so. The recognition of gender inequalities and violence, as well as discrimination, taking place in the private realm brought by the main Conventions, was a critical step for the recognition of practices like FGM/C as a human rights problem (see Baer, 2007:98). Notwithstanding, despite the evolution in the agendas between the 1970s and 80s, FGM/C still failed to make it to the main policy documents (see Berkovich, 1999). This would change with the CEDAW Ninth Session of the Committee, in 1990, where a new recommendation was made (N^o14) on female circumcision.

Prior to the 1990s, violence against women was viewed as a private, domestic matter, and thus beyond the scope of international human rights law (...). The 1993 Vienna World Conference on Human Rights was a landmark event (...) female genital mutilation became classified as a form of violence against women (VAW); second, the issue of VAW was for the first time acknowledged to fall under the purview of international human rights law (Shell-Duncan, 2008: 227).

Fran P. Hosken had been one of the first women's activists to present global figures on the prevalence of FGM/C², and to use the expression mutilation around the end of the 1970s, but it was this entry of women's rights and violence against women in the global human rights agenda that mainstreamed the question. More funds for research and campaigning became available, and the last twenty-five years have seen instruments consolidate and plenty of experiences being done. The last two and a half decades also brought the conscience that FGM/C is not solely a problem in the Global South, but one that is also increasingly becoming a problem in the Global North.

The challenges posed by such a practice in Europe are not only due to it being a human rights and health problem, but they are also linked to it being attributed to a 'cultural other', thus creating fears of discrimination (see Johnsdotter, 2009). Often, institutions tend to consider cultural difference in a culturalist perspective that fails to see how "every culture is contested from its interior, [and] those local moralities are also objects of criticisms" (Massé, 2009: 38). Furthermore,

When we consider FGM/C as a question stemming from migrations, this unfolds in three different directions: 1) one axis of governance and the management of cultural difference, intersected by questions that are specific to policy in migrations, rights to mobility and entry in territories 2) a biopolitical axis, where the different institutions, like health centers, schools, police, social services, and immigration offices, etc., manage people affected by the practice and apply guidelines that define the practice in an institutional setting, but often struggle with lack of information; 3) one last axis is the one linking migrant communities to their place of origin through many flows, both material and symbolic (social, cultural, economic) and the influence these represent for the prevalence of the practice in both countries of origin and host countries (Falcão, 2017).

Changes in the legislation against FGM/C are an important tool to allow concerted actions in the field. However, these are implemented within a framework of extreme vulnerability at a social, economic, and symbolic level. This constitutes a rather crippling element to the deployment of anti-FGM/C agendas, as women victims of FGM/C occupy mostly the margins of European cities, where the State and local administration face specific problems that go way beyond the possibility of practicing FGM/C. Social vulnerability, which is the exposure of people, families and communities to risk and their incapacity to respond to it on its own (or with help)

² Even if the figures presented lacked in systematic data, that would only start to be gathered consistently in the 1990s by the DHS and MICS, by USAID and the United Nations respectively.

(Malheiros *et al*, 2016: 189), also manifests itself in access to free public healthcare, which is often limited because of the ambiguity in legal status of many immigrants' victims of FGM/C; and to other local services.

Meanwhile, as migrations turned FGM/C into a problem to be dealt globally, the framework of the fight against FGM/C has changed, evolving into a more punitive legalistic approach. Newer instruments, like the Maputo Protocol (part of the African Charter on Human People's and Rights) in 2003, the Beijing Declaration in 2000, or the Istanbul Convention, in 2011, have furthered the capacity to create punitive legal frameworks in most of the issues around violence against women, and particularly FGM/C. The Istanbul Convention for example, created specifically to address those issues, has promoted the current wave of criminalisation in the European countries that have ratified it. The punitive-criminalising framework is not consensual, and activists stated some concerns surrounding its consequences, namely: the increasing invisibility of the practice due to fear of prosecution. Furthermore, research in critical human rights, like the one conducted by Didier Fassin (2009), criticizes essentialist notions of culture (Shell-Duncan, 2008) and cultural otherness (Peroni, 2016). Even though there are more legal instruments available to tackle a practice, and those instruments address real problems trying to provide frameworks of action, there isn't enough knowledge about the reasons that make FGM/C so hard to eradicate. This is especially relevant in Western countries where, culturally, FGM/C is mainly considered to be a 'harmful traditional practice' and a 'violation of human rights'.

Social intervention and the case of FGM/C in Portugal

Following the proliferation of legal instruments and frameworks to deal with a practice such as FGM/C, local actors have taken it upon themselves to contribute to the fight against FGM/C. Supported by an institutional framework responding to the international human rights, in Portugal, this fight unravelled in different dimensions ever since it started almost twenty years ago. We can, for organization purposes, divide what is being done in roughly four topics.

1) Information and awareness

From the mid 2000s up until today the FGM/C issue went from a totally unknown practice to one that is periodically reported on the media. Some specialists emerged in the scene and civil society organizations helped disseminate the "anti-FGM agenda".

The most visible actions undertaken, and knowledge produced took place during the 2010's. However, we should go back to the beginning of the 20th century to find the first references of FGM/C in Portugal. In 2003, a first study was conducted by Associação para o Planeamento da Família (APF) about the knowledge of health professionals on the practice of FGM/C. The study would be presented on the first seminar dedicated to the practice and concluded that, in general, health professionals lacked knowledge on how to deal with the victims of FGM/C. There was concern that the system couldn't respond to the special needs of the victims and that FGM/C would continue to go unnoticed. At the same time, the practice was getting some attention in the media, through the work of Sofia Branco, whose articles in *Público* date back to 2002. She used personal stories and exposed cases and their consequences. By giving voice to the victims and their own opposition to the practice a "tone" was set for what would be the approach to FGM/C in Portugal, based on a concern that the practice had been "imported" from countries such as Guiné Bissau and was happening in the outskirts of Lisbon's urban area. In 2006, this journalist would publish "*Cicatrices de Mulher*", a book that definitely launched the awareness among a wider audience.

These two concerns have remained the main focus of the anti-FGM agenda being deployed in Portugal: a) FGM/C as a practice happening in the country among communities of West African migrants, thus signaling migration flows from these areas as potentially problematic and in need of a specific attention; b) how the system and a wide array of professionals working for public services were not prepared to deal with the practice. Both these concerns have guided the production of knowledge around FGM/C in Portugal for the last twenty years. They have also catalysed several interventions at the local institutional level and the production of a set of institutional documents that guide the actions of professionals, namely for police forces and health professionals. In 2012, the Health Directorate General (DGS) published a protocol (see DGS, 2012) comprising of specific guidelines and a decision algorithm for health professionals.

At the academic level, some Master thesis started to appear in 2007 (see Martingo, 2009), but we would have to wait until 2015 to see the first country wide study on FGM/C, comprising of both statistical analysis and first-person anthropological accounts on the practice. The study, coordinated by Manuel Lisboa (2017) and conducted by Dalila Cerejo and Ana Lúcia Teixeira, brought with it a clearer picture of how the practice spread through the territory.

A different type of approach, not specifically focused on the systemic response to FGM/C nor with the knowledge about the practice, focused on the victims' subjectivity and experiences.

In that sense, some films about the practice are noteworthy because they shed light on activists and women, instead of the system. Films like “Si Destinu”, by guinean-portuguese Vanessa Fernandes, a story of a little girl who is being prepared to be cut and her feelings of confusion; *Este é o meu corpo* (“This is my body”), 2017, by Inês Leitão and Daniela Leitão, gathering testimonies from activists and victims; or *A tua Voz* (“Your voice”), 2016, by Margarida Cardoso and Alexandra Alves Luís, are the main references in this area.

Finally, concerning knowledge and awareness we should underline the availability of a vast array of other productions like academic thesis and publications; project reports; booklets; guides for professionals and educators; factsheets, campaigns and media reports on developments. Most of these, though, still focus on the problematic nature of a practice like FGM/C in a European context and on the best way of curbing the practice.

2) Institutionalization

Marked by a favourable institutional environment providing framework to gender equality initiatives and following the focus on sexual and reproductive rights given by the new international framework, FGM/C has been the object of attention, in Portugal, especially in the last decade and a half. Several institutions have tried to apply the coordinates elaborated in the aforementioned Conventions and Protocols for Action. In that sense, the Commission for Citizenship and Gender Equality (CIG)³ has been promoting the alignment of the Portuguese legislation, and its institutions, with European recommendations, namely those coded in the Istanbul Convention, ratified by Portugal in 2011. The Commission approved, until this date, three pluri-annual Action Plans and promoted a series of other actions to render this question known by a wider public. The Commission coordinates public policy on FGM/C since 2009.

Other actors were also actively involved in granting visibility to FGM/C in European territory and since 2016 that, on the 6th of February (the International Zero Tolerance Day to FGM/C), at the municipal level, the Regional Encounters are held. These have already taken place in Amadora (2016), Sintra (2017), Seixal (2018), Lisboa (2019), Odivelas (2020). Despite the objectives announced, these encounters present a narrow view of FGM/C, in the Zero Tolerance framework.

³ The institutional page of this Commission is clear on how the international framework contributed to its current organic. <https://www.cig.gov.pt/area-a-cig/historia-da-cig/>

Professionals coming from several services, from health departments to social intervention, share their experiences and talk about the programmes being promoted. Surveys are conducted and debates take place, catalysed by the presentations of invited guests. Victims of FGM/C are also, often, part of this picture, but unfortunately most of the times they are called only with the purpose of having them share their own personal stories.

Apart from governmental actors and local powers, civil society organizations⁴ also developed numerous campaigns focusing on information and training, producing materials and projects. These institutions articulate among themselves and with other institutional actors, in local and international partnerships, also with African NGOs, especially those in Guinea Bissau⁵. During this period in which the visibility of the practice in Portugal has increased, Portuguese institutions participated in several national and international projects, such as: *Create Youth Network*; *Replace 2*; *Change Plus*; *MUSQUEBA*; *MAP-FGM*, *Youth4Change* among others.

Alongside CIG, one of the most active institutions is DGS (Direção-Geral de Saúde). This institution has tried to provide a framework in the health system, for the practice of FGM/C, by establishing partnerships with other institutions, but also by promoting a framework of continuous training and widening of the scope of knowledge of its professionals. In articulation with some Medicine Schools and NGOs, it has been responsible for the creation of post-graduate studies for health professionals. Recently, in 2018, and articulating with the ACM (Alto Comissariado para as Migrações), it also decided to consolidate a network of Health Centers (ACES) and local powers⁶, with the project *Práticas Saudáveis: Fim à Mutilação Genital Feminina*, targeting the five Municipal Administrations with a higher estimated prevalence of FGM/C⁷. In September 2018, this institution also published a report, with data from the period 2014 to 2017, gathered in the Health Data Platform, a software (deployed in 2012) accessed only by health professionals where a special folder dedicated to FGM/C has been created.

⁴ P&D Factor, Associação Mulheres Sem Fronteiras, UMAR, MUSQUEBA, APF, and AJPAS, Balodiren, Associação de Filhos e Amigos de Farim are just few examples.

⁵ Among which the Comité Nacional para o Abandono das Práticas Nefastas, Saúde da Mulher e Crianças, led by Fatumata Djau Baldé (see Carvalho, Falcão e Patrício, 2018).

⁶ Alcochete, Barreiro, Moita e Montijo (Arco Ribeirinho), Almada-Seixal, Amadora, Loures-Odivelas e Sintra

⁷ Cascais Municipality is the 6th, reason why it wasn't included in this programme.

Despite the clear evolution of the institutional framework, the data available and the approach undertaken are still quite limited to a bias that focuses on the practice of FGM/C in numbers and statistics, as a violation of human rights that can be curbed by education and awareness raising. In most institutional frameworks, and in most studies, the information that is made available pays little to no attention to the wider contexts of FGM/C. Social Intervention is particularly prone to such generalizations.

3) Local intervention and the limitation of community-based approaches with people from Guinea Bissau.

If on the one hand, localised interventions often target communities, defined roughly as people inhabiting a certain area, sharing the same nationality. On the other hand, community participatory approaches are often built upon rough generalizations of cultural belonging. This categorization bias is part of the problem set by the “anti-FGM” framework in Portugal, especially when this framework is heavily reliant on the engagement with people coming from Guinea Bissau. This is why we can find around the territory of Lisbon urban peripheries several projects that dedicated their attention to FGM/C through (and with) people from Guinea Bissau’s “community”. Most of these projects, despite their well-intentioned objectives, aim at social change by applying behaviorist models that usually ignore in-depth studies of cultural dynamics and history (see also *Mestre I Mestre and Johnsdotter, 2019*). These models are operationalised with just a few surveys applied to control groups and are designed to achieve accountable short-term outcomes rather than long-term engagements. The people mobilised by these projects become ‘mediators’, ‘women champions’, ‘stakeholders’, ‘community leaders’ and other categories used in project parlance. These people are then used to create a link between the so-called “communities” and the institutions, but there is little to no critical assessment of this articulation role. Most interventions also don’t evaluate their own institutional settings and constraints that show themselves when developing such projects⁸.

Most intervention projects, because they do not widen their scope, they often fail to understand that FGM/C is not always a priority in people’s lives, and violence against women (or violence in general) is not exhausted by cultural practices. Other social and cultural constraints concerning gender and intergenerational relations are paramount to address the complexity of the framework where FGM/C perpetuates itself.

⁸ If anything there is a culture of not questioning the institutional organic.

Dimensions such as systemic racism for example, are normally absent of all projects about FGM/C. We should remember that, even though in Portugal FGM/C is evolving in a migratory context, its intertwined relation with the country of origin cannot be set aside⁹. Social forms of belonging and “making the social” are in constant relation with the origin and often not immediately with the Portuguese context, at least for the generation of people that came from Guinea. Younger generations also have a different relation to sociocultural values and social dynamics, so much so that the generational undertones to cultural practices in the Portuguese context shouldn't be overlooked. So, the truism ‘not all guinean are alike’ might be a bit obnoxious, but it's something that seems to need a reminder for most institutions.

A complex set of inequalities underlines the need for intersectional approaches. These are far from being the norm for institutions. These would allow us to shift from the two main concerns already discussed: the lack of knowledge on FGM/C on the part of professionals; and the fact that it is a problem particularly connected with a specific group of migrants.

Recent fieldwork conducted in Portugal on gender violence and normativity permitted us to identify a wide array of dividing subjects and social dilemmas faced by Guinean people living in Portugal. These social constructs, which are not directly related with FGM/C, represent daily struggles for most people migrating from Guiné Bissau. Some of these are directly relevant to understand the context where FGM/C exists, other are also relevant, even if in a less straightforward way. The short list that follows gives us a less schematic view of normativity and violence, while underlying the importance of going beyond simplistic views on “violation of human rights” and “harmful cultural practices”. These views have resulted from a series of focus groups and individual interviews.

Women tend to experience more violence than men. The accounts on social and structural violence are vivid and concrete for women, while men talk about violence in an abstract way.

The representation of women is highly ambiguous. They are lauded for their reproductive labour and for being “like warriors”, meaning that they face life's ordeals with courage; but, at the same time, they are subalternised by the way reproductive labour is underappreciated.

Girls and boys are distinguished strongly while growing. A culture of responsibility is imposed on girls while a culture of carelessness is passed on to boys.

⁹ Changes in the laws of both countries, as well as in awareness raising campaigns, have created different dynamics and pace between people living in Guinea and Guinean living in Portugal.

The nonexistence of spaces for dialogue between genders and generations is at the heart of forms of violence. Submission is demanded of women and youth, and it stresses the importance of a culture of seniority, where age is the biggest source of social legitimacy to have a voice publicly.

In cultures where the “social” is very important, many external influences can influence the outcome of people’s decisions. Social pressure is often felt as an inescapable dimension across all groups in Guinea Bissau.

In Portugal, Guinean men have feelings of betrayal concerning the choices of women relating to work and their growing autonomy. These feelings of male fragility are also linked with financial stress as well as the culture of the male as provider.

Trouble defining alternative forms of masculinity on the part of both men and women. Normative masculinity is also associated with a certain patriarchal distance (meaning a culture where the man exists first and foremost to impose definition and authority).

The dimension of affects is seen as belonging to the feminine sphere, but it is also problematic between generations, especially related with the culture of seniority. Public displays of feelings are discouraged. This hampers a proper emotional management and communication between groups of people. A cleavage between youth holding progressive views and traditionalists, associated with a culture of parent support. Youth are expected to support their parents from a certain age onward. The difficulty of educating children with traditional values heightens the conflicting aspect of social relations among people from Guinea-Bissau in Portugal. This also provokes clashes between traditional values and values learnt in the formal education system.

This list is far from being complete, but it points out to some of the complexities that are part of the lives of people from Guinea Bissau living in Portugal, among which there are people belonging to communities practicing FGM/C. The very nature of these social relations, alongside gender and generational values, is permanently negotiated. FGM/C belongs in the same framework as a set of other practices that are not at all detached from one another. Social interventions in Portugal often tackle just a narrow part of people’s concerns.

Activists frequently dialog with many of these dimensions, but for people from FGM/C practicing communities, these don’t forcefully belong to the domain of citizenship as they are still seen as pertaining to the private realm. Even if States regulate, people don’t immediately start living on a juridical regime in tune with international law. They rather point to social relations and “ways of doing” that precede them.

4) Criminalization

Criminalization of FGM/C became the main institutional approach to this cultural practice, in Europe, after the Istanbul Convention (2011), which clearly stated that this violation of human rights should have its own juridical framework. The countries that signed and ratified the treaty soon started to present their laws. In Portugal, FGM/C is a public crime since 2015. Before that date it was already considered a grievous offense to physical integrity, but it was not typified. By specifying the aggravating circumstances of this practice, law was able to extend punishment to preparatory acts and moral authority of the crime. An extraterritorial clause was also applied to the law against FGM/C, since often the practice is not done in Portugal but in the countries of origin during holidays and trips to visit relatives. Criminalization is problematic though, in many instances. As we mentioned before, the lack of proper knowledge makes the system ill prepared to deal with the complexities of such a practice. As *Mestre I Mestre and Johnsdotter* (2009) tell us “reiterated law enforcement concerns are not coupled with training and prevention that are needed in the case of FGM in Europe”.

Despite the fact that criminalization has become the main framework guiding the juridical approach to FGM/C, “fewer than 50 FGM criminal court cases exist in Europe”¹⁰ (*Mestre I Mestre and Johnsdotter, 2019*). Many conundrums persist when dealing with this practice in the legal sphere. *Mestre I Mestre and Johnsdotter* are among the few to have done a critical evaluation of the cases of FGM/C arriving to criminal courts and the underlying assumptions of the legal apparatus. They propose a distinction between typical and atypical FGM cases. According to these authors, this distinction “connects the court cases to the cultural realities of the practicing communities and requires previous knowledge about the different practices and communities, their migratory history, and the status in Europe of those involved.” (*idem*) The “atypical” case should, according to them, involve experts on the appreciation of the material circumstances of the crime.

In Portugal, the first condemnation for the crime of FGM/C happened on the 8th of January 2021. Rugui Djalo, a young woman from Guinea Bissau, at the time 19 years old, was convicted for the crime of FGM. In the proposed classification of typical and atypical cases, Rugui's case would fall on the latter.

¹⁰ This number as changed since the authors have written their article, with convictions in Portugal and the UK.

As *Mestre I Mestre and Johnsdotter (2019)* underline, the atypical cases seem to “reflect the willingness to open investigations and legal proceedings”, meaning that there is a sort of pressure in the system to produce culprits and condemn those who practice FGM/C. Whatever the reasons behind the materiality of the act were, the case of Rugui seems to configure such a desire to set an example. In these cases, evidence is not normally “consistent with a sound cultural narrative” (*ibidem*). Events, and the way they play out in court frequently follow “a cultural logic that is unfamiliar to the Western court actors” (*ibidem*). This is what happened to the case of Rugui Djalo. When returning from a trip to Guinea Bissau, the mother of the child, took her daughter to a health center, due to a genital infection. The nurses that oversaw the girl suspected a case of FGM/C and denounced it. Following an evaluation, the Public Office decided to prosecute the 19-year-old woman. The judges in the Tribunal of Sintra, decided to materialize a sentence, setting it to four years of imprisonment invoking the fact that FGM/C is an extreme form of violence, and that the criminalization framework in Portugal is one of “zero tolerance to FGM/C”.

Despite the case being publicised in all the media, lauded as the “first sentence condemning FGM/C”, the actual circumstances of what happened were not clearly discussed, nor were they object of any critical appraisal. Discussing these circumstances with someone that followed the court hearing closely, we were able to become aware of a general attitude towards the woman accused. As the defence lawyers tried to invoke the fact that the girl, at the time of the facts with 18 years of age, the judges were insisting on the production of guilt, trying to assess the extent to which the mother of the child was aware, or not, of what was going to happen. No specialists were called to the hearing. Mitigating circumstances were also disregarded. The judges were not interested in the fact that the material author of the act was not the mother, that she was pressured by her elders without a real capacity to refuse. Let us not forget that a culture of seniority is especially hard to negotiate for a young woman who is visiting the family of her husband (to whom she has been married to for not so long). There are many crippling factors to hamper any decision contrary to the family’s desires. These should have been considered mitigating circumstances and guilt should be considered on a larger framework. What would be the alternative for Rugui? Not to visit the family of her husband? To not present her child to her eager in-laws? Could a 18 year old young wife really refuse to establish those social bonds? Was she aware of the danger the child was in? She might have been, but was she fully aware? And if so, could she really have chosen otherwise? Accused of a “violation of human rights”, when she herself is a victim of structural violence, and is trapped in a network of dense social ties that obey to many constraints based on gender and age.

These questions that remain is the reason why *Mestre I Mestre and Johnsdotter* (2019) propose the classification of atypical cases, but also why they remind us that the

attempt to recognize values and norms in terms of legally privileged justifications toward exculpation (exclusion of guilt) or mitigation of the defendants' guilt and punishment" is what has been deemed to be a cultural defense. In these cases, the "concept needs to be coupled with the definition of culturally motivated crimes (a terminology currently accepted in Italy and Spain).

These arguments are controversial and have been object of critique, but if the objective of a judgment is to produce justice, how is depriving a small child of her mother (who is also a victim of a system) doing her justice? For these two authors, the presence of specialists in court could be used to better understand the logic of the act of FGM/C. If theoretically we tend to agree with this and see here an opportunity for Applied Anthropology, at the same time we are aware that this cannot be done without a proper ethical and deontological clarity (Holden, 2019).

Fortunately for Rugui, the Court of Appeal of Lisbon would suspend the execution of the four-year sentence to which the woman was condemned, considering that the imprisonment would further penalize the daughter. "We believe that the simple censorship of the fact and the threat of prison achieve in an adequate and sufficient way the intent of punishment"¹¹ were the words with which the Court has, then, allowed Rugui to resume her life.

This case, "the first condemnation for FGM/C in Portugal", is an illustration of the ambiguities in the whole system where the "anti-FGM agenda" has been deployed. Its "zero tolerance" foundations, with criminalization as its tool, contribute to a rather deaf justice system, when it comes to dealing with such a practice. In court, and probably outside of it, people that endure such a form of violence need to be heard on the details of their stories, and the constraints upon them. Criminalization has brought with it consequences, and many activists are today questioning if this is in fact the best tool to combat FGM/C. One of the problems seems to reside in the fact that the huge amount of awareness raising, training of future professionals,¹² training of active professionals, campaigns, protocols, action orientations, cannot educate fully on the cultural logics behind this practice.

¹¹ <https://www.tsf.pt/portugal/sociedade/tribunal-da-relacao-suspende-pena-de-prisao-por-crime-de-mutilacao-genital-feminina-13947315.html>

¹² The authors of this article have participated in an International Project, financed by the European Commission (MAP-FGM), which consisted of training future professionals, and have between 2016 and 2018 trained over 400 people.

This education demands time that doesn't exist, it demands attention to cultural difference, it demands capacity to recognize the narrative underlying peoples' choices.

Conclusion

In this article we have tried to make an overview of the ambiguities and conundrums of FGM/C, from the creation and adoption of sexual and reproductive rights at the international level to the specific case relating Portugal to Guinea Bissau. Considered by many as an "extreme violation of human rights", this practice has been on the radar of international organizations for the last thirty years and has been a strong mobiliser of moral sentiments. A certain vein of humanitarianism, mobilised by these sentiments, and nourished by Eurocentric forms of institutionalised feminism, has created a zero-tolerance framework which seems, in the end, counter-productive because it pushes the practice of FGM/C to invisibility; because it re-victimizes victims; and further discriminates people already socially vulnerable. For us it seems unnecessary to adopt cultural relativism, but we think that, at least, when it comes to such a delicate subject, some critical notes have to be made.

Because contemporary politics is keen on the mobilization of moral sentiments, things often get blurred. In the Portuguese example, all the awareness, training, and campaigns, have achieved a double-edged sword. On one hand, professionals in all areas have a minimum understanding of what FGM/C is and are today legitimised by the rule of law. On the other hand, this often-minimal understanding is clearly insufficient to appreciate the logic at play. This has been the case with the Bissau Guinean woman Rugui Djalo, who was convicted to four years of imprisonment in the beginning of 2021, only to see her sentence suspended some months later. The fact that the same system was able to produce two rather different judgments is proof of the uneven distribution of knowledge on the practice of FGM/C.

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