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The Legal Framework for the Eradication of Female Genital Mutilation (F.G.M)

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Abstract

Female circumcision or female genital mutilation (FGM) is a traditional and cultural practice among Africans including some tribes in Nigeria. Its origin dates back to antiquity. FGM is the amputation and mutilation of the sex organ of girls and women for various cultural, medical and traditional reasons. The practice is inimical and dangerous to the health of the victims. It also violates rights of women. This paper discussed how the practice can be eradicated through the legal framework of legislation, education, enlightenment, and human rights norms.

Keywords: Female, genital, mutilation, circumcision, cutting, custom, tradition

1. Introduction

Globally women are victims of gender based violence (GBV) in form of violence against women, women trafficking and domestic violence. Furthermore, in Africa and other third world countries girls and women are victims of harmful traditional and cultural practices in form of widowhood rites, son preferences, female genital mutilation (FGM) or female circumcision, etc. In Africa some cultural practices are not only unquestioned they are unquestionable. One of such unquestionable cultural practices is FGM which is the scope of this paper. Harmful traditional practices are a reflection of status of women in society. Globally the status of women is low socially, economically and politically. Harmful traditional practices reflect the inferior status of women, gender inequality, gender discrimination and lack of women empowerment. Female circumcision is the mutilation of genitals of girls and women in the name of culture, tradition, purification, family honour, hygiene, virginity, prevention of promiscuity and enhancement of fertility.

1.1. Definition of Female Genital Mutilation

The World Health Organisation (WHO) described FGM as referring to "all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs whether for cultural, religious or other non-therapeutic reasons".¹ It is practiced nearly all over the world but it is prevalent in Africa. It is a socio-cultural practice and it has no health or medical value. It is a harmful and dangerous traditional practice inimical to the health of girls and women.²

1.2. Terminology

Female genital surgery has rotates over several terminology. Is it "female circumcision" or "female genital mutilation" or "female genital cutting"? One of the problems of the practice is that of terminology. What is the correct terminology?³ Initially the practice was known as female circumcision. In medical parlance circumcision refer generally to male circumcision and is not destructive or mutilative. Circumcision is not synonymous with women. Feminists and FGM abolition activists are of the view that the term "female circumcision" is fallacious because it is confusing male circumcision which is non-destructive with female genital surgery which is destructive.⁴ As a result feminists coined a term called "female genital mutilation" (FGM). The word "mutilation" captures the violent nature of the act.

Cultural anthropologists and practitioners of female circumcision on the other hand are opposed to the term "FGM". To them the word "mutilation" is offensive and judgemental and an attack on the culture of the practitioners. They argued that this amount to stigmatisation and derogation and the correct terminology is "female circumcision".⁵ The UNICEF/UNIFEM/UNFPA and other United Nations agencies admitted that the word "mutilation" is problematic and it was

wrong to “demonise” the practice they therefore recommended the word “female genital cutting” which is less judgemental.⁶

However, the word “mutilation” or “FGM” gained momentum during the 1970s to 1980s and it was adopted at the Third Conference of the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children (IAC) in Addis Ababa.⁷ In 1991 the WHO recommended that the UN adopts this terminology and this is an international consensus on the term. According to Obermeyer:

The extensive literature on the subject, the support of international organisations, and the emergency of local group working against the continuation... appear to suggest that an international consensus has been reached, and the clearly disapproving and powerfully evocative expression of “female genital mutilation” has now all but replaced the possibly inaccurate, but relatively less value laden form of “female circumcision”⁸ A Ugandan based organisation prefer the term “female genital cutting”⁹ while UNICEF and UNFPA combined the two terminologies; “female genital mutilation/cutting” (FGM/C). The advantage of the FGM terminology is that it graphically and vividly and in a pungent manner portray the practice as a violent act which violates women’s rights and dignity that destroy the genital of girls and women.

2. Types and How It Is Practiced

The WHO has carried out extensive research on various types of FGM. In 1995 it published four types of FGM. Type 1 is called “clitoridectomy”. Type 2 is “incision”. Type 3 is “infibulations”. Type 4 is unclassified or other types. In 2007, WHO published a modified and complex version of the four types?¹⁰ They are as follows:

