

**THE RESPONSE OF HUMAN RIGHTS LAW TO THE
PRACTICE OF FEMALE GENITAL MUTILATION IN
NIGERIA***

ABSTRACT

Female Genital Mutilation (FGM) or female circumcision is a traditional practice among various tribes in Africa including Nigeria. This paper highlights the pros and cons of the practice. The practitioners argued for its continuation because it was an important cultural heritage that marks the transition of a girl from childhood to adulthood while the abolitionists want it to be abolished because it violates human rights. A doctrinal method of research is used to look into the veracity of the arguments on both sides. The prevailing opinion is that FGM or female circumcision violates both constitutionally guaranteed rights like rights to life, health, physical integrity, dignity, etc and human rights treaties and Conventions like United Nations Charter, Universal Declaration of Human Rights, International Covenant on Civil and Political Rights, the Maputo Protocol, etc. In view of this, the paper recommends that the practice should be abolished.

1.0 Introduction

This paper is divided into the following sub-headings: conceptual analysis of Female Genital Mutilation (FGM) which defines the practices and traces its origin; prevalence of FGM in Nigeria which discusses the types practiced in various parts of Nigeria; factors responsible for the practice which discusses the various reasons why it is practiced; the relationship between FGM

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and Human Rights; and finally, the conclusion and recommendation which proffers solutions to the problem.

2.0 Conceptual Analysis of Female Genital Mutilation

Female Genital Mutilation (FGM) is the cutting or removal of the female sex organ. It is a traditional and cultural practice among Africans including some tribes in Nigeria.¹ It is an old age practice done in the name of culture, tradition, purification, family honour, hygiene, virginity and decency.² The origin of the practice is unknown but according to Larve it was widely attested in antiquity and according to him, male circumcision were first practiced in the Near East and bodies exhumed in Egypt around 4,000 BC disclosed evidence of circumcision.³

Male circumcision is a global phenomenon. It is practiced among Jews, Christians, Muslims and people of other faiths. Female circumcision on the other hand is not mentioned in the Bible or Koran.⁴ FGM predated both Islam and Christianity in Africa. According to Heradotus, it was practiced among Phoenicians, Hittites and Ethiopians in the 5th Century.⁵ A Greek papyrus dated 163BC referred to circumcised girls in Egypt.⁶ The colonialists noted the practice in Africa and Christian missionaries attempted to stop it through criminal legislations in Burkina Fasso,

¹ Fran P. Hosken. "Female Circumcision in the World of Today: A Global Review." Paper presented in a Seminar organized by World Health Organisation in 1979 in Khartoum, Sudan, entitled Seminar on Harmful Traditional Practices Affecting the Health of Women and Children.

² Nawal EI-Saadawi. *The Hidden Fame of Eve: Women in the Arab World* (London: Zed Press, 1980) p. 33.

³ Gerald Larve, *Religious Traditions and Circumcision*, in *The Truth Seeker* (San Diego, Freethinkers Publication) July/August, 1999, pp. 4-8.

⁴ Only Male Circumcision is mentioned in the Bible. See Genesis 17:10-11.

⁵ Gerald Larve, *supra*, p. 4.

⁶ E. Dorkinoo, et al., *Female Genital Mutilation: Proposal for Change* (London, Ministry Rights Group, 1992) pp. 1-4.

Kenya and Sudan. In Nigeria it is practiced by nearly all the tribes except the Fulani, Ijebu and Igala.⁷

The World Health Organisation (WHO) defines FGM as procedures involving partial or total removal of the external female genitalia or other injury to the female genital organ whether for cultural, religious or other non-therapeutic reasons.⁸ It is a socio cultural practice and it has no health or medical benefit. It should be noted that the practice also rotates over several terminologies. Is it “female circumcision” or “female cutting” or “female genital mutilation”? Circumcision means the cutting or removal of skin for religious or medical reasons. Mutilation on the other hand means to destroy or mangle or vandalise.⁹ What is the correct terminology? This question is very important when it comes to the issue of whether the practice is relevant to the African culture and it should be retained or whether it violates human rights and it should be abolished.

Sociologists and anthropologists and practitioners prefer “female circumcision” while physicians, feminists and abolitionists prefer “female genital mutilation”.¹⁰ Anthropologists argued that the term “female genital mutilation” (FGM) is derogatory and judgmental while feminists and abolitionists argued that the term “female circumcision” is confusing male circumcision with female circumcision.¹¹ The former act is medical and normal while the latter serves no useful purpose but harmful, painful and traumatic

⁷ Amos A. Idowu. “Effects of female Genital Mutilation on Human Rights of Women and Female Children: The Nigerian Situation.” *Research Journal of International Studies*. Issue 8, Nov. 2008, p. 2.

⁸ World Health Organisation (WHO), Regional Plan of Action to Accelerate the Elimination of Female Genital Mutilation (Geneva, WHO, 2006).

⁹ *Macmillan English Dictionary for Advanced Learners*, 2007 Edition, p. 988.

¹⁰ C.M. Obermeyer. “Female Genital Surgeries: The Know, The Unknown and The Knowable.” *Medical Anthropology Quarterly*. Vol. 13, P. 79.

¹¹ For comparison of the two mutilations, see Fran. P. Hosken. *Stop Female Genital Mutilation: Women Speak Facts and Action* (Lexington: WINNEWS, 1995) pp. 20-30.

for women and girls and furthermore, that the word “mutilation” graphically explains the suffering experienced by victims.

The WHO, Inter-African Committee on Traditional Practices Affecting the Health of Women and Children (IAC) and other international health agencies recommended the term “mutilation” or “female genital mutilation” but agreed that the term “mutilation” is judgmental and the practice should not be demonized but the term “FGM” is preferable and is recommended.¹²

In Nigeria, there are different types of FGM as published by the WHO. In 1995, the WHO published four types and in 2007 it further published modified versions of the four types. These are type I, *clitoridectomy*; type II, excision; type III, infibulations; and type iv, unclassified.¹³

3.0 Prevalence of Female Genital Mutilation in Nigeria

Statistics and records on FGM in Africa and Nigeria are difficult to assemble because the practice often takes place in secrecy. However, according to official records of Federal Ministry of Health, WHO, United Nations Children’s Fund (UNICEF), United Nations Population Fund (UNFPA) and other international health agencies and fund donors, all the four types of FGM identified by WHO are practiced in Nigeria.¹⁴ The following States have the highest prevalent rate with types practiced among girls and women. Ekiti 89% (Type 1), Edo 88% (Type II), Ondo 83% (Type II), Kwara 83% (Types I, II), Ebonyi 74% (Type: N.A.), Bayelsa 74% (Type: N.A), Oyo 73% (Type I) while the following

¹² WHO, UNICEF, et al. Eliminating Female Genital Mutilation: An Interagency Statement.

¹³ WHO, UNICEF, et al. Eliminating Female Genital Mutilation: An Interagency Statement.

¹⁴ Biola Oyewunmi. “Female Genital Mutilation: A Case of Woman’s Inhumanity to Human.” *Nigerian Tribune*, Feb. 12, 2004.

States have the lowest prevalence: Niger 6% (Type: N.A), Taraba 5% (Type: N.A), Yobe 3% (Type IV), Jigawa 2% (Type IV).¹⁵

According also to statistics, geographical prevalence is as follows: North West 0.4%, North East 1.3%, North Central 9.8%, South-South 34.7% and South East 40.8%.¹⁶ Prevalence according to age of circumcision includes: 0-12 months: 85%, 1-4 years: 4.1%, 5-6 years: 2.0%, 7-8 years: 2.0%, 9-10 years: 0.5%, 11-12 years: 0.9%, and 13+ years: 1.8%.¹⁷ In 1996, the United Nations Data system showed that 32.7 million Nigerian women have been infibulated.¹⁸ In 1997, the WHO study showed that 60% of Nigeria's female population are circumcised.¹⁹ Between 1997 and 2005, a study conducted by the Center for Gender and Social Policy Studies, Obafemi Awolowo University, Ile-Ife, Osun State showed that all the four types of FGM are practiced in Nigeria and nearly all the ethnic tribes in Nigeria practiced it except the Fulani.²⁰ According to Macro International Incorporation, Washington DC, in a study conducted for USAID in 2003, the prevalence rate among women aged 15 to 49 is 19.0% while that of women aged 50+ is 59.6% and total number of women circumcised is 9, 238, 126.²¹

¹⁵ M. V. Mandara. "Female Genital Mutilation in Nigeria." *International Journal of Gynecology and Obstetrics*. Vol. 88, No. 3, pp. 291-298.

¹⁶ Federal Ministry of Health and WHO, Elimination of Female Circumcision in Nigeria (Abuja: FMH, WHO, 2007).

¹⁷ Stanley P. Yoder. *Numbers of Women Circumcised in Africa: The Production of a Total* (Washington DC: Macro International Inc., 2008).

¹⁸ Amos A. Idowu. *Supra*, p. 1.

¹⁹ *Ibid.*

²⁰ Report on Female Genital Mutilation in Nigeria by Centre for Gender and Social Policy Studies, Obafemi Awolowo University, Ile-Ife.

²¹ Stanley P. Yoder. *Numbers of Women Circumcised in Africa: The Production of a Total* (Washington DC, Macro International Inc., 2008).

4.0 Factors Responsible for the Practice of Female Genital Mutilation

Several factors or reasons are responsible for the practice of female genital mutilation in several parts of Africa including Nigeria. Some of the reasons include: religions, obligation, cultural requirement, symbol of purity, ignorance and so on. All members of all faiths practiced female genital mutilation. To the practitioners, it is a religious obligation ordained by God and this is traceable to the divine covenant and instruction given to Abraham by God. This covenant relates, however, to male circumcision and not to female circumcision. Female circumcision is not mentioned in the Bible or Koran. However, among Muslims it is a religious obligation. Infibulation, the most dangerous form of circumcision, is rampant in North Africa and East Africa among Muslims. Islamic clerics in Egypt have issued “Fatwa”²² against parents who refused to circumcise their daughters.²³ FGM is a part of the culture and tradition of the people. It is not a hurting practice but rather a symbol of love that marks the transition of girls to puberty and womanhood, therefore, it is a cultural obligation.²⁴

FGM is regarded by the practitioners as a symbol of purity, charity, family honour and identity and a symbol of virginity. In Africa there is a link between circumcision, virginity and marriageability. When a girl is circumcised, this is evidence of virginity and she commands respect and a very high bride price.²⁵ On the other hand, a girl that is not circumcised is evidence of non-virginity and she cannot get married because men cherish virgins and no man in Africa traditional setting will marry a woman who is

²² Fatwa is a decree issued by an Islamic authority.

