

Katsina state is the lowest with only one percent of its women cut.¹¹⁵

Although, the three major tribes in Nigeria are Hausa, Yoruba and Igbo, but there are in Nigeria other tribes that have numerical strength in which the practice of female circumcision is highly entrenched in their tradition, one of such tribe are the Shuwa Arab of Borno state. They are approximately about 2 million people and basically nomadic and herders. They are predominantly Muslims, and cultural orientation is increasingly Arabic because they are from the Arabs extraction, simple geographical circumstances make them Nigerians. The most essential cultural system for socialism of the women and girls in the shuwa cultural society is the female circumcision, and they perceived it through religious dimension, they practice it with passion almost 98 percent of its women and girls are duly circumcised.¹¹⁶ Their cultural persuasion is vibrant, bold and imminently patriarchal and thus the practice of female circumcision is essentially a means to controlling women sexuality, but it has a ritualistic undertone.¹¹⁷

There are quite a number of factors that which supports and perpetuates the practice of female circumcision, but the origin is still obscure, even though some reliable account is worthy to note.

2. ORIGIN OF FEMALE CIRCUMCISION

Although it is quite difficult to trace the period when female circumcision started or its origin, but some scholars opined that it can be traced from period of the ancient Egypt. This is so due to its pharaonic belief attached to the concept of bisexuality of the gods, which same attributes is

reflected in each individual human being.¹¹⁸ This mythology is divinely inspired and claimed that each individual had both soul of male and female in him/her, the male soul in the female is located at the clitoris, while the female soul of the male is located at the prepuce of the penis. Thus in order to engender healthy gender development the male soul must be excise from the female and the female soul also excise from the male, and this is done principally by circumcision.¹¹⁹

According to historians this practice could be traced to 800 years BC from ancient Egypt that it is one cultural practice that is observed with passion and zeal. Whenever their girls reached fourteen or begin to have menstrual flow they promptly circumcised the girl, as a mark of significant cultural practice.¹²⁰ Furthermore according to Wikipedia between 1813 to 1825 doctors were performing female circumcision as a medical remedy in Europe.¹²¹ Also in the united states of America a surgeon in New Orleans was said to have perform this procedure for a different reason, which is connected to the practice of medicine.¹²² Thus it is obvious that female circumcision was a universal practice but different regions perform the procedure for different reasons, while to some is cultural others opined that it is a medical therapy¹²³ to remedy some biological or psychological defects.

It is quite significant to note that female circumcision is prevalent in the regions that defined it as an essential cultural practice.

3. WHAT IS FEMALE CIRCUMCISION

Although, female circumcision was not defined, but female genital mutilation was jointly defined by international institutions which includes the world

¹¹⁵ Op, cit, note 2, P, 351.

¹¹⁶ Umar MA, 'Violence against women: Towards formulating an enforceable legal regime in Nigeria' (unpublished thesis, International Islamic University, Malaysia, 2018).

¹¹⁷ Ibid, at P, 78

¹¹⁸ Assaad MB, 'Female circumcision in Egypt: Social implications, current research and prospects for change' (1980) 11 *Studies in Family Planning* 3–16.

¹¹⁹ Boyle EH, Songora F and Foss G, 'International discourse and local politics: Anti-female-genital-cutting law in Egypt, Tanzania and the United States' (2016) 48 *Social Problems* 524–544.

¹²⁰ Ibid, 526.

¹²¹ Allen PL, *The Wages of Sin: Sex and Disease Past and Present* (1st edn, University of Chicago Press 2002) 112–143.

¹²² Ibid, 128.

¹²³ World Health Organisation, 'Factsheet details on female genital mutilation' (Geneva, March 2019) <https://www.who.int/news-room/fact-sheet/details/female-genital-mutilation> accessed 18 September 2019.

health organisation (WHO), united nations international children emergency fund (UNICEF) among others.¹²⁴ There are quite a number of terms that were proposed to be used to describe female circumcision which includes excision, purification, ritual passage, female genital cutting, among others. But all were rejected for not being comprehensive, certain and appropriate in both meaning, effect or implication. Thus, female genital mutilation was widely used by the United Nation system since 1997 but was officially adopted in 2008 by all UN agencies. Therefore, according to Susan Raafat¹²⁵ ‘FGM’ was first coined by the famous feminist campaigner Fran Hosken in 1979, and this major breakthrough is underscored by therapeutic reasons which explained that the procedure is against acceptable medical practice.¹²⁶

Thus, female genital mutilation (FGM) is defined as the world health organisation (WHO) as any procedure perform which involves the partial or substantial removal of external female genitalia or inflicted an injury on the female genital organ whether for traditional purposes or for any non-medical reasons.¹²⁷ Conversely term ‘FGM’ was adopted in Africa by the inter-African committee on traditional practices (IAP) since 2005 and declared as harmful traditional practices and abhorring category of violence against women in Africa.¹²⁸ This study will hereinafter referred to female circumcision with FGM interchangeably, but this will be done carefully so as not to offend those that practice it as cultural expression or traditional identity.