WHO TYPOLOGY, 1995	WHO MODIFIED TYPOLOGY, 2007
TYPE 1 Removal of the prepuce with or without excision of part or the clitoris (CLITORIDECTOMY)	TYPE 1A Removal of the clitoral hood or prepuce only. TYPE 1B Removal of the clitoris with the prepuce
TYPE 2 Removal of the clitoris with partial or total excision of the labia minora (EXCISION)	TYPE 2A Removal of the labia minora only. TYPE 2B Partial or total removal of the clitoris and labia minora. TYPE 2C Partial or total removal of the clitoris, the labia minora.
TYPE 3 Removal of part or all of the external genitalia (prepuce, clitoris, labia minora, labia majora) and stitching/narrowing of the vaginal opening (INFIBULALTION)	TYPE 3 Narrowing of the vaginal orifice with creation of a covering seal by cutting and oppositioning the labia minora and or the labia majora, with or without excision of the clitoris TYPE 3A Removal and Apposition of the labia minora TYPE 3B Removal and Apposition of the labia majora.
TYPE 4 Pricking, piercing or incising of the clitoris and/or labia. Stretching of the clitoris and/or labia. Cauterisation by burning of the clitoris and surrounding tissue. Scrapping of tissue surrounding the vaginal orifice or cutting of the vagina. Introduction of corrosive substances or herbs into the vagina to cause bleeding or for the purpose of tightening or narrowing it and any other procedure that falls under the broad definition of female genital mutilation (UNCLASSIFIED) ¹¹	TYPE 4 All other harmful procedures to female genitalia for non-medical purposes, for example: pricking, piercing, incising, scrapping and cauterisation. (UNCLASSIFIED)

The practitioners of FGM vary from one society to the other but they are generally traditionalists, birth attendants, barbers, blacksmiths, priestesses of secret societies and most often by grandmothers and old women. They are also elderly illiterate with no medical background. The instruments are usually non-medical and crude objects like knives, scissors, scalpels, pieces of broken glass or razor blades.¹² The implements are not sterilised and it is done in unhygienic circumstances and without anaesthetic and as a result of this the rate of infection is high. The operation last up to 20 to 30 minutes and it is done by a group of four to six people holding and pinning the victim to the floor thereby rendering her immobile. The victim must be completely immobile any movement may lead to fatal cut and the victim may bleed to death.

Lack of anaesthetic make the operation to be extremely painful. After the operation a paste of mixture of herbs, ashes, etc may be rubbed into the wound. In cases of infibulations the legs are bound for one week until the scar tissue is healed. This is how a victim described the horror of FGM:

It was forcibly laid down after the women stripped me. I had been asleep when they came at dawn. I was barely 6 years old and terrified I did not know what was happening. They pulled my legs apart and held them open. A big old woman sat down facing me and started to cut me with a large knife ...it hurt terribly. I tried to free myself and screamed and screamed...the last thing I remember was blood all over, spurting from between my legs. Then I passed out.¹³

One of the problems of FGM is lack of consent of victims and this is how some of them reacted bitterly: "dehumanising and painful," "my opinions were dismissed as irrelevant as though it was my body that was being invaded", "I felt undeniably like rape", "...radically redesigned, tortured, abused, disfigured, mutilated, humiliated, hurt, abandoned, betrayed", "I assumed I was born deformed".¹⁴

2.1. FGM and Womens Rights and Legal Framework for Eradication

FGM is a form of violation of the human rights of women. It is a socio-cultural practice in Africa that violates women's right to health, reproductive rights, right to life, dignity of the human person, personal liberty, right to life, privacy and family life, freedom of expression, freedom from discrimination, etc. The practice also inflicts pain and violence in victims therefore it amounts to torture.¹⁵

2.2. FGM and Right to Life and Physical Integrity and Privacy

The first and the basic risk of the practice is haemorrhage when a sensitive nerve is cut the victim bleed uncontrollably to death. This is an affront to right to life. The act is performed by pinning of girls and women to the floor, exposing their genitals and cutting it by crude implements. This is a violation of bodily integrity, an affront to decency, privacy and physical integrity of women. The Universal Declaration of Human Rights (UDHR) provides that all human beings are equal in dignity and everyone has the right to life, liberty and security of person. The International Covenant on Civil and Political Rights (ICCPR) provides that human beings have inherent right to life, liberty and security of person and they shall be treated with humaneness and with respect for their inherent dignity.¹⁶ The Preamble of the International Covenant on Economics, Social and Cultural Rights (ICESCR)¹⁷ as well as the Nigerian Constitution provide that human rights "derive from the inherent dignity of the human person".¹⁸ All the above rights represent basic and core human rights values and they are all violated by FGM. These core rights can be used to eradicate FGM.

2.3. FGM and the Right to Reproductive and Sexual Rights

Reproductive and sexual health and sexual right is an offshoot of sexuality. Sexuality is a central aspect of being human throughout life which encompasses sex, gender identity and role, sexual orientation, eroticism, pleasure, intimacy and reproduction.¹⁹ Sexual health is a state of physical, emotional, mental and social well-being in relation to sexuality. Reproductive health is a state of complete physical, mental and social wellbeing and not merely the absence of disease or infirmity in all matters relating to the reproductive system and to its functions. Reproductive and sexual rights must be freely exercised free from coercion and discrimination. FGM is an anti-thesis of reproductive rights. FGM is in conflict with sexuality, sexual health and sexual rights. It is imposed on women. It amounts to coercion, discriminatory and gender violence. The basis of FGM is to control, direct and subdue the sexuality of women and enhance their marriageability.²⁰

2.4. FGM and Right to Health

The right to health or health facilities is a basic fundamental human right. The former is a civil and political right while the latter is a socio-economic right. WHO defines health as "a State of complete physical, mental and social well-being, not merely the absence of disease or infirmity".²¹ The UDHR provides that everyone has the right to a standard of living adequate for the health and wellbeing of himself and of his family. The ICESCR provides that States parties recognise the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.²² Similar provisions are in the Nigerian Constitution, Additional Protocol to the American Convention on Human Rights and the African Charter on Human and Peoples Rights. FGM violates the right to health of women. It has dangerous health and medical implications. Female genitalia is maimed and disfigured. The health implications is unquantifiable and may be lifelong. FGM violates human rights norms on health.

