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## FEMALE GENITAL MUTILATION: A RITE OF PASSAGE OR A BREACH OF WOMEN'S RIGHTS IN NIGERIA?

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**ABSTRACT:** *Female genital mutilation or female circumcision constitutes one of the vital challenges confronting the rights of women in Nigeria. Attempts geared towards its complete eradication have remained unsuccessful to date due to the fact that the practice is entrenched in the culture or traditional beliefs of the people. The article sought to address the question whether female genital mutilation was merely a rite of passage or it amounted to a grave violation of women's rights in Nigeria. A number of justifications have been advanced for the continued practice of female genital mutilation in Nigeria. Nonetheless, the study revealed that the practice, though considered as an initiation rite into womanhood in some communities, posed serious immediate and long term health consequences to the victims as well as violated various human rights' principles guaranteed under international, regional and national instruments. Thus, the article recommended, inter alia, that the Nigerian government and all relevant global and local stakeholders should adopt suitable mechanism towards the abolition of the practice in Nigeria.*

**KEYWORDS:** culture, rite of passage, discriminatory practices, female genital mutilation, female circumcision, female genital cutting, women's rights

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### INTRODUCTION

Female genital mutilation (FGM) has been recognised as one of those cultural practices that infringes on the rights of an African woman, including Nigerian women. The practice which is also known as female circumcision or female genital cutting relates to the "cutting of all or part of the external sex organs of a girl or a woman other than on medical grounds."<sup>1</sup> About 100-140 million women and girls have been estimated by the World Health Organisation (WHO) to have been subjected to the cultural practice of female circumcision globally,<sup>2</sup> while 3 million girls are also estimated to be at risk of undergoing the procedure yearly.<sup>3</sup>

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<sup>1</sup> Violence Against Persons (Prohibition) Act 2015 (VAPP Act 2015), section 46. See also World Health Organisation, *Female Genital Mutilation: A Handbook for Frontline Workers* (Geneva: World Health Organisation, 2000), p. 10.

<sup>2</sup> World Health Organisation, *Female Genital Mutilation: A Handbook for Frontline Workers*, *ibid*, p. 9.

<sup>3</sup> World Health Organisation, *Eliminating Female Genital Mutilation: An Interagency Statement* (Geneva: World Health Organisation, 2008), p. 1.

The figures in Nigeria are also upsetting. Recent statistics estimate that about 20 million girls and women have undergone FGM.<sup>4</sup> According to a 2018 survey, about 20% of Nigerian women age 15-49 have been circumcised.<sup>5</sup> This is a decrease for the figure of 25% earlier reported in 2013.<sup>6</sup> The 2018 Nigeria Demographic and Health Survey (2018 NDHS) indicated that prevalence of the practice of FGM vary according to places of residence, ethnic groups and religion. It stated for instance that about 24.2% of women living in urban areas performed FGM while 15.6% of women living in rural areas were reported to have undergone the practice.<sup>7</sup> In communities where female genital mutilation is practiced, there is also disparity in relation to the age when the girl or woman undergoes the procedure. While in some communities the practice can occur from the time of birth till when she attains the age of puberty, in others it is performed on the wedding night.<sup>8</sup>

With respect to the prevalence of female circumcision in the various geographical zones of Nigeria, the 2018 demographic survey report noted that the North-Central recorded 9.9%,<sup>9</sup> North East-6.1%,<sup>10</sup> North-West-20.2,<sup>11</sup> South-East-35%,<sup>12</sup> South-South-17.7%<sup>13</sup> and South-West-30%.<sup>14</sup> The survey also highlighted the various States in each of the zones with the highest prevalence rate of FGM. These include Kwara State (North Central)-46%, Yobe State (North East)-14.2%, Kaduna State (North West)-48.8%, Imo State (South East)-61.7%, Edo State (South-South)-35.5% and Ekiti State (South West)-57.9%.<sup>15</sup>

While no known health benefits have been associated with the practice, it is an acknowledged fact that apart from the health consequences, pains and sufferings associated with the procedure, it also amounts to a serious infringement of the fundamental rights of Nigerian women

<sup>4</sup> 28 Too Many, *Country Profile: FGM in Nigeria* (October 2016), p.7. Available at <http://www.28toomany.org/countries/nigeria/>. Accessed on 15 February 2020.

<sup>5</sup> The survey noted that 86% of circumcised women in this age bracket were circumcised before they attained age 5 while 5% passed through the procedure of FGM at age 15 or older. See National Population Commission and ICF international, *Nigeria Demographic and Health Survey 2018*. (National Population Commission (NPC)/ ICF international, 2019), p. 465 .

<sup>6</sup> National Population Commission and ICF international, *Nigeria Demographic and Health Survey 2013*. (National Population Commission (NPC)/ The DHS Program, 2014), p. 348 Available at <https://www.unicef.org/nigeria/reports/nigeria-demographic-and-health-survey-2013>. Accessed on 15 February 2020.

<sup>7</sup> *Nigeria Demographic and Health Survey 2018, op. cit.*

<sup>8</sup> John Tochukwu Okwubanego, "Female Circumcision and the Child in Africa and the Middle East: The Eyes of the World Are Blind to the Conquered" (1999) 33(1) *The International Lawyer*, pp. 159-187 at p.160.

<sup>9</sup> The States that comprise the North-Central are: Benue, Kogi, Kwara, Nasarawa, Niger and Plateau States and the Federal Capital Territory, Abuja.

<sup>10</sup> This includes Adamawa, Bauchi, Borno, Gombe, Taraba and Yobe States.

<sup>11</sup> The following States come within this geopolitical zone-Jigawa, Kaduna, Kano, Katsina, Kebbi, Sokoto and Zamfara States.

<sup>12</sup> States within the South-East zone are Abia, Anambra, Ebonyi, Enugu and Imo State.

<sup>13</sup> The South-South States are: Akwa Ibom, Bayelsa, Cross River, Delta, Edo and Rivers States.

<sup>14</sup> The South-West States consist of Ekiti, Lagos, Ogun, Ondo, Osun and Oyo States.

<sup>15</sup> National Population Commission and ICF international, *Nigeria Demographic and Health Survey 2018, op. cit.*, pp. 473-474. Although from this survey, there were significant improvements on the prevalence rates in the various States and zones, yet when compared with the position obtainable under the NDHS 2013, it was obvious that some States like Yobe, Imo and Ekiti have now swapped positions with Bauchi, Ebonyi and Osun States respectively to retain the unenviable position of States with highest prevalence rate of FGM within their geographical zones. See NDHS 2013, pp. 348-350.

and girls. About 91.5 million girls and women above 9 years old in African have been reported to be currently living with the negative consequences of FGM.<sup>16</sup> The main goals of the cultural practice may not be unconnected with the need to promote cultural rite of passage and to check “promiscuity and sanitizing the society against social problems, such as teenage pregnancy, prostitution, adultery and abortion,”<sup>17</sup> which behaviours were “often looked upon unfavourably by traditional communities.”<sup>18</sup>

However, balancing the aims for the practice of FGM and the negative consequences it has continued to pose to the female gender has resulted in calls being made globally for the abolition of the practice. Consequently, in year 2012, the United Nations General Assembly (UNGA) adopted a historic resolution calling on the global community to intensify actions and address through “all necessary measures, including enacting and enforcing legislation” to eradicate the practice of FGM.<sup>19</sup> Again, in 2015, the international community established a new set of developmental goals, Sustainable Development Goals (SDGs), which also incorporated into its Goal 5 the need to end all gender inequality including the obliteration of female genital mutilation by the year 2030.<sup>20</sup> Also, anti-female circumcision campaigns,<sup>21</sup> policies,<sup>22</sup> programmes and laws have been put in place in Nigeria to address this barbaric and discriminatory practice. In fact in 2015, the Nigerian federal government enacted the Violence against Persons (Prohibition) Act (VAPA Act) with provisions criminalising the practice of FGM. Similar provisions have been domesticated in some States’ laws. All these actions are clear indications of concerted efforts and universal consensus by the global community to work together with the Nigerian government at all levels and relevant stakeholders to end FGM not only worldwide but also in Nigeria.