The global concerted efforts to stem the tide of the FGM menace was first at the world health assembly at Geneva in 1994 under the auspices of the world health organisation, participating states resolved that FGM is harmful traditional practice and state parties are obligated to eradicate it through the promulgation of domestic policies and programmes.¹²⁹ Nigeria was prominently participated at the 47th world health assembly and undertook the obligation to eradicate this FGM absolutely and completely¹³⁰. The procedure is mostly performed by traditional circumcisers who were usually birth attendants and in the related services. There is no health benefit accrued for the performance of FGM, in fact there is serious adverse health consequences and implications which may lead to death as a result of FGM.¹³¹

4. TYPE OF FEMALE CIRCUMCISION/MUTILATION

There are four major known type and procedure of performing female circumcision and they all adversely affect the health being of the woman or girl. The four different types are practiced in Nigeria some severe while others are less severe but still have its adverse dimensions.¹³² The first type is popularly called ‘clitoridectomy’ is the partial or total removal of the clitoris and in very rare cases the removal of fold of the skin surrounding the clitoris. The second type is called ‘excision’ or ‘Sunnah’¹³³ which involved a partial or total removal of the clitoris and the inner fold of the vulva with or without removal of the outer fold or skin of the vulva. Accordingly, the type three form

¹²⁴ World Health Organisation, ‘Factsheet details on female genital mutilation’ (Geneva, March 2019) <https://www.who.int/news-room/fact-sheet/details/female-genital-mutilation> accessed 18 September 2019.

¹²⁵ Raafat Y, ‘Controversial term “Female genital mutilation”’ <www.28toomany.org/fgm-controversial> accessed 18 September 2019.

¹²⁶ www.endviolencenow.org/female-genital-mutilation/un-women accessed on 18/09/19

¹²⁷ Op, cit, note 16.

¹²⁸ ‘Declaration: on the Terminology FGM’ (6th IAC General Assembly, 4–7 2005, Bamako/Mali) (The Bamako declaration).

¹²⁹ World Health Organisation, ‘WHA47.10, 47th World Health Assembly: Resolutions and Decisions’ (Geneva, 1994) 10.

¹³⁰ Okeke TC, Anyaehie USB and Ezenyeaku CCK, ‘An overview of female genital mutilation in Nigeria’ (2012) 2 *Annals of Medical and Health Sciences Research* 70–73.

¹³¹ Ibid.

¹³² Op cit, T.C. Okeke et al.

¹³³ Op cit, Boyle EH, Songora F and Foss G, 526. The term ‘Sunnah’ used to make reference to type two is borrowed from Islam meaning the traditions of the Holy Prophet Muhammad (SAW), but neither of the scholars make reference to Islam permitting female circumcision or specifically the practice of type two as explained herein above.

of female circumcision is often called ‘Infibulation’ and its involve a severe procedure of narrowing of the vaginal opening through the creation of a covering seal. The seal is form by cutting and repositioning of the inner skin or outer skin of the vulva, through stitching with or without excision of the clitoris. While type four involves piercing, incising, cauterizing and pricking the female genital area, or any other harmful procedure to female genitalia for non-medical purpose.¹³⁴

However, the most extreme form of female circumcision will be followed by stitching or sewing together of the raw vulva so that a small opening will be preserved for the purposes of passage of urine and menstrual fluid.¹³⁵ Consequently time will come when de-infibulation may be necessary required that is when a woman is infibulated and there is need for smooth sexual intercourse or to facilitate child birth.¹³⁶ Therefore, those women that were cut by infibulation suffer two injuries at the first time when it was super imposed on them and secondly when they were about to deliver a child.

5. RATIONALE FOR FEMALE CIRCUMCISION/FGM

The practice of female circumcision is deeply rooted in culture and some traditional belief.¹³⁷ Thus frequently the proponents of female circumcision are obscenely disturbed when phrase female genital mutilation is used to refer to female circumcision, largely due to the fact that it is their cultural expression and traditional identity. This sentiment as expressed by the proponent should be carefully and wisely addressed in order to achieve holistic eradication of FGM. The influence and significance of culture and traditional belief in the lives of the people should be imminently respected, preserve and promoted.

Thus, the Supreme court held in the case of *Ojiogu Vs. Ojiogu*¹³⁸ that a custom is way of life of the people and based on their belief, therefore, it cannot be said to be repugnant to natural justice, equity and good conscience especially if the people professed it and agreed to be bound by its application. Therefore, government must involve the inhabitants of this cultural practice in order to get it totally eradicated. An honest woman was quoted to have said that people are resistant to stop the practice and female circumcision persisted due to their believe in it as significant cultural orientation.