2.5. FGM and Right to Culture

Cultural self-determination is a human right. A human being is a product of culture. The UDHR provides that everyone has the right freely to participate in the cultural life of the community.²³ The ICESCR provides that State parties recognise the right of everyone to take part in cultural life. The Nigerian Constitution as well as other international norms on human rights protect right to culture. FGM is an African cultural practice. Its purpose is to preserve virginity and prepare women for marriage. However, due to its imposition and its dangerous and harmful consequences on the health of women it is a bad culture and where there is a conflict between culture and human rights the latter prevails. 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 Freedoms"²⁴

2.6. FGM and Rights to Private and Family Life

According to UDHR no one shall be subjected to arbitrary interference with his privacy, family, home, honour and reputation. It also provides that men and women of full age without any limitations have the right to marry and to found a family. The ICESCR, the Nigerian Constitution and ICCPR provide for similar provisions.²⁵ FGM violates the above human rights norm. It is an affront to dignity, decency, privacy, family life, honour and reputation of women. FGM is a great threat to family stability in Africa. FGM is responsible for both maternal and infant mortality. Infibulated women have serious ante and post natal problems. FGM also disrupts family life in Africa.²⁶ It is accountable for divorce among infibulated women because both the wife and husband have no sexual fulfilment they cannot consummate their marriage because the vagina is too tight for penetration and sex is too painful for the wife and the two of them suffer in silence therefore the only option available is divorce.²⁷

2.7. FGM and Violations of International Human Rights Law

FGM is a violation of international human rights of women. Since 1946 women's rights have been protected by the UN Charter, UDHR, ICCPR, ICESCR and other international human rights norms like Convention on Rights of the Child, CEDAW, CAT, etc. The United Nations (UN) was established in 1945 and its Preamble proclaims, "...to reaffirm faith in fundamental human rights in the dignity of and worth of the human person."²⁸ The Charter also aims to achieve International Co-operation in solving international problems of an economic, social, cultural or humanitarian character. FGM violates the UN Charter because it is an affront on human rights of women it is also an international problem with economic, social and cultural consequences. The UDHR proclaimed in 1948 provides in its Preamble for the recognition of the inherent dignity and of the equal and inalienable rights. The ICCPR and ICESCR equally promotes and protects women's rights in form of right to life, dignity, health, family life, economic, social and cultural rights. These basic norms and rights are violated by FGM. The International Bill of Human Rights can be used by States Parties to eradicate FGM.²⁹ In view of this the UN at different fora had passed several resolutions condemning and calling for the eradication of FGM. Also the Committee on Economic, Social and Cultural Life calls for an "appropriate measure to abolish harmful traditional practices"³⁰ including female genital mutilation. The Human Rights Committee of ICCPR had recommended that FGM was a domestic and sexual violence and violates the rights of women and children and it was denounced as torture, cruel, inhuman and degrading treatment.³¹

3. 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. It was adopted by the UN to redress the issue of discrimination facing women in respect of equal rights, women's dignity and all obstacles facing women. CEDAW calls on States Parties to take all appropriate measures to modify all socio-cultural practices subjecting women to inferiority and to eliminate all discriminations against women.³² FGM is contrary to CEDAW. The Committee on CEDAW on several occasions recognised the menace and injustice of FGM. It labelled it violence against women and called for an "enactment and effective enforcement of law that prohibit female genital mutilation"³³

4. Convention on Rights of the Child (CRC)

The CRC is the most authoritative enactment or treaty that codified children's rights. The CRC notes that the family is the fundamental group of society and natural environment for the growth of children. Children have right to development within a family setting in an atmosphere of happiness, love, understanding and they are entitled to rights proclaimed in the Charter of the UN.³⁴ It should, however be noted that FGM is inimical to the ideals proclaimed in the CRC. The CRC defines a child as a human being below the age of 18 years old and they are entitled to protection from physical or mental violence, injury or abuse, maltreatment or exploitation including sexual abuse.³⁵ FGM violates CRC because majority of victims are children. FGM takes place within family setting. It is an act of violence, torture,

exploitation, maltreatment and mental anguish. The Committee on CRC labelled FGM a “dangerous and harmful practice” and calls for its abolition.³⁶

5. 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 personor intimidating or coercing him/her.³⁷ The pain, suffering, violence and degradation inflicted on FGM victims is odious, tragic, brutal and barbaric. FGM is torture according to the UN Special Rapporteur on Torture. The Committee against Torture on several occasions recommