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Ban without Prosecution, Conviction without Punishment, and Circumcision without Cutting: A Critical Appraisal of Anti-FGM Laws in Europe

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Abstract:
This article focuses on anti-FGM laws aiming at eliminating gender-based violence. It uses intersectionality to question the underlying conceptualization of gender-based violence, and examines how the problem is represented, and which solutions have been proposed by French, British and Italian laws, showing their inconsistencies and biases. It also considers silenced dissenting voices by focusing on the proposal of "circumcision without cutting". The main goal is to uncover how anti-FGM laws generate new forms of vulnerability for African descent women in Europe, calling for a more complex articulation of gender at the intersection with migration status, ethnicity and neo-colonial relations.

Keywords: anti-FGM laws, body modifications, intersectionality, female genital mutilation, gender-based violence

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1 Introduction

The alteration of sexual organs is an old phenomenon that is increasingly widespread today. The most popular modifications on male and female bodies legally performed across the globe include male circumcision, breast augmentation, sex change operations, intersex surgery, and genitoplasty (Chase 2002; Earp 2016; Ehrenreich & Barr 2005; LaBarbera 2009b; Public Policy Advisory Network on Female Genital Surgeries in Africa 2012). The number of surgical procedures performed to modify female sexual organs has steadily grown in Europe and the US in the last two decades.[1] In 2015, women represented 91 per cent of all cosmetic surgery in the United Kingdom.[2]

Breast augmentation was the top surgical procedure. According to the 2011 report of the American Society of Plastic Surgeons (ASPS), more than ten billion dollars are spent annually in cosmetic interventions (American Society of Plastic Surgeons 2013). The UK Department of Health estimated this booming business to rise up to £3.6 billion by 2015.[3] Its percentage is still increasing, in spite of the prosthesis scandal that generated a public health alert, and required the withdrawal of worldwide-distributed silicone implants.[4] Breast augmentation with silicone or saline implants is the treatment proposed for what ASPS defines as a pathology. "Micromastia", or having small breasts, is described as a medical condition resulting in feelings of inadequacy, lack of self-confidence, and problems with perceptions of femininity and wellness (Coco 1994).

Short-term complications are those related to any surgery, such as bleeding, infection, and bruising (Elting and Isenberg 1976). On the book hand, long-term complications include difficulty detecting cancerous growths through mammography; keloid and capsular contractures; mammary muscle atrophy; autoimmune disorders; and loss of nipple sensation (Grigg, Bondurant, and Ernster et al., 2000)[5] with the associated impairing of sexual functioning (Masters, Johnson & Kolodny 1995). In addition, over time the implants deflate and leak, requiring new surgeries and the related post-op complications. In spite of its short- and long-term adverse health effects, breast augmentation is recommended in Western countries, even for under-age patients with the consent of one parent only.[6]

Also genitoplasty is increasingly in demand in Europe and the US today.[7] It includes hymen repair, vaginal narrowing, clitoral prepuce elimination, and labial size reduction.[8] Although very few gynecological studies define what "normal" female genitalia are (O'Connell, Hutson & Anderson 1998; Verkauf, Von Thron & O'Brien 1992), medical recommendations are based on the under-researched assumption that shaping female genitalia according to "normality" may improve women's wellbeing, self-esteem, and healthy relationships

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(Lloyd, Crouch & Minto 2005).[9] Although complications, such as infection, vaginal adhesions, scars, altered sensation, and difficult or painful sexual intercourse, frequently appear (American College of Obstetricians and Gynecologists 2007; Liao & Creighton 2007; Lloyd, Crouch & Minto 2005), they are considered as foreseeable consequences of a dangerous activity consented by adult informed women.

Feminist scholars discuss whether re-drawing the female body geography reflects an internalized patriarchal ideal of femininity (Coco 1994) or rather is an exercise of the right of self-ownership of the body and thus an extreme form of empowerment (Tiefer 2008). Notwithstanding, patients who undergo such interventions are irrefutably assumed to be free and autonomous agents (Tietjens Meyers 2000). Cultural reasons, societal constraints, and the possible internalization of patriarchal structures are immaterial to define consent as a sufficient legal justification (LaBarbera 2009b; Chambers 2004; Davis 2003; Nussbaum 1999; Tamir 1996). Informed consent, and its problematic evaluation, appears to be the crucial discriminating element to distinguish between lawful and outlawed interventions.

Ritual interventions on female genitalia surely are the most (in)famous outlawed modifications of sexual organs. They are best known as "female circumcision", "female genital mutilation" (FGM) or "female genital cutting" (FGC). They are internationally defined as "gender-based violence" and punished as "cultural crimes". While cosmetic interventions on female sexual organs steadily increase, campaigns and legal instruments to eradicate ritual interventions on female genitalia enormously proliferate internationally. Any kind of ritual intervention on female genitalia is banned in Western countries. All European countries have criminal laws that define any ritual intervention on female genitalia as a crime, either as a specific criminal act or an instance under the general category of bodily injury (Leye and Sabbe, 2009).

Ritual interventions on female genitalia are assumed to be barbaric traditions imposed on female bodies within patriarchal communities that are brought along in the migratory context. This assumption, which has been scarcely discussed or questioned (Earp 2016; Shweder 2013; Public Policy Advisory Network on Female Genital Surgeries in Africa, 2012; Shweder 2002; LaBarbera 2009b; Essén and Johnsdotter, 2004), portraits both minors and adults women as victims of backlash culture, while rituals performed on male genitalia are rarely called into question (Cohen 2005; Darby & Svoboda 2007; Earp 2016; Shweder 2013). On this basis, consent of adult women is deemed as invalid. Women's choices in traditional and patriarchal societies are assumed to be culturally conditioned, and therefore not free or informed (Nussbaum 1999).

In Europe, this discourse is framed within the never-ending debate on feminism versus multiculturalism and gender equality versus cultural diversity (LaBarbera 2016; LaBarbera 2009b ; Freedman, 2007; Kukathas, 2001; Volpp, 2001; Okin, 1999). Indeed, how to regulate ritual interventions on female genitalia is a very controversial issue that involves biopower (Foucault, 1978) and controlling processes (Nader, 1994) over the female body. It puts female body center stage and interrogates women's rights, equality, autonomy, and cultural diversity. It poses the question of how to balance the apparently irreconcilable rights of personal self-determination (Svoboda 2013; Tietjens Meyers 2000) and exit (Kukathas 2012; Okin 2002 ; Sheldon and Wilkinson, 1998), while maintaining traditions that are perceived as meaningful in other cultural contexts (Kenyatta, 1938). It entails answering the question of how to protect fundamental rights, such as health and body integrity of women, on the one side, and non-discrimination on the base of sex, race, or culture, on the other.