²³ On January 29, 1981, the Great Sheikh of Al-Azhar Mosque in Egypt issued a Fatwa compelling all parents to circumcise their daughters.

²⁴ Royal College of Nursing (RCN), *Female Genital Mutilation* (London, RCN, 2006) p. 3.

²⁵ El-Saadawi, *supra*, p. 3.

not circumcised.²⁶ Even though the practitioners of the practice claim they are doing so on ground of culture and tradition, the practice is actually based on taboos, ignorance and unscientific reasons such as: if not cut, the clitoris can become long to touch the legs; that the clitoris is dirty and smelling and that is why it should be cut; that if a man's penis touches the clitoris he will die; that during childbirth, if the head of the baby touches the clitoris he/she dies; that circumcision makes conception easier; that it prevents vaginal discharges, vaginal parasites and prevents contamination of mother's milk.²⁷

Another reason why it is practiced is that it provides a source of income for those who perform the operation both traditional and medical practitioners.²⁸ One other factor is cultural relativism. Each culture has intrinsic cultural values peculiar to it and one of such is female circumcision. Cultural anthropologists have argued for its retention and charges abolitionists with cultural imperialism and agents of Western societies.²⁹

5.0 Female Genital Mutilation and Violations of Fundamental Human Rights

²⁶ Jomo Kenyata. *Facing Mount Kenya*. (New York: Vintage Books, 1965) p. 25.

²⁷ Harry Lightfoot-Klein. "Prisoners of Ritual: Some Contemporary Developments in the History of Female Genital Mutilation." Paper presented at the 2nd International Symposium on Circumcision, San Francisco, 1991. S. James. "Reconciling International Human Rights and Cultural Relativism: The Case of Female Circumcision." *Bioethics*. Vol. 8, 1994, pp. 1-26.

²⁸ J. A. Black, et al. "Female Genital Mutilation. *BMJ*. Vol. 10, 1995, pp. 1590-1594. In Nigeria, the Traditional operators include: barbers, grandmothers, traditional birth attendants, etc, while the medical operators include; nurses, doctors and paramedics.

²⁹ Abdulmumini A. Oba. "Female Circumcision as Female Genital Mutilation": Human Rights or Cultural Imperialism"? *Global Jurist*. Vol. 8-3, 2008, pp. 1-38.

So far we have been able to indicate the various reasons why various tribes in Africa practiced female circumcision. However, human rights advocates have shown that the practice violates human rights. Indeed, female circumcision is a violation of human rights of women. Human rights are a badge of humanity.³⁰ A human right is a universal moral entitlement. It is innate. A man is entitled to rights simply because he is a human being. When a right is violated, it is an affront to justice and humanity. It is fundamental because it is sacred and it is codified by the supreme law of the land.³¹ What are women's rights? They are a proclamation that women are human beings and they are being denied their rights.³² Women deserve to be given dignity, honor, decency and respect which they deserve. Each of the rights impacted upon by the practice of FGM will now be considered.

5.1. Right to Life and Physical Integrity

The Universal Declaration of Human Rights (UDHR, 1948) provides that all human beings are equal in dignity and that everyone has the right to life, liberty and security of person.³³ The International Covenant on Civil and Political Rights (ICCPR, 1966) provides that every human being has the inherent right to life.³⁴ Sections 34 and 35 of 1999 Constitution of the Federal Republic of Nigeria provides that everyone has the right to life and

³⁰ J. Donnelly. "Human Rights and Human Dignity: An Analytic Critique of Non-Western Conceptions of Human Rights." 76 *The American Political Science Review*; M. Sepulveda et al. *Human Rights Reference Handbook*, 2nd Revised Edn. (Costa Rica: University for Peace, 1999).

³¹ See chapter 4 of the 1999 *Constitution of the Federal Republic of Nigeria*.

³² Rebecca Cook. "Women's International Human Rights: The Way Forward." *H.R.Q.* Vol. 15, 1993; Bunch Charlotte and Samantha Frost. "Women's Human Rights: An Introduction", in *Rutledge International Encyclopedia of Women: Global Women's Issues and Knowledge*, Rutledge, 2000, p. 1.

³³ UDHR was adopted in 1948 by the General Assembly in Resolution 217 (111). See Article 3.

³⁴ ICCPR was adopted by G.A Resolution 2200 A (xxi) of 1996. See Article 6.

shall be entitled to his personal liberty. The right to life, dignity and integrity represents basic and core human values and without them a man/women is not a human being. At times, victims of FGM bleed to death. It is submitted that in this wise, FGM violates the right to life. The human carnage of the practice is enormous. According to a report by Inter-African Committee on Female Genital Mutilation, over 114 million women and girls have died from the practice.³⁵

5.2 Reproductive and Sexual Rights

Reproductive and sexual health and rights constitute an offshoot of sexuality. Sexuality is a central aspect of being human throughout life which encompasses sex, gender identity, sexual orientation, eroticism, pleasure, intimacy and reproduction. Sexual health is a state of physical, emotional, mental and social wellbeing in relation to sexuality. Sexual right is the right of all persons to the following: the highest attainable standard of sexual health, decision to be active sexually or not, etc. Reproductive right encourages sexuality, sexual health and sexual rights. It must be freely exercised and must be free from coercion, discrimination and violence. FGM is an anti-thesis of reproductive right. It is in conflict with sexuality, sexual health and sexual rights. Its purpose is to control, direct and subdue the sexuality and virginity of women and enhance their marriageability to men and make sex more pleasurable for men. It prohibits eroticism, pleasure, intimacy and reproduction of women³⁶.

