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Published in:
Social & Legal Studies

DOI:
[10.1177/09646639221118862](https://doi.org/10.1177/09646639221118862)

Publication date:
2023

License:
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Document Version:
Final published version

[Link to publication](#)

Citation for published version (APA):
Bavel, H. V. (2023). Is Anti-FGM Legislation Cultural Imperialism? Interrogating Kenya's Prohibition of Female Genital Mutilation Act. *Social & Legal Studies*, 32(3), 378-398. [n/a].
<https://doi.org/10.1177/09646639221118862>

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Is Anti-FGM Legislation Cultural Imperialism? Interrogating Kenya's Prohibition of Female Genital Mutilation Act

Social & Legal Studies

2023, Vol. 32(3) 378–398

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DOI: 10.1177/09646639221118862

journals.sagepub.com/home/sls**Hannelore Van Bavel** *School of Sociology, Politics, and International Studies, University of Bristol, UK*

Abstract

Postcolonial feminists and anthropologists have criticised anti-female genital mutilation (FGM) efforts for being ethnocentric and for imposing ‘Western’ values onto African communities. Recently, a Kenyan medical doctor has petitioned against Kenya’s Prohibition of FGM Act, arguing that the Act is unconstitutional and the entrenchment of Western values. This article critically interrogates the allegation that African legislation against ‘FGM’ (FGM) embodies the culturally-imperialist imposition of Western values by empirically examining how Kenya’s anti-FGM Act was produced and became contested. The findings show that international power hierarchies influence who can speak and what can be said about FGM. However, the findings simultaneously challenge the Africa/West and cultural relativism/imperialism divide present in some of the critiques of anti-FGM legislation and interventions. I argue that the notion of ‘imposition’ does not adequately capture the African agency and the transnational collaborations that went into both producing *and* contesting the Act.

Keywords

Female circumcision, female genital mutilation/cutting, cultural imperialism, cultural relativism, Kenya

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Introduction

In July 2017, female medical doctor Tatu Kamau filed a petition to overturn Kenya's Prohibition of Female Genital Mutilation (FGM) Act of 2011 ('the Anti-FGM Act' or 'the Act'). The Act is a federal law and criminalises all forms of FGM regardless of the age or consent of the girl or woman (Kenya, 2011). The Act is much more far-reaching than most national laws on FGM and criminalises not only the performance of FGM, but also procuring, aiding and abetting the practice of FGM; procuring a person to perform FGM in another country; allowing the use of premises for FGM; the possession of tools and equipment for the purposes of FGM; failure to report awareness of FGM to a law enforcement officer, whether the procedure is in progress, has already occurred or is planned; and the use of derogatory or abusive language against a woman for having not undergone FGM or against a man for marrying or supporting that woman (articles 19 to 25). Penalties include imprisonment for a minimum of three years and/or a fine of at least 200,000 Kenyan shilling (close to US \$1800). The Act also established the 'Anti-FGM Board', a semi-autonomous government agency with a mandate to co-ordinate anti-FGM efforts in Kenya and advise the government on all matters concerning FGM.

Dr Kamau does not necessarily support FGM, but she believes that the practice should be discouraged through awareness raising rather than legislation and prosecution. In her petition, she wrote that Kenya's Prohibition of FGM Act infringes on women's rights to culture, the best attainable health, and gender equality. The anti-FGM Act explicitly prohibits medically trained professionals from performing surgeries on female genitalia for non-medical reasons and prescribes imprisonment for life for a medically trained person who causes the death of another person through an act of FGM. According to Kamau, the criminalisation of medicalised FGM denies 'willing adult women' access to safe and hygienic circumcisions and therefore infringes on their right to 'the highest attainable standard of health including the right to health care' (Kamau, 2017: 3). Anti-FGM activists oppose 'medicalised' FGM because it is assumed to undermine efforts to end FGM. Male circumcision and its medicalisation are not only legal but actively promoted by the Kenyan government in a campaign that links 'voluntary medical male circumcision' to reduced risk of HIV infection (Gilbertson et al., 2019). In criminalising female but not male circumcision, Kamau argues, the Act also discriminates against women. Most importantly, Kamau believes that the Act infringes on women's right to participate in the cultural life of their choice. In her petition, she makes a cultural relativist argument:

14. It is the petitioner's belief, which belief is widely shared among communities, that no particular culture is superior to another and when examining issues of ethics, morality, law or politics, all cultural beliefs are equally valid and the truth itself is *relative, depending on the cultural environment*.

15. That each community has the liberty to practice any culture that is native and relevant to that society without the *imperialist imposition* from another culture that holds a different set of beliefs and/or norms. (Kamau, 2017, author's emphasis)

In an interview with the Kenyan newspaper Daily Nation, Dr Kamau was quoted saying that the term ‘mutilation, [coined by] Westerners, is a label given to us by those who do not understand it’ (Muthini, 2018). She added that British colonisers started criminalisation of practices that hold meaning to the African communities practising them and that the Anti-FGM Act is a further ‘entrenchment of Western culture.’ She claimed to speak on behalf of ‘communities that practice female circumcision and for the women who have been jailed for carrying out the rite’ (High Court of Kenya, 2021: 2).

Kamau is not the first person to oppose the ‘Western’ character and ‘cultural imperialism’ of anti-FGM efforts and legislation. Since the 1970s, debates on ‘female circumcision’ have largely followed the format of the cultural relativism-universalism debates, with universalists stating that ‘FGM’ can never be acceptable and cultural relativists arguing that ‘female circumcision’ should be understood within its socio-cultural context and that communities should decide on their practices without the ‘cultural imperialist’ interference of ‘outsiders’ (e.g. Brennan, 1989). (African) anticolonial feminists and anthropologists criticised the sensationalism and Western ethnocentrism in the discourses of certain Western feminists, such as US American radical feminists Fran Hosken and Mary Daly. Taken together, these critiques criticised Western feminists for essentializing and vilifying African cultural practices, silencing subaltern perspectives on female circumcision, and for imposing Western values onto African communities (e.g. Ahmadu, 2000; Boddy, 1998; Njambi, 2007; Nnaemeka, 2005; Savane, 1979).

When Senegal passed anti-FGM legislation in 1999, critics argued that the Senegalese government had only done so to ‘please American sensitivities’ to ensure the continuation of USA aid to Senegal (Economist, 1999). Shell-Duncan et al. (2013: 2) write that this portrayal of Senegalese anti-FGM law as ‘an imposition of Western values on an African nation’ overlooks ‘the long history of debate on female genital mutilation/cutting (FGM/C) among Senegalese intellectuals and the leadership of Senegal in the international human rights movement.’ Similarly, Hodžić (2017: 24) has criticised the notion of anti-FGM efforts being a ‘Western imposition’ for assuming that Western women and men are the primary agents of anticutting campaigning and thus erasing African campaigners from the analysis. The discipline of anthropology has long challenged unhelpful binaries between ‘the West’ and ‘Africa’, the ‘global’ and the ‘local’.

Drawing from these insights, this article explores the case study of Kenya’s Anti-FGM Act to interrogate the allegation – formulated by Kamau, cultural-relativist anthropologists and postcolonial feminists –, that African anti-FGM legislation embodies the culturally-imperialist imposition of Western values. It does so by studying how the Act came into being and, recently, became contested in a constitutional court case. I do not challenge the critique that the anti-FGM campaign demonstrates colonial continuities and continues to suffer from ethnocentrism and cultural imperialism. My argument is more nuanced: I suggest that power inequalities in who gets to define ‘FGM’ persist but, at the same time, that the notion of ‘imposition’ does not adequately capture the African agency and the transnational collaborations that went into both producing *and* contesting the Act. Inspired by critiques of post-development theory as formulated by ethnographers of development (e.g. Mosse, 2005), my aim is thus to complicate the notion of ‘imposition’ and show the more subtle ways in which power operates in the context of anti-FGM legislation. I pay attention to persistent power hierarchies in the production of knowledge

and policies on FGM, while also challenging the Africa/West and cultural relativism/imperialism divide present in some of the postcolonial feminist scholarship on the matter (Nnaemeka, 2005).

The article starts by tracing the production of Kenya's Prohibition of FGM Act of 2011 and shows how the Act was the initiative of two Kenyan women from FGM-practising communities who found support among national actors and the transnational anti-FGM campaign. It then analyses Kamau's petition to annul the anti-FGM Act and the reaction it caused among anti-FGM campaigners in Kenya and beyond. I argue that both the production *and* contestation of the Anti-FGM Act reflect Kenyan agency and transnational collaboration, but that those producing and defending the Act could count on the support of a powerful transnational anti-FGM movement, while contestants of the Act were ridiculed and silenced.

Methodology and Ethics

The article is based on a multi-sited ethnography of the transnational anti-FGM domain (Marcus, 1995), with a geographical focus on Kenya and its historical relationship to the United Kingdom. For over two years, I conducted participant observation among non-governmental organisations in the UK and Kenya, at national and international conferences and workshops on FGM, and among Kenyan communities targeted by anti-FGM policies and interventions, including Maasai and Samburu communities in south and central Kenya. In addition, I conducted over forty in-depth interviews with key informants, including Kenyan politicians, journalists, health practitioners, scholars, activists, and NGO staff. I identified actors who were involved in producing the Anti-FGM Act by reading the preparatory documents of the Act. I gained access to these actors through participating in conferences in Kenya and working as a Research Intern for the Africa Coordinating Centre for the Abandonment of FGM (ACCAF) at the University of Nairobi. I conducted life history interviews with individuals who were key to the production of the Anti-FGM Act (i.e. Linah Jebii Kilimo, Sophia Abdi Noor, Guyo Jaldesa). These interviews focussed on what FGM has meant to them throughout their lifetime and how and why they became involved in developing the Anti-FGM Act. I closely followed Dr Tatu Kamau's court case as it unfolded. I attended two hearings and conducted interviews with journalists, witnesses, and lawyers on the case. I had two phone conversations with Dr Kamau herself. However, she provided little additional information as the court case was still ongoing.

For a deeper understanding of the historical context of anti-FGM efforts in Kenya, I analysed British colonial government and missionary documents on 'female circumcision' in Kenya kept in the UK National Archives in Kew, London, and the Kenya National Archives in Nairobi.

Ethical approval for my study was obtained from the SOAS University of London Ethics Committee and the Kenyan National Committee for Science, Technology, and Innovation. All interviews were subject to verbal informed consent and participants received an information sheet including my contact details. In cases of participant observation, I worked to ensure that all people involved were aware of my identity and interests as a researcher. The key informants who are named in this article gave explicit consent to

having their names mentioned in the article. Interviews were conducted in English or Swahili, recorded on encrypted audiorecorders, and transcribed. I analysed the data through an iterative process of carefully reading and re-reading the transcripts to identify salient themes in the data. I used a dialogical approach in which ideas from the literature allowed me to make sense of the data and the data allowed me to refine and further develop these ideas.

Throughout this article, I switch between 'FGM' and 'female circumcision'. The terms actors use often reflect their position within debates on female genital surgeries. British colonial officials and missionaries in Kenya initially referred to the practices as 'female circumcision', but in the 1970s the US American feminist Fran Hosken popularised the term 'female genital mutilation' (FGM), arguing that 'circumcision' wrongly implies parallels with male circumcision and therefore minimises the harm and torture that FGM entails. In my writing, I try to remain faithful to the terms that different actors use. This means that I use FGM when referring to anti-FGM activism, NGO efforts, and legislation, and 'female circumcision' when referring to Kamau and communities who consider the practice an important, albeit changing, part of their cultures. Kamau uses the term 'female circumcision' and rejects 'mutilation', which she believes to be a judgemental term coined by Westerners.

History of Anti-FGM Legislation in Kenya

The beginnings of what today is a transnational campaign against FGM are often traced back to missionary and colonial efforts to end 'female circumcision' in early 20th century Kenya. Historians and social scientists, such as Thomas (2003) and Njambi (2007), have studied the resistance that followed colonial bans on female circumcision and that contributed to the nationalist, anti-colonial movement in Kenya. Kenya's first president, Jomo Kenyatta, initially supported the colonial government's policy to encourage a less invasive type of cutting. Anti-colonial activists, however, opposed all interference in Kenyan culture prompting Kenyatta to change his stance for fear of losing political support. In *Facing Mount Kenya*, his anthropological study of his ethnic group the Gĩkũyũ, he described 'female circumcision' as 'the very essence of an institution which has enormous educational, social, moral, and religious implications' (Kenyatta, 1965: 128). Kenya's second president, Daniel arap Moi, issued an official statement against the practice in 1982 after fourteen girls allegedly died from related complications (Canada, 2000). In 1989, the first governmental ban followed, prohibiting government-controlled hospitals and clinics from practising FGM. The increased attention to FGM on the international stage in the 1990s was mirrored with new efforts to ban FGM in Kenya. In 1995, a female parliamentarian tried to outlaw the practice, but her motion was defeated, reflecting parliamentarians' reluctance to interfere with cultural practices, out of fear of losing votes or because, as members of practising communities, they valued the practice. In 1999, the National Plan of Action for the Elimination of FGM emphasised the importance of education to end FGM (Prazak, 2016: 18). Two years later, the Kenyan Parliament decided that education alone was insufficient and made carrying out FGM on anyone under the age of 18 a criminal offence under the Children Act of 2001 (ibid). Only a few court cases resulted from the law and it was soon criticised for being ineffective

(Oloo et al., 2011). Since its reform in 2010, Kenya's Constitution states that 'a person shall not compel another person to perform, observe or undergo any cultural practice or rite' (Article 44 (3)) but does not explicitly mention FGM. In 2011, Kenya's parliament passed the Prohibition of FGM Act, a federal law that would make FGM illegal regardless of age or consent.

The Prohibition of FGM Act of 2011

Since Kenya's Independence, different Kenyan actors have thus lobbied for restrictions and bans on FGM. To critically interrogate to what extent 'imposition' played a role in these bans, this section examines the most recent one: the Prohibition of FGM Act of 2011. It draws from the life stories of the Act's protagonists. Memories are coloured by the present and people tend to create order and linearity as they reconstruct their past (Allison, 2006). I used other testimonies and documentary resources to triangulate the life stories and contextualise them in time and space.

The Act was the initiative of two Kenyan women from FGM-practising communities who found support in other Kenyan politicians, medical professionals, and in the transnational anti-FGM campaign. One of these women was Linah Jebii Kilimo, who became Member of Parliament for Marakwet East in 2003 and used that position to pass a stricter anti-FGM law. Seated across from me in an Eritrean coffee bar in Nairobi in 2018, then 56-year-old Linah Jebii Kilimo told me her life story resulting in the passing of the Anti-FGM Act.

Linah grew up as the only daughter among her mother's eight children in a village of small-scale farmers in Marakwet. Growing up in Marakwet, she had thought of female circumcision as a normal event that would prepare her to be a wife and mother. Seated across from me in an Eritrean coffee bar in Nairobi, adult Linah Jebii Kilimo told me how her teacher's stories about uncircumcised women driving their own cars in Nairobi fired her imagination. Whenever planes departing from Nairobi passed through the skies above Marakwet, Linah's teacher would tell the class: 'Do you see those planes? They go to a place called London. And it's only the educated who go to London.' Linah began to see remaining uncircumcised as key to good education and a bright future:

In class 4, I first realised that FGM had consequences – not for one's health, but for my education. I understood that only the educated could drive cars in that magical place called Nairobi and take a plane to London. To me, driving a car symbolised empowerment. We had to carry the salt on our backs, and a car would make those chores easier. That, to me, was empowerment. I was like: "If I want to drive a car, I shouldn't be cut." To be educated, I needed to make sure I remained in school. And to remain in school, I needed to avoid being circumcised.

In Marakwet, female circumcision is part of a ceremony called *sonok* that initiates girls into womanhood. After being circumcised, girls remain in seclusion (*kapkoro*) and are taught community traditions and how to be a good wife, daughter-in-law, and mother. After seclusion, girls between nine and fourteen years old are socially considered

women ready for marriage and childbearing. When it was Linah's time to be initiated, she ran away. Adult Linah, recounting her story to me, remembered this as the saddest moment in her life: 'I didn't know where I wanted to go. I just wanted to run away from the cut. I just knew that my future would be destroyed. After the cut, no more education.'

Linah found refuge at a Christian camp of the Word of Life missionaries in Chewoyet, some 2 h by car from her village. As evangelists, the Word of Life missionaries fiercely oppose FGM and other 'heathen' practices. Having lost her only daughter, Linah's mother grew sick of sadness and reproached her husband for chasing Linah away with his insistence on initiation. Eager to regain peace at home, her father sent Linah's brothers to look for her and promised that, if she would agree to come home, no one would pressure her to be circumcised. Her family kept their promise. Linah went back to school and completed Advanced Level Education and later obtained her Diploma in the management and control of HIV/AIDS at Kenyatta University in Nairobi.

Young Linah had refused to be circumcised, not because of the pain or health risks of circumcision, but because she believed it would mean the end of her education and thus the end of her ambition to one day drive a car or fly to London. It was at a training by the Education Centre for Women in Democracy (ECWD) that she first learned about the health risks of what the trainers called 'FGM'. The trainers made use of graphs and images of FGM health effects developed by FEMNET, a Pan-African women's organisation for gender equality. Remembering the diagrams, graphics, and stories she read in the resources shared by FEMNET, adult Linah Jebii Kilimo told me: 'I could relate to them. I said: "I think I saw those in the village."' Prolapse of the uterus at birth, I had seen it in my village.' Learning about those health consequences, Kilimo became more committed to the issue and vowed that she would outlaw FGM.

In 2003, Kilimo became Member of Parliament for Marakwet East. With the support of then-Deputy Director for Gender and Social Development Protus Onyango and financial resources of the African Union, she organised a forum in parliament where experts explained the health and social implications of FGM to other parliamentarians.

One of the experts was Professor Guyo Jaldesa, a Kenyan obstetric gynaecologist and leading medical researcher on FGM health consequences. Growing up among the Borana¹ ethnic group that universally practises female circumcision, he initially did not question the practice. It was during his Master's in Gynaecology and Obstetrics at the University of Nairobi in 1998 that he first came across information on the negative health implications of FGM and that his interest in the topic grew. His first study on FGM looked at the psychosexual consequences of FGM on women attending a gynaecologist clinic in northern Kenya. Jaldesa later became one of the researchers who contributed to the most influential article evidencing the health risks of FGM, commissioned by the WHO and published in *the Lancet* in 2006 (Banks et al., 2006).

I assisted Professor Jaldesa at a workshop on FGM for midwives organised by the ACCAF. During one of our breaks, Professor Jaldesa told me that, in the process leading up to the Prohibition of FGM Act, he and his team organised several trainings on the health implications of FGM for parliamentarians from practising communities. They used the 2006 WHO study published in *The Lancet* to 'demonstrate scientifically that FGM has negative health consequences for women and their babies.' With this peer-

reviewed WHO study, Prof Jaldesa recalled, ‘we were able to convince the parliamentarians that [FGM] is not useful, and [that] they should come up with laws to prohibit it.’

Kilimo also found support in Sophia Abdi Noor, a parliamentarian from Garissa County who, after undergoing FGM as a child, took the same vow as Kilimo: to see an end to FGM. As part of the process to convince parliamentarians of the importance of more comprehensive FGM legislation, Noor gave a personal testimony on FGM in parliament and organised a breakfast meeting to discuss FGM with male leaders from pastoralist societies. As a Somali woman from north-eastern Kenya, Noor underwent FGM for religious reasons at the age of seven years old. Of the seven girls who were cut that day, two lost their lives and Noor haemorrhaged. Noor was one of the few women in her community to attend college. She acquired a Diploma in Community Development and started advocating against FGM in the 1980s. As a panellist at the first national conference on FGM in Nairobi in February 2018, Noor told the attendees how hard it had been to speak out against FGM:

It was a taboo, something that was not allowed to be talked about in my society. [...] I was seen as a mad woman [for talking about it]. My mother was very embarrassed. She said: ‘What have I done? I brought madness into this world.’

In a lunch break interview at the conference, Noor told me how she had brought Sheikhs to her community who said that the Quran does not mention female circumcision. However, community members were not easily convinced: those who know the Quran through memorisation rather than reading defended the conviction that the Quran does require male *and* female circumcision. Noor worked for several international organisations – including the UNHCR, World Vision, CARE International, MSF-Spain, and Oxfam – and, in 1995, founded Womankind Kenya, an organisation that aims to improve the lives of pastoralist girls and women in Kenya. In 2008, Noor became member of parliament for Garissa County. Together, Kilimo and Noor succeeded to include a clause into the reformed Constitution of 2010, stating that every law ratified by Kenya would become Kenyan law, resulting in several international laws on women’s rights becoming Kenyan law. One year later, parliament passed the Prohibition of FGM Act of 2011. In the eyes of Kenyan and international anti-FGM activists and organisations, the passing of the bill marked an important step for the movement, as the government’s official commitment added legitimacy to their struggle to end all forms of what they consider to be FGM. Noor was cited in *The Guardian* as saying that, while ‘men got their independence in 1963’, women finally ‘achieved independence from the cruel hand of society’ on the day the Act was passed (Boseley, 2011).

Kilimo was influenced by her schoolteacher who linked FGM to the end of her education; Jaldesa changed his mind upon learning about FGM and its health risks during his training as gynaecologist; Noor’s apprehension towards FGM was reinforced and strengthened by the international NGOs she worked for. Those who dismiss anti-FGM efforts as ‘Western values’ by referring to these influences insist that any initiative can only be truly ‘African’ if it exists in a vacuum, free from any influences. However, within a globalised world it is impossible to disentangle individual, local, and external influences. My point is thus not to deny these influences, but that ‘imposition’ implies

a unidirectionality belied by the initiative of Kenyan actors and their collaborations with Kenyan, African, and Western actors.

Constitutional Petition Against Kenya's Prohibition of FGM Act of 2011

Attempts to end FGM in Kenya have always been met with resistance by those wanting to continue their cultural practices (e.g. Njambi, 2007; Thomas, 2000), and the Anti-FGM Act of 2011 was no exception. This resistance has manifested in 'public protest, increasing medicalisation, greater secrecy as the practice moves underground, cutting girls at a younger age before they have the capacity to object, together with foot-dragging and non-compliance with the law' (Hughes, 2018: 279). Community resistance has also been co-opted for political reasons: several political leaders representing communities that practise female circumcision have opposed the anti-FGM Act for fear of losing votes for supporting a ban on FGM (Kaberia, 2014). What made Kamau's court case unique is that she took these struggles to court and used legal arguments. Her counternarrative went beyond emphasising the meaning of female circumcision to practising communities and the right to culture. It used the same language that underpins the anti-FGM discourse – like 'human rights' and 'gender equality' – but challenged what exactly human rights and gender equality entail when it comes to female circumcision. The anti-FGM discourse says that FGM is a human rights violation, infringes on women's health, and perpetuates gender inequality (UNICEF-UNFPA, 2014). Kamau, however, argued during an interview for KTN News that criminalising adult women for adhering to cultural practices infringes on Article 18 of the Universal Declaration of Human Rights, which protects the right to 'manifest [one's] religion or belief in teaching, practice, worship and observance' (United Nations, 1948).

Once you reach adulthood, there should be no reason why you cannot make this decision. If women can decide to drink, to smoke, women can join the army, women can do all sorts of things which might bring them harm or injury, and yet they're allowed to make that decision. [They can make] this decision [for] female circumcision [too]. (KTN News Kenya, 2018)

In addition, she argued that the criminalisation of medicalised FGM forces women to seek surgeries in substandard conditions and thus denies 'willing adult women access to the highest attainable standard of health including the right to health care' (Kamau, 2017: 3). During the KTN News interview, she continued saying that 'once [a woman] has made that decision [to be circumcised], she should be able to access the best medical care to have it done' (KTN News Kenya, 2018). Kamau furthermore argued that '[...] if willing women can be accorded the opportunity to be circumcised by qualified medical practitioners then the complications complained of will not be experienced' (Kamau, 2018a: 3).

Kamau also challenged the idea that FGM is an expression of gender inequality. She argued that, on the contrary, the anti-FGM Act discriminates against women by criminalising female but not male circumcision. According to Kamau, female and male

circumcision are each other's equivalents and carry complementary socio-cultural meanings in most practising communities in Kenya.

Kamau filed Machakos Petition 8 of 2017 on the 24th of July 2017. On the 14th of June 2018, Justice David Kemei determined that Kamau's petition raised 'substantive matters of the law' and referred it to the Honourable Chief Justice for appointment of an uneven number of judges.² The Petition was renamed Constitutional Petition 244 of 2019. The case involved Kamau as petitioner and three respondents: the attorney general, the Anti-FGM Board, and the office of the director of public prosecution. In addition, ten organisations signed up as interested parties. Of these ten interested parties, nine were nongovernmental organisations that opposed Kamau's petition and defended the Anti-FGM Act.³ The tenth party was John Kiplangat Arap Koech, a Kalenjin elder, chairperson of the *Sarun Amabet Welfare Association* for the preservation of culture, custom and heritage, and supporter of Kamau's petition. Katiba Insitute, and Kenya Legal and Ethical Issues Network on HIV & AIDS (KELIN) and the Initiative for Strategic Litigation in Africa (ISLA) were listed as friends of the court. Two extra parties, defending a cultural relativist view of female circumcision, applied to be included on the side of the petitioner, but their applications failed to meet the deadline and were therefore rejected. Hearings took place between October 2019 and October 2020, the last ones online due to the COVID-19 pandemic.

The arguments of the defence largely touched upon five themes. The first theme revolved around FGM's health risks. Kamau argued that the prohibition of medicalised circumcision forces 'women to be circumcised by traditional circumcisers hence exposing them to [...] physical, psychological, and emotional consequences' (Kamau, 2018b: 3) and that medicalisation would resolve this concern. Josephine Kulea, the founder of the Samburu Girls Foundation, argued that Maa communities would not embrace medicalisation because female circumcision is a cultural practice and therefore takes place in the context of a cultural ceremony. Kamau retorted that other Kenyan communities would and already have embraced medicalisation and that it would be a 'violation of the rights of women from other circumcising communities to be compelled to follow the preferences of the Maa communities in disregard of their own preferences' (Kamau, 2018i: 2).

The second set of arguments touched upon the issue of consent. Defence witnesses said that FGM happens to young girls who are incapable of consenting as part of an initiation ritual into adulthood, which is often followed by school drop-out and early marriage. A Maasai woman from Kajiado testified that she underwent FGM at the age of twelve years old, that the procedure had to be repeated because 'it was not performed well', that it was 'the most painful feeling' she had ever experienced, and that she missed school because it took a month to recover (Ncharo, 2018: 2–3). In response, Kamau repeated that her petition only concerns adult women and that minors will still be protected under the Children's Act of 2001 if the Anti-FGM Act were repealed. Testimonies on behalf of the Public Prosecutor and the Samburu Girls Foundation argued that adult women do not choose to undergo FGM but are forced by men or the society at large. Kamau's response was that women who are forced to undergo FGM are protected under Article 44(3) of the Constitution and the Penal Code which prevents 'any person to compel another from observing, undergoing or performing any cultural

practice or rite' (Kamau, 2018d: 2) and that, in contrast to Maa society, women from other practising communities are able to consent to female circumcision. In addition, Kamau retorted that the Act violates the constitution because it 'compels the women from circumcising communities to practice a culture copied from non-circumcising communities' (Kamau, 2018d: 2).

Various witnesses mentioned that FGM violates women's right to dignity. Kamau responded that the Act denies women who derive dignity from circumcision their claim to respect and acceptance (Kamau, 2018i: 2). To the claim that FGM is a harmful cultural practice, Kamau responded that culture changes and that cultural practices like female circumcision can be modernised rather than abandoned. She argued that, just like Maa communities have abandoned the removal of the front teeth, female circumcision 'can also be phased out without criminalisation' (Kamau, 2018e: 2).

Other witnesses argued that FGM discriminates against women, to which Kamau responded that male and female circumcision are each other's parallels and therefore female circumcision is not discriminatory of women. Using the language of gender equality, she argued that the Act discriminates against women because it criminalises female but not male circumcision, and explicitly prohibits medical staff from performing female circumcision while men can access medically-safe circumcisions in hospitals (Kamau, 2018h: 2).

Finally, witnesses defended the Act by stating that, in enacting this law, Kenya fulfilled its international obligations and 'acted in line with the standards set out in the African Human Rights system and in the practice of comparative African states' (ISLA, 2019). Kamau responded that the Act was enacted 'without due regard to the will of people of Kenya' and 'without considering its constitutionality' (Kamau, 2018c: 2). In addition, she criticised the double standard of the Anti-FGM Act for criminalising female circumcision but allowing sex reassignment and 'cosmetic' genital surgeries. Kamau argued that a sexual reassignment procedure is an act of mutilation according to the definition and that it 'should not be acceptable over female circumcision' (Kamau, 2018f: 2), thus using anti-FGM rhetoric to strengthen her counternarrative. In addition, she argued that the deponents failed to explain why 'female genital surgeries conducted by gynaecologists and plastic surgeons for cosmetic purposes in developed countries are legitimate and yet female genital surgeries in Africa are criminalised' (Kamau, 2018g: 2).