### **Origin, Meaning and Classification of Female Genital Mutilation**

The origin of female genital mutilation though of ancient times is fraught with controversy. There is absence of consensus even among anthropologists regarding the origin of the practice. Some anthropologists express the view that female circumcision is traceable to the 5<sup>th</sup> century BC in Egypt where the practice of infibulations was referred to as “Pharaonic circumcision”

<sup>16</sup> P. Stanley Yoder and Shane Khan, *Number of Women Circumcised in Africa: The Production of a Total* (Calverton, Macro International Inc, 2008), p.15.

<sup>17</sup> Akin Ibidapo-Obe, *A Synthesis of African Law*, (Concept Publications Limited, 2005), p.155.

<sup>18</sup> Cheluchi Onyemelukwe, “Legislating on Violence Against Women: A Critical Analysis of Nigeria’s Recent Violence Against Persons (Prohibition) Act, 2015,” (2016) 5(2) *DePaul Journal of Women, Gender and the Law*, pp. 31-32.

<sup>19</sup> The UNGA adopted the said Resolution A/RES/67/146 on 20 December 2012. See “UN General Assembly Adopts Worldwide Ban on Female Genital Mutilation.” Available at <http://www.npwj.org/FGM/UN-General-Assembly-Adopts-Worldwide-Ban-Female-Genital-Mutilation.html>. Accessed on 25 February 2020.

<sup>20</sup> See “Eliminate female genital mutilation by 2030: Joint Statement of UNFPA and UNICEF” (3 February 20-16). Available at <https://www.unfpa.org/press/eliminate-femalew-genital-mutilation-2030-say-unfpa-and-unicef>. Accessed on 25 February 2020. See also United Nations Children’s Fund, “Female Genital Mutilation/Cutting: A Global Concern” (New York: UNICEF, 2016) See also UN Women, “SDG 5: Achieve gender equality and empower all women and girls.” Available at <https://www.unwomen.org/en/news/in-focus/women-and-the-sdgs/sdg-5-gender-equality>. Accessed on 25 February 2020.

<sup>21</sup> *FGM in Nigeria: Country Briefing*. Available at [www.thegirlgeneration.org](http://www.thegirlgeneration.org). Accessed on 31 December 2019.

<sup>22</sup> See for instance, Federal Ministry of Health, *National Policy and Plan of Action for the Elimination of Female Genital Mutilation in Nigeria 2013-2017* (Abuja, 2013).

and was used as a means of preventing pregnancy among female slaves.<sup>23</sup> Others have traced it to Somalia where it was allegedly used as a means to securing a higher price for female slaves. Still others believe that it emanated from the Equatorial African herders who employed the practice as a form of protecting young female herders from rape or as an “early attempt at population control.”<sup>24</sup>

Moreover, Sakeah et. al,<sup>25</sup> have submitted that female circumcision was practiced by the Phoenicians, Hittites, and the ancient Egyptians. The authors pointed out that in places like England and the United States of America in the 1940s and 1950s, gynaecological surgeons employed the practice of FGM as a form of “treatment” for sexual disorder like hysteria, lesbianism, nymphomania, melancholia, masturbation, and “other female deviances”<sup>26</sup> and that African immigrants have also spread the practice to other places like Asia, North and South America, Europe and Australia.<sup>27</sup> The authors’ position is also supported by Cook who further noted that FGM is “practiced in 28 African countries in the sub-Saharan and Northeastern regions”<sup>28</sup> and that it cuts across all socio-economic groups<sup>29</sup> though high rate of formal education has to some extent contributed to a decrease in the practice of FGM in some countries like Nigeria.<sup>30</sup>

FGM or female circumcision refers to all procedures relating to the complete or incomplete removal of the external female genitalia or other injury caused to the female genital organ either for cultural or other non-medical purposes.<sup>31</sup> Similarly, the Nigerian VAPA Act 2015 and the Ekiti State Gender-Based Violence (Prohibition) Law 2019, define the phrase, “circumcision of a girl or woman” to mean “cutting off all or part of the external sex organ of a girl or woman other than on medical ground.”<sup>32</sup> Simply put, female circumcision or female genital mutilation is an entrenched traditional practice where some parts of the external genitalia of a girl or

<sup>23</sup> Alison T. Slack, “Female Circumcision: A Critical Appraisal” (1988) 10 (4) *Human Rights Quarterly*, pp. 437-486. It is referred to as “Pharanonic circumcision” as the procedure, according to historical documentations was recorded in Egypt more than 2000 years earlier during the Pharanonic era- see Jaimee K. Wellerstein, “In the Name of Tradition: Eradicating the Harmful Practice of Female Genital Mutilation,” (1999) 22(99) *Loyola of Los Angeles International and Comparative Law Review*, p. 104.

<sup>24</sup> 28 Too Many, *Country Profile: FGM in Nigeria* (October 2016), p.11. Available at <http://www.28toomany.org/countries/nigeria/>. Accessed on 15 February 2020.

<sup>25</sup> Evelyn Sakeah et. al., “Males’ Preference for Circumcised Women in Northern Ghana,” (2006) 10(2) *African Journal of Reproductive Health*, pp. 36-47.

<sup>26</sup> *Ibid*, p. 38. See also M. F. Fathalla, “The Girl Child,” (2000) 70 *International Journal of Gynaecology and Obstetrics*, pp. 7-12.

<sup>27</sup> Evelyn Sakeah et. al, *op. cit.* See also E. Dorkenoo, “Combating Female Genital Mutilation: An Agenda for the Next Decade,” (1992) 49(2) *World Health Statistics Quarterly*, pp. 142-147.

<sup>28</sup> Rebecca J. Cook, “Ethical concerns in female cutting” (2008) 12(1) *African Journal of Reproductive Health*, p.8. See also A. Rahman and N. Toubia, *Female Genital Mutilation: A Guide to Laws and Policies Worldwide* (London/New York: Zed Books, 2000), p.7.

<sup>29</sup> R. J. Cook, B. M. Dickens and M. F. Fathalla, “Female Genital Cutting (Mutilation/Circumcision): Ethical and Legal Dimensions,” (2002) 79 *International Journal of Gynaecology and Obstetrics*, p. 282.

<sup>30</sup> *Ibid*. See also N. O. Nkwo and H. E. Onah, “Decrease in female genital mutilation among Nigerian Ibo girls,” (2001) 75 *International Journal of Gynaecology and Obstetrics*, pp. 321-322.

<sup>31</sup> WHO, UNICEF, UNFPA, *Female Genital Mutilation (A Joint WHO/UNICEF/UNFPA Statement)* (Geneva: World Health Organisation, 1997), p. 3. See also National Population Commission/ ICF International, *Nigeria: Demographic and Health Survey 2013* (National Population Commission/ ICF International, 2014), p. 345.

<sup>32</sup> VAPA Act 2015, section 46; Ekiti State Gender-Based Violence (Prohibition) Law No. 18 of 2019, section 63.

woman is cut or removed as a form of cultural rite of passage of young girls to womanhood or to regulate her sexual behaviours for non-medical reasons.

The World Health Organisation has identified four different forms of FGM in practice.<sup>33</sup> The first type is called clitoridectomy, which involves the partial or complete removal of the clitoris or the prepuce. This is similar to the removal or cutting of male foreskin.<sup>34</sup> The second category is known as the excision, which involves the removal of the clitoris and the inner labia or lips with or without the outer labia.<sup>35</sup> The third type of FGM is the infibulation,<sup>36</sup> which relates to the cutting/removing of part or all of the external genitalia and then narrowing or sewing up of the vaginal opening.<sup>37</sup> The fourth type of FGM according to WHO include any other category of deliberate damage or injury to the female genitalia (for example, cauterisation by burning of the clitoris and surrounding tissues; scraping of the vaginal opening or cutting of the vagina,<sup>38</sup> pricking, piercing or incision of the clitoris and/or labia; stretching of the clitoris and/or labia, insertion of corrosive substances into the vagina to cause bleeding or introducing into the vagina herbs in order to tighten or narrow it,<sup>39</sup> etc) for no obvious therapeutic reason.<sup>40</sup>

In cultural settings where the practice is prevalent, all these categories of FGM are often performed by traditional cutters/circumcisers or elderly women who may also be traditional birth attendants with no medical training and using sharp crude unsterilised instruments<sup>41</sup> in

<sup>33</sup> World Health Organisation, *Eliminating Female Genital Mutilation: An Interagency Statement* (World Health Organisation, 2008), p.4. See also WHO, UNICEF, UNFPA, *Female Genital Mutilation (A Joint WHO/UNICEF/UNFPA Statement)* (Geneva, World Health Organisation, 1997), *op. cit.*

<sup>34</sup> About 10% of circumcised Nigerian women are reported to have undergone the Type 1 FGM procedure. See NDHS 2018, p. 466.