This article focuses on anti-FGM laws adopted to combat gender-based violence and is structured into five sections. The first theoretical section presents intersectionality as a category of analysis, explaining its potential for this study. The second section explains the typology adopted by the WHO and the legal framework that has been developed on its basis. The following section analyzes how, within this framework, the problem has been represented and which solutions have been proposed by French, British and Italian legislation, showing their inconsistences and biases. Adopting a comparative law methodology, legislative techniques, implementations and judicial records are analyzed. Substantive, personal, and territorial scopes, as well as modes of prosecution are examined comparatively. Finally, the fourth section draws on the dissenting voices that are excluded from the hegemonic discourse contained in the legislation under analysis, and particularly focuses on the proposal of "circumcision without cutting". By showing the limits of criminal law and its perverse effects resulting in new forms of vulnerability for African descent women in Europe, the article finally sets the basis for alternative framing and solutions to effectively protect women's right to health, non-discrimination and self-determination, as it is pointed out in the conclusions.

2 Intersectionality as a category of analysis

Ritual interventions on female genitalia are practiced in Europe on girls and women from Sub-Saharan countries, who mostly are African descent second generations or newly arrived economic migrants with temporary or even irregular status (Kaplan and López, 2010). Their social position certainly is shaped by their gender, but

also by their ethnicity, migratory status, level of education and employment in the host country. Addressing such a complexity through the category of gender-based violence alone definitely is not enough. What is needed is a more nuanced understanding of the interdependence and interrelatedness of race and ethnicity, culture and religion, educational and occupational level as social structures in continuous becoming that mutually shape gender, creating complex matrix of dis/em-powering conditions that (re)produce intertwined forms of vulnerability (LaBarbera, 2012). In order to adequately tackle such a complexity, intersectionality is adopted here as a category of analysis.

Coined by Kimberlee Crenshaw (1989), intersectionality draws in Black feminist movement and critical theories that questioned the purported neutrality of gender as a universal concept. Whiteness, heterosexuality, Christianity, and middle-class family organization were pointed out as the standpoint from where feminism pretended to speak for every woman in the world (Combahee River Collective, 1982; Combahee River Collective 1982; Lorde 1982; Spelman 1988). In referring to the distinctive structural inequalities that shape African American women's lives, Crenshaw pointed at the intersection of race and gender structures, policies, and representations and argued that, by segmenting each dimension of discrimination, both feminist and anti-racist policies paradoxically ended in reproducing and reinforcing their social marginalization (Crenshaw 1991 : 1252). Crenshaw used intersectionality as a metaphor to show how different forms of discrimination interact and mutually constitute one another (Crenshaw, 2011). Recognizing the differences among women and the danger of essentialism in feminist and race scholarship, intersectionality allowed critical legal studies and critical race theory[10] to address the exclusion of those who fall in-between the fixed and isolated social categories used in purportedly inclusive anti-discrimination laws and policies (Crenshaw, 1989 and 1991).

By recognizing that each kind of discrimination is mutually constituted by the intersection with the others, intersectionality helps to recognize that no form of discrimination stands alone, and reveals how the different dimensions of social life are distorted by single-axis or merely additive analyses (Hancock, 2007). In addition, intersectionality exposes the paradoxical effects of analyses, laws and policies that –by separately addressing race, gender, sexuality or disability-based discrimination as isolated– reinforce social subordination and create new forms of exclusion and vulnerability (Crenshaw 1989; Hill Collins 2000).

Intersectionality allows to understand social positioning as a locus of subjetification, power and privilege that dynamically changes over time and contexts in relation to the different social structures that conform social life. By focusing on the interactions between socio-political structures, power relations and discursive representations as context-specific processes, it reveals the complexity of mutual and simultaneous constitution of discrimination and privileges based on gender, sexual orientation, ethnicity, religion, national origin, (dis)ability and socio-economic status (Winker and Degele, 2011).

To use the concept of intersectionality as a category of analysis in legal studies means to examine the extent to which law and politics questions (or instead take for granted) the privileges of majority groups and prevent (or instead reproduce) the exclusion of disadvantaged subjects. Taking on the intersectional perspective implies to recognize that gender discrimination is constituted not only by the disadvantages that women experience in patriarchal societies, which attribute power and privilege according to sexist criteria, but also by the concurrence of other systems of subordination that create differences among women, and locate some women in positions of particular marginalization and social exclusion.

Intersectionality is a powerful category of analysis for critical inquiry of law and policy. Following Mary Matsuda (1991), "asking the other question" helps to reveal hidden and intersecting forms of discrimination: when we deal with an apparently race-based discrimination, we are invited to ask about sexism; if an issue is represented as a problem because of sexism, we are remembered to ask about heterosexism; as well as when the problem is homophobia, we are called to inquire about classism.

Intersectionality is used in this study as a category to analyze the regulations of ritual interventions on female genitalia in European countries. It is used to critically inquire whether the category of gender-based violence explains what is at stake when ritual interventions on female genitalia are performed in Europe. The intersectionality approach helps me to consider the mutually constitutive interactions of race, ethnicity, culture, educational level, migration status and neo-colonial relations as intermeshed with gender-based structural discrimination and violence. Through this way, intersectionality allows uncovering hidden forms of racism and neo-colonialism and addressing the specific vulnerability of African descent women in Europe at the intersection of a complex web of subordination that is reproduced and sustained through anti-FGM laws. Using intersectionality as a category of analysis helps me to pursue the goal of perplexing the representation of ritual interventions on female genitalia as a problem of gender-based violence.

Following Carol Bacchi (1999), to perplex "what is the problem represented to be" is considered as a necessary step for proposing alternative framing of the problem that include health, body integrity, self-determination, and non-discrimination within the matrix of ethnic diversity, migration processes and neo-colonial relations of African descent women in Europe. Bacchi (1999) refers to the competing understandings of social issues as "problem representations". The goal of "what's the problem represented to be?" as an approach

is to inquiry the different subjacent conceptualization of those problem representations. Understanding who or what is depicted as responsible for the "problem" and, by considering their shifts over time and across cultures, what is left unproblematic are crucial steps to explore possible alternative responses. Bacchi's approach, combined with intersectionality as a category of analysis (Verloo, 2007), proves to be vital for critical inquiry of law because it questions the status quo and can allow creating more comprehensive legal tools (norms, institutions, interpretations) and strategies of political inclusion.