³⁵ Inter-African Committee Report on Female Genital Mutilation in Nigeria, 1996, pp. 4-8. The Office of the Senior –Coordinator for International Women’s Issues Report on FGM in 2001 reported that 32.7million women were seriously affected in Nigeria.

³⁶ World Health Organisation, et al. *Measuring Sexual Health: Conceptual and Practical Consideration and Related Indicators* (Geneva, WHO, 2000) p. 6.

5.3 Right to Health

The UDHR provides that everyone has the right to a standard of living adequate for the health and wellbeing of himself and his family.³⁷ The International Covenant on Economic, Social and Cultural Rights (ICESCR, 1966) provides that States parties recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.³⁸ The 1999 Nigerian Constitution provides that the health, safety and welfare of all persons are safeguarded and not endangered or abused.³⁹ The WHO defines health as “a state of complete, not merely the absence of disease or infirmity”.⁴⁰

The right to health is a fundamental human right. FGM violates the right to health and destroys the health of women. It has dangerous health and medical implications. The crude operation is painful and horrible. Victims are maimed and disfigured for life. Victims can be infected with HIV/AIDs and other obstetrical and gynecological diseases. According to WHO, the health implications of FGM can be classified into two: short and long term consequences. The short term consequences include: hemorrhage, sepsis, shock, infection, damages to adjoining organs, severe pains, and finally, death. Long term consequences include: bleeding and pains, keloid formations, calculus formation, difficult menstruation, reproductive tract infections, pelvic inflammatory

³⁷ Article 25 of UDHR.

³⁸ Article 12 of ICESCR; Article 12 of African Charter; Paragraph 7.2 of the Programme of Action of the International Conference on Population and Development; Paragraph 89 of the Platform for Action of the 4th World Conference on Women respectively. All guaranteed right to health.

³⁹ Section 17 (2) of the 1999 Constitution.

⁴⁰ World Health Organisation (WHO), Considerations for Formulating Reproductive Health Laws (Geneva, WHO, 2006) p. 6.

diseases, HIV/AIDS infections, pregnancy and childbirth complications, etc.⁴¹

5.4 Right to Private and Family Life

According to the 1999 Constitution, “The privacy of citizens, their homes ... is hereby guaranteed and protected.”⁴² The UDHR provides, “No one shall be subjected to arbitrary interference with his privacy, family, home ..., nor attacks upon his honor and reputation. Everyone has the right to the protection of the law against such interference or attack.”⁴³ It also provides that the family is the natural and fundamental group unit of society and is entitled to protection by society and the state.⁴⁴ FGM is an affront to dignity, decency, privacy and family life which is the natural and fundamental unit of society and humanity. FGM is a great threat to marriage and family instability and it is also a major factor responsible for maternal and infant mortality. Mutilation of genitals of girls and women without their consent and inability of couples to consummate marriage because of infibulations is a violation of private and family life.

5.5 Right to Culture

The African Charter on Human and Peoples Rights provides that individuals have a right to preserve and strengthen positive African cultural values in their relations with other members of the Society.⁴⁵ The Declaration of the Principles of International Co-operation provides that “Each culture has a

⁴¹ M.A. Dirie, et al. “The Risk of Medical Complications After Female Circumcision.” *E.A.M.J.* Vol. 69, pp. 479-482. V. E. Ewguotu, et al. “Complications of Female Circumcision in Nigerian Igbos.” *British Journal of Obstetrics and Gynecology.* Vol. 88, pp. 1090-1093.

⁴² Section 37 of the 1999 Constitution.

⁴³ Article 12 of UDHR.

⁴⁴ Article 16.

⁴⁵ Article 29 (7) of African Charter.

dignity and value which must be respected and preserved ... every people has the right and the duty to develop its culture.”⁴⁶ A human being is a product of the culture of the people where it is practiced. However, there are some cultural values that are inimical to the rights and values of women in Africa and FGM is one of them. FGM is bad culture. Where a culture is in conflict with human rights, it has to give way. This fact is recognized by the UN; bad culture must bow down to human rights.

FGM is a cultural practice that is rooted in taboos, lies and ignorance. It is also a harmful traditional practice endangering the lives of girls and women in Africa. The Declaration of the Principles of International Cultural Co-operation provides that “the principles of this declaration shall be applied with due regard for human rights and fundamental freedom.”⁴⁷ The implication of this is that any cultural practice that violates human rights and fundamental freedoms cannot stand. There are similar provisions in UDHR⁴⁸ and ICESCR⁴⁹.

6.0 Response and Intervention of Human Rights and International Efforts to Ban FGM

Prior to the 20th century there was no documentary evidence of FGM in Africa but in the early 1900s colonialists and Christian missionaries in Burkina Fasso, Kenya and Sudan attempted to stop the menace through criminalization but to no avail. Between 1960s and 1970s in Sudan, Somalia and Nigeria, doctors who had treated FGM patients started documenting the menace and its terrible toll on women’s health. In 1979, the WHO sponsored a Seminar in Khartoum, Sudan, entitled “Seminar on Harmful Traditional Practices Affecting the Health of Women and

⁴⁶ Article 1 (1).

⁴⁷ Article 5.

⁴⁸ Article 30.

⁴⁹ Article 15 (1) (a).

Children.”⁵⁰ During this seminar some doctors presented papers on the dangers of FGM to women’s health. This was the first time both the UN and WHO intervened to catalogue the dangers of FGM and to label it a human right matter.

Since 1979 the United Nations has been at the forefront to curb the menace of FGM by holding women conferences on FGM and by adopting several Resolutions, Declarations and Conventions against the practice. FGM is now a global menace and a global menace needs a global solution. Even though Africa is the epicenter of FGM, it is now a global problem and because of this, the UN has intervened to tackle the menace through the following human rights instruments.

6.1 The UN Charter

The UN was established in 1945 and it boldly proclaims respect for human rights in its Preamble:

... to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women... to promote social progress and better standards of life in larger freedom ... to employ international machinery for the promotion of the ... social advancement of all people.⁵¹

The Preamble strikes at the heart of FGM. It is a practice that violates women’s right to dignity and worth of a human being. It debars the progress of women. It is a product of unequal power

⁵⁰ Up till today this conference is the most authoritative conference on FGM. It was organized by WHO even though the conference centered on harmful traditional practices 15 papers were delivered on FGM by medical personnel from all over the world.

⁵¹ See the Preamble of the UN Charter.

relations between men and women. The practice discriminates against women thus it violates the UN Charter.

6.2 Universal Declaration of Human Rights (UDHR)

The UDHR was adopted and proclaimed by the General Assembly in 1948.⁵² It is not a treaty but it is binding in conscience of member States of the UN. Its Preamble provides for the recognition of inherent dignity and of the equal and inalienable rights of freedom, justice and peace in the world.⁵³ The Preamble further states that respect for and enjoyment of rights is the highest aspiration of the common people and disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind.⁵⁴ The UDHR can be used as a platform to eradicate FGM because it violates inherent dignity and inalienable rights of women. Its terrible obstetrical and gynecological disaster has jolted the conscience of mankind and advocates of feminism and human rights have labeled it an instrument of tyranny, oppression and dominance.

6.3 International Covenant on Economic, Social and Cultural Rights (ICESCR)

Its Preamble proclaims the Charter of the UN as well as ideals of the UDHR.⁵⁵ The following rights adopted in ICESCR are violated by FGM: Article 1 protects the right to self-determination. Article 3 protects the right to the enjoyment of all social and cultural rights. The Covenant also provides for special protection for mothers before and after childbirth and special protection and assistance to be given children without

⁵² General Assembly Resolution 217 (111) of 10th December, 1948.

⁵³ Paragraphs 1-3 of the Preamble of UDHR.

⁵⁴ Paragraph 2 of the Preamble of UDHR.

⁵⁵ Paragraphs 1-4 of the Preamble of ICESCR.

discrimination.⁵⁶ FGM violates all the above rights. It violates the right to bodily integrity and bodily self-determination.

6.4 International Covenant on Civil and Political rights (ICCPR)

The ICCPR provides that every human being has the inherent right to life, right to be free from torture, freedom from degrading treatment, right to liberty and security and right to be treated with humanness and with respect for the inherent dignity of human person.⁵⁷ FGM is the anti-thesis and violates all the above rights. The Committee on ICCPR has recommended that FGM was both a domestic and sexual violence against women and girls and it denounced it as torture, cruel, inhuman and degrading treatment.⁵⁸

6.5 Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW)

CEDAW is a UN Treaty that specifically targets women and to affirm women's rights.⁵⁹ It was promulgated by the UN to redress the issue of discrimination facing women in respect of women's dignity, equal rights, empowerment, etc. It defines discrimination against women to mean "any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women irrespective of their marital status on a basis of equality of men and women of human rights and fundamental freedoms in the political, economic, social, fundamental, civil or

⁵⁶ Articles 10 (2) and Article 13 of ICESCR.

⁵⁷ Articles 6,7,8 and 9 of ICCPR.

⁵⁸ Human Rights Committee Report and C.A.R: UN.DOC.CCPR/CO/82/BEN/(2004) and UN.DOC. CCPR/C/CAR/(2006), respectively.

⁵⁹ CEDAW was adopted by G.A Resolution 3/180 on 18 Dec. 1979: UN DOC. A/34/46 and it came into force on 3rd September, 1981.

any other field.”⁶⁰ The following CEDAW provisions are relevant to FGM: Article 5 provides that all States parties shall take appropriate measures to modify the social and cultural pattern with a view to achieving the elimination of customary prejudices based on inferiority of the sexes. Article 12 provides that States parties shall take all appropriate measures to eliminate discrimination against women in order to ensure on a basis of equality, access to health care services and safe motherhood. The Committee on CEDAW has on several occasions addressed the issue of FGM. It labeled FGM as violence to women and noted its dangerous health consequences.⁶¹ It calls on states parties to eliminate it by “enactment and effective enforcement of law.”⁶²

6.6 Declaration on the Elimination of Violence Against Women (DEVAW)

The Declaration was adopted by the General Assembly in 1993.⁶³ It recognizes the universal application to women of the rights and principles with regard to equality, security, liberty, integrity and dignity of all human beings. It noted that violence against women (VAW) is an obstacle to the achievement of equality, development, peace and advancement of women. DEVAW defines violence against women as follows:

- (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and

⁶⁰Article 1 of CEDAW.

⁶¹ General Recommendation 24 on Women and Health: UNDOC. AQ/54/38/Rev. 1(1999).

⁶² Ibid.

⁶³ Declaration was adopted by G.A. Resolution 59/167 of 20th December, 1993.

other traditional practices harmful to women, non-spousal and violence related to exploitation.

- (b) Physical, sexual and psychological violence occurring within the general community including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution.
- (c) Physical, sexual and psychological violence perpetrated or condoned by the state, wherever it occurs.⁶⁴

The Declaration specifically mentions FGM as gender based violence against women. Its definition of VAW perfectly fits FGM⁶⁵. The Declaration calls on all member States of the UN to take all appropriate measures to end violence against women.

6.7 Convention on the Rights of the Child (CRC)

The CRC is the most authoritative document or treaty to codify children's rights.⁶⁶ The Convention prohibits torture, cruel and inhuman treatment of children. It calls for the protection of right to education and health of children.⁶⁷ It defines a child as a human being below the age of 18 years old.⁶⁸ It recognizes that a child needs full and harmonious development of his/her personality and should grow up in a family environment in an atmosphere of love and understanding. States and parents must take all appropriate measures to protect the child's interest, privacy,

⁶⁴ Article 2, *DEVAW*.

⁶⁵ FGM is physical, sexual and psychological violence against women. See also M. H. El-Defraw. "Female Genital Mutilation and its Psycho-sexual Impact." *Journal of Sexual and Marital Therapy*. Vol. 27, pp. 465-473.

⁶⁶ CRC was adopted by the GA Resolution 44/25 on 20th Nov., 1989. Resolution UN Doc. A/44/49 (1989) and entered into force on 2nd September, 1990.

⁶⁷ Article 19, 24, 25, 28 and 37 of CRC.

⁶⁸ Article 18 of CRC.

protection against unlawful attacks on his/her honour and reputation.⁶⁹

Article 19 provides that States parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence or abuse. The Convention also provides that a child is entitled to the enjoyment of the highest attainable standard of health. Female children are the highest victims of FGM globally and the CRC directly addresses the problems of victims of the practice. Article 24(3) calls on States parties to take all effective measures with a view to abolishing traditional practices prejudicial to the enjoyment of the highest attainable standard of health. Female children are the highest victims of FGM globally and the CRC directly addresses the problems of victims of the practice. Article 24(3) calls on States parties to take all effective measures with a view to abolishing traditional practices prejudicial to the health of children. The Committee on CRC has labeled FGM “a dangerous and harmful practice inimical to the rights and survival of children” and calls for its abolition⁷⁰.

6.8 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT)

CAT defines torture to mean any act by which severe pain or suffering whether physical or mental is intentionally inflicted on a person for such purposes or intimidating or coercing him/her.⁷¹ It must be noted that the practitioners of FGM have no intention to inflict pain or torture; in fact they see it as an act of love and a customary practice of transition to adulthood or womanhood.

⁶⁹ Article 40 of CRC.

⁷⁰ See Committee’s Report on Austria: UN DOC.CRC/C/15/Add. 251 (2005).

⁷¹ Article 1 of CAT.

However, nobody can deny the fact that the crude operation inflicts pain on victims and this amounts to “inhuman or degrading treatment”. However, the Special Rapporteur on Torture has declared that FGM is torture and CAT is applicable to FGM.⁷² The Committee on CAT on several occasions in its reports has labeled FGM a “dangerous traditional practice” that must be eradicated.⁷³

7.0 Female Genital Mutilation and Regional Instruments

Even though the epicenter of FGM is Africa, it has been exported to all parts of the world especially Europe and North America through immigrants, refugees and asylums.

7.1 Europe and Female Genital Mutilation

The abolition of FGM is top priority in E.U. States. The EU recognize FGM as gender based violence and its campaign to ban it is anchored on the principles of Human Rights Based Approach (HRBA). It frames FGM as a human right violation to be abolished by using the following human rights instruments: (1) European Convention for the Protection of Human Rights and Fundamental Freedoms;⁷⁴ (2) European Social Charter;⁷⁵ (3) European Convention on the Exercise of Children’s Rights;⁷⁶ (4) Protocol No. 12 to the European Convention for the Protection of Human Rights and Fundamental Freedoms on a General Prohibition of

⁷² Manfred Nowak (UN Special Rapporteur on Torture). Time for Concrete EU Action Against Female Genital Mutilation.

⁷³ Committee’s Report on Sudan: UN Doc. CRC/C/15/Add. 190 (2002).

⁷⁴ See European Union. “Ending Female Genital Mutilation; A strategy for the European Union Institutions” www.endfgm.eu. The European Convention was signed in Rome in 4 Nov., 1950 and entered into force on 3rd September, 1953.

⁷⁵ The Revised European Social Charter was open for signature in Strasbourg 3rd May, 1996 and entered into force on July 1st, 1999.

⁷⁶ European Convention on the Exercise of Children’s Rights was opened for signature on 25th January, 1996 and entered into force on July 1st, 2000.

Discrimination;⁷⁷ (5) European Convention on the Exercise of Children's Rights.⁷⁸

All the above mentioned instruments can be used to tackle the problem of FGM by using the HRBA method even though the instruments do not specifically mention FGM. The above instruments relate to social, economic, social cultural and political rights which are all relevant to FGM. The horrors of FGM were brought to Europe by African migrants during the 1980s onward. In response to this, UK,⁷⁹ Norway,⁸⁰ Austria⁸¹ and Sweden⁸² have criminalized the practice of female circumcision. Moreover, the EU Parliament has passed several resolutions condemning FGM.⁸³

7.2 America and Female Genital Mutilation

FGM has not been well documented in Central and Southern America unlike in North America where it has been documented and criminalized in USA and Canada. The Organisation of American States (OAS) has not specifically promulgated a treaty or passed any resolution on the practice. It, however, has three Conventions that can be used to curb the menace: (1) American Declaration of the Rights and Duties of Man (The American Declaration);⁸⁴ (2) American Convention on

⁷⁷ Protocol No. 12 was opened for signature on 4 November, 2000 and entered into force on April 1st, 2005.

⁷⁸ European Convention on Children's Rights was opened for signature on 25th January 1996 and entered into force on July 1st, 2000. The Convention is an adoption of the UN Convention on Rights of the Child.

⁷⁹ Prohibition of Female Genital Mutilation Act, 2003.

⁸⁰ Law Prohibiting Female Genital Mutilation Law No. 7 of December 15, 1995.

⁸¹ Article 90 Penal Code, 2001.

⁸² Act Prohibiting the Female Genital Mutilation of Women. No. 316 of 1982, amended in July 1998.

⁸³ Resolution on Female Genital Mutilation (2001/2035) of the European Parliament Resolution on Female Genital Mutilation (2001/1247) of Parliamentary Assembly.

⁸⁴ American Declaration of the Rights and Duties of Man, 1948, OEA/Ser.LV/11.82 doc. 6 rev.1

Human Rights (The American Convention);⁸⁵ and (3) Inter-American Convention on the Prevention, Punishment and Eradication of Violence against Women.⁸⁶ The Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women is directly relevant to FGM because female circumcision is violence against women. Even though the Convention does not specifically mention FGM it can be used as a legal framework for its abolition.⁸⁷ Canada and ten states in United States have criminalised female circumcision.⁸⁸ It is, however, not criminalized at the federal level in the US.

7.3 Africa and Female Genital Mutilation

Since 1998, the OAU (now AU) has passed several Resolutions calling for the prohibition of FGM in Africa. In 1998, there was an OAU Declaration on the Abolition of FGM. It was adopted in the 64th session of OAU in Ouagadougou in June, 1988. On 6th June, 2003 the Inter-African Committee (IAC) on Traditional Practices Affecting the Health of Women and Children in collaboration with the African First Ladies launched the “Zero Tolerance to FGM” in Addis-Ababa. In Cairo, in 2003, the Afro-Arab Expert Consultation in “Legal Tools for the Prevention of Female Genital Mutilation” launched the Cairo Declaration for the Elimination of FGM. In 2004, during the Summit of African Heads of States and Governments, the Solemn Declaration on the

⁸⁵ American Convention on Human Rights, 1969. OAS Official Records, OEA/Ser.K/xvi/1/1

⁸⁶ Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, 1994, 33 ILM 1534 (1994).

⁸⁷ See Article 2 (a) and (b); Article 4 and 6 of the Inter-American Convention on the Prevention, Punishment and Eradication of Violence Against Women.

⁸⁸ For Canada, see Prohibition of Female Genital Mutilation Act, Section 273. The ten states in United States that have criminalised female circumcision are California, Delaware, Illinois, Maryland, Minnesota, New York, North Dakota, Rhode-Island, Tennessee and Wisconsin.

Principles of Gender Equality in Africa was adopted. In 2005, in Djibouti, there was Djibouti Declaration under the theme “Towards a Political Declaration on Terminology of FGM” where it was decided that the best description of terminology for female circumcision was “Female Genital Mutilation”. In 2009, in Nairobi, the Final Declaration of the Regional Workshop for Health Professionals on Engaging Zero Tolerance to FGM/Child Marriage was held. The AU Declaration on the Abolition of FGM was adopted in July 2011 in Malabo, Equatorial Guinea. It was the second declaration of AU on FGM.

The AU has also adopted and proclaimed three human rights instruments relevant to the abolition of FGM: firstly, the African Charter on Human and Peoples’ Rights (African Charter);⁸⁹ secondly, African Charter on the Rights and Welfare of the Child;⁹⁰ and thirdly, Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa (the Maputo Protocol or the Protocol on Women’s Rights⁹¹).

7.3.1 The African Charter on Human and Peoples’ Rights (The African Charter)

The African Charter on Human and Peoples’ Rights was adopted by the O.A.U. in 1981 to protect human rights generally in Africa. It was adopted and proclaimed to enforce rights, freedom, equality and justice in Africa.⁹² Its Preamble reaffirms that States shall pay attention to the right to development and civil and political rights cannot be dissociated from economic, social and

⁸⁹ African Charter on Human and Peoples’ Rights 1981, O.A.U. Doc. CAB/LEG/67/3 rev. 5.

⁹⁰ African Charter on the Rights and Welfare of the Child, O.A.U. Doc. CAB/LEG/24.9/49(1990).

⁹¹ Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 2003, adopted by 2nd Ordinary Session of the Assembly of the AU, Maputo, 11th July, 2003: Assembly/AU/Dec.19(11).

⁹² See Preamble of the African Charter.

cultural rights.⁹³ The Charter did not specifically mention FGM but it protects and promotes economic, social and cultural rights. FGM is an economic, social and cultural menace in Africa thus in view of this African Charter is relevant to FGM and its abolition. Rights which are codified in the Charter protects right to life, dignity, freedom from discrimination, exploitation, torture, inhuman and degrading treatments. FGM violates all the above rights and it is contrary to them. The AU in relying on the African Charter has passed resolutions calling for the abolition of the practice.⁹⁴

7.3.2 African Charter on the Rights and Welfare of the Child (ACRWC)

The African Charter on the Rights and Welfare of the Child was adopted by O.A.U. in 1990 in Addis Ababa. The Charter was purposely adopted to preserve, promote and protect the rights of African children.⁹⁵ Its Preamble recognizes the need to take all appropriate measures to promote and protect the rights and welfare of the African child. The ACRWC did not specifically mention FGM but it noted that the conditions of African children remain critical due to the unique factors of their socio-economic, cultural, traditional and developmental circumstances, exploitation and on accounts of the child's physical and mental immaturity he/she needs special safeguards and care. ACRWC promotes and protects the social and cultural rights of children including their right to life, education and health. FGM violates and is contrary to all the above rights. The Charter provides that all States and Governments in Africa should aim to protect the best interest of the child. The

⁹³Paragraph 8 of the Preamble.

⁹⁴ Some of those Resolutions have been mentioned earlier in this paper.

⁹⁵ The Preamble of the ACRWC provides "Recognising that the child occupied a unique and privileged position in the African society and that for the full harmonious development of his personality, the child should grow up in a family environment in an atmosphere of happiness, love and understanding.

highest victims of FGM are female children and FGM is not in their best interest.

7.3.3 Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (the Maputo Protocol or the Protocol on Women's Rights)

The Protocol on Women's Rights in Africa was adopted in Maputo in 2003 by the AU.⁹⁶ It was adopted and proclaimed because the AU felt the African Charter on Human and Peoples' Rights did not adequately protect women's rights in Africa. The Maputo Protocol specifically protects women's rights in Africa and specifically calls for the abolition of FGM. The Protocol is the main human rights instrument and legal framework for the abolition of FGM in Africa. The key points in the Protocol are as follows:

- Recognition and protection of civil, political, economic, social and cultural rights of women.⁹⁷
- Protection of all internationally recognized human rights of women.⁹⁸
- Protection from traditional practices harmful to the health of women.⁹⁹
- Safeguard the right to health and reproductive rights of women.¹⁰⁰
- Protection of women from exploitation and degradation.¹⁰¹

⁹⁶ The Protocol recognizes previous human rights instruments which promote and protect women's rights like: UDHR, ICCPR, ICESCR, CEDAW and its Optional Protocol as well as ACRWC.

⁹⁷ Article 4.

⁹⁸ Paragraphs 3,4,5,6 of the Preamble.

⁹⁹ Article 5.

¹⁰⁰ Article 14.

¹⁰¹ Article 3.

- Protection of family rights of women.¹⁰²

All the above issues are fundamental to FGM. It calls on States Parties to prohibit and condemn discriminations against women, harmful traditional practices and violence against women. The Protocol termed FGM a harmful practice.¹⁰³ The Protocol provides that there must be creation of public awareness through information against FGM, provision of necessary support for victims and protection of women who are in risk of harmful traditional practices. Finally, it calls on States Parties to take measures including “prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilations, scarification, medicalisation and paramedicalisation of female genital mutilation and all other practices in order to eradicate them”.¹⁰⁴

8.0 Conclusion and Recommendations

Female genital mutilation, a socio-cultural practice in Africa which is a symbol of gender violence, gender discrimination, violence against women, unequal power relations, female disempowerment and symbol of inferiority. It violates both constitutionally guaranteed rights as well as international human rights treaties like CRC, ICCPR, ICESCR, Maputo Protocol, etc. The practice has also acquired a global notoriety as a result of its exportation to Europe and North America. Criminalisation of FGM is one of the options for its eradication but the government needs to do the following things to achieve maximum result for total eradication. Firstly, there must be massive enlightenment campaign about the dangers of the problem coupled with

¹⁰² Articles 6 and 7.

¹⁰³ Article 5(b).

¹⁰⁴ Ibid.

supporting human rights education and awareness programme. Secondly, it is incumbent on the Federal Government to ratify and domesticate all treaties pertaining to human rights and perform its obligations under such treaties. Thirdly, criminalization of the act by various governments in Africa is a deterrent to perpetrators. Punitive measures should be taken against perpetrators. Fourthly, alternative rites of passage or invitation should be encouraged by States. Among some tribes in East Africa, the alternative rites of passage include pinching the clitoris with a pin but there is no cutting. Among some tribes in Nigeria, it is mere organization of festivities in form of dancing around the town and merry-making. Fifthly, massive public sensitization about the evil of the practice should be carried out in schools, hospitals, homes, churches and mosques.