<sup>35</sup> This is the commonest type of FGM in Nigeria. The NDHS 2018 reveals that 41% of circumcised Nigerian women underwent this form of FGM, *ibid.*

<sup>36</sup> This is also referred to as “stitching” or “Pharanonic circumcision.” The term, infibulations is taken from *fibula*, which translates “clasp or pin in Latin and goes back to the old Romans; a fibula was used to hold together the folds of a toga....The Romans also fastened together the large lips of slave girls to prevent them from having sexual intercourse as becoming pregnant would hamper their work.” Jaimee K. Wellerstein, “In the Name of Tradition: Eradicating the Harmful Practice of Female Genital Mutilation,” (1999) 22(99) *Loyola of Los Angeles International and Comparative Law Review*, p. 104.

<sup>37</sup> It is reported that 6% of circumcised Nigerian women performed this procedure according to the NDHS 2018, *ibid.* However, the NDHS 2013 survey report indicates that the practice of sewing the female genital area closed after cutting is common in Nasarawa State (22%), Kaduna State (21%) and Bayelsa State (20%). See NDHS 2013, p. 348.

<sup>38</sup> A study has revealed that 25% of Nigerian women have experienced the scraping of the tissue surrounding the vaginal orifice as a form of FGM. The report noted that this type of procedure was most prevalent among women in the Islamic communities particularly in the northern part of Nigeria. For instance, Hausa and Fulani ethnic groups accounted for 87% each and those residing in the north-west zone of Nigeria accounted for 84%- See NDHS 2013, *ibid* at p. 351.

<sup>39</sup> The use of corrosive substances as a female genital mutilation procedure is reported to be common among Catholic women accounting for 9.4% while other Christian groups recorded 4.8%. Also women in the Ijaw/Izon ethnic groups accounted for 11.4% and were followed by Ibibio ethnic group of Akwa Ibom State with 7.5%. See NDHS 2013, *ibid.*

<sup>40</sup> *Ibid*, pp. 345-346. See also World Health Organisation, *Eliminating Female Genital Mutilation: An Interagency Statement* (World Health Organisation, 2008), p.4. See also R. J. Cook, B. M. Dickens and M. F. Fathalla, “Female Genital Cutting (Mutilation/Circumcision): Ethical and Legal Dimensions, (2002) 79 *International Journal of Gynaecology and Obstetrics*, pp. 281-287.

<sup>41</sup>Such instruments have been reported to include special knives, scissors, razors, piece of glass, sharp stones, cauterisation (burning) and finger nails to “pluck out the clitoris of babies” - see Department of Gender and Women’s Health/Department of Reproductive Health and Research Family and

unhygienic states without anaesthetic<sup>42</sup> though there are some instances where some medically trained personnel get involved as circumcisers.<sup>43</sup>

### **Raison d'être for the Practice of Female Genital Mutilation**

In every African society in which female genital mutilation or female circumcision is practiced, it is a clear expression of gender inequality that is deeply rooted in our patriarchal societal norms which, among others, tend to entrench normative gender roles that are discriminatory and most often, harmful to women and girls as well as symbolises society's dominance over women. FGM is widely accepted by both men and women, especially the traditionalists, and anyone who attempts to abandon it may face multifaceted societal pressure, outcry, persecution and banishment.<sup>44</sup> This is because practitioners and adherents of such practice, including older women who themselves had been subjected to the procedure, consider the practice as a form of their cultural identity and any antagonism to its continuance is deemed to be a direct or indirect attack on their identity and culture.<sup>45</sup> This may be termed as sociological reasons, the essence of which is the need to identify with the cultural heritage of the people, promote social integration and maintain social structure.

Among the Efik<sup>46</sup> and Ibibio<sup>47</sup> peoples, female genital mutilation or female circumcision is considered as a rite of passage which is performed on a woman of marriageable age during the period she undergoes *mbobi* (bride fattening)<sup>48</sup> or shortly after but before marriage. It is believed that a woman must be circumcised before she gives birth to her first child so that the

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Community Health/World Health Organisation, *Female Genital Mutilation: A Student's Manual*, (WHO/FCH/GWHO/0.14 WHO/RHR/01.17), p. 17.

<sup>42</sup> R. J. Cook, B. M. Dickens and M. F. Fathalla, "Female Genital Cutting (Mutilation/Circumcision): Ethical and Legal Dimensions, *op. cit.* See also Department of Women's Health, Family and Community Health, WHO, *A System Review of the Health Complications of Female Genital Mutilation including Sequelae in Childbirth* (WHO/FCH/WMH/00.2, 2000), p.11.

<sup>43</sup> The 2018 NDHS reveals that majority of female circumcision was performed by traditional agents in Nigeria. From the report, 93% of girls aged 0-14 and 85% of women aged 15-49 were circumcised by traditional agents. On the other hand, 7% of girls and 9% of women within the same age brackets were circumcised by medical personnel. Within the medically trained personnel, the percentage distribution of circumcised girls and women within the stated age brackets by doctors were 0.5% and 0.8% respectively. Similarly, 6.5% girls within the same age limit and 7.7% of women age 15-49 were circumcised by a nurse/midwife. See NDHS 2018, *op. cit.*, p. 480.

<sup>44</sup> World Health Organisation, *Eliminating Female Genital Mutilation: An Interagency Statement* (World Health Organisation, 2008), p.5. See also Michael Owoyuyigbe, Miracle-Eunice Bolorunduro and Dauda Busari, "Female genital mutilation as sexual disability: perceptions of women and their spouses in Akure, Ondo State, Nigeria" (2017) 25(50) *Reproductive Health Matters*, p. 81.

<sup>45</sup> N. F. Toubia and E. H. Sharief, "Female genital mutilation: have we made progress?" (2003) 82(3) *International Journal of Gynaecological and Obstetrics*, pp. 251-261.

<sup>46</sup> The Efik people are indigenous people in Cross River State, commonly called, "Calabar people" in the south-south part of Nigeria.

<sup>47</sup> The Ibibio people can be found in Akwa Ibom State, south-south of Nigeria.

<sup>48</sup> The fattening process involves the forceful feeding of a prospective bride to make her fat, beautiful and presentable to the intended husband as fatness was associated by the people as evidence of good living and sound health as well as a testimony that her parents were wealthy. During this period, usually lasting about six weeks, the intended bride would be confined in a hut, where she would be fed, sleep and generally live a sedentary life. It is often carried out after the payment of bride price by the intended husband. During the fattening period, a woman is taught how to meet and satisfy the sexual needs of the husband. See Celine, "Confinement, Fattening and Circumcision: A Cultural Practice in Nigeria." Available at <https://www.worldpulse.com/community/users/celine/posts/64279>. Accessed on 10 February 2020.

head of the baby would not be hindered by the woman's uncut clitoris and thereby resulting in the death of the baby.<sup>49</sup> In some African communities, where the baby comes out alive from an uncircumcised mother, he or she may be tagged as "unclean" or a "bad omen" and may be ostracised from the community.<sup>50</sup> Cook, relying on a WHO study, has argued that "in a society where there is little economic viability for women outside marriage, ensuring that a daughter undergoes genital mutilation as a child or teenager is a loving act to make certain her marriageability."<sup>51</sup> Though members of the extended family are often involved in taking decisions regarding the performance of female circumcision, only women are permitted to be present when this traditional procedure is conducted on the girl.<sup>52</sup>

Hygiene and aesthetic reasons are also commonly given as explanations for performing female circumcision on a woman/girl. It is reasoned that performing FGM on the girl or woman would make her private part "beautiful and not dirty or smell bad" and prevent itching. Associated with the hygiene and aesthetics argument is another assumption that a "woman's clitoris is dangerous and that if it touches a man's penis he will die" as it is presumed that a "woman's genitals can grow and become unwieldy, hanging down between her legs" unless she is circumcised.<sup>53</sup> Thus, the removal of the clitoris or performance of infibulations is aimed at achieving smoothness, beautification of the female organ<sup>54</sup> and safeguarding the husband's life. The proponents of this position maintain that where a girl or woman is not circumcised men would not come "nearer" to her as many "men in cutting cultures say that they will only marry a woman who has been cut."<sup>55</sup> There is no medical evidence to buttress the assumption that failure to perform circumcision on a girl or woman causes vaginal itching or bad odour. What

<sup>49</sup>*Ibid.*

<sup>50</sup> Hajra Rahim, "A woman died in my arms: her crime? To refuse FGM" (8 March 2016), *The Guardian*. Available at <https://www.theguardian.com/society/2016/mar/08/a-woman-died-in-my-arms-her-to-refuse-fgm>. Accessed on 15 February 2020.

<sup>51</sup> Rebecca J. Cook, "Ethical concerns in female cutting" (2008) 12(1) *African Journal of Reproductive Health*, p.7; N. Toubia and S. Izett, *Female Genital Mutilation: An Overview* (Geneva: World Health Organisation, 1998), p. 2. See also "The Waris Dirie Story," (June 1999) *Reader's Digest*, available at <http://www2.hawaii.edu/~pine/Phil110/waris-dirie.html>. Accessed on 7 March 2020, where an FGM victim shared personal testimony: "...since the prevailing wisdom in Somalia is that there are bad things between a girl's leg, a woman is considered dirty, oversexed and unmarriageable unless those parts-the clitoris, the labia minora, and most of the labia majora-are removed. Then the wound is stitched shut, leaving only a small opening and scar where the genitals had been- a practice called infibulations."

<sup>52</sup> Amnesty International, recounts the testimony of a victim who was circumcised at age ten thus, "I was told by my late grandmother that they were taking me down to the river to perform a certain ceremony....Once I entered the secret bush, I was taken to a very dark room and undressed. I was blindfolded and stripped naked. I was then carried by two strong women to the site of the operation. I was forced to lie flat on my back by four strong women, two holding tight to each leg. Another woman sat on my chest to prevent my upper body from moving...." See Amnesty International, *Female Genital Mutilation-A Human Rights Information Packet*, AI. Index: Act 77/09/97. Available at <https://www.amnesty.org/ailib/intcam/female/fgm1.htm>.

<sup>53</sup> Amnesty International, *Female Genital Mutilation-A Human Rights Information Packet*, AI. Index: Act 77/09/97. Available at <https://www.amnesty.org/ailib/intcam/female/fgm1.htm>.

<sup>54</sup> A. Telle, "Transforming Women into 'Pure' Agnates: Aspects of Female Infibulation in Somalia" in Vigdis Broch-Due, Ingrid Rudie and Tone Bleie (eds.) *Carved Flesh, Cast Selves: Gender Symbols and Social Practice* (Oxford, Breg, 1993), pp. 83-106; Ellen Gruenbaum, "Sexuality Issues in the Movement to Abolish Female Genital Cutting in Sudan" (2006) 20(1) *Medical Anthropology Quarterly*, 121-138.

<sup>55</sup> Mark Gould, "Life after female genital mutilation," (17 February 2010) *The Guardian*. Available at <https://www.theguardian.com/society/2010/feb/17/reversing-female-genital-mutilation>. Accessed on 11 February 2020.

however is certain is that in such cultural backgrounds, the girl's earnest desire of becoming married, which as earlier noted, comes with economic and social security as well as the attainment of womanhood and femininity may weigh heavily in a woman's mind and consequently contribute significantly for the continued practice of FGM.<sup>56</sup>

There are also other reported cases that female circumcision is rooted in a family tradition and consequently, any girl child born or married into the family must perform the act.<sup>57</sup> Female children and their mothers face constant threats from the man's family where either the girl-child or the mother remains adamant and refuses to be coerced into undergoing the barbaric practice.<sup>58</sup> Where a man (husband) is an adherent of such tradition and sees it as a "normal family tradition," refusal by the wife or female children to undergo the procedure may result in crisis in the home and possibly result in the woman and her children abandoning the home for a safer environment.<sup>59</sup> The woman herself may be threatened with divorce by the husband, forcefully ejected from the home, abandoned by the husband without any mean of sustenance or be compelled to suffer other forms of economic abuses.

Some traditional cutters or circumcisers have also found the practice to be of economic gains to them. According to one of such cutters in Ugep community of Cross River State, not only is the practice a tradition in the community, it also affords her a means of livelihood:

*"This practice has been passed down by our ancestors for generations, but we know it is wrong. I cut for a living because it's the way of people here, it is how I live. But of course I want to stop, it's just that I make my living from this, so what would I do if I stopped...."*<sup>60</sup>

Psychosexual reasons also significantly contribute to the high rate of female circumcision. This is due to the flawed cultural belief that the practice can minimise libido and sexual promiscuity

<sup>56</sup> World Health Organisation, *Eliminating Female Genital Mutilation: An Interagency Statement* (World Health Organisation, 2008), p.6. See also Robert Kiptoo, "Kenyan girls hide in schools to escape FGM," (21 December 2016) *BBC News*. Available at <http://www.bbc.com/news/world-africa-38382837>. Accessed on 15 February 2020, where it was reported that after the initiation of female circumcision rites in a place like Kenya, the girls' parent "introduce them to their husbands, whose family gives them cows as dowry."

<sup>57</sup> See Eric Dumo, "I live in constant fear every day-Adebayo, woman tormented by in-laws for refusing genital mutilation," (29 June 2019) *The Punch*. Available at <https://punchng.com/i-live-in-constant-fear-every-day-adebayo-woman-tormented-by-in-laws-for-refusing-genital-mutilation/>. Accessed on 28 February 2020, where a woman alleged that on the night of their wedding day some elderly men and women from her husband's family walked into their bedroom and informed her that as the "tradition in their family, it is mandatory for every first male child to subject his wife to genital mutilation on the night of their wedding or risk facing severe consequences like castration, banishment or having his wife and children killed." This compelled the couple to abandon home for a safe place when the family pressure became unbearable following their refusal to carry out the FGM.

<sup>58</sup> See for instance, Egun Sessou, "In-laws mull girl's circumcision as mother cries out," (13 December 2018) *Vanguard*. Available at <https://www.vanguardngr.com/2018/12/in-laws-mull-girls-circumcision-as-mother-cries-out/>. Accessed on 15 February 2020.

<sup>59</sup> Ola Ajayi, "Ibadan: Wife escapes with four children over circumcision row," (20 December 2018) *Vanguard*. Available at <https://www.vanguardngr.com/2018/12/ibadan-wife-escapes-with-four-children-over-circumcision-row>. Accessed on 15 February 2020.

<sup>60</sup> Hajra Rahim, "A woman died in my arms: her crime? To refuse FGM" (8 March 2016), *The Guardian*. Available at <https://www.theguardian.com/society/2016/mar/08/a-woman-died-in-my-arms-her-to-refuse-fgm>. Accessed on 15 February 2020.

or waywardness of girls, especially during adolescence and this will in turn make the woman to remain faithful to the husband when she eventually gets married. It is considered that female virginity and fidelity of a wife to the husband promotes family honour and familial purity. In this connection, it has been argued that the “removal of women’s drive for sexual satisfaction both reduces the likelihood of a woman’s voluntary surrender of virginity before marriage, and eases her demands for sexual attention that her husband may be unwilling or unable to provide.”<sup>61</sup> The possible reason for this is that it is unimaginable in the traditional African society that any “decent” woman should derive sexual pleasure. Such view, as rightly noted by Fathalla clearly shows the quest for control and suppression by the male-dominated “communities of women’s sexuality, which is a feature of many traditional societies of various religious faiths.”<sup>62</sup> However, such prejudiced societal understanding of “sexual morality” which promotes FGM at the expense of gender equality, women’s health and reproductive right as well as women’s human dignity is debasing as it oppressively tends to rob them of an attribute of their humanity. Sexuality is certainly a central aspect of being human and includes sexual and gender identity.<sup>63</sup>

The practice of FGM has also been linked to religious beliefs of the people.<sup>64</sup> For instance, in the NDHS 2013, one of the questions posed to the respondents was whether they believed that female circumcision was required in their religion. About 24% of the men and 15% of the women held respectively that FGM was a religious requirement. Specifically, 18% Muslim women and 30% of Muslim men stated respectively that female circumcision was required in their religion; 16% Catholic women and 22% Catholic men maintained the same position; 11% of women from other Christian groups and 22% of their male counterparts also believed that FGM was a religious obligation. Among the traditionalists, 33% of women and 40% of men also considered FGM as a requirement in their religion.<sup>65</sup> In all these religious groups, it is apparent that more men than women believed that FGM was required under their respective religion. However, the fact that the practice of FGM can be found among Christian and Islamic communities, does not imply that it is either sanctioned in the Holy Bible or in the Koran, though in the Christian Bible, male circumcision is stipulated under the Old Testament<sup>66</sup> but not rendered mandatory under the New Testament.<sup>67</sup>

<sup>61</sup> R. J. Cook, B. M. Dickens and M. F. Fathalla, “Female Genital Cutting (Mutilation/Circumcision): Ethical and Legal Dimensions, *op.cit.*, p. 284. See also M. F. Fathalla, “The Girl Child,” (2000) 70 *International Journal of Gynaecology and Obstetrics*, pp. 7-12.

<sup>62</sup> M. F. Fathalla, “The Girl Child,” (2000) 70 *International Journal of Gynaecology and Obstetrics*, pp. 7-12.

<sup>63</sup> Pan American Health Organisation/World Health Organisation, *Promotion of Sexual Health: Recommendation for Action* (Washington: Pan American Health Organisation, 2000), p.12.

<sup>64</sup> Liselott Dellenborg, “A Reflection on the Cultural Meanings of Female Circumcision: Experiences from Fieldwork in Casamance, Southern Senegal” in Signe Arnfred (ed.) *Re-thinking Sexualities in Africa* (Uppsala: The Nordic Africa Institute, 2004), pp. 79-98. See also Michelle C. Johnson, “Making Mandinga or Making Muslims? Debating Female Circumcision, Ethnicity, and Islam in Guinea-Bissau and Portugal” in Ylva Hernlund and Bettina Shell-Duncan, *Transcultural Bodies: Genital Cutting in Global Context* (New Brunswick: Rutgers University Press, 2007), pp. 202-223.

<sup>65</sup> NDHS 2013, *op. cit.*, pp. 358-359.

<sup>66</sup> *Holy Bible*, Genesis Chapter 17: 10-27.

<sup>67</sup> *Ibid*, 1<sup>st</sup> Corinthians 7: 18-20, Galatians Chapter 2:3, Galatians Chapter 6: 13-15.

## Health Implications of Female Genital Mutilation

All categories of FGM have both immediate and long term series of health complications regardless of the stage in life it is performed on the girl and woman. As earlier noted, the practice of FGM is mostly carried out by non-medically trained personnel outside medical facilities and this may result in serious bleeding of the victim which may eventually require an urgent medical attention. In some communities where such medical intervention is not available for blood transfusion, the girl may bleed to death.<sup>68</sup> Cases of serious pains and shock as a result of the barbaric cutting of the female clitoris without anaesthetics are also common. There is also a possibility of contracting HIV/AIDS, hepatitis, and other blood related infections as a result of using unsterilised instruments to circumcise scores of people.<sup>69</sup>

Other health risks of FGM include urine retention as a result of swelling and inflammation around the wound, chronic pelvic and urinary tract infections as a result of using unsterilised instruments in the circumcision procedures. Such infections may lead to permanent damage or injury to the reproductive health of the woman. For instance, a poorly managed and infectious genitally mutilated wound may result in the woman/girl developing vaginal stenosis, which is the narrowing and loss of flexibility of the vagina, accompanied by dryness and loss of elasticity of the tissue. Such may affect the sex life of the woman/girl and her husband when she eventually gets married.<sup>70</sup> Also untreated infections may lead to infertility. It is a known fact that the inability of a woman to give birth to a child in the African society is itself a serious issue and this may constantly put the woman under emotional, mental, marital and societal pressure which may adversely affect the marriage.

There is also a possibility of injuring neighbouring organs of the woman/girl like the vagina, rectum, perineum and the urethra as a result of the girl or woman struggling to free herself because of the excruciating pains associated with the FGM procedure or due to human negligence or poor eye sight of the circumciser. Damage to the rectum and urethra may result in a vesico-vaginal or vecto-vaginal fistula as a result of injury sustained during FGM, de-infibulation or re-infibulation, sexual intercourse or obstructed labour. The occurrence of such challenges can affect the woman throughout her life time<sup>71</sup> and make her socially withdrawn.<sup>72</sup>

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<sup>68</sup> John Tochukwu Okwubanego, "Female Circumcision and the Child in Africa and the Middle East: The Eyes of the World Are Blind to the Conquered" (1999) 33(1) *The International Lawyer*, pp. 159-187 at p.161. See also Waris Dirie, "Waris Dirie: 'Female genital mutilation is pure violence against girls,'" (14 October 2013) *The Guardian*. Available at <https://amp.theguardian.com/lifeandstyle/2013/oct/14/waris-dirie-female-genital-mutilation-fgm> . Accessed on 7 March 2020.

<sup>69</sup> Jaimee K. Wellerstein, "In the Name of Tradition: Eradicating the Harmful Practice of Female Genital Mutilation," (1999) 22(99) *Loyola of Los Angeles International and Comparative Law Review*, p. 106.

<sup>70</sup> Angela Onwuzoo, "Anyone who undergoes female genital mutilation can't enjoy sex-Survivors," (15 March, 2020), *The Punch*. Available at <https://punchng.com/anyone-who-undergoes-female-genital-mutilation-cant-enjoy-sex-survivors/> . Accessed on 15 March 2020

<sup>71</sup> See Edward Nnachi, "Two varsity students battle genital mutilation in Ebonyi," (7 February 2020) *The Punch*. Available at <https://punchng.com/two-varsity-students-battle-genital-mutilation-in-ebonyi/> . Accessed on 28 February 2020, where it was alleged that two female students were battling for their lives at the National Obstetric Fistula Centre in Ebonyi State, Nigeria as a result of "confirmed complications 16 years after they were genitally mutilated."

<sup>72</sup> World Health Organisation, *Female Genital Mutilation: A Handbook for Frontline Workers*, op. cit, p. 27.

Depression, worries and suicidal tendencies may also not be ruled out as a result of such health complications.

A study has also indicated that dermoid cysts may also grow at the spot where the cutting was done as a result of “inadvertent imbedding of a piece of skin in the wound.” This may cause worries and anxieties to the parents and the circumcised girl or woman.<sup>73</sup> Infibulation (Type 3) is also connected with antenatal complications and problems in early labour, prolonged or obstructed labour and obstetric fistulae. Similarly, stillbirth or early neonatal death have been linked to infibulations as a result of obstruction to delivery posed by vulva scarring that occurred as a result of infibulations FGM procedure or the extra scarring that may have happened in complicated clitoridectomy and excision (types 1 & 2) procedures.<sup>74</sup> Moreover, bleeding after delivery of a baby is considerably common in women who have undergone FGM. This is because of the extra incision caused coupled with the perineal tears experienced by reason of scarring resulting from the FGM procedures.<sup>75</sup>

### **FGM as a Violation of Women’s/Girls’ Human Rights**

Female genital mutilation of any kind has been recognised as a harmful traditional practice which violates a number of guaranteed human rights principles, norms and standards. From some of the reasons identified in the article, it is obvious that the practice seeks to eliminate sexual desires in women and girls while at the same time increasing the male sexual performances. This is not only an affront to the sexual health and reproductive rights of the woman<sup>76</sup> but is also highly discriminatory as it further strengthens male dominance or power disparity between male and female in our patriarchal society. International, regional and national human rights instruments have provisions encouraging gender equality and non-discrimination on basis of sex.<sup>77</sup>

<sup>73</sup> R. J. Cook, B. M. Dickens and M. F. Fathalla, “Female Genital Cutting (Mutilation/Circumcision): Ethical and Legal Dimensions, *op.cit*, p. 283.

<sup>74</sup> World Health Organisation, *A Review of the Health Implications of Female Genital Mutilation including Sequelae in Childbirth* (Geneva: World Health Organisation, 2000), pp. 48-51. See also generally, World Health Organisation, *Female Genital Mutilation: A Handbook for Frontline Workers*, *op. cit*, pp. 23-31.

<sup>75</sup> World Health Organisation, *A Review of the Health Implications of Female Genital Mutilation including Sequelae in Childbirth*, *ibid*, p. 46.

<sup>76</sup> For example, a victim of FGM alleged that the practice prevents a girl from “enjoying sex for the rest of her life.” See “The Waris Dirie Story,” (June 1999) *Reader’s Digest*, available at <http://www2.hawaii.edu/~pine/Phil110/waris-dirie.html>. Accessed on 7 March 2020. See also Angela Onwuzoo, “Anyone who undergoes female genital mutilation can’t enjoy sex-Survivors,” (15 March, 2020), *The Punch*. Available at <https://punchng.com/anyone-who-undergoes-female-genital-mutilation-cant-enjoy-sex-survivors/>. Accessed on 15 March 2020, where an FGM survivor testified, “I find sex rather painful and unpleasant due to the scar that resulted from mutilation when I was circumcised as a child....The pain I usually experience during penetration normally puts me off. So, I see nothing exciting about sexual intercourse....It was like being penetrated with a sharp razor.” She confessed that the pain she endured during sex was only to enable her have children and that her painful experiences during sex had made her husband lose interest in lovemaking with her.

<sup>77</sup> See for instance the provision of Article 7 of the United Nations Universal Declaration on Human Rights 1948 which states thus, “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.” See also the Constitution of the Federal Republic of Nigeria, 1999 (as amended), section 42. See also the International Covenant on Civil and Political Rights (ICCPR) 1966, Article 2.

The procedure adopted in carrying out the FGM is often crude. The operation is carried out by the circumciser using a special knife/penknife, scissors, razor blade or a piece of sharp instrument without any anaesthetics. The girl or woman is held down by several women, including her relatives. At times, the victim's mouth may be covered with a piece of cloth to prevent her from screaming and her eyes blindfolded.<sup>78</sup> The procedure may last for about 15-20 minutes.<sup>79</sup> It is submitted that subjecting a girl or woman to such an embarrassing and agonising treatment amounts to a grave violation of her right against unlawful interference with her privacy and freedom from torture or cruel, inhuman and degrading treatment.<sup>80</sup> In addition, every individual is entitled to respect for the dignity of his or her person.<sup>81</sup> Even in situations where it is argued that the girl or woman consented to the treatment, such consent may have been due to enticement, pressures from her family, friends, the society or other external factors and considerations, in which case she may not have had any other option than to undergo the procedure.<sup>82</sup>

The right to life may also be engendered where the complications arising from the FGM results in the death of the woman or girl.<sup>83</sup> Moreover, the various health complications associated with the practice violates the woman's or girl's right to the highest attainable standard of physical and mental health recognised under international instruments like the International Covenant on Economic, Social and Cultural Rights (ICESCR) 1976<sup>84</sup> and the Convention on the Rights of the Child (CRC).<sup>85</sup> As a matter of fact, in all actions concerning a child, the overall best interest of the child is to be of paramount consideration.<sup>86</sup>

Although the CRC recognises the responsibility of parents and family in making decisions for children,<sup>87</sup> it cannot be boldly asserted that the practice of FGM on a child is in her best interest when the Convention guarantees her freedom from all forms of mental and physical violence, injury, abuse and maltreatment while in the care of her parents, legal guardian or any other person who has care of the child.<sup>88</sup> Article 24(3) of the Convention expressly mandates States to adopt all effective and suitable measures to eliminate traditional practices injurious to the health of children. In fact, the Concluding Observations of the Committee on the Rights of the

<sup>78</sup> See Amnesty International, *Female Genital Mutilation-A Human Rights Information Packet*, AI. Index: Act 77/09/97. Available at <https://www.amnesty.org/ailib/intcam/female/fgm1.htm>.

<sup>79</sup> World Health Organisation, *Female Genital Mutilation: A Handbook for Frontline Workers*, op. cit, p.10.

<sup>80</sup> ICCPR, Articles 7 and 17.

<sup>81</sup> United Nations Universal Declaration on Human Rights 1948, Article 5. See also the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003, Article 3 and 4.

<sup>82</sup> John Tochukwu Okwubanego, "Female Circumcision and the Child in Africa and the Middle East: The Eyes of the World Are Blind to the Conquered" (1999) 33(1) *The International Lawyer*, pp. 159-187 at p.166.

<sup>83</sup> T. C. Okeke, U. S. B. Anyaehie and C. C. K. Ezenyeaku, "An Overview of Female Genital Mutilation in Nigeria" (2012) 2(1) *Annals of Medical and Health Sciences Research*, pp.70-73. Available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3507121>. Accessed on 28 February 2020

<sup>84</sup> Article 12.

<sup>85</sup> Child's Rights Convention 1990, Article 24(1). Nigeria is not only a party to this Convention but has also domesticated it in line with section 12 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>86</sup> Child's Rights Convention 1990, Article 3.

<sup>87</sup> *Ibid*, Article 5.

<sup>88</sup> Child's Rights Convention 1990, Article 19(1).

Child 1997<sup>89</sup> specifically directs governments to enact laws that will ban the practice of FGM on children as it is an infraction of the rights of children.<sup>90</sup>

### **Anti-FGM Instruments and Interventions for the Protection of Women's Rights**

The practice of FGM has increasingly become a global concern. As a means of addressing the harmful consequences and fundamental human rights violations caused by the practice of FGM, the global, regional and Nigerian government have adopted or enacted some instruments, laws and policies to eliminate the practice in Nigeria in order to “achieve health and well-being for women, girls, their families and communities.”<sup>91</sup> The anti-female genital mutilation instruments or framework would be viewed from the global, regional and national perspectives.

### **International Interventions**

Several global bodies have played significant roles in highlighting the dangers associated with female genital mutilation through conferences, research programmes and adoption of human rights' instruments and have given vital support for the abolition of the practice. The World Conference on Human Rights held in Vienna in 1993 recognised the fact that FGM was a contravention of women's rights. The Cairo International Conference on Population and Development held in 1994 also vehemently criticised the practice of FGM and in addition to calling on the governments to ban the harmful practice went further to demonstrate its willingness to support attempts among Non-Governmental Organisations (NGOs) and religious establishments to abolish the practice. The same position was similarly maintained at the United Nation's Fourth World Conference on Women held in Beijing, China in 1995.<sup>92</sup>

Moreover, sometime in 1997 the World Health Organisation (WHO) in collaboration with the United Nations Children's Fund (UNICEF) and the United Nations Population Fund (UNFPA) issued a joint statement condemning the practice of FGM.<sup>93</sup> Since then, various attempts have been made to abolish the practice through research and work with various local communities. Similarly in 2007, UNICEF and UNFPA initiated the Joint Programme on Female Genital Mutilation/ Cutting to intensify action towards the prohibition of the practice. The World Health Organisation in partnership with nine other United Nations partners issued an interagency statement reaffirming their “commitment to the elimination of female genital mutilation within a generation.”<sup>94</sup> Other attempts by WHO in partnership with its other UN agencies includes but not limited to the 2010 Global Strategy to Stop Health-Care Providers from Performing Female Genital Mutilation,<sup>95</sup> the 2016 joint programme on guidelines on the

<sup>89</sup> UN Committee on the Rights of the Child, *UN Committee on the Rights of the Child: Concluding Observations: Togo*, 21 October 1997, CRC/C/15/Add.83. Available at <https://www.refworld.org/docid/3ae6af5do.html>. Also available at <http://hrlibrary.umn.edu/crc/togo1997.html>. Both accessed on 2 March 2020.

<sup>90</sup> *Ibid*, paras. 24 and 48.

<sup>91</sup> WHO, UNICEF, UNFPA, *Female Genital Mutilation (A Joint WHO/UNICEF/UNFPA Statement)* (Geneva, World Health Organisation, 1997), p. 2.

<sup>92</sup> See US Department of State, “The International Response.” Available at <https://2001-2009.state.gov/g/wi/rls/rep/9293.htm>. Accessed on 28 February 2020.

<sup>93</sup> WHO, UNICEF, UNFPA, *Female Genital Mutilation (A Joint WHO/UNICEF/UNFPA Statement)* (Geneva, World Health Organisation, 1997), pp. 1-20

<sup>94</sup> See World Health Organisation, *Eliminating Female Genital Mutilation: An Interagency Statement* (World Health Organisation, 2008), pp.1-40.

<sup>95</sup> World Health Organisation, *Global Strategy to Stop Health-Care Providers from Performing Female Genital Mutilation* (Geneva: World Health Organisation, 2010), pp. 1-18.

management of health complications from FGM and the 2018 WHO clinical handbook of FGM geared towards the enhancement of knowledge and skills of health care providers in preventing and managing the health complications associated with FGM practice.<sup>96</sup>

As earlier pointed out, the United Nations General Assembly (UNGA) adopted a momentous resolution in year 2012 calling on the global community to accelerate actions regarding the eradication of the practice of FGM.<sup>97</sup> Three years after, the global community again established a new set of developmental goals, Sustainable Development Goals (SDGs), which also enjoined in its Goal 5 the need to end all gender inequality including the obliteration of female genital mutilation by the year 2030.<sup>98</sup> Also, as far back as 18 December 1979, the United Nations General Assembly adopted the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW). Although there is no explicit mention of the practice of FGM in this instrument, it is suffice to say that its definition of “discrimination against women” brings the practice of FGM within the compass of CEDAW<sup>99</sup> and State parties are mandated to eliminate the discrimination by *inter alia*, abolishing existing “regulations, customs and practices” which constitute discrimination against women.<sup>100</sup> In addition, the Committee on the Elimination of Discrimination against Women in its General Recommendations 14,<sup>101</sup> 19,<sup>102</sup> and 24<sup>103</sup> noted the serious health and other consequences associated with the practice of FGM on women and children and consequently recommended the abolition of the practice by State parties.<sup>104</sup>

### Regional Interventions

Neither the African Charter on Human and People’s Rights 1981 nor the African Charter on the Rights and Welfare of the Child 1990 expressly mentions the practice of FGM in their

<sup>96</sup> See generally, World Health Organisation, “Female Genital Mutilation.” Available at <https://www.who.int/news-room/fact-sheets/detail/female-genital-mutilation>. Accessed on 28 February 2020.

<sup>97</sup> The UNGA adopted the said Resolution A/RES/67/146 on 20 December 2012. See “UN General Assembly Adopts Worldwide Ban on Female Genital Mutilation.” Available at <http://www.npwj.org/FGM/UN-General-Assembly-Adopts-Worldwide-Ban-Female-Genital-Mutilation.html>. Accessed on 25 February 2020.

<sup>98</sup> See “Eliminate female genital mutilation by 2030: Joint Statement of UNFPA and UNICEF” (3 February 20-16). Available at <https://www.unfpa.org/press/eliminate-femalew-genital-mutilation-2030-say-unfpa-and-unicef>. Accessed on 25 February 2020. See also United Nations Children’s Fund, “Female Genital Mutilation/Cutting: A Global Concern” (New York: UNICEF, 2016) See also UN Women, “SDG 5: Achieve gender equality and empower all women and girls.” Available at <https://www.unwomen.org/en/news/in-focus/women-and-the-sdgs/sdg-5-gender-equality>. Accessed on 25 February 2020.

<sup>99</sup> “...any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.” - See Article 1 of CEDAW.

<sup>100</sup> *Ibid*, Articles 2(f) and 5.

<sup>101</sup> At the Ninth Session, 1990.

<sup>102</sup> At the Eleventh Session, 1992.

<sup>103</sup> At the Twentieth Session, 1999.

<sup>104</sup> See United Nations Women, *Convention on the Elimination of All Forms of Discriminations against Women: General Recommendations made by the Committee on the Elimination of Discriminations against Women*. Available at <https://www.un.org/womenwatch/daw/cedaw/recommendations/recomm.htm> . Accessed on 28 February 2020.

provisions, though there are a number of provisions in the instrument which may impliedly be used as basis to protect the rights of women and girls against the practice of FGM.<sup>105</sup> However the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003 expressly mentions the practice of FGM and enjoins state parties to prohibit through legislative measures backed by sanctions "all forms of female genital mutilation, scarification, medicalisation and para-medicalisation of female genital mutilation and all other practices in order to eradicate them."<sup>106</sup>

Similarly, the Cairo Declaration for the Elimination of Female Genital Mutilation 2003 though recognises the need of government to adopt legislative response as a pivotal tool to criminalise and prohibit the practice of FGM,<sup>107</sup> yet acknowledged that the "use of law should be one component of a multi-disciplinary approach to stopping the practice of FGM."<sup>108</sup> In June 1998, the Heads of State and Government of the defunct Organisation of African Unity (now African Union) met in Burkina Faso and approved the 1997 Addis Ababa Declaration on Violence against Women which includes a call for the banning of the practice of FGM. There was also a conference organised by the Inter African Committee on Traditional Practices Affecting the Health of Women and Children of The Gambia (GAMCOTRAP) tagged, "A Symposium for Religious Leaders and Medical Personnel on FGM as a Form of Violence." The conference resulted in the 1998 Banjul Declaration on Violence which *inter alia* admitted that there was no religious colouration or justifications for the practice of FGM and accordingly advocated for the abandonment of the practice.<sup>109</sup>

### National Legislative Interventions

Edo State became the first State in Nigeria to make a law prohibiting female circumcision.<sup>110</sup> The law punishes any person who offers herself for circumcision, or either forces, lures or encourages any person to undergo FGM or permits any female who is either a daughter or ward to be genitally mutilated or performs the operation of female circumcision.<sup>111</sup> The law imposes an imprisonment term of not less than three years or ₦ 3,000 (about \$8.20) fine or both on the offender if convicted.<sup>112</sup> Any person who obstructs or assaults any officer in the performance of his/her statutory obligations shall on summary conviction be liable to a one year imprisonment term or a fine of ₦ 2,000 (about \$5.47) or both.<sup>113</sup>

Cross River and Ekiti States have also criminalised the practice of FGM in their respective States. Both laws impose an imprisonment term of not more than two years or a fine of not less

<sup>105</sup> See for example Articles 4, 5, 16 and 18(3) of the African Charter 1981; Articles 3, 5, 10 and 14 of African Charter on the Rights and Welfare of the Child 1990.

<sup>106</sup> Article 5(b) thereof.

<sup>107</sup> The Declaration was produced from the meeting of Afro-Arab Expert Consultation on "Legal Tools for the Prevention of Female Genital Mutilation" held in Cairo from the 21<sup>st</sup> -23<sup>rd</sup> June 2003 by the representatives of 28 African and Arab countries affected by the practice of FGM, international and NGOs and experts on FGM. See para. 1 thereof. Text copy available at <http://www.npwj.org/node/416>. Accessed on 28 February 2020.

<sup>108</sup> *Ibid*, see para. 2 thereof.

<sup>109</sup> See US Department of State, "The International Response." Available at <https://2001-2009.state.gov/g/wi/rls/rep/9293.htm> . Accessed on 28 February 2020.

<sup>110</sup> Edo State Female Mutilation (Prohibition) Law 1999.

<sup>111</sup> *Ibid*, section 4.

<sup>112</sup> *Ibid*, section 7.

<sup>113</sup> *Ibid*, section 9.

than ₦10, 000 (about \$27.43) for a first offender and an imprisonment term of not more than three year without option of fine for repeated offenders.<sup>114</sup> Under the Ekiti State Law, it is immaterial that the consent of the victim was sought for and obtained.<sup>115</sup> Moreover, the Ekiti State Law is further reinforced by the recently enacted Ekiti State Gender-Based Violence (Prohibition) Law 2019<sup>116</sup> which classifies female genital mutilation, attempting or aiding the mutilation of a woman or girl-child's genitals as a form of violence against women<sup>117</sup> and accordingly prohibits the practice.<sup>118</sup> The person who carries out the genital mutilation or engages the services of another individual to perform it is liable on conviction to a minimum of one year imprisonment or to a fine of ₦200, 000 (about \$547.70) or both.<sup>119</sup> The attempt to commit the offence attracts an imprisonment term of not more than one year or a fine not exceeding ₦100, 000 (about \$274.35) or both.<sup>120</sup> A similar penalty is prescribed for a person who incites, aids, abets or counsels another person to commit the prohibited offence.<sup>121</sup> The implication of this is that in Ekiti State, the prosecutor can elect to bring the charge under any of the two laws. This is because the 2002 Law has not been expressly repealed under the recent 2019 Law.

At the federal level, the Violence against Persons (Prohibition) Act (VAPA Act) 2015 was the first federal legislation that expressly criminalised the practice of FGM of a girl or woman.<sup>122</sup> This statute is the most comprehensive law on violence against persons, including women, in Nigeria<sup>123</sup> and can be said to be a bold statement by the Nigerian government that it was committed to its obligations as mandated under CEDAW and the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003. Any person who performs female circumcision or employs another individual to perform the operation is liable on conviction to a term of imprisonment not more than 4 years or to a fine not above ₦200,000 or both under the legislation.<sup>124</sup> On the other hand, the penalty for attempting to commit the offence, or inciting, aiding, abetting, or advising another person to undergo FGM is a term of imprisonment not more than 2 years or a fine not greater than ₦100,000 or both.<sup>125</sup> The major problem with the law is that it is geographically limited to the Federal Capital Territory, Abuja and does not apply to the States of the federation except individual States elect to domesticate the law within its respective jurisdiction.<sup>126</sup>

<sup>114</sup> Cross River State Girl-Child Marriages and Female Circumcision (Prohibition) Law 2000, section 4; Ekiti State Female Circumcision (Prohibition) Law 2002, section 3. It should be noted that a number of other States in Nigeria like Lagos, Osun, Ondo, Bayelsa, Ogun, Delta, Ebonyi, Oyo, Imo, and Rivers State have their own respective laws prohibiting the practice of FGM in their domains

<sup>115</sup> *Ibid*, section 2.

<sup>116</sup> No. 18 of 2019, Laws of Ekiti State of Nigeria.

<sup>117</sup> *Ibid*, section 1(4)(i)(ii)(c) thereof.

<sup>118</sup> *Ibid*, section 7(1).

<sup>119</sup> *Ibid*, section 7(2).

<sup>120</sup> *Ibid*, section 7(3).

<sup>121</sup> *Ibid*, section 7(4).

<sup>122</sup> VAPA Act 2015, section 6(1).

<sup>123</sup> Cheluchi Onyemelukwe, "Legislating on Violence against Women: A Critical Analysis of Nigeria's Recent Violence against Persons (Prohibition) Act, 2015," (2016) 5(2) *Depaul Journal of Women, Gender and the Law*, p. 4. Retrieved from <http://via.library.depaul.edu/jwgl/vol5/iss2/3> .

Accessed on 12 November 2017.

<sup>124</sup> VAPA Act 2015, section 6(2).

<sup>125</sup> VAPA Act 2015, section 6(3) and (4).

<sup>126</sup> See for instance sections 27 and 47 of the Violence against Persons (Prohibition) Act 2015.

In addition to legislative response, a number of other governmental policies have been produced by the Nigerian government to protect women/girls reproductive rights and to ban female genital mutilation. Such policy frameworks include but not limited to the National Policy and Plan of Action for the Elimination of Female Genital mutilation in Nigeria 2013-2017, National Strategic Framework for the Elimination of Obstetrics Fistula in Nigeria 2019-2023, among others.<sup>127</sup> The National Policy and Plan of Action for the Elimination of Female Genital mutilation in Nigeria 2013-2017 acknowledged the fact that FGM is a prevalent socio-cultural problem that cuts across various ethnic communities and groups in Nigeria. Thus, the policy's goals included *inter alia*, the need to eliminate the practice of FGM in Nigeria in order to improve the health quality of life of girls and women in accordance with the objective of the National Health Policy as well as promote community behavioural change in initiatives towards the abolition of FGM. It was also its objective to create a legal framework for the eradication of FGM at both national and State levels.<sup>128</sup>

The various Nigerian anti-FGM legislative responses, policies and intervention programmes at all levels are welcome developments as both the 1999 Nigerian Constitution and the domesticated Child's Rights Acts failed to expressly mention and/or prohibit the practice of FGM, though they contain some human rights standard principles, norms or provisions which can be relied on by victims in enforcing their violated guaranteed fundamental human rights.

## CONCLUSION AND RECOMMENDATIONS

The article has demonstrated that while FGM may be an expression of the cultural practice of the people in communities where it is an acceptable norm, it is also one of the most serious challenges to the health and human rights of girls and women who are forced to undergo the procedure almost on daily basis. The article has also shown that the practice of FGM is deeply ingrained in our patriarchal ideology which promotes gender disparity and considers men as being superior to women and accordingly makes men to feel that they have control even over a woman's body and sexuality. The advocacy to eliminate the practice of FGM should therefore, actively involve men both in the urban and rural communities. This will enable them to understand and appreciate better the adverse health effects that the practice constitutes to their wives, daughters and female relatives.

Also there is need to effectively involve religious and traditional bodies or leaders in the fight against the practice of FGM. This is because in the NDHS 2018 survey report, some respondents (including men and women who were Christians, Muslims, Catholics and traditionalists) admitted that they considered the practice as a religious obligation. So, engaging the cooperation and commitments of all religious leaders in the advocacy to end FGM will go a long way in discouraging persons who consider the practice as a religious requirement from continuing in such fallacious thinking. The necessity for a multi-cultural and inter-religious discussions stem from the fact that though FGM amounts to health and human rights violation

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<sup>127</sup> See "Nigeria: Govt Launches Eleven Policies on Reproductive Health, Others," (Lagos: 14 April 2019), Daily Trust. Available at <https://allafrica.com/stories/201904240097.html>. Accessed on 2 January 2020.

<sup>128</sup> The National Policy and Plan of Action for the Elimination of Female Genital mutilation in Nigeria 2013-2017 (Abuja: Federal Ministry of Health, 2013), pp. 14-15.

with grave adverse health issues, yet there is need to understand and balance the respect for cultural norms of the people with acceptable human rights principles and standards.

It is further recommended that international and regional bodies should continue in supporting the Nigerian government, women's groups and NGOs at all levels towards the eradication of the practice. The support should not be restricted to financial commitment alone. Educational training or enlightenment programmes and seminars based on research findings regarding harmful health consequences and human rights abuses occasioned by the practice should be adopted in communities and States where the practice is prevalent. This is because FGM may be widespread in villages and remote areas where the government may not have easy access and they are hardly reported. This further explains why employing the instrumentality of criminalisation alone may not effectively address the problem.

In addition to aggressive dissemination of information and media publicity regarding the need to end the practice, the federal, states and local governments and other relevant stakeholders in the educational sector should also ensure that the need for the elimination of FGM is incorporated into school curricula at all levels. Also there should be continued advocacy for the enactment of anti-FGM laws in States where the practice has not yet been explicitly criminalised. And even in States where the practice has been prohibited, there is need for effective enforcement of the laws against perpetrators of the practice. So far, there have been no known reported cases of prosecution of anyone in States with anti-FGM laws despite the fact that the practice still thrives in Nigerian communities as indicated in the NDHS 2018.

Finally, the medicalisation of FGM is unethical and should be strongly condemned as it violates the World Medical Association's Declaration of Helsinki 1964 of "do no harm." Moreover, such practice by medical personnel (for example, medical doctors, nurses and other medical health care providers) is inappropriate as it would further encourage the continuation of the practice of FGM and ostensibly legitimise it. Definite attempts should therefore, be made to discourage it. This could be achieved through sensitisation and collaboration with regulatory bodies or professional associations for health care providers<sup>129</sup> as well as relevant law enforcement agencies on the dangers associated with medicalisation of FGM. Such collaborative efforts may ultimately result in sanctioning and/or imposing professional disciplinary actions against health care providers engaged in performing medicalised FGM.

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<sup>129</sup> For instance, the Nigerian Medical Association (NMA), Medical Women Association of Nigeria (MWAN), Medical and Dental Council of Nigeria (MDCN), Community Health Practitioners Registration Board of Nigeria (CHPRN), National Association of Nigerian Nurses and Midwives (NANNM), etc