“Female children are still being subjected to this mutilation, people will say it openly that don’t do it, they do it, they are still doing it..... and they are still in favour of it because they believe that the female ones will become promiscuous.”¹³⁹

This sentiment as ventilated above is largely held by many tribes and ethnic groups in Nigeria which the national demographic surveys usually do not include in its report because they are minority. But the minorities put together are in the majority, for example, the Edo people in the south-south Nigeria believe the religio-cultural significance of female circumcision. These superstitious believes includes, an uncircumcised female is filthy, unclean and a taboo, because babies die during delivery when contact is made with the clitoris.¹⁴⁰ Certainly there is still no empirical nor scientific evidence to justify this myth it was just superstitious believe that was transmitted from generations to generations, sadly majority of the adherents of this practice were increasingly presented mild and severe obstetrics complications.¹⁴¹ More worrisome is that the women whom were the victims of this patriarchal tradition justify the practice and insist that their

¹³⁴ Op cit, note 15.

¹³⁵ Boyle EH, Songora F and Foss G, ‘International discourse and local politics: Anti-female-genital-cutting law in Egypt, Tanzania and the United States’ (2016) 48 Social Problems 527.

¹³⁶ Op, cit note 15

¹³⁷ Olomjobi Y, Human Rights on Gender, Sex and the Law in Nigeria (Princeton Publishing Company 2015) 81–82.

¹³⁸ (2009) 9 North Western Law Review (pt. 1198) 1, S.C

¹³⁹ Op cit, Olomjobi Y, 82.

¹⁴⁰ Osifo DO and Evbuonwan I, ‘Female genital mutilation among the Edo people: The complications and patterns of presentation at a paediatric surgery unit, Benin city’ (2009) 13 African Journal of Reproductive Health 17–26, 22.

¹⁴¹ Ibid, 23.

daughters must be circumcised,¹⁴² at which period the daughters might be too young or in case of women might be illiterate to negotiate their basic human rights.

The rationale for the observance of this practices varies from society to society and ethnic community to ethnic community, but increasingly in Nigeria reasons for the persistence of the practice include protection of the girls not to delve in to promiscuity, retention of virginity, conservation of girls fertility and control woman's sexual functions in competing with man, among others.¹⁴³ FGM also connotes cleanliness because non-circumcision of females will mean the woman retains impurities in her body. Paradoxically traditional circumcisers who indulge in the practice as trade or business are persistently engaged in the practice secretly and performing it underground.¹⁴⁴ Therefore it is noted with concern that the religio-cultural dimension of the practice and the myth or superstitious believe, the traditional circumcisers who make fortune or eke out a living out of it, are some of the reasons why the practice persisted despite impactful international and domestic outcry against it.

Conversely it was reported that Network against female genital mutilation,¹⁴⁵ 73 traditional circumcisers were promised soft loan to start a new business in order to stop FGM, they accordingly obliged and surrender their tools to the district commissioner. Unfortunately, the promised could not be fulfil they threaten to resume their trade and ultimately resumed.¹⁴⁶ This has challenge the potency of statutory prohibition alone, whether it is capable of eradicating the practice without the corresponding support and involvement of the inhabitants that profess it as their paramount traditional practice. In other words, unless inclusive

strategic eradication programme must be sourced and developed by government FGM will persistently exist and continue unabated.

Although, many scholars have suggested for "medicalisation" or "clinicalisation" of the female circumcision as risk reduction strategy.¹⁴⁷ But the world health organisation (WHO) have since 1982 issued proclamation declaring it unethical for any health official to perform female circumcision either in the hospital or any other health establishment.¹⁴⁸ Similarly the international federation of gynaecology and obstetrics have in 1994 passed a resolution obligating all medical doctors not to perform female circumcision.

However, there are historical account which revealed that ancient medical and scientific therapeutic and clinical management includes female circumcision in the treatment and control of some specific ailments, for example, the treatment of insanity, nymphomania and masturbation.¹⁴⁹ Erstwhile, it was also revealed that in 1866 in UK the then president of the medical society Isaac Baker Brown was the first to opined that for the treatment of masturbation or abnormal irritation the cutting of the clitoris is the only solution.¹⁵⁰ Even though, majority of medical practitioners at that time mounted stiff opposition to this perception and openly condemn the proponents as quackery, which lead to expulsion from certified medical practitioners.¹⁵¹ Therefore scientific medical proof has consistently oppose the practice of female circumcision.

6. FEMALE GENITAL COSMETIC SURGERIES

This involves multiple but different procedures performed largely for non – therapeutic reason, the commonest and popular procedure includes vulvo-

¹⁴² Op cit, Osifo DO and Evbuonwan I, 22.

¹⁴³ Op cit, Olomajobi Y, 82.

¹⁴⁴ Op cit, Osifo DO and Evbuonwan I, 25.

¹⁴⁵ A non-governmental organisation (NGO) domiciled in Tanzania attempts to discourage the practice FGM by offering incentives to the traditional circumcisers but for some unforeseen circumstances failed.

¹⁴⁶ Boyle EH, Songora F and Foss G, 'International discourse and local politics: Anti-female-genital-cutting law in Egypt, Tanzania and the United States' (2016) 48 Social Problems 527.

¹⁴⁷ Shell-Duncan B, 'The medicalization of female "circumcision": harm reduction or promotion of a dangerous practice?' (2001) 52 Social Science and Medicine 1013–1028.

¹⁴⁸ World Health Organisation, Female Circumcision: Statement of WHO Position and Activities (World Health Organisation 1982).

¹⁴⁹ Rodriguez SB, Female Circumcision and Clitoridectomy in the United States: History of a Medical Treatment (University of Rochester 2014) 149. University of Rochester, (2014) p, 149

¹⁵⁰ Op cit, Allen PL, 98.

¹⁵¹ Ibid, Rodriguez SB, 148.

plasty or labio-plasty otherwise referred to as vaginal rejuvenation, labia minora hypertrophy or clitoral hypertrophy.¹⁵² The basis of this surgical procedure is to enhance the image of the female genitalia to reflect the most influenced image and advertisement by the playboy magazines, or other social media outlets, often on video streaming website, You Tube page of famous photographer Nick Karras.¹⁵³ Among others. Western styled women are very much concerned about the attractiveness and appearance of their vagina seek to achieve idealised female body particularly with the appearance of their genitalia similar to those of the female super stars in the entertainment industry. There are also claimed of enhance sexual relations and the desire to achieve orgasm as some of the reason of labio-plasty, while to others is the apparent need to satisfy their sex or intimate partner with the kind of genital image of his taste, especially among those involved in oral sex activity.¹⁵⁴ Thus there are other outstanding claims which underscored the purpose of these surgeries it also include clitoral hood reduction, G-spot amplification and hymenoplasty, ultimately the objective of labio-plasty includes the following:

Reduction in the hypertrophic

Preservation of the introitus which means vaginal entrance

Minimal invasiveness

Maintenance of neurovascular supply, among others.¹⁵⁵

However, non – therapeutic labiaplasty is accessed inappropriately for cosmetic reasons rather than clinical indications, sometimes due to inconvenience in physical exercises, protruding clitoral or labia tissues which make them uneasy at the beach or swimming pool, or uneasy while on

bicycle. Women in modern western societies want petite and non-protruding clitoral hood.¹⁵⁶ Interestingly Zambian women are culturally conditioned to prefer elongated clitoral hood because is a sign of good Zambian woman who is ready for marriage. As such Zambian women used weight or pulling strategy with a view to elongating the clitoris as it will increase sexual pleasure.¹⁵⁷ There are quiet several different techniques use in conducting clinical surgeries of labia-plasty, they are about eleven techniques that were identified. But broadly speaking these different categories of techniques are group into three main techniques they as follows:

Edge resection this involves the removing of the excess tissue of labia minora by resecting the most protruding part and re-design it in either ‘W’ or ‘S’ shape or to even curve it, but necessarily the excess tissues are flatly removed and no protruding of the genitalia.¹⁵⁸ The Edge resection is virtually the most popular performed surgery.

Wedge resection this involves various modification techniques with a view of preserving the shape of the vagina and to prevent loss of function and sensation. It is otherwise called wedge reduction technique because the labia cannot be removed too much, thus it allows for conveniences while wearing underwear, no dryness or vaginal introitus.¹⁵⁹

Central resection techniques otherwise called central reduction method seek to modify the genitalia into triangle shape or bicycle helmet shape by preserving the original texture, maintaining the contours and pigmentation of the labia edge. Usually, the inner and outer surface of labia minora are sutured separately without touching the erectile tissue between them.¹⁶⁰

¹⁵² Vulvoplasty Report 2014 (MBS Review, Australian Government Department of Health)

¹⁵³ Ozer M et al, ‘Labioplasty: Motivations, Techniques and Ethics’ <https://www.researchgate.net/publications/322963990> accessed 25 April 2021.

¹⁵⁴ ‘Labioplasty with stable labia minora retraction – butterfly-like-approach’ <http://www.journal.iww.com/prsgo/fulltext/2020/04000/labiaplasty.aspx> accessed 28 April 2021.

¹⁵⁵ Op cit, Vulvoplasty Report 2014.

¹⁵⁶ Michael A, ‘Protruding Labia Minora: Abnormal or Just Uncool’ (2011) 32 *Journal of Psychosom, Obstetrics, Gynecology* 154–156.

¹⁵⁷ Mubanga PG, ‘Zambian Women in South Africa: Insight into Health Experiences of Labia Elongation’ (2015) 52 *Journal of Sex Research* 857–867.

¹⁵⁸ Op cit, Ozer M et al, ‘Labioplasty: Motivations, Techniques and Ethics’.

¹⁵⁹ Ibid, Ozer M et al, ‘Labioplasty: Motivations, Techniques and Ethics’.

¹⁶⁰ Ibid.

However, whatever technique or method adopted it still involved the reduction or modification of the female genitalia by pricking, excision, cutting of the excess labia tissue. The outcome of these surgeries is largely less complication or not at all, because those complications reported resolved themselves without the need for revision of procedure. This conclusion was reached due to increase in the number of women seeking labio-plasty services in the western highly developed societies.¹⁶¹ It was noted with deep concern that normal anatomic variations is used as the excuse necessitating medical intervention, thus exposes otherwise healthy women to unnecessary cosmetics surgery.¹⁶² They are essentially worried with genital self-image based on deceptive marketing and industry generated diagnosis and biological conditions that are largely untrue. Therefore, the women seeking such services are largely victims of patriarchal advertisement.

Meanwhile, according to world health organization the prohibition of FGM is fundamentally underscored by the principle of human rights, which include rights of women and the girl-child, right to health and bodily integrity and right to non-discrimination based on sex. Thus, the world health organisation noted with dismay that some practices such as female genital cosmetic surgery and hymen repair, which are legally accepted in many western countries and generally considered FGM, actually falls within the definition of FGM.¹⁶³

7. INTERNATIONAL LEGAL PROHIBITION OF FEMALE CIRCUMCISION/FGM

The international community have proposed and proclaimed a number of reforms towards ensuring human rights to all without discrimination based on sex. These reforms are centred around the

promotion and preservation of women's human rights and the eradication of violence against women in all ramifications. Essentially, violence that is rooted in culture, tradition and religion, and reference was made to harmful traditional practices. Therefore, since 1993 the global acceptable minimum is the eradication of any conflict between women's rights and harmful customary practices, cultural prejudices and religion extremism. Conversely, all existing laws should be repealed to eliminate traditional and cultural practices which discriminate and causes harm to women and girl-child.¹⁶⁴ This commitment was reiterated in 1995 when the world converged in China and emphatically maintained that any harmful traditional, customary and modern practices which violates the rights of women should be prohibited and eliminated, particularly FGM should be eradicated.¹⁶⁵

Thus, the famous women's right treaty has obligated governments of respective states that are signatories to the convention to pursue by all appropriate means and without delay a policy of eliminating discrimination against women.¹⁶⁶ Nigeria has signed and ratified this convention, thus she is obligated to repealed all laws, stereotypes, practices and prejudices which impair women's well-being and enjoyment of human rights. Interestingly the definition of discrimination by the convention has scoped FGM in prominent detail. It provides that 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

¹⁶¹ 'Elective Female Genital Cosmetics Surgery', The American College of Obstetrician and Gynecologist (ACOG), clinical committee opinion, No. 795 (January 2020).

¹⁶² Ibid.

¹⁶³ World Health Organisation, Eliminating Female Genital Mutilation: An Interagency Statement (WHO, Department of Reproductive Health and Research, Geneva 2008) 8–10.

¹⁶⁴ Vienna Declaration and Programme of Action of the World Conference on Human Rights 1993, S II (B) (3) para 38 & 49.

¹⁶⁵ Beijing Declaration and Platform for Action: Fourth World Conference on Women (1995) paras 39, 107, 113, 124, 232, 224 & 277.

¹⁶⁶ Convention on the Elimination of Discrimination against Women (CEDAW), Art 2.

fundamental freedoms in the political, economic, social, cultural, civil or any other field.¹⁶⁷

Therefore, the perplexities of FGM is too much too many, but broadly speaking it means different things to different people or region. It is opined that it is all about women's sexuality, in which the society seek to control women's sexuality by reducing their sexual fulfilment.¹⁶⁸ It is believed that when the erectile part of the female genitalia is cut it will prevent her from being promiscuous. Furthermore, it is about social pressure, thus in a community where women circumcision is the norm it will create an environment in which the practice of female circumcision is a pre-requisite for social acceptance, and non-observing the practice is deemed a taboo. It is also said to be cultural and traditional practices, because the society which professes the practice of FGM maintain their custom and preserve and promote their cultural expression and identity through persistence of the practice.

