

## The Gambia - IGP v. Yassin Fatty, Nano Jawla, Kadijatu Jallow (2023)

### Cutting traditions: The impact of the first-ever prosecution for female genital mutilation in The Gambia

The law can be a catalyst to help change social norms and attitudes towards women and girls, but equally, social norms and attitudes can result in cultural resistance to legislation that can impede the effectiveness of laws aimed at protecting women and girls from discrimination and abuse. In this case study from The Gambia, the stark divide between laws that should protect women from FGM and the flawed nature of their application due to enduring harmful beliefs is clearly illustrated in the first case brought under The Gambia's 2015 legislation outlawing FGM.

### Case origins

In August 2023, the first successful criminal case was brought under The Gambia's 2015 legislation that outlaws FGM. The case was against a traditional cutter and two mothers of the three children upon whom FGM was performed in Bakadaji-Mandinka town in January 2023. The case was heard by a Magistrates' Court in August 2023, despite cases involving harm against children falling under the jurisdiction of the Women's (Amendment) Act, 2015, and therefore being tried in the upper courts. The three defendants pleaded guilty to all charges, and were given one-year prison sentences that were commuted to a 15,000 Dalasis fine if paid within three months of the sentence.<sup>1</sup> The payment of the fines for all three women were facilitated by a third party (religious leader Imam Fatty), so no prison time was served.

### The context

Even though anti-FGM legislation was passed in The Gambia nearly a decade ago, no cases had been tried previously. Yet, the practice remains commonplace, and societal support remains high. Apart from the law, one of the common approaches towards the elimination of FGM was to work on transforming underlying social norms and to work with communities and cutters to renounce the practice of FGM in their communities. As the traditional cutters were well respected and paid for their services, part of the renunciation process (often referred to as 'Dropping the Knife' ceremonies) involved offering them access to funds that would allow them to retrain or open alternative businesses so that they had alternate sources of income and respect.

Yassin Fatty, the traditional cutter who was a defendant in this case, was one of 30 women who renounced their "calling" in an FGM renunciation ceremony in Wassu in 2013. GAMCOTRAP (The Gambia Committee on Traditional Practices Affecting the Health of Women and Children, an NGO that works to eradicate

<sup>1</sup> Judgment in Suit No KTR/CS/09/23, In the Kaur/Kuntaur Magistrates Court of The Gambia, IGP v. Yassin Fatty, Nano Jawla, Kadijatu Jallow, Ruling Statement available here: <https://drive.google.com/file/d/1a7ie6y-T1I9twHkEk8fminb7BVBPAiY71/view?usp=sharing>.

FGM/C in The Gambia) notes that Yassin Fatty was given a bakery and that her son was also trained in operating it.<sup>2</sup> After her conviction for practising FGM, Fatty told a journalist working for The New York Times that she never took an oath nor ceased practising FGM, and that, “Even if you bring a bag of money, I won’t stop what I found my grandparents doing. I don’t do anything just because I’m told to by outsiders. I listen to myself.”<sup>3</sup>

Yassin Fatty’s rejection of her oath, her continued belief that FGM is a critical religious and traditional practice that benefits women and girls, and her continuation of the practice are indicative of the deeply held pro-FGM beliefs still widely seen in The Gambia and illustrate the limitations of legislation when pitted against entrenched beliefs across society.

### Bringing the case

The fact that the case was brought in 2023 is due in large part to the commitment of anti-FGM activists in The Gambia to gain justice for survivors of FGM. In a society where 73% of women and girls aged between 15-49 are affected by FGM<sup>4</sup>, it would seem that the State could have brought any number of cases in the preceding eight years. But activists and survivors describe a police and judicial system that routinely denied or inadequately investigated allegations of the practice of FGM, with tacit yet pervasive support for the practice amongst police, judiciary and law enforcement.

On the day the cutting took place, in January 2023, a community-based facilitator with GAMCOTRAP was informed about the arranged FGM and interrupted Fatty, but only after she had performed FGM on three of the eight young girls.<sup>5</sup> Despite incontrovertible evidence that Fatty had performed FGM on the children and that the two mothers present were complicit in the crime, there was reluctance from the police to arrest the three women, and from the State to pursue charges. Activists from GAMCOTRAP demanded that action be taken against Fatty and the two other women involved. They launched a concerted campaign to hold Fatty and The Gambia Government to account by pursuing a case using the relevant legislation. Some weeks after the crimes were reported, charges were eventually brought against the three women.

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*“I said we have to pursue it. the person involved in the cutting is an ex-circumciser who has been trained, who has been given heightened knowledge about every aspect of FGM and women’s rights and was given also an alternative livelihood opportunity to abandon the knife and she has taken the oath and made an abandonment and she was celebrated by the whole region.” - Dr Isatou Touray, Executive Director of GAMCOTRAP and former Vice-President of The Gambia*

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2 GAMCOTRAP, Press Release: The First Female Genital Mutilation Case to be Prosecuted since the Enactment of the law Prohibiting FGM in 2015 in The Gambia, August 2023, [https://gamcotrap.org/wp-content/documents/PRESS\\_RELEASE\\_FROM\\_GAMCOTRAP\\_FGM\\_Case\\_in\\_Bakadigi\\_second\\_release.pdf](https://gamcotrap.org/wp-content/documents/PRESS_RELEASE_FROM_GAMCOTRAP_FGM_Case_in_Bakadigi_second_release.pdf)

3 Ruth McLean and Matty Jobe, *The 96-year-old who defied a ban on Female Genital Cutting*, New York Times, 5 September 2024, <https://www.nytimes.com/2024/09/05/world/africa/gambia-female-genital-cutting.html>

4 UNICEF Global FGM/C Database, 2024, <https://data.unicef.org/topic/child-protection/female-genital-mutilation/>

5 GAMCOTRAP, Press Release: GAMCOTRAP has Unveiled Circumcision of Three Children Aged 4 Months to 1 Year in Bakadagi Mandinka in Niani District of CRR-North of The Gambia, January 2023, [https://gamcotrap.org/wp-content/documents/PRESS\\_RELEASE\\_FROM\\_GAMCOTRAP\\_FGM\\_Case\\_in\\_Bakadigi\\_CRR.pdf](https://gamcotrap.org/wp-content/documents/PRESS_RELEASE_FROM_GAMCOTRAP_FGM_Case_in_Bakadigi_CRR.pdf)

## The appearance of justice

The focus around the case from the beginning seemed to be the welfare of the defendants, and little consideration was given to the harm done to the girls involved, nor to their ongoing welfare. At the time of the crime, Yassin Fatty was over 90 years old, the two mothers had very young children, and when the case went to trial, one of the women was visibly pregnant, and one was nursing a young baby. One of the difficulties of pursuing crimes of FGM through the courts is that the perpetrators often include the parents of the children involved, and cutters are usually older women, well respected in their communities, and law-abiding in all other aspects of their lives, and therefore sympathetic to the general public. Despite pleading guilty to all charges, the three women received a lot of sympathetic coverage in The Gambian press and lenient non-custodial sentences from the Magistrate.

Some observers have argued that the case highlights broader limitations within the existing legal framework, including the restricted range of sentencing options available at the Magistrates' Court level. Others have suggested that higher courts, by virtue of their broader jurisdiction and more detailed written judgments, may offer greater opportunity for legal clarification and the development of precedent in serious human rights cases such as FGM.

The case also illustrates the tension between lawful judicial discretion and public expectations of deterrence in cases involving harmful traditional practices. While the court acted within the scope of the law, the outcome has renewed discussion on whether the current statutory penalties under the Women's Act adequately reflect the gravity of the offence and its long-term impact on survivors. Ultimately, the decision whether to appeal rests with the prosecuting authorities, and no appeal was pursued in this instance.

Public reaction to the case was divided. Some members of the public felt that the sentence was too lenient given the nature of the offence, while others considered it appropriate in light of the age of one of the offenders and cultural considerations.

Despite the sentencing, The Gambian Government chose not to appeal the case.

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*"It caused a division in the sense that the people who are anti-FGM felt that the decision in the case was a bit light. The people on the other side felt that it was a bit harsh, having regard to the fact that one of the perpetrators was an old person, and this was their culture."* - **Anna Njie, Barrister and President and Chairperson of the Legal Aid Committee of the Female Lawyers Association Gambia (FLAG).**

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## Religious and political backlash

While the 2023 prosecution marked a significant moment in the enforcement of the anti-FGM law, it also triggered a series of unintended consequences that complicated the broader struggle to end the practice. The combination of media commentary supportive of FGM and the prevailing social acceptance of FGM meant that the case led to a backlash against anti-FGM law and activists working to end FGM.

Shortly after the judgment was issued, a private members' Bill was introduced in the National Assembly of The Gambia by Hon. Almameh Gibba, seeking to repeal the anti-FGM legislation. The main driving force behind the backlash was The Gambia's pro-FGM Islamic leaders, spearheaded by Imam Fatty, a distant cousin of Yassin Fatty and a vocal supporter of FGM. Imam Fatty co-opted the weak judgment in the case and used the sympathy garnered for the three defendants to reframe the case and the legislation as an attack by anti-FGM activists on an important religious practice.

Throughout the case, those involved in supporting the prosecution experienced threats and intimidation from supporters of FGM. Staff from GAMCOTRAP, such as their community-based facilitator, who not only identified the case within the community but also supported it throughout the trial, experienced significant backlash. The facilitator was detained for up to 14 hours by the police on false charges of extorting money from the community before eventually being released.

Both during and after the case, religious leaders like Imam Fatty seeded disinformation about the anti-FGM movement and activists, linking their position to the promotion of prostitution and same sex relationships, which are criminalised in The Gambia.