3 What is the problem represented to be? WHO Typology and the International Legal Framework

The World Health Organization (WHO) defines as "Female Genital Mutilation" (FGM) "all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons" (WHO, UNICEF and UNFPA, 1997). Under this term four different types of interventions are included. Type I, better known as "circumcision", is the mildest form of intervention and may range from removal of the clitoral prepuce (type Ia) to partial removal of the clitoris (type Ib).[11] This type of intervention is comparable both to ritual male circumcision (Abu-Sahlieh 2006; Cohen 2005; Darby & Svoboda 2007) and genitoplasty involving laser reduction of the prepuce ((Earp, 2016; LaBarbera 2009b).[12]

Type II, which is also known as "excision" or "clitoridectomy", is described as ranging from removal of labia minora (type IIa) to partial or total removal of the clitoris along with the labia minora (type IIb), including removal of labia maiora (type IIc).[13] This is comparable to that type of genitoplasty called "laser vaginal rejuvenation", which involves the reduction of the labia minora and is offered as a cosmetic intervention to provide a "youthful look of the labia minora".[14]

Type III, which is also known as "infibulation" or "Pharaonic circumcision", consists of suturing together the labia minora (type IIIa) or maiora (type IIIb) only leaving a small orifice for urine, sometimes including the previous partial removal of clitoris and labia minora.[15] When it entails the most invasive intervention, infibulation is associated to very serious health risk for girl and women (Abdulcadir, Margairaz & Boulvain 2011). It is widely practiced in Somalia, Sudan, Egypt, and Kenya. Yet, although infibulated women are less than 10 per cent of total population undergoing ritual interventions on female genitalia (Kaplan & López 2010; Public Policy Advisory Network on Female Genital Surgeries in Africa 2012), anti-FGM advocacy misleadingly links the risks associated to infibulation with any ritual intervention on female genitalia (Public Policy Advisory Network on Female Genital Surgeries in Africa, 2012; LaBarbera 2009b; Obermeyer, 2003 and 1999).

Type IV finally includes the rest of procedures carried out on female genitalia for non-medical purposes, such as pricking, piercing, incising, scraping and cauterizing. This fourth type has been introduced by the WHO to the end of including any type of cultural tradition aiming at altering female genitalia that could have been set aside in previous definitions. Yet, this broad definition generates several applicative problems because, literally understood, it would include cosmetic interventions such as genital piercing and genitoplasty that are broadly spread in Western cosmetic clinics, while the WHO only aimed at referring to ritual (read: Other's) interventions only. To what extent Western interventions should be included has not been seriously discussed so far (Puppo, 2013), confirming the suspect of cultural biases carried by a purportedly medical-based approach.

On this base, the United Nations declared ritual interventions on female genitalia an issue of violence against women and called for zero tolerance (UNPF, 2010).[16] Since the 80s, legislation banning ritual interventions on female genitalia has been passed not only in African countries, where these interventions have been traditionally performed, but also in European countries to target displaced communities (Allotey, Manderson & Grover 2001; LaBarbera 2009b). The eradication of ritual interventions on female genitalia currently is a fundamental objective of the United Nations Population Fund. Recently, the Third Committee on Social, Humanitarian and Cultural Issues of the General Assembly of the United Nations issued a Resolution urging States at "intensifying global efforts for the elimination of female genital mutilations" because they constitute "an irreparable, irreversible abuse that impacts negatively on the human rights of women and girls" (United Nations General Assembly, 2012).

The two most important international legal instruments that justified the definition of ritual interventions on female genitalia as a violation of human rights have been the 1979 Convention on the elimination of all forms of discrimination against women (CEDAW)[17] and the 1989 Convention on the rights of the child.[18] Both conventions call on member states to introduce legislation to eradicate violence against women and children or ensure that existing laws are enacted and enforced. States that ratified those international conventions are legally bounded to implement them. Accordingly, the European Parliament adopted Resolutions 2001/2035(INI) and 2008/2071(INI), urging European countries to approve uniform and consistent legislation on this matter. More recently, in 2011, the Council of Europe adopted and opened for signature the "Convention on preventing

and combating violence against women and domestic violence" –better known as Istanbul Convention– that specifically addresses ritual interventions on female genitalia and binds States to criminalize infibulation, excision and circumcision performed on women and girls (art. 38).[19] Although the Convention recognizes "the structural nature of violence against women as gender-based violence, and that violence against women is one of the crucial social mechanisms by which women are forced into a subordinate position compared with men", it disproportionately focuses on Others' violent practices, depicting gender-based violence as problem brought in by migrant population and revealing the neo-colonialist approach of European institutions (Peroni, 2016).

4 A comparative analysis of French, British and Italian anti-FGM laws

4.1 Which conducts are prohibited and how they are sanctioned

Ritual interventions on female genitalia in Europe are punished as crimes, either as specific criminal acts or as subtypes of the general category of "bodily injury" (Leye and De Blonde, 2004). France, the United Kingdom, and Italy have been chosen for comparative analysis as token of i) prosecution under the existing criminal code, ii) first example of *ad hoc* legislation, and iii) most recent legislation in Europe respectively.

France is one of the few Western countries that did not approve an *ad hoc* anti-FGM law.[20] Without need of any amendment, since the 80s (*Cour de Cassation, chambre criminelle,* 1983, n. 83-92616), ritual interventions on female genitalia are treated as a case of bodily injury (art. 222-9 penal code) .[21] Ten years in prison and 150,000 euros fine are foreseen for performing or assisting violent acts that cause a permanent mutilation or disability. If violence is inflicted on a minor, aggravating circumstances are foreseen. Additional aggravating circumstances are applied if the culprit is a parent or a person having custody of the child. Similarly, aggravating circumstances apply if the act is performed because of the belonging to an ethnic group, nation, race or religion (art. 222-10 penal code). Because this general punitive scheme applies to everyone without distinctions of age, sex, race or ethnic origin, this is considered the best way to pursue the principle of *egualité* and *laïcité* (Weil-Curiel 2001; Winter 1994). Yet, this principle is only formally but not substantively accomplished (*égalité réelle*). Indeed, neither cosmetic interventions on female sexual organs nor ritual male circumcision are considered bodily injuries. Only those ritual interventions performed on the genitalia of African descent women are prosecuted. When closely scrutinized, the French secularism model reveals the biases of assuming whiteness and Catholicism as an unquestioned universal norm (Volpp, 2007).

On the other hand, the United Kingdom was one of the first Western countries adopting an *ad hoc* anti-FGM law (1985 Female Circumcision Act, later replaced by 2003 Female Genital Mutilation Act). It was meant "as an important social measure laying down the standards which must be achieved by anyone who is living in this country" (Prohibition of Female Circumcision House of Lord Bill, 1983, vol. 444, col. 993).[22] It specifically addresses as a crime the conducts of "infibulating", "excising" and "circumcising" female genitalia, as well as any other mutilation of the labia or clitoris. Yet, penalties need to be established on a case-by-case basis according to the invasiveness of the cut. In spite of the long unsuccessful history of colonial banning (Kershaw 1997; Njambi 2007; Presley 1988; Thomas 2000), the high symbolic value of an *ad hoc* law was regarded as the most powerful instrument to declare the strongest opposition to such ritual interventions in the UK and abroad.[23] The terminology used in the British Act, and the debate that preceded it, clearly reveals the "arrogant perception" (Gunning, 1991) of colonial discourses in dealing with cultural otherness, body integrity and African women's autonomy (Dustin 2010; LaBarbera 2009b).