After two covid-19 related postponements, the verdict was finally rendered on 17 March 2021. The judges decided that Kamau's Petition was 'devoid of merit' and dismissed all charges. On the matter of choice, the judges argued that Kamau's 'assumption is that anyone above the age of 18 years undergoes FGM voluntarily' (High Court of Kenya, 2021: 48). Based on the testimonies, they found that this is not the case, as women from practising communities or who marry into said communities experience social pressure to be cut and punitive sanctions, including stigma and exclusion, if they refuse to be cut. 'Women,' they argued, 'are thus as vulnerable as children due to social pressure and may still be subjected to the practice without their valid consent' (48–49). The judges furthermore argued that consent cannot be invoked because the Constitution 'has not inscribed the freedom to inflict harm on one's self in the exercise of [their] freedoms' (77) and because 'no person can license another to perform a crime' (57).

In response to Kamau's claim that women, like men, should have access to medicalised circumcision, the judges responded that the expert witnesses and the testimonies of two women who suffered health complications after medicalised FGM demonstrated that 'medicalisation does not mitigate harm' (50). They also agreed with the expert witnesses that no medical staff is trained to perform FGM and that carrying out the operation goes against the Hippocratic Oath.

In response to Kamau's claim that the Act discriminates against women, the judges acknowledged that Kenyan legislation on male and female circumcision differentiates between men and women. However, they reasoned that differentiation only amounts to discrimination if it is unreasonable and arbitrary. The judges were 'not convinced that said discrimination was unreasonable' and pointed at the alleged health benefits of male circumcision versus the harm of FGM as a reasonable justification for differentiation (71).

The judges concluded that, ultimately, the case was about balancing the right to culture with the rights to life, equality and freedom from discrimination, human dignity, freedom and security of the person, and the highest attainable standard of health and reproductive healthcare (51). In that balancing exercise the Court prioritised health over culture, which is in line with the current international norms on FGM. The judges acknowledged that 'cultural rights intertwine with human rights in certain social spaces and are not easy to separate' (51). However, they concluded that 'despite the rights enshrined in Articles 11, 32 and 44 of the Constitution relating to culture, religion, beliefs and language, these rights can be limited due to the nature of the harm resulting from FGM/C to the individual's health and well-being' (54).

Kamau's court case resulted in a forthcoming amendment of the Anti-FGM Act which will make the Act even more comprehensive. While the current Act prohibits FGM Types I, II, and III (clitoridectomy, excision, and infibulation respectively), the amended Act will also criminalise the 'rest' category of type IV. Further research will have to investigate how the amended Act will impact women and transgender and intersex people who seek genital surgeries for religious, socio-cultural, therapeutic, cosmetic, and gender identity reasons.

One could argue that Kamau missed a number of opportunities to argue her case more strongly. For example, she could have drawn from existing scholarship that challenges the taken for granted notion that male circumcision is inherently beneficial, and that all forms of female circumcision are inherently harmful (Darby, 2015; Earp, 2017; Frisch et al., 2013; Obermeyer, 1999; Shweder, 2002). Or she could have used empirical evidence from Egypt that shows that medicalised FGM can go hand-in-hand with a decrease in prevalence to challenge the assumption that medicalisation would undermine efforts to end the practice (Van Eekert et al., 2020). In the final verdict, the judges wrote that Kamau failed to provide evidence for a number of claims. Those familiar with critical anthropological and postcolonial scholarship on FGM know that empirical evidence that could be used to support her arguments does, in fact, exist.

Perhaps more importantly, however, the legal logic of the courtroom is profoundly different from the decolonial logic underpinning Kamau's grievances. Kamau raises epistemological questions that are ultimately about who gets to decide on women's bodies – questions that have been raised by African postcolonial feminists such as Nnaemeka

(2005), Njambi (2007), Tamale (2020) and anthropologist Ahmadu (2020). The judges, on the other hand, approach these questions from a legal perspective and refer to existing national and international laws that reflect the hegemonic discourse on FGM. They did not engage deeply with Kamau's argument that the Anti-FGM Act is an imposition of 'outsider' values, or that in fulfilling its international obligations, Kenya had not sufficiently considered the will of the people if Kenya. These questions touch upon the nature of law and whose interests it represents. In East Africa, 'customary' law, religious law, and state law exist side by side and are intertwined (Schlee, 2013; Tamale, 2020: 132). While officially state legislation trumps customary law, community members might disagree with state legislation and prioritise customary law. Ultimately, the case embodies a decades-old debate between cultural relativists and universalists (e.g. Ahmadu, 2017; Brennan, 1989; Lionnet, 2005), with at its core the question of how universal the Universal Declaration of Human Rights really is and who gets to decide about women's bodies.

Power Hierarchies in Who Gets to Define FGM

The history of how Kenya's Anti-FGM Act came into being shows that 'imposition', and the unidirectionality that the term implies, does not capture the agency of Kenyan actors in producing comprehensive legislation against FGM. The Act was the initiative of Kenyan women from FGM-practising communities who found support in Kenyan and international individuals and organisations. However, acknowledging African agency and the international nature of the anti-FGM campaign should not blind us to the power hierarchies that continue to influence which voices are heard versus ignored or silenced. While Noor and Kilimo readily found support for the efforts to end FGM, Kamau was ridiculed and verbally attacked for her perspective that deviates from the hegemonic anti-FGM discourse. The UNICEF-UNFPA Joint Programme calls its campaign against FGM 'African-led' (UNICEF-UNFPA, 2018). In comparison to the early 20th century, more African women and men participate in the transnational anti-FGM campaign, including in leadership positions. However, there is only space for those who indeed agree with and support the anti-FGM campaign *the way it is* (see also Hodžić, 2019). Those who disagree or hold an alternative perspective on what the future of female circumcision on the continent should be, are not given a platform. Kamau sees medicalised female circumcision as a way to allow women to continue cultural practices that are meaningful to them while reducing the associated health risks, potentially as an intermediate step in the process towards total abandonment. Yet, her alternative perspective is ridiculed and subjugated within the so-called 'African-led' campaign on FGM, suggesting that 'African-led' refers to those Africans whose perspective and approach conform to the agenda of the transnational anti-FGM campaign. That same campaign works hard to change the mind of dissidents and, if that fails, to silence their opposing voices. Kamau's court case shows the power of the anti-FGM campaign and its resilience in face of criticism.

Indeed, Kamau was called a crazy attention seeker and some anti-FGM activists went so far as to threaten to take legal action against her.⁴ Yet, Kamau is not the only one to challenge the anti-FGM campaign and its underpinning discourse. As mentioned in the

introduction, (African) postcolonial feminists, anthropologists, and women from communities that practise female circumcision have formulated similar critiques throughout the history of the anti-FGM campaign. Furthermore, Kamau said she received support from anonymous women from practising communities. Some anti-FGM activists questioned the credibility of this claim. However, during my fieldwork among Maasai and Samburu in southern and central Kenya, I came across women who said that ‘the doctor might have a point.’ A nurse in Maralal, in Samburu County, said that she knew of ‘other’ nurses that would circumcise women to reduce the risk: ‘When we do it, we can use anaesthesia and hygienic tools so that the girl doesn’t suffer and won’t bleed too much.’ She said that she understood Kamau for wanting to make female circumcision more hygienic, ‘because these people in the villages they will never stop, even if you put a hundred laws.’ The high rates of ‘medicalised’ FGM in Kenya suggest that there are more healthcare professionals who perform FGM (Kimani et al., 2020), be it for economic reasons or to reduce the risk of a practice that they either agree with (because they are part of the same communities), or know that will take place regardless of their involvement but in sub-standard conditions.