Although the bid to repeal the anti-FGM law was defeated in a parliamentary vote in July 2024, the entire process was very damaging and greatly undermined progress made by anti-FGM activists in the preceding decades. The rejection of the repeal bill was swiftly followed by another case, this time a constitutional challenge filed by Hon. Almameh Gibba, along with the three persons convicted for performing FGM (Yassin Fatty, Nano Jawla and Kadijatu Jallow). This challenge before The Gambia Supreme Court seeks the court to declare the anti-FGM law as unconstitutional on the grounds that the law violates the rights to equality, religion and culture as guaranteed by The Gambia Constitution.<sup>6</sup> The case remains pending before the Supreme Court at the time of publishing this report.

Pro-FGM religious leaders managed to reframe the discussion around FGM away from women's and girls' rights and back to religious freedom. Furthermore, they seemed to take confidence from the leniency of the sentences. After Imam Fatty facilitated the payment of the defendants' fines, he began to vocally profess his support for and willingness to help people to commit FGM against girls. The discussion also spread to include support for child marriage, which is still practised in the country despite a 2016 amendment to the Children's Act, which raised the minimum marriage age for

<sup>6</sup> Ramatoulie Jawo, *Foni Kansala NAM and Others Contest Sections of Women's Amendment Act 2015 At Supreme Court*, Kerr Fatou, 31 July 2024, <https://www.kerrfatou.com/foni-kansala-nam-and-others-contest-sections-of-womens-amendment-act-2015-at-supreme-court/>

boys and girls to 18. No action was taken against the Imam despite his public proclamations that he and others would break the law around FGM. This case, therefore, exposed deep societal divisions and prompted a legal backlash that now threatens the very framework that was established to protect women and girls.

Anti-FGM activists have reported that FGM is now being performed on children at much younger ages, so they can't speak about the event at the time and don't remember the event afterwards. Negative stereotypes about women who have not been subjected to FGM have increased, and women who speak out against FGM are still often stigmatised in their communities. The religious backlash and the public questioning of the validity of women's claims that FGM harmed them have massively impacted survivors, whom the guilty verdict had initially empowered.

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*“There was a lot of excitement...amongst several survivors about the fact that this first successful conviction had been obtained by The Gambia...People thought this was a step forward. But at the same time, they began this pro-FGM movement, which we had never seen before. The camp was so expanded that many religious leaders and Islamic scholars in particular took it upon themselves to vilify women who have been through FGM...and they started questioning the real experiences of these survivors...The backlash from these “very important people” was something that was disheartening for us survivors.”* - **Musu Bakoto Sawo, Human rights lawyer and anti-FGM activist**

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## The silver lining

This case shows very clearly that successful prosecutions using laws that protect women and girls are only the starting point to change in society and justice for women and girls. The case and its aftermath illustrated the continuation of deeply held beliefs about the legitimacy of FGM as a religious practice. They emphasised the need to continue addressing these enduring, harmful gendered norms. And importantly, it showed that merely adopting a law against FGM is not sufficient. Implementation of the law is critical, along with awareness programs by and for practising communities at the grassroots level, as well as addressing how societal attitudes impact the implementation of the law. In this way, what could have been solely a damaging case for the broader anti-FGM movement in The Gambia has been used to reshape the strategy going forward. It was also an important case in that it finally tested the law eight years after it was passed, and the coverage surrounding the case raised awareness that the law existed and could be applied in The Gambia.

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*“I believe this case really did increase awareness that a law against FGM existed, if not awareness about FGM as a harmful practice... it allowed us to test the waters to see what it would look like litigation-wise.”* - **Musu Bakoto Sawo, Human rights lawyer and anti-FGM activist**

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## Learnings

The Gambia's first case tried under the anti-FGM legislation was by no means an unmitigated success. Still, it did result in three convictions, which have likely had a deterrent effect. Further, it consolidated and created learning for the anti-FGM movement on how to better support the implementation of the law in ways that truly help survivors of FGM in The Gambia.

This case showed that the work of grassroots NGOs is crucial in changing attitudes towards FGM, and there remains a need to educate all sectors of the public on violence against women and girls in general and FGM in particular. There also needs to be greater consistency between the Government's public support for anti-FGM legislation and its actions. For the legislation to be implemented properly, there needs to be proactive support culminating in more prosecutions against those practising FGM in The Gambia. There is still widespread stigma for people who report FGM, which significantly reduces the number of people willing to come forward and seriously impedes the use of the law. Until survivors are adequately protected and supported to report FGM, and until the law is effectively implemented using a multi-sectoral approach, including education of all stakeholders on the law, the legal protections against FGM in The Gambia will not protect women and girls.

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*"We all know that there are many countries that actually have laws in place, but implementation is the problem. The fact that we have done it successfully is key, and it's a success for all of us, for feminist engagement, for GAMCOTRAP, and all other organisations, whether we were the initiators of this case or not; it doesn't matter. What is important is the fact that we have challenged, we have tested, we have litigated, and working with our partners and, of course, Equality Now and other feminist groups who are out there supporting us."* - **Dr Isatou Touray, Co-founder of GAMCOTRAP and former Vice-President of The Gambia**

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Additionally, the constitutional challenge of the anti-FGM law underscores the double-edged nature of strategic litigation. While it can catalyse accountability and awareness, it may also provoke resistance when legal reform outpaces social acceptance.



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