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Towards justice: Global challenges and opportunities in litigating cases of female genital mutilation

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Executive summary

Female genital mutilation (FGM) is a globally recognised form of gender-based violence and discrimination, affecting 230 million women and girls across the world. This report explores how legal mechanisms, primarily litigation and criminal prosecutions, have been employed by various actors and stakeholders across different national and local contexts as a strategy for eradicating FGM. Through this analysis, the report highlights the broader social, legal, and political contexts in which these cases unfold, as well as the complex strategies employed in litigation efforts. It also evaluates the impact of legal action on the wider movement to end FGM. Finally, the report identifies critical legal and practical gaps, shares best practices, and offers actionable recommendations to strengthen the role of law in the fight against FGM.

Report overview

The report contains two distinct areas of focus:

- ◆ **The role of strategic litigation as a strategy towards eradicating FGM.** Drawing on detailed case studies of six landmark strategic litigation cases related to FGM from Burkina Faso, India, Kenya, Liberia, The Gambia and the United States, the potential impact of strategic litigation is examined from a human rights-based perspective. It analyses both the lessons learned and the challenges encountered in these cases, offering cross-jurisdictional insights to provide a global perspective. These cases demonstrate the diverse and creative legal strategies employed to address on-the-ground realities, while simultaneously advancing advocacy, awareness, education, and reform efforts throughout the litigation process.
- ◆ **Barriers to accessing justice in FGM cases, drawing on research from ten focus countries: Australia, Burkina Faso, Egypt, France, Kenya, Liberia, Sierra Leone, the United Kingdom, the United States of America, and Uganda.** Despite the existence of specific anti-FGM laws in most countries, prosecutions remain rare. Where prosecutions have occurred, they often fail, or even when convictions are secured, the sentences are not implemented. This chapter analyses available case law on FGM from these focus countries to examine the systemic and social obstacles that prevent survivors from obtaining justice.



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Barriers in accessing justice for survivors of female genital mutilation

The report reveals significant gaps in the enforcement and implementation of anti-FGM laws globally. Survivors and those at risk face complex barriers, including social ostracisation, prolonged legal proceedings, lack of community support, and, in some cases, the criminalisation of survivors themselves. Some of the critical barriers to access justice identified in this report include:

- ◆ **Low reporting of FGM cases**
- ◆ **Lack of victim-centred approaches, which have, in some countries like Kenya, contributed to the criminalisation of survivors of FGM themselves**
- ◆ **Protection gaps in the law (such as limited definitions of FGM, and loopholes such as jurisdictional loopholes which inhibit prosecutions)**
- ◆ **The lack of effective victim and witness protection**
- ◆ **Poor investigation and evidence gathering by the police**
- ◆ **Difficulties in meeting evidence requirements**
- ◆ **Prolonged and inaccessible court proceedings**
- ◆ **Uneven and inconsistent sentences**
- ◆ **Failure to enforce court decisions**

The report also identifies some promising approaches to improving access to justice in cases of FGM, drawing on examples from countries such as Burkina Faso and France, which have been successful in prosecuting a greater number of FGM cases.

One of the central takeaways is that strategic litigation and criminal prosecutions, although important, are not a silver bullet. **The effort to end FGM is inherently multi-dimensional and must be complemented by broader strategies**, such as advocacy, public education campaigns, institutional support, and sustained funding, while ensuring that the interests and well-being of the parties involved in litigation are not compromised.

Key learnings from cases of strategic litigation

The cases of strategic litigation examined in this report are drawn from around the world. They are of various types, ranging from constitutional challenges to the anti-FGM law, public interest litigation cases, criminal prosecutions, and civil cases related to FGM. They provide powerful examples of how strategic litigation can be used as a tool in the movement towards ending FGM, and have the power to galvanise broader social change and strengthen the movement to end FGM beyond the courtroom. Some of the key lessons learned are:

- ◆ **Analysing impact:** Strategic litigation can have a significant impact on the movement to end FGM in various ways, including by preventing backsliding, by leading or contributing to reform of laws and policies related to FGM, by raising public awareness of FGM as a human rights violation, motivating survivors to speak out and engage in advocacy, and leading to increased conversations within communities with high prevalence of FGM.
- ◆ **Litigation as part of a broader strategy:** Strategic litigation is particularly effective when embedded within broader multi-sectoral strategies. When the strategies are developed in meaningful consultation with civil society, survivors, experts, and other stakeholders working to end FGM, there is a positive impact. A strong communications and media strategy is also necessary to accompany strategic litigation efforts.
- ◆ **Safeguarding and community backlash:** Strategic litigation can have unintended consequences, and the impact of these cases on survivors and their families must be considered. Many survivors and persons involved in the case can face stigma, social exclusion, and ongoing harassment, with limited or no state protection. In some instances, law enforcement can be complicit in intimidation.
- ◆ **Lengthy and expensive judicial processes:** Litigation is a costly and lengthy process that requires resources that many civil society organisations and survivors may not have access to. In cases where there is a positive outcome for the survivors and people at risk, implementation was identified as a challenge in the aftermath of the judgment.
- ◆ **Partnerships and stakeholder coordination:** Strategic litigation was most impactful when stakeholders, individuals, and partners worked closely together, leveraging their specific areas of expertise to ensure that all aspects of the case were addressed through collaboration and resource sharing.

Recommendations

Comprehensive laws against female genital mutilation

1. **Explicit and comprehensive laws against FGM must be adopted**, which include a clear and detailed definition of FGM, prohibit a range of acts linked to FGM, and include specific provisions on cross-border FGM.
2. **FGM laws must be actively enforced**, including compliance with court rulings, sentences, and protective orders.

Protection of survivors

3. **Survivors of FGM must not be prosecuted, criminalised, or punished** under any law against FGM, including under mandatory reporting or aiding/abetting provisions.
4. **Protective measures must be developed to safeguard survivors and complainants from gender-insensitivity and discrimination** by law enforcement, the judiciary, or frontline support services, including through regular capacity-building.
5. **Legal safeguards must be put in place to protect survivors, witnesses, complainants, and whistle-blowers** from backlash, harassment, and retaliation, both within and between community and institutional settings.

Addressing procedural loopholes

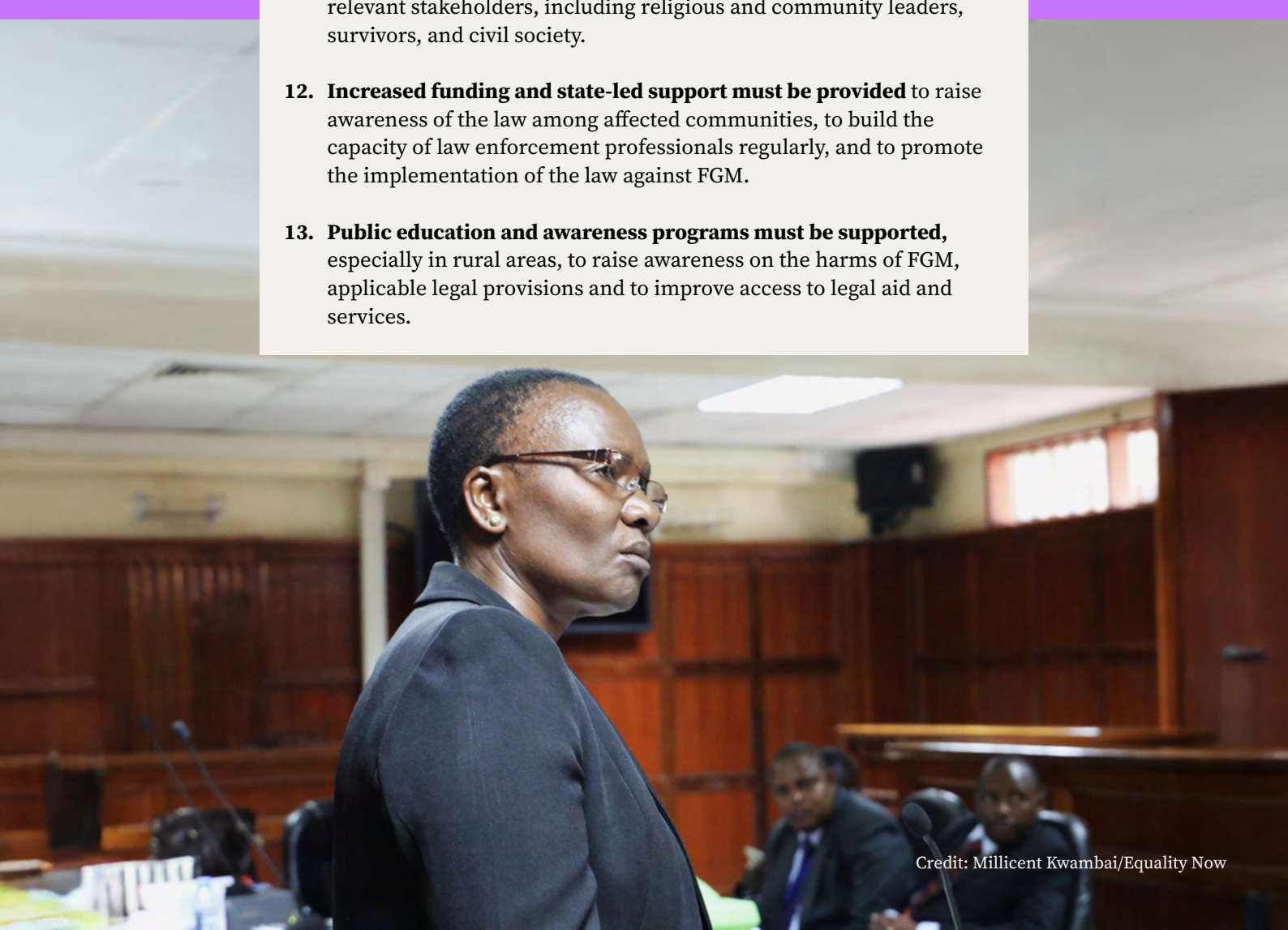
6. **Regulatory guidelines must be developed** to support the implementation of FGM laws, including providing for the issuance of protection orders and other protective remedies, as well as **Standard Operating Procedures (SOPs)** for law enforcement and prosecutors.
7. **Sentencing Guidelines must be issued to ensure uniformity and consistency in sentencing** to avoid arbitrary leniency.
8. **Legislation and judicial guidelines on evidence must reflect the unique and complex nature of FGM**, especially regarding the challenges in investigation and evidence collection.

Access to remedies

9. **Comprehensive legal measures must be developed to support survivors in accessing justice.** This includes civil remedies such as compensation and protection orders, anonymity provisions in FGM cases, and access to free legal aid.
10. **Concrete measures must be taken to prevent delays in FGM cases,** including delays in investigation, evidence collection, and laying of charges.

Multi-sectoral approach

11. **A comprehensive and coordinated national and global response to FGM must be developed** and adequately supported, involving all relevant stakeholders, including religious and community leaders, survivors, and civil society.
12. **Increased funding and state-led support must be provided** to raise awareness of the law among affected communities, to build the capacity of law enforcement professionals regularly, and to promote the implementation of the law against FGM.
13. **Public education and awareness programs must be supported,** especially in rural areas, to raise awareness on the harms of FGM, applicable legal provisions and to improve access to legal aid and services.





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