Meanwhile, the main perplexity is that it is religious, whether viewed through cultural or traditional lens it is a cultural practice that is binding and assumed the status of native law and custom of the people. But it is said to be practice by the orthodox religion of the Jews, Islam and Christianity.¹⁶⁹ To a large extent it could be true of Islam, due to remarkable identification of one form and method of female circumcision called '*SUNNI CUT*' this suggested that its foundation is in Islam. Accordingly, in a purposive interview one of the respondents claimed that it is Islamic and narrated that during the life time of the prophet Muhammed an old woman who is identified as the circumciser was brought to the Holy Prophet and he said don't cut too deep but cut little of the clitoris.¹⁷⁰ Thus based on this he said the people of Shuwa Arabs

extraction embraced the practice as part of the religious recommendatory practice in Islam.

Although, the practice of FGM is not restricted to girl-child other elderly women could be victim of this heinous but endemic practice. Most particularly to the girl-child it is pathetic due to the absent of informed consent before the procedure is accordingly perform. The girl-child subjected to FGM is exposed to health hazards and bodily injuries due to inflicting severe pain as a result of the procedure. This is tantamount to violation of the convention against torture,¹⁷¹ which Nigeria has signed on 28th July 1988 and ratified for national implementation on 28th June 2001. According to the convention i.e, UNCAT torture is defined as "Torture" to mean any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or third party information or confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.¹⁷² It does not include pain or suffering arising only from. Inherent in or incidental to lawful sanctions.

Meanwhile, the international community have dedicated a convention to address the overwhelming challenges militating against the rights of children around the world. The convention particularly emphasised that no child shall be subjected to torture or other cruel, inhuman or degrading punishment.¹⁷³ Accordingly, the child convention imposed on state parties the obligation to take all effective and appropriate measure with a view to abolishing traditional practices prejudicial

¹⁶⁷ Art 1 of CEDAW.

¹⁶⁸ Alade EA, *Women's Rights and the Nigerian Customary Law with Global Perspectives* (Obafemi Owolowo University Press 2018) 155.

¹⁶⁹ *Ibid*, 155.

¹⁷⁰ Idris AGG, interview by author, Mashamari ward, off Bama Road, Jere Local Government Area, Borno State, 24 March 2021.

¹⁷¹ United Nations Convention against Cruel Torture and Inhuman or Degrading Treatment or Punishment (UNCAT 1984).

¹⁷² Art 1, UNCAT 1984.

¹⁷³ Art 37(a) of the United Nations Convention on the Rights of the Child (1989) (child convention).

to health of children.¹⁷⁴ It was opined that FGM is equally violation of right to life as enshrined in the famous bills of rights of the United Nations.¹⁷⁵ The civil and political rights covenant interprets provision on right to life as obligating governments to adopt 'positive measure' to preserve life.¹⁷⁶ FGM can be seen to violate right to life in the rare cases in which death occurred as a result from the wrongful and quackery procedure. Thus, the right to physical integrity, while often associated with the right to freedom from torture, encompasses a number of broader human rights' principles, including the inherent dignity of the person, the right to liberty and security of the person and the right to privacy. Therefore, acts of violence that threatens a person's safety, such as FGM, violates a person's right to physical integrity.¹⁷⁷

There are quite a number of regional instruments that focused attention on human rights and proclaimed the prohibition of FGM, these African treaties were more specific due to the fact that the cultural practice of FGM is deeply rooted in African culture and tradition. The African states and governments were required to take all appropriate measures towards the elimination of harmful social and cultural practices that are inimical to the welfare, dignity and normal growth and development of the child, most particularly those cultural practices that are prejudicial to the health and life of the child, and those that are discriminatory to child on ground of sex.¹⁷⁸ In the same vein the African protocol on women's rights has explicitly prohibits the cultural practice and call on state parties to prohibits and condemn it through the prohibition of all harmful practices which negatively affect the human rights of women and which are contrary to all international standards.¹⁷⁹

Accordingly harmful practices is defined to mean all behaviour, attitudes and practices which negatively affect the fundamental rights of women and girls, such as their rights to life, health, dignity, education and physical integrity.¹⁸⁰

Furthermore, the Maputo protocol has emphatically obligated the state parties to prohibit with the promulgation of domestic legislations backed by sanctions all forms of FGM scarification, medicalization and para-medicalization of FGM with a view of eradicating the practice.¹⁸¹ Conversely due to the fact that FGM involves invasive procedure on otherwise healthy tissues without therapeutic necessity, and which likely may result in to severe physical and mental injuries, it is therefore a flagrant violation of right to health as recognised and imposed on the state parties to recognise the right of everyone without any form of discrimination to the highest attainable standard of physical and mental health.¹⁸²

Therefore, the physical and mental health of women and girls are of paramount consideration and governments of respective countries are urged to initiate policies that will mainstream the health needs of women and girls due to their vulnerability to traditional practices such as FGM.¹⁸³ Although, argument may be converse that right to health as elaborated by the plethora of international treaties, instruments and convention is equally elaborated under the 1999 constitution of Nigeria.¹⁸⁴ This right is conceived as objective and purpose of government and that government must direct it policy toward planning and provision of sufficient medical and health facilities for all persons.

8. DOMESTIC LEGAL PROHIBITION OF FEMALE CIRCUMCISION/FGM

¹⁷⁴ Art 24 (3) of the child convention 1989.

¹⁷⁵ International Covenant on Civil and Political Rights (ICCPR) 1966, International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 and The United Nations Charter 1948.

¹⁷⁶ Op cit, Alade EA, 156.

¹⁷⁷ Ibid, 157.

¹⁷⁸ African Charter on the Rights and Welfare of the Child 1990 (ACRWC), Art 21(1)(a & b).

¹⁷⁹ Protocol on African Charter on Human and People's Rights on the Rights of Women in Africa 2003 (Maputo Protocol), Art 5.

¹⁸⁰ Ibid, Art 1(g) of the Maputo Protocol, 2003.

¹⁸¹ Ibid, Art 5(b) of the Maputo Protocol, 2003.

¹⁸² International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966, Art 12(1).

¹⁸³ General Recommendation No.24 of the CEDAW Committee, 20th session, 1999.

¹⁸⁴ Constitution of the Federal Republic of Nigeria 1999, S 17, Part II, Fundamental Objectives and Directive Principles of State.

Although, there is no national legislation prohibiting the practice of FGM, this is largely due to Nigeria's unique federal arrangement which stipulates that such issues of FGM is within the concurrent legislative list, whereof both the federal government and federating units can legislate on it. Therefore, the federal government had in 2015 passed in to law a women specific legislation with the objective and purpose of eliminating violence against women in Nigeria.¹⁸⁵ This legislation has elaborated provision which criminalises the practice of female circumcision and female genital mutilation with adequate corresponding punishment in the following categories of persons.

Any person who either perform or commission another to perform is liable on conviction to 4 years imprisonment or fine of N200,000 only or both

Any person who attempts to perform this criminal act is equally liable on conviction to 2 years imprisonment or N100,000 only fine or to both

Any person who incites, abets, aids or encourage and support another person to commit this prohibited conduct is liable on conviction to 2 years imprisonment or to N100,000 only fine or to both.¹⁸⁶

However, this elaborate provision is fulfilling and aligned itself to the global acceptable minimum towards eradication of this endemic malaise, yet the legislation is not of national application. The jurisdiction of VAPP, Act 2015 is limited to the Federal capital territory, Abuja¹⁸⁷ and all respective states are enjoined to domesticate same within their legislative competence in other to enthroned national coverage and application. Sadly, there are about 13 states so far that have legislated legal prohibition on FGM in Nigeria.¹⁸⁸ This is the only dedicated legislation which seek to eradicated FGM

in Nigeria, but there elaborated constitutional provision that no person shall be subjected to any form of torture, inhuman and degrading treatment or punishment.¹⁸⁹ The constitutional provision is huge commitment toward the elimination of FGM practice, but the constitution is often contain a solemn declaration without corresponding punishment. Therefore, the constitutional elaboration can be described as barking without biting.

Erstwhile, federal ministry of health has source and developed a policy guideline reiterating the remarkable commitment of government in eradicating FGM, by expressing concern and raising awareness on the dangers of FGM to women and girl-child. This worthy document identified and defined harmful traditional practices against reproductive health to include FGM and group circumcision among other endemic malaise.¹⁹⁰ The document also identified 'Zurgu' cut, 'Angurya' cut and 'Gishiri' cut, as the prevailing types of FGM in Nigeria, and maintained that religion and culture are the fulcrum which persistently reinforce the FGM practice and undermine the effort of government in eradicating it.¹⁹¹ The document ultimately emphasised government's undertaking to subscribed to the policy declaration; to wit formulation and enforcement of legal instruments aimed at supporting the elimination of FGM practices through intensified public awareness and health care providers.¹⁹²

Certainly, Nigeria has domesticated the child's rights convention and enacted the child's rights Act,¹⁹³ which sadly, has limited jurisdictional application. The application of the Act is restricted to Abuja and respective states government were urge to consider and domesticate same in their

¹⁸⁵ Violence Against Persons (Prohibition) Act 2015 (VAPP 2015).

¹⁸⁶ Constitution of the Federal Republic of Nigeria 1999, S 6, VAPP Act 2015.

¹⁸⁷ Constitution of the Federal Republic of Nigeria 1999, S 47, VAPP Act 2015.

¹⁸⁸ Nnamdi US, 'FGM in Nigeria: Combative Legislation and the Issues Impact on the Economic Growth of Women' (June 2019) <www.impakter.com/female-genital-mutilation-in-nigeria-legislation> accessed 20 April 2021.