Finally, Italy was one of the last European countries in banning ritual interventions on female genitalia. Following the 2001/2035(INI) European Parliament Resolution, through the approval of the Law 7/2006,[24] Italy amended its penal code and introduced a special provision for ritual interventions on female genitalia "to promote also in Italt awareness around this phenomenon and prevent it".[25] According to the reform, any person that alters female genitalia for non-therapeutic purposes is guilty of performing severe mutilation and is punishable from 4 to 12 years of prison (art. 583-*bis* penal code). The targeted conduct is "clitoridectomy", "excision", "infibulation" or any practice that produces similar effects. The sanction can be reduced to two-thirds if the injury is minor. However, when injury is performed on a child, or for profit, sanction increases by one-third.

The analyzed anti-FGM laws refer to non-therapeutic purposes and to practices that produces similar effects, being irrelevant whether they are performed on girls or adult consenting women. This generates two sets of interpretative problems that impair their legal effectiveness. The first set of interpretative problems relates to with the differentiated effect of informed consent when cultural traditions are involved. Using intersectionality as a category of analysis shows that the category of gender-based violence ignores the mutually constitutive interactions of multiple intersecting social structures. It reveals that gender is constructed as a cross-cultural construct that shapes a universalized notion of "Woman" –as if one could "became a woman" irrespectively of

her race, ethnicity, culture, religion, national origin, migration status, age, sexuality, education, and body-ability. It also allows uncovering that such a notion leads to represent any woman that does not conform to that model as a victim of patriarchal cultural traditions in need to be saved (LaBarbera, 2009a; Narayan, 2000; Mohanty, 1984). It results in a paternalistic approach that shapes the legal treatment of adult women as legal minors. An unbiased application of equality and non-discrimination principle would require an equal legal consideration of cosmetic and ritual interventions on female genitalia performed on adult consenting women, irrespectively of their culture or race. Altering the genitalia of adults for cosmetic or rituals reasons should be regarded as mutilation in either cases or none (LaBarbera 2010; LaBarbera 2009b).

The second set of interpretative problems is associated with the exclusive reference to female genitalia in anti-FGM laws, which raises the issue of why children's male genitalia are excluded from protection of body integrity as a fundamental human right. Intersectionality allows disclosing that in the analyzed legislation "gender" is used as a synonym of "Woman", and that the notion of "gender-based violence" is constructed exclusively as violence against women. Yet, if we understand gender as those social structures through which male and female bodies are constructed and culturally represented as men and women, we should recognize that gender structures enable or constrain both femininity and masculinity within a dichotomist opposition. Those structures shape women's and men's bodies, options, behaviors, choices and desire within complex matrixes of subordination where race, class, sexuality, and geo-political locationality also matters. Indeed, not only women have a gender, also men do. Not only women's role and expectations are socially constructed, also men's are. By virtue of equality and non-discrimination principle, also ritual male infant circumcision should be included under the same category. Altering genitalia of girls and boys should be considered as mutilation in either cases or none (Cohen 2005; Earp 2016; Shweder 2013; Svoboda 2013).

4.2 Who is subject to punishment

In France, anyone who performs a violent act that results in mutilation is subject to punishment (art. 222-9 penal code). France counts on the highest number of judicial cases related to ritual interventions on female genitalia, most of them brought before criminal jurisdictions. French judicial records have shown that the woman practicing the ritual cutting (*exciseuse*) is rarely reported by the parents that hired her (Commission Nationale Consultative sur les Droits de l'Homme, 2004). For this reason, the defendants are mainly the parents. Given the special relationship between parents-defendant and daughter-victim, the execution of the verdict is conditionally suspended (*sursis*). In other words, the culprit is convicted but not punished (Commission Nationale Consultative sur les Droits de l'Homme France, 2004), according to a model that can be defined as "conviction without punishment". Indemnification can be asked as a compensation for the damage of the victim. To the end of stopping pressures from the extended family living in the homeland, indemnification seems to have greater impact than the suspended sentence to prison (Commission Nationale Consultative sur les Droit de l'Homme, 2013). Yet, in most of the cases the parents-culprit are economic migrants or refugees who live under difficult economic conditions and cannot afford to pay it (Gunning 1991; Shell-Duncan et al. 2013). A public fund (*fond de garantie*) guarantees the payment of the compensation of victims (art. R50-12-1 code of criminal procedure).

The British 2003 Act establishes that any person who aids, abets, advises or procures mutilation of female genitalia is prosecutable. Although consent works as a legal justification for tattoos, piercings, violent sports and ritual male circumcision (R. vs. Brown [1993]),[26] it is immaterial in the case of ritual interventions on female genitalia. By equating adult consenting women to legal minors, the British legislation reveals its paternalistic attitude, resembling missionary campaigns in former colonies (LaBarbera 2009b; Shweder 2002). In addition, in the UK the anti-FGM law only serves symbolic purposes since no prosecution for "female genital mutilation" has been hold so far.[27] This second model can be described as a "ban without prosecution".

In Italy, the prosecuted conducts are "circumcision", "excision", "infibulation" and any other practice that produces the same effects (art. 583-*bis* penal code).[28] The Italian law recalls the Resolution 2001/2035(INI), according to which "any form of female genital mutilation, of whatever degree, is an act of violence against women, which constitutes a violation of their fundamental rights, particularly the right to personal integrity and physical and mental health, and of their sexual and reproductive rights". Like in the UK, to the present date, not a single judicial decision of definitive condemnation has been pronounced in Italy.[29]

Under the Law 7/2006, neither informed consent nor cultural reasons are considered relevant. Indeed, according to a well-established jurisprudential doctrine on the principle of secularism (*Corte di Cassazione, sezione I penale*, 1983), cultural or religious reasons cannot eliminate the unlawfulness of an act(Floris, 1984). Although on the base of the same principle, a behavior cannot be considered unlawful solely because it is performed for religious or cultural reasons, the analysis of the aggravating circumstances shows paradoxical outcomes. In particular, the conduct is considered personal injury (art. 582 penal code) if recovery from health damage is inferior to 40 days and the defendant proves that the intervention was performed for other-than-cultural reasons. Sanction ranges from 3 months to 3 years of prison. Instead, no matter how long the recovery is, the applicable

sanction for ritual interventions on female genitalia (art. 583-*bis* penal code) is from 4 to 12 years of prison, that is the same as for felony murder, armed robbery, rail disaster, extortion, and gang rape.

Beyond criminal sanctions, the Italian law provides administrative and disciplinary sanctions, establishing the definitive closure of medical centers and the withdrawal of professional license. Also these sanctions are disproportionately severe compared with similar cases. While for illegal termination of pregnancy (L. 194/1978) medical license is suspended from 1 to 5 years (art. 30 penal code), for ritual interventions on female genitalia it is suspended from 3 to 10 years, while the closure of the medical center is permanent (Colaianni 2006; Fornasari 2008).