Transnational Support for Contesting the Act

While Kamau’s Kenyan supporters remained anonymous, she received public support from African women in the diaspora in the UK and USA. In October 2019, two years after she filed the petition, Kamau received support from an organisation called All Women Are Free to Choose (AWAFC). AWAFC was founded by Fuumbai Ahmadu, a Sierra Leonean and US American social anthropologist who underwent excision in her early 20s as part of the traditions of her ethnic group, the Kono. On her website, Ahmadu writes that ‘as a circumcised woman who has worked and lived with thousands of circumcised women’, she felt she had to do something to counter the ‘damage [...] caused by aggressive anti-FGM campaigns and legislation’ (Ahmadu, 2019). With damage, she refers to the ‘discrimination and racial profiling of women and men in immigrant communities in western countries, especially Muslim communities’, and the ‘deep psychosocial and psychosexual impact of FGM media stereotyping’ (ibid). AWAFC advocates for the right of women to decide on their own bodies and challenges negative stereotyping of anti-FGM campaigns.

Ahadu is also part of a transnational network of African diaspora women living across the USA and Europe and who disapprove of the transnationally dominant anti-FGM discourse. One of the women in the network is Zainab, a Kenyan Somali woman who has lived in the UK since she was 7 years old. Zainab has a social media account where she challenges what she calls the ‘dominant narrative on FGM’ and demands the right for circumcised women to define their own experiences. She tweeted that ‘Calling me “mutilated” is as racist as calling me [n-word]’.

I mentioned this network to Nashipai, a Kenyan Samburu woman whom I met while she was studying her Master’s in Development Studies at University College London. Nashipai did not find it surprising that these critiques of the anti-FGM discourse are especially present among diaspora women. She said:

“When you are living in the west as an African woman or as a Muslim, you are constantly confronted with the double standards and racist undertones in debates about FGM. It makes you question what the real intention behind these anti-FGM campaigns is. Is this really about helping African women, or is FGM just an excuse for their anti-immigration, racist, and Islamophobic politics?”

Nashipai told me she had not been circumcised as a teenager, but that she changed her mind about female circumcision after witnessing the racism in the anti-FGM campaign. She said she was planning on getting circumcised upon her return to Kenya, ‘as a big fat middle finger to this whole colonial sector trying to decide for African women what we need.’ I never asked whether, upon returning to Kenya, Nashipai did, in fact, get circumcised. After all, she had made sufficiently clear that an African women’s genitals are none of my business.

A Kuria woman whom I interviewed in Nairobi similarly located these critiques of Western imposition in the West. She said:

I empathise with their fight against racism in the West, but I wish they would not undermine our struggles here. I get angry when I read another comment on how this fight against FGM is a Western fight. So what are we? Brainwashed Africans? Aren’t we the ones who underwent this practice? They are more concerned with protecting a culture they barely know than with supporting us to protect our bodies. [...]

Commenting on the critique that anti-FGM efforts today are a form of neocolonialism, she added:

When I started [my organisation for girls’ rights], I did not know anything about this history of missionaries and female circumcision and whether it is the West or not. All I knew was the pain, the suffering, my friend who died. [...] For them it is politics, for us it is about our lives.

These examples further challenge any clear-cut distinction between the ‘West’ imposing anti-FGM values versus Africa resisting such cultural imperialism. Besides erasing the agency of Africans in anticutting efforts, the concept of ‘imposition’ implies a false binary between the West versus Africa. Neither of these sides are homogenous: African women, like Jebii Kilimo and Noor, dedicated their lives to ending FGM out of their very personal experiences with FGM. The same is true for many Kenyan women and men who were part of my ethnography and who started organisations and other initiatives to end FGM. At the same time, there are those Kenyan people who want female circumcision to continue, as can be seen from communities secretly continuing to practise FGM but also from public protests against the law (K24 TV, 2014). Similarly, not all ‘Western’ actors have supported the anti-FGM campaign. In fact, from the 1980s onwards, Western anthropologists have very much criticised the ethnocentrism in Western feminist discourses on FGM. The international network that supported Kamau’s court case includes actors from Western and African backgrounds, and backgrounds that cannot easily be assigned to one or the other. The binary also ignores the role of transnational collaborations, both in producing the anti-FGM

campaign but also in criticising it – as can be seen from the transnational network that supported Kamau’s court case.

Conclusion

The case study of Kenya’s Prohibition of FGM Act shows that calling the Act the simple imposition of Western values would ignore the agency of Kenyan actors as well as the multidirectional influences and transnational collaborations that went into its production and contestation.

Challenging the idea that Kenya’s Anti-FGM Act is merely the result of Western imposition does not mean denying power imbalances all together. Those seeking to end FGM will readily find the support of a transnational network against FGM with UN agencies at its core, and with considerable power and resources, including international resolutions, a large body of scientific evidence supporting the anti-FGM discourse, and Western funding streams. Kilimo and Noor could count on the support of the United Nations-led transnational campaign against FGM and of the Kenyan government and its interest of following international resolutions and appearing ‘modern’ on the postcolonial global stage. However, acknowledging these power imbalances should not translate into discrediting the transnational anti-FGM campaign as a ‘Western’ project. Within the international anti-FGM movement, African activists and organisations carved out a space for African-led activism and leadership. At the same time, however, what can and cannot be said is strongly policed by the transnational anti-FGM industry. Those with alternative perspectives on ‘female circumcision’ and how it should be approached are likely to be ridiculed, marginalised, and silenced.

These findings are important to work towards a transnational feminism that is ‘meaningful to different women in different places’ (Njambi, 2007: 706). In line with anthropology’s commitment to cultural relativism, it is important to remain awake to the power of hegemonic knowledge and the ways in which it silences subaltern voices (Spivak, 1988). At the same time, however, we must remain vigilant that claims to cultural relativism and protecting ‘African authenticity’ against cultural imperialism do not become co-opted by conservatives trying to undermine women’s activism. Sylvia Tamale (2011, 2014) has warned that such static notions of ‘African culture’ have been weaponised by conservatives to deny certain groups – women, the LGBTQIA + community – their rights. Dorothy Hodgson (2001: 234) showed how Maasai men who mobilised around ‘indigenous rights’ have ‘justified the exclusion of women by appeals to “tradition” and “culture”’.

One could argue that Dr Kamau similarly risked undermining efforts to end FGM by mobilising the right to ‘culture’. With its insistence on prioritising gender, the defence and jury equally ignored the influence of colonialism. Both parties thus failed to acknowledge that FGM and the campaign to end it are shaped by the intersection of sexism, colonialism, and racism. Crenshaw (1991) coined the term ‘intersectionality’ to emphasise that different axes of discrimination do not simply co-exist, but overlap and combine to create additional harmful effects. For feminist struggles to be relevant to women with different positionalities, feminism must always acknowledge how women’s

experiences are shaped by the intersection of gender, race, colonialism, and other axes of difference.

Consciousness of colonial legacies in anti-FGM efforts should not be co-opted to undermine the work of Kenyan women to end a practise that they find unnecessary and harmful. At the same time, protecting girls and women from the harmful effects of FGM should not go at the cost of African women's right to self-determination regarding their bodies, beliefs, and cultures. By ridiculing Kamau, what could have become an important discussion on the role of race, culture, and colonialism in the anti-FGM campaign and wider transnational feminist struggles became side-tracked and silenced.

Acknowledgements

I would like to thank Catherine Dolan, Gunvor Jonsson, Marloes Janson, Mhairi Gibson, Katy Newell-Jones and Natasha Carver for their support and feedback.

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Declaration of Conflicting Interests

The author(s) declared no potential conflicts of interest with respect to the research, authorship, and/or publication of this article.

Funding

The author(s) disclosed receipt of the following financial support for the research, authorship, and/or publication of this article: This work was supported by the SOAS Research Studentship and ESRC Postdoctoral Fellowship.

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Notes

1. The Borana are traditionally nomadic (though increasingly permanently settled) pastoralists living around Isiolo, Tana River, Garissa, Moyala and Marsabit Districts in northern Kenya. Most Borana are Muslims, with some following traditional religion and worshipping Waqa. The Borana practise FGM – mostly type III – for religious reasons (28 Too Many, 2013: 22). According to Prof. Jaldesa, Borana girls are usually cut between the ages of 6 and 10.
2. The three-judge bench that was allocated consisted of Justices Lydia Achode, Kanyi Kimondo and Margaret Muigai.
3. Equality Now, the National Gender and Equality Commission (NGEC), the Federation of Women Lawyers (FIDA), Samburu Girls Foundation, Msichana Empowerment Kuria, Kenya Women's parliamentary Association (KEWOPA), Centre for Rights Education and Awareness (CREAW), Men for Equality Between Men and Women (MEMW), AMREF Health Africa Kenya.
4. The Somali-British activist Nimco Ali wrote on Twitter: 'The [Kenyan] law not only bans FGM but also says anyone promoting should and will be arrested. On that note, I am starting a

campaign to have [Tatu Kamau] arrested' <https://twitter.com/nimkoali/status/957236770055344128>, 27 January 2018 (accessed on 2 June 2021).

References

- 28 Too Many (2013) *Country Profile: FGM in Kenya*. London, UK: 28 Too Many.
- Ahmadu F (2000) Rites and wrongs: an insider/outsider reflects on power and excision. In: Shell-Duncan B and Hernlund Y (eds) *Female 'Circumcision' in Africa: Culture, Controversy, and Change*. Boulder, Colo.: Lynne Rienner Publishers, Inc., pp.283–312
- Ahmadu F (2017) Equality, not special protection: multiculturalism, feminism, and female circumcision in western liberal democracies. In: Cassaniti JL and Menon U (eds) *Universalism without Uniformity*. Chicago and London: The University of Chicago Press, pp.214–238.
- Ahmadu FS (2019) Is pleasure to circumcision as pain is to mutilation? In: *Challenging the anti-FGM Act in Kenya*. Available at: <https://siamagazine.com/f/is-pleasure-to-circumcision-as-pain-is-to-mutilation> (accessed 24 February 2020).
- Ahmadu FS (2020) Bondo in the 21st Century: Female circumcision, choice and the case of Fatmata in Kono District, Sierra Leone. In: *Sia Magazine*. Available at: http://www.fuambaisiaahmadu.com/blogs?fbclid=IwAR3MXVLuYmHUP_MBuQ7X-3GMJ91bBNGIW4enCum6OcF7wE79w0ICnaC6zrE (accessed 20 February 2020).
- Allison FH (2006) Remembering a Vietnam war firefight: changing perspectives over time. In: Perks R and Thomson A (eds) *The Oral History Reader*, 2nd ed. London and New York: Routledge, Taylor & Francis Group, pp.69–83.
- Banks E, Meirik O, Farley T, et al. (2006) Female genital mutilation and obstetric outcome: WHO collaborative prospective study in six African countries. *Lancet (London, England)* 367: 1835–1841.
- Boddy J (1998) Violence embodied? Female circumcision, gender politics, and cultural aesthetics. In: Dobash RE and Dobash RP (eds) *Rethinking Violence against Women*. Thousand Oaks, California: Sage, pp.77–110.
- Boseley S (2011) FGM: Kenya acts against unkindest cut. *The Guardian*, 8 September. Available at: <https://www.theguardian.com/society/sarah-boseley-global-health/2011/sep/08/women-africa> (accessed 18 September 2019).
- Brennan K (1989) The Influence of Cultural Relativism on International Human Rights Law: Female Circumcision as a Case Study. 7(3).
- Canada I and RB of C (2000) *Kenya: Prevalence of female genital mutilation (FGM) in the Kikuyu tribe: age at which practised; consequences of refusal for grandparents; availability of state protection*. 2 August. KEN35138. Available at: <https://www.refworld.org/docid/3ae6ad5e76.html> (accessed 2 October 2019).
- Crenshaw K (1991) Mapping the margins: intersectionality, identity politics, and violence against women of color. *Stanford Law Review* 43(6): 1241–1299.
- Darby R (2015) Risks, benefits, complications and harms: neglected factors in the current debate on non-therapeutic infant circumcision. *Kennedy Institute of Ethics Journal* 25(1): 1–34.
- Earp BD (2017) Does female genital mutilation have health benefits? The problem with medicalizing morality. *Quillette Magazine*. Available at: <http://quillette.com/2017/08/15/female-genital-mutilation-health-benefits-problem-medicalizing-morality/>.
- Economist (1999) Female Genital Cutting: Is It a Crime or Culture? *Economist*, 13 February.
- Frisch M, Aigrain Y, Barauskas V, et al. (2013) Cultural bias in the AAP's 2012 technical report and policy statement on male circumcision. *Pediatrics* 131(4): 796–800.
- Gilbertson A, Ongili B, Odongo FS, et al. (2019) Voluntary medical male circumcision for HIV prevention among adolescents in Kenya: unintended consequences of pursuing service-delivery targets. *Plos One* 14(11): e0224548. El Bcheraoui C (ed.).

- High Court of Kenya (2021) *Verdict on Constitutional Petition No. 244 of 2019*. 17 March. Nairobi.
- Hodgson DL (2001) *Once Intrepid Warriors: Gender, Ethnicity, and the Cultural Politics of Maasai Development*. Bloomington: Indiana University Press.
- Hodžić S (2017) *The Twilight of Cutting: African Activism and Life after NGOs*. Oakland, California: University of California Press.
- Hodžić S (2019) 'The Twilight of Cutting' book talk by Saida Hodžić. Cornell University Library. Available at: <https://www.cornell.edu/video/twilight-of-cutting-african-activism-life-after-ngos-book-talk-saida-hodzic> (accessed 9 August 2020).
- Hughes L (2018) Alternative rites of passage: faith, rights, and performance in FGM/C abandonment campaigns in Kenya. *African Studies* 77(2): 274–292.
- ISLA (2019) PRESS RELEASE – FGM Case: 23 OCTOBER 2019. Available at: <http://www.the-isla.org/press-release-fgm-case-23-october-2019/> (accessed 25 February 2020).
- K24 TV (2014) *Over 3,000 Maasai Women Meet in Kajiado to Campaign for the Cutt*.
- Kaberia J (2014) Local Kenyan Chiefs in FGM Controversy. 393 ed. Institute for War & Peace Reporting; Wayamo Communication Foundation; Capital FM. Available at: <http://tinyurl.com/ypftmbb>.
- Kamau T (2017) *Constitutional Petition No.8 of 2017*. 8.
- Kamau T (2018a) *Supplementary Affidavit replying affidavit of Federation of Women Lawyers (FIDA-Kenya) sworn by TERESA OMONDI – A DEITAN on 23/2/2018 and filed herein on 26/2/2018*.
- Kamau T (2018b) *Supplementary Affidavit replying affidavits sworn on behalf of the 1st Respondent by Sadia Snago Hussein, Joshua Olodido Oruma and Ruth Jepchumba Kilimo sworn on 19/2/2018 and filed herein on 26/2/2018*.
- Kamau T (2018c) *Supplementary Affidavit replying The Honourable Attorney General (1st Respondent) as sworn by Professor Guyo Waqo Jaldesa on the 16/04/2018*.
- Kamau T (2018d) *Supplementary Affidavit replying to AMREF Health Africa in Kenya (9th Interested Party herein) sworn by Magdalene Namwati Toroko, Lelein Kanunga and Susan Komeyan Nasenke Katei on 15/3/2018*.
- Kamau T (2018e) *Supplementary Affidavit replying to AMREF Health Africa in Kenya (9th interested party), sworn by Dr Joachim Osur on 16/3/2018*.
- Kamau T (2018f) *Supplementary Affidavit replying to Equality Now (1st Interested Party) sworn by Faiza Jama Mohamed together with an Affidavit sworn by Fatuma Ahmed Sheikh Abdullahi and both filed on 26/2/2018*.
- Kamau T (2018g) *Supplementary Affidavit replying to Men for the Equality of Men and Women – MEW (8th Interested Party) as sworn by Rev. Dr Timothy M. Njoya on the 17/04/2018*.
- Kamau T (2018h) *Supplementary Affidavit replying to Samburu Girls Foundation (SGF) (4th Interested Party) as sworn by Dr Josephine Kulea on the 15/03/2018*.
- Kamau T (2018i) *Supplementary Affidavit replying to the Office of the Director of Public Prosecutions (3rd Respondent) sworn by Cliff O. Machogu on 26/2/2018 and filed on the same day*.
- Kenya (2011) *Prohibition of Female Genital Mutilation Act No. 32 of 2011*. National Council for Law Reporting. Available at: http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/Prohibition_ofFemaleGenitalMutilationAct_No32of2011.pdf.
- Kenyatta J (1965) *Facing Mount Kenya: The Tribal Life of the Gikuyu*. New York: Vintage Books.
- Kimani S, Kabiru CW, Muteshi J, et al. (2020) Female genital mutilation/cutting: emerging factors sustaining medicalization related changes in selected Kenyan communities. *PLOS ONE* 15(3): e0228410. DeBaets AM (ed.).
- KTN News Kenya (2018) Case filed by Dr Tatu Kamau seeking to legalize FGM adjourned. *KTN News Kenya*. Nairobi. Available at: <https://www.youtube.com/watch?v=NEOavMlmUWg> (accessed 25 February 2020).

- Lionnet F (2005) Women's rights, bodies, and identities: the limits of universalism and the legal debate around excision in France. In: Nnaemeka O (ed) *Female Circumcision and the Politics of Knowledge: African Women in Imperialist Discourses*. Westport, Conn: Praeger., pp.97–110
- Marcus GE (1995) Ethnography in/of the world system: the emergency of multi-sited ethnography. *Annual Review of Anthropology* 24: 95–117.
- Mosse D (2005) *Cultivating Development: An Ethnography of Aid Policy and Practice*. Anthropology, culture, and society. London and Ann Arbor, MI: Pluto Press.
- Muthini S (2018) Legalise female genital mutilation, says doctor in court. *Daily Nation*. 18 January, 2018. Available at: <https://www.nation.co.ke/news/Legalise-female-circumcision-says-doctor-in-court/1056-4267584-11ajval/index.html>.
- Ncharo CK (2018) *Affidavit sworn by Caroline Karato On 16/03/2018 on behalf of Federation of Women Lawyers (FIDA Kenya)*.
- Njambi WN (2007) Irua ria atumia and anti-colonial struggles among the Gi'kũyũ of Kenya: A counter narrative on 'female genital mutilation'. *Critical Sociology* 33: 689–708.
- Nnaemeka O (ed) (2005) *Female Circumcision and the Politics of Knowledge: African Women in Imperialist Discourses*. Westport, Conn: Praeger.
- Obermeyer CM (1999) Female genital surgeries: the known, the unknown, and the unknowable. *Medical Anthropology Quarterly* 13(1): 79–106.
- Oloo H, Wanjiru M and Newell-Jones K (2011) Female genital mutilation practices in Kenya: the role of alternative rites of passage. A case Study of the Kisii and Kuria districts. *Feed the Minds* 48. DOI: 10.31899/rh2.1075.
- Prazak M (2016) *Making the Mark: Gender, Identity, and Genital Cutting*. Ohio University research in international studies, Africa series no. 93. Athens, Ohio: Ohio University Press.
- Savane M-A (1979) Why we are against the international campaign. *International Child Welfare Review* 38: 37–39.
- Schlee G (2013) Customary law and the joys of statelessness: idealised traditions versus Somali realities. *Journal of Eastern African Studies* 7(2): 258–271.
- Shell-Duncan B, Wander K, Hernlund Y, et al. (2013) Legislating change? Responses to criminalizing female genital cutting in Senegal: criminalizing FGC. *Law & Society Review* 47(4): 803–835.
- Shweder RA (2002) 'What about female genital mutilation?' and why understanding culture matters in the first place. In: Shweder RA, Minow M and Markus HR (eds) *Engaging Cultural Differences: The Multicultural Challenge in Liberal Democracies*. New York: Russell Sage Foundation, pp.216–251.
- Spivak GC (1988) Can the subaltern speak? In: Nelson C and Grossberg L (eds) *Marxism and the Interpretation of Culture*. Urbana, IL: University of Illinois Press, pp.271–313.
- Tamale S (ed) (2011) *African Sexualities: A Reader*. Oxford, UK: Pambazuka Press.
- Tamale S (2014) Homosexuality is not un-African. In: *Al Jazeera*. Available at: <http://america.aljazeera.com/opinions/2014/4/homosexuality-africamuseveniugandanigeriaethiopia.html> (accessed 13 August 2020).
- Tamale S (2020) *Decolonization and Afro-Feminism*. Quebec: Daraja Press.
- Thomas LM (2000) 'Ngaitana (I will circumcise myself)': lessons from colonial campaigns to ban excision in Meru, Kenya. In: Shell-Duncan B and Hernlund Y (eds) *Female 'Circumcision' in Africa. Culture, Controversy, and Change*. Colorado: Lynne Rienner Publishers, Inc., pp. 129–150.
- Thomas LM (2003) *Politics of the Womb: Women, Reproduction, and the State in Kenya*. Berkeley: University of California Press.
- UNICEF-UNFPA (2014) *UNFPA-UNICEF Joint Programme on Female Genital Mutilation/Cutting: Accelerating Change. Summary Report of Phase I*. New York: UNICEF.

- UNICEF-UNFPA (2018) *UNFPA-UNICEF Joint Programme on Female Genital Mutilation: Accelerating Change – Performance Analysis for Phase II*. New York: UNFPA-UNICEF.
- United Nations (1948) *Universal Declaration of Human Rights*. Available at: <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.
- Van Eekert N, Biegel N, Gadeyne S, et al. (2020) An examination of the medicalization trend in female genital cutting in Egypt: how does it relate to a girl's risk of being cut? *Social Science & Medicine* 258: 113024.