¹⁸⁹ Constitution of the Federal Republic of Nigeria 1999, S 34 (as amended).

¹⁹⁰ National Reproductive Health Policy and Strategy to Achieve Quality Reproductive and Sexual Health for All Nigerians, Federal Ministry of Health, Abuja, Nigeria (2001) 1.2.2.

¹⁹¹ Ibid.

¹⁹² Policy Declaration, National Reproductive Health Policy, 2.2 (2.7).

¹⁹³ Child's Rights Act 2003, Laws of the Federation of Nigeria.

territorial jurisdiction. However, some states have since heeded to this call while others due to religious and cultural reasons are yet to domesticate it nor enact their unique legislation on child's rights. Consequently, the Act prohibited any form of torture against a child or inhuman and degrading punishment or treatment.¹⁹⁴

9. DUE DILIGENCE OBLIGATION FRAMEWORK

The due diligence obligation principle is a normative component of 5Ps which implicates the state as bearing responsibility towards prevention and responding to human rights violations committed by state and non-state actors or private individuals. These 5Ps are prevention, protection, prosecution, punishment and provide remedy/compensation.¹⁹⁵ The origin of the due diligence principle might be traced from the CEDAW committee general comments, where it elaborated that states may be responsible for private acts if they failed to act with due diligence to prevent the violation of human rights or to investigate and punish acts of violence.¹⁹⁶

In the same vein the UN declaration on elimination of violence against women reiterated that the states should exercise due diligence to prevent, investigate and in accordance with national legislation, punish acts of violence against women, whether those acts are perpetrated by the states or private persons.¹⁹⁷ Although Nigeria has promulgated a legislation but has not contained the magnitude of the endemic malaise due to its limited territorial jurisdiction. Thus, Nigeria has failed to discharge its international obligation of eliminating violence against women most especially FGM.

Paradoxically while government claimed to have enacted legal prohibition adherents of the FGM practice are largely unaware of the prohibition, and government did not operate an inclusive and participatory process while sourcing and

developing the legal framework for the prohibition of FGM. There should be effective and efficient campaigns for awareness raising on the associated dangers and health consequences of the FGM practice.

10. FINDINGS

This paper ultimately found that there is prevalence of the FGM practice in Nigeria and the practice is largely cultural and religious. The adherents of the practice spread across different cultural divides, they are in almost all cultural and traditional societies. Nigeria has signed and ratified international instruments prohibiting FGM practice and yet there is no national legislation prohibiting this endemic practice, but government demonstrated commitment in eradicating FGM by promulgating VAPP Act 2015 this is in addition to Child's rights Act 2003 and National reproductive health policy 2001. The legal prohibition of FGM practice is largely due to its associated health consequences and violation of human rights of women and the girl-child. The FGM practice persisted due to cultural and religious undertones and to a large extent lack of adequate awareness of the prohibition and health consequences.

Nigerian government did not involve and call for the participation of the adherents of the practice in sourcing and developing the legal framework for the prohibition of FGM. It became crystal clear that there is FGM practice that is Islamic because Sunni cut is one type of FGM practice, and this paper also found one prophetic tradition that gave tacit approval for the practice. Accordingly, the paper found that genital cosmetic surgery is FGM, but it is largely found in the western developed societies. Finally, FGM practice is violence against women and girl-child and Nigeria has failed in its due diligence obligations.

¹⁹⁴ Constitution of the Federal Republic of Nigeria 1999, S 11, Child's Rights Act 2003.

¹⁹⁵ Goldsheid J and Liebowitz DJ, 'Due Diligence and Gender Violence: Parsing Its Power and Its Peril' (2015) 48 Cornell International Law Journal 305.

¹⁹⁶ General Recommendation No.19, CEDAW Committee, 19, U.N. Doc. A/47/38 (1992).

¹⁹⁷ Art 4, United Nations Declaration on Elimination of Violence against Women 1993.

11. CONCLUSION

The ambivalence of the plural interpretation and the purpose and or aim of the practice of FGM there is still the legal prohibition by the international human rights regime. The traced the normative purpose of the practice, the meaning and types of FGM and the platform upon which the practice stand and persisted. The World health organisation is the global health as the global health regulator is absolute in its prohibition of the FGM practice and clearly stand against medicalisation of it. The United Nations system has condemned the practice and urged the respective state government to initiate domestic policy and enact legislation to eradicate the practice.

Thus, in African cultural societies and Nigeria in particular the practice FGM persisted because of its traditional and religious undertones, but in the western developed society women are largely dissatisfied with genital image seek labio-plasty, they are largely influence by the internet and social media which encouraged them to seek genital cosmetic surgeries, which ultimately is FGM, according to world health organisation. Ironically, respective governments in Europe prohibited FGM but permitted labio-plasty, whereas in Nigeria government only demonstrated commitment to eradicating it.

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