The Law 7/2006 also foresees activities of prevention and assistance, informative campaigns and the establishment of a toll-free information phone number. Yet, it lacks provisions for implementing concrete measures of intervention. In particular, no measures regarding asylum for women at risk of being forced to undergo ritual interventions on female genitalia against their will, nor financial coverage for training and informative campaigns are foreseen. Since Italian legislation has been adopted in response to the European resolution calling for the homogenization of European laws banning ritual interventions on female genitalia, it can be considered as a token that reveals European trends on this matter.

In sum, by depicting women as victims of ritual interventions on female genitalia, anti-FGM laws ignores that all the actors on the scene –*exciseuses*, mothers, female friends and relatives that take part in the rituals– are women. The analysis of anti-FGM laws shows that the category of gender-based violence alone does not provide an adequate basis to regulate ritual interventions on female genitalia in European countries. An intersectional approach is needed. By relying on a notion of gender as "violated" by culture, anti-FGM laws and advocacy are not able to address the complexity at stake, but rather crystallize potentially self-transformative rituals, reproducing the vulnerability that supposedly aimed to fight.

4.3 The right to initiate prosecution and reporting obligations

In France, not only the victim, but also the public prosecutor and interest groups can initiate the prosecution (*Cour de Cassation, chambre criminelle*, 1993, n. 93-80370). On the base of medical reports, interest groups can act, without or even against the will of the victim.[30] Moreover, to overcome the barrier of doctor-patient confidentiality, its infringement has been decriminalized in 2004. From then on, French doctors are required to report signs of ritual interventions on female genitalia found on their patients.

Also in the UK any professional that identifies a child at risk is required to share such an information with the Department of Social Services. When a child is a suspected victim of ritual interventions on female genitalia, parents are informed about the content of the law and its consequences, and police starts criminal investigations. On this base, the public prosecutor (Crown Prosecution Services) decides whether the elements to initiate the judicial prosecution exist.

In contrast, in Italy, only public prosecutors can initiate the prosecution of ritual interventions on female genitalia (*ex officio*). Because ritual interventions on female genitalia are considered to severely harm the general public interest, prosecution is initiated regardless the complaint of the part. This punitive scheme significantly differs from that applied to personal injuries (art. 582 penal code) that are instead prosecuted only after the complaint of the part. In contrast to France and the UK, Italian medical and health personnel are not compelled to provide any information related to their patients.

4.4 Where norms apply: the extraterritoriality principle

The extraterritoriality principle, also referred to as principle of passive personality or nationality, is established as a general norm to define the territorial scope of anti-FGM laws. Ritual interventions on female genitalia are prosecuted on the base of the nationality of the victim also beyond national borders, being immaterial whether the crime has been committed in the national soil or abroad. Yet, in the French legal framework a loophole exists. While nationality of permanent resident children is obtained at adulthood (Carra and Fiorini, 2012), ritual interventions on female genitalia are mostly performed on underage daughters of non-nationals. This makes the principle of extraterritoriality practically inapplicable. In the UK instead the principle of extraterritoriality relies on a broader concept of nationality, which also includes permanent residents. The margins of application of British law are thus theoretically broader, but it is has never been applied. Also in Italy the extraterritoriality principle is constructed on a stretched interpretation of nationality as including permanent residents. Yet, when it is combined with the possibility to initiate the prosecution when the culprit is away from the national territory, the irrelevance of "dual incrimination" criterion, and the lack of international judicial cooperation, the extraterritorial principle reveals procedural problems that lead to inapplicability in Italy (DiPietro 2006; Fornasari 2008).

The very conceptualization of the extraterritorial principle is profoundly entrenched with colonial racialized past and legal orientalism of European countries. Extraterritoriality indeed is a crucial tool of non-territorial imperialism (Ruskola 2013). By establishing that anti-FGM laws can be applied outside the national territory, the extraterritoriality principle shapes the territorial scope of legislation beyond the national borders and invades African territories once again, while at the same time constructs the culprits as cultural others.

Although they end up in bans that do not prosecute and convictions that do not punish, anti-FGM laws draw "symbolic boundaries" (Lamont & Molnar 2002; McAdams 2000), invisible and yet uncrossable, that separate "us" –liberated, educated and autonomous who condemn backward practices– from "them" that are oppressed by patriarchal culture and victim of brutal mutilations. These boundaries result in reinforcing the vulnerability of African descent women in Europe as it is discussed in the following section.

4.5 The increased vulnerability of African descent women as a perverse effects

The symbolic boundaries established by anti-FGM laws (re)produce the vulnerability of displaced African descent women because of three main reasons. First, although anti-FGM laws identify –more or less exactly– the prohibited criminal conduct, they do not succeed in discouraging ritual interventions on female genitalia. Bans that does not prosecute and convictions that does not punish did not play any decisive role in the eradication of ritual interventions on female genitalia in Europe. This is the result of the biases and inconsistences that lead to the inapplicability of anti-FGM laws. But it is also related to the fact that the targeted population comes from Sub-Saharan countries where group-based customary norms and state law coexist and compete(Grande, 2004). In African countries, laws banning ritual interventions on female genitalia form part of a cycle that periodically alternates criminalization and decriminalization. In contrast, they are required by ancient and binding customary norms that persist. Disobedience to such norms causes severe social isolation that is undoubtedly feared more than inconsistently applied criminal sanctions (Shell-Duncan et al., 2013). This resulted in driving ritual interventions on female genitalia into clandestinity (Guiné & Moreno Fuentes 2007; Shell-Duncan et al. 2013; Winter 1994). Because most operators are obliged to report in Europe, African families are turning less to the national health services. Through this way, anti-FGM laws produce the unintended perverse effect of increasing distrust and isolation of the African displaced community, which is further marginalized by being pointed out as cultural Other (Boyle & Corl 2010; Nnaemeka 2005 , 2001). Most importantly, underground interventions can more easily lead to the medically unsupervised post-intervention side effects that can severely endanger the health of African descent women and girls in Europe.

Second, anti-FGM laws and campaigns can generate a feeling of distress that affects women's healthy sexual functioning. Medical and anthropological studies showed the negative psychological effects of anti-FGM campaigns on women who underwent the intervention before migration. The discovery of being permanently mutilated and unable to achieve sexual satisfaction can lead to distress and sexual dysfunction, which is in turn erroneously attributed to ritual interventions on female genitalia (Johansen 2007, 2002; Johnsdotter 2013, 2007; Adams 2004; Ahmadu 2007; Catania et al. 2007; Gunning 1991; Oba 2008).

Third, anti-FGM laws preclude any process of transformation of social norms and practices from within. Rather than recognizing cultural practices as sites of multiple possibilities where individuals and groups actively and strategically invent and reinvent themselves (Njambi 2007), anti-FGM laws crystallize ritual intervention on female genitalia as crimes. Anti-FGM laws disregard that after the banning, in colonial Africa ritual interventions on female genitalia were transformed into an instrument of resistance to colonial domination (Imoh & Ame 2012; Kershaw 1997; Njambi 2007; Presley 1988; Thomas 2000).[31] Also in the migratory context, the ban could induce an ethnic resurgence and lead to revindicate ritual interventions on female genitalia as markers of African identity, preventing a gradual transformation of cultural traditions that is often connected with migration processes.

Migration processes frequently generate migrants' critical reflection on culture and belonging (LaBarbera 2015). Migrants become particularly aware of the relational and contextual nature of gender because in the host country they attempt to fulfill expectations and behavior that may differ sharply from the expectations in the country of origin (Donato, Gabaccia, et al., 2006). All migrants, as they move from one society to another, show more or less subtle alterations of their way of perceiving and representing themselves. For women, in particular, migration often leads to drastic and profound changes that substantially modify the most intimate dimensions of individuals life: feelings, desire, expectations, strategies of self-representation and social interaction, perception of the body and ability to imagine and create their own life paths (LaBarbera 2015; Nolin 2006).[32] Although rituals can be, and usually are, functional to the preservation of existent social structures and the status quo (Davis-Floyd, 2008), they profoundly interact with social structures transforming them from within. Indeed, by revitalizing traditions in response to changing circumstances, rituals represent one of the most powerful tools for grassroots social change (Kelly and Kaplan, 1990: 141). The study of the multiple implications of ritual

interventions on female genitalia in the different social structures involved, such as gender, race, social position and migration status, is crucial to imagine and impulse their transformation (LaBarbera 2010).

Finally, the analysis of anti-FGM laws through intersectionality allows making a broader contribution to the debate over the law as a tool to discipline the female body and its perverse effects. It clearly reveals that the female body is a highly disputed arena where the meaning of health, integrity, consent, and self-determination are contended and strongly dependent on geo-cultural variables. It also shows how anti-FGM laws in Europe are constructed in such a way that they fail in discouraging and stopping conducts that purportedly violate "public goods". This leads to recall that the definition of "public goods" is subject to social, historical and cultural changes and that, in democratic societies, they should be submitted to public debate (Fraser 1990; Habermas 1991). Yet, the targeted population has not been involved the debate. They represent marginalized cultural others that are not allowed into the public arena and are not entitled to propose their understanding of ritual interventions on female genitalia as beautifying coming of age rituals rather than violations of bodily integrity (LaBarbera 2009b; Shweder 2002). Lacking consensus from the targeted population, anti-FGM laws are incapable to transform deeply rooted social behaviors (Shell-Duncan et al. 2013). For such a transformation, processes of community-based social action are needed (Abusharaf 2001; An-Na'im 1994; Halim 2007; Harris 2010; Le Jeune & Mackie 2008).

5 Dissenting excluded voices: circumcision without cutting

Following Bacchi's approach (1999), this section analyzes some of the voices that are absent from the analyzed anti-FGM laws. In particular, the focus is posed on the proposal of "circumcision without cutting", as well as the attempt and the failure to implement it as an alternative procedure both in Italy (Abdulcadir, Margairaz & Boulvain 2011 ; Abdulcadir, 2006; Catania and Abdulcadir, 2005; Pasquinelli, 2007) and the US (Abdulcadir, Margairaz & Boulvain 2011; Carens 2000; Obiora 2001; Obiora 1996; Coleman 1998; Shell-Duncan 2001).

"Circumcision without cutting" was proposed in 2004 by Dr. Abdulcadir, a gynecologist of Somali origin working in Italy at the Florence-based Research Center for Preventing and Curing Complications of Female Genital Mutilation (*Centro regionale di riferimento per la prevenzione e la cura delle mutilazioni genitali femminili*). The proposal included the pricking of external genitalia of girls under anesthesia and medical supervision, with parental consent and without any tissue removal. The objective was twofold. First, to avoid pain and prevent side effects of ritual practiced at home without medical supervision or sterile instruments. Second, to preserve traditions that are perceived as meaningful by the African diasporic community that demands circumcision not only for their sons, but also for their daughters (Abdulcadir 2006; Catania & Abdulcadir 2005).

The proposal of "circumcision without cutting" was presented as a compromise between the expectations of the migrant community and the Western medical and legal standards. The Somali community of Florence welcomed it as a viable alternative. The proposal was presented as a transitional measure, being the long-term goal a gradual and participatory abandonment of the practice among second generations. Having obtained the approval by the National Bioethics Committee, the proposal was meant to become a bill and proceed through the parliamentary approval. Yet, the proposal generated a heated public debate and strong opposition by prominent public intellectuals.[33] The discourse was framed along a dichotomous structure that irreconcilably opposed "circumcision without cutting" to women's rights and liberal values (Galeotti, 2007). As a result, the proposal was considered too divisive to be discussed in parliament and was summarily abandoned. Shortly after, the Law 7/2006 was passed banning ritual interventions on female genitalia, and any similar operation, including pricking on female genitalia.

In a similar fashion, in 2010 "circumcision without cutting" was proposed for its second time by the American Academy of Pediatrics (AAP) as a reasonable option for dealing with ritual interventions on female genitalia in Western countries (American Academy of Pediatrics 2010). Being less extensive than routine newborn male circumcision,[34] "circumcision without cutting" was proposed as a non-harmful compromise that could help to build trust between medical centers and displaced Sub-Saharan communities. According to the AAP, "circumcision without cutting" could prevent some girls from undergoing procedures in their native countries, and play a role in the eventual abandonment of such risky practices. Yet, once again the proposal generated strong opposition from human rights advocacy groups and was withdrawn.[35]

Although the proposal of "circumcision without cutting" caused a strong ideological backlash in Italy and the US, the outcomes of numerous projects in Africa show that the most effective strategies for abandoning ritual interventions on female genitalia include the participation of the targeted communities and, in particular, of women, who are the primary actors –not only the victims– in such rituals and initiation ceremonies. Projects of initiation "without cutting" have successfully spread in many African countries in the last decade (Johansen et al., 2013; Chelala, 1998; Melching, 2001; Shell-Duncan, et al., 2013).[36] Their success reveal, on the one hand, that cultural and social differences have to be taken seriously to protect human rights in different contexts; on the

other, that agency of targeted population and their involvement needs to be reinforced to promote grassroots social change.

6 Conclusions

Regulation of ritual interventions on female genitalia in Western countries is a very controversial issue that entails biopower over the female body and reveals crucial unresolved tensions between gender equality, self-determination, and cultural diversity. Framing ritual interventions on female genitalia within the larger category of modifications of sexual organs, and shifting from the plastic surgeon's scalpel to the *exciseuse*'s ritual knife, this article contributes to detect the double standard applied to non-therapeutic interventions, in particular ritual interventions, on the one hand, and cosmetic interventions, on the other. The crucial discriminating element is the different consideration of the consent of an adult woman, which constitutes a legal justification for cosmetic but not for ritual interventions. Uncovering this double standard pushes to inquire into alternative framings of ritual interventions on female genitalia.

Understanding that the category of gender is multilayered and context-dependent reveals that international anti-FGM advocacy has silenced dissenting voices. Scholars that adopt critical perspectives, activists that do not endorse the western human rights discourse, and women or communities that consider these interventions risky and yet meaningful rituals are erased from the international panorama.

Yet, the analyzed legislation results in banning without prosecution or conviction without punishment, generating a gridlock that impairs the effectiveness of the law. On the other hand, circumcision without cutting, although it is proposed as a symbolic ceremony, is considered a violation of human rights of women and girls. We clearly face an impasse that requires a critical appraisal. This article contributes to the debate on how to regulate ritual interventions on female genitalia in Western countries by recalling that women are actors on the scene and not mere victims; that traditions are not fixed once and for all, but are continuously questioned, challenged and transformed by those who shape their life according to them; that migration is *per se* a radical transformation process through which traditions and customs gain new meanings; and finally, that ancient and socially rooted customs need a community-based approach to be transformed. The final goal of this article is to contribute to the academic and political debate on ritual interventions on female genitalia by questioning the current discourse and leading towards alternative approaches to the end of protecting women's right to health, non-discrimination, and self-determination, while eliminating the burden of vulnerability of African descent women in Europe.

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Notes

[1]Consistently with Kinsey et al. (1953) and Masters, Johnson, and Kolodny (1995), recent studies describe the sexual function of the female breast (Levin 2006) and show that breast stimulation activates the sensory cortex of the brain associated with the genital region (Komisaruk et al. 2011).

[2]See British Association of Aesthetic Plastic Surgeons,"Daddy Makeovers and Celeb Confessions: Cosmetic Surgery Procedures Soar in Britain", http://baaps.org.uk/about-us/press-releases/2202-super-cuts-daddy-makeovers-and-celeb-confessions-cosmetic-surgery-procedures-soar-in-britain and "Female Genital Aesthetic Surgery", http://www.baaps.org.uk/docs/procedures/Aesthetic_Genital_Surgery.pdf (retrieved in August 2016).

[3]See UK Department of Health, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/192028/Review_of_the_Regulation_of_Cosmetic_Interventions.pdf (retrieved in August 2016).

[4]See "Q&A: PIP breast implants health scare". *BBC*, http://www.bbc.com/news/health-16391522. See also Boseley S. 2012. "Cosmetic surgery advertising ban urged by leading surgeons". *The Guardian*, http://www.theguardian.com/lifeandstyle/2012/jan/22/ban-advertising-cosmetic-surgery (retrieved in August 2016).

[5]See Food & Drug Administration. 2009. Saline-Filled Breast Implant Surgery: Making an Informed Decision, http://www.fda.gov/downloads/medicaldevices/productsandmedicalprocedures/implantsandprosthetics/breastimplants/ucm064453.pdf (retrieved in August 2016).

[6]See American Society of Plastic Surgeons, "Plastic Surgery For Teenagers Briefing Paper", http://www.plasticsurgery.org/News-and-Resources/Briefing-Papers/Plastic-Surgery-for-Teenagers.html (retrieved in August 2016).

[7]See Rogers L. 2008. "The Quest for The Perfect Vagina". *The Guardian*, http://www.theguardian.com/culture/tvandradioblog/2008/aug/15/thequestfortheperfectvagi (retrieved August 2016); Revill J. 2003. "The New Nose Job: Designer Vaginas". *The Observer*, http://www.theguardian.com/uk/2003/aug/17/health.healthandwellbeing (retrieved in August 2016).

[8]See Laser Vaginal Rejuvenation Institute of Los Angeles, http://www.drmatlock.com/ (retrieved in August 2016).

[9]Surgical interventions on female genitalia are not a new phenomenon in Western countries. Clitoridectomy was practiced in nineteenth century Victorian England to treat autoerotic female behaviors, homosexual inclinations and hypersexuality, which were considered symptomatic of female mental disorders (Webber & Schonfeld 2003). It was forcefully practiced in psychiatric hospitals until 1935 for epilepsy, hysteria, catalepsy, melancholy, and even kleptomania (Sheehan 1981).

[10]Critical Legal Studies (CLS) was a movement promoted by a group of leftist North American legal scholars who, during the 70s, started to challenge the ideological biases of law from a postmarxist and postmodern standing point. They argued that law is politics, and criticized it as a system that perpetuates social and economic inequalities (Carreras 1999; Kennedy 2002; Minda 1995). As a branch of CLS, Critical Race Theory particularly questioned how race and racialized power are constructed and represented in American legal culture(Crenshaw et al., 1995).

[11]Ritual interventions on female genitalia were widespread across Africa long before the diffusion of Islam. In Islamic culture, type I is known as *sunna* (tradition) because it is a recommended although not a mandatory practice. Although the Koran recommends to "do not go deeply", many Muslim believe that is a religious requirement while many Ulemas predication help to perpetuate such a misunderstanding (Aixelá 2009 and 2010).

[12]See Laser Vaginal Rejuvenation at http://www.drmatlock.com/body-procedures-beverly-hills/laser-vaginal-rejuvenation/ (retrieved in January 2017).

[13]By referring to the total removal of the clitoris, the WHO definition reifies a misconception of genital anatomy and ignores that clitoris is part of a bigger tissue cluster most of which is internal (O'Connell, Sanjeevan, and Hutson, 2005).

[14]*Idem.*

[15]Type III might include suturing of the labia without any removal of the clitoris. Indeed, according to recent data, almost 50 % of type III interventions leaves the clitoris fully intact, which may be one reason for which women who undergone to type III interventions have few reproductive health issues (Public Policy Advisory Network on Female Genital Surgeries in Africa, 2012: 24). In addition, infibulated women scores high in achieving desire, arousal, orgasm, and sexual satisfaction (Catania et al., 2007; Okonofua, Larsen, and Oronsaye et al., 2002).

[16]See United Nations, *Ending Widespread Violence Against Women*. http://www.unfpa.org/gender/violence.htm (retrieved in August 2016).

[17]The CEDAW specifies that "the term 'discrimination against women' shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field" (art. 1 CEDAW). Although ritual interventions on female genitalia are not explicitly mentioned, they are included under the scope of the CEDAW because they are intended as "a practice reserved for women and girls that has the effect of nullifying their enjoyment of fundamental rights" (Rahman and Toubia 2000 : 21). See "Sources of international human rights law on Female Genital Mutilation" at http://www.endvawnow.org/en/articles/645-sources-of-international-human-rights-law-on-female-genital-mutilation.html (retrieved in January 2017).

[18]"Article 32.1: States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development".

[19]"Article 38: Female genital mutilation. Parties shall take the necessary legislative or other measures to ensure that the following intentional conducts are criminalised: A. excising, infibulating or performing any book mutilation to the whole or any part of a woman's labia majora, labia minora or clitoris; b. coercing or procuring a woman to undergo any of the acts listed in point a; c. inciting, coercing or procuring a girl to undergo any of the acts listed in point A".

[20]In France, ritual interventions on female genitalia are referred as "sexual mutilation" (*mutilation sexuelle*).

[21]Arrêt de la Cour de Cassation, chambre criminelle, du 20 août 1983, "les clitoris et les lèvres de la vulve sont des organes érectiles féminins, que leur absence à la suite de violence constitue une mutilation au sens de l'article 312-3 du code penal". Available at https://www.legifrance.gouv.fr/affichJuriJudi.do?idTexte=JURITEXT000007060684 (retrieved in January 2017). After the 1994 reform of the French penal code, art. 312-3 has been replaced by the current art. 222-9.

[22]"We can be kind and welcome people from other countries, but we must not import primitive and ignorant cruelties and practices just because some other countries have them" (Prohibition of Female Circumcision HL Bill, Hansard of 10 November 1983, vol. 444, col. 997).

[23]"I understand that in other countries where female circumcision is widely practised the symbolic effect of the passing of this law in this country will be helpful to them as a precedent" (Prohibition of Female Circumcision House of Lord Bill, Hansard of 10 November 1983 vol. 444, col. 996, available at http://hansard.millbanksystems.com/lords/1983/nov/10/prohibition-of-female-circumcision-bill (retrieved in January 2017)).

[24]The Law 7/2006 is better known as "legge Consolo", after its proponent Senator Giuseppe Consolo, member of the Italian conservative party Alleanza Nazionale, which at the time was part of the coalition "Casa delle Libertá" lead by the Premier Silvio Belusconi.

[25]See Retico A. 2002. "Mutilazioni genitali femminili, il 'no' delle donne anche sul Web". La Republica, http://www.repubblica.it/online/cronaca/stopfgm/stopfgm/stopfgm.html (retrieved in January 2017).

[26]"In some circumstances violence is not punishable under the criminal law. When no actual bodily harm is caused, the consent of the person affected precludes him from complaining. There can be no conviction for the summary offence of common assault if the victim has consented to the assault. Even when violence is intentionally inflicted and results in actual bodily harm, wounding or serious bodily harm the accused is entitled to be acquitted if the injury was a foreseeable incident of a lawful activity in which the person injured was participating. Surgery involves intentional violence resulting in actual or sometimes serious bodily harm but surgery is a lawful activity. Other activities carried on with consent by or on behalf of the injured person have been accepted as lawful notwithstanding that they involve actual bodily harm or may cause serious bodily harm. Ritual circumcision, tattooing, ear-piercing and violent sports including boxing are lawful activities" (Houses of Lord, R. vs. Brown [1993] 2 All ER 75).

[27]See Gerry F. 2012. "Female genital mutilation: time for a prosecution". *The Guardian*, http://www.theguardian.com/law/2012/nov/13/female-genital-mutilation-prosection-uk (retrieved in August 2016); Firmin C. 2013. "Female genital mutilation: The UK must act now". *The Guardian*, http://www.theguardian.com/society/2013/mar/26/female-genital-mutilation-preventive-approach (retrieved in August 2016).

[28]Long before the introduction of art. 583-bis into the penal code, the Criminal Court of Milan (Tribunale Penale di Milano, IV sez., 25 November 1999) condemned the father of a girl to two years imprisonment for forcing his daughter to undergo ritual interventions on

female genitalia in Menofeia, Egypt. The legal references were the fundamental right to health (art. 32 Constitution) and criminal provisions on serious injuries (art. 582 and 583 penal code) along with the civil provisions on the disposal of own body (art. 5 civil code). This reveals that the reform was not technically needed (DiPietro 2006; Fornasari 2008; LaBarbera 2010; Miazzi 2008), but was rather approved for its symbolic value of opposition to ritual interventions on female genitalia. Yet, because of its technical contradictions, it is highly ineffective.

[29]On the contrary, the Appeal Court of Venice (*Corte d'appello di Venezia, sez. II penale*, 23/11/2012, n. 1085) acquitted the parents of a young girl because of the lack of harm and the specific malice required by art. 583-bis of the penal code. The Court argued that the parents' aim was not to hamper the daughter' sexual function and her sexual freedom. Indeed, the incision did not result in disease because the cutting was very minor (type IV). Their aim was rather to respect their cultural tradition and assuring her daughter fully acceptance within their community of origin by guaranteeing her marriageability. They were found not guilty (Basile 2013).

[30]The *Commission pour l'Abolition des Mutilations Sexuelles* (CAMS) has played a particularly important role by acting as a civil party (*partie civile*) and claiming economic damages in criminal proceedings.

[31]In 1956, groups of teenage girls circumcised themselves without ceremonies or celebrations as a form of rebellion to the decision of the local men-formed counsel of the city of Meru of banning ritual interventions on female genitalia. *Ngaitana* or "I will circumcise myself" is how they called themselves. Circumcision became a way to resist against the attempt to control women's bodies enacted by men, and the attempt to control African politics enacted by colonial powers (Thomas, 2000). See also Pedersen (1991).

[32]Referring to Somali women living in Sweden, Sara Johnsdotter and Birgitta Essén show how "all the motives for circumcision in Somalia are turned in and out in exiled life in Sweden. What was once largely seen as 'normal' and 'natural' about the own cut and sewn genitalia was questioned in Sweden, when the women were met with shocked reactions among healthcare providers in maternal care and delivery rooms. A thitherto strong conviction that circumcision of girls was required by religion was questioned when Somalis met Arab Muslims, who do not circumcise their daughters, in Sweden. The fear that their daughters would be rejected at marriage if uncircumcised disappeared in the light of the immense Somali diaspora in the West, where Somali men can be expected to accept and even appreciate uncircumcised wives. In addition, the risk of stigmatization and ostracism disappeared when living in an environment where most girls are not circumcised" (Johnsdotter and Essén, 2016: 4).

[33]See Sofri A. 2004. "Mordete la mano del macellaio". *Panorama*, http://archivio.panorama.it/Mordete-la-mano-del-macellaio (retrieved in August 2016); Bruni F. 2004. "Doctor in Italy Tries to Ease Pain of an African Tradition". *The New York Times*, http://www.nytimes.com/2004/02/01/world/doctor-in-italy-tries-to-ease-pain-of-an-african-tradition.html?pagewanted=all&src=pm (retrieved in August 2016).

[34]Male circumcision is not only practiced by Muslim and Jewish communities, but it also is routinely performed on the majority of newborn male in US hospital. See "Statistics on Human Genital Mutilation" at http://noharmm.org/HGMstats.htm (retrieved in January 2017).

[35]See Belluck P. 2010. "Group Backs Ritual "Nick" as Female Circumcision Option". *The New York Times*, http://www.nytimes.com/2010/05/07/health/policy/07cuts.html?_r=1& (retrieved in August 2016).

[36]See Molly Melching's Tostan project in Senegal, http://www.tostan.org/ and Adriana Kaplan's in Gambia http://www.mgf.uab.es/eng/knowledge_transfer.html (retrieved in August 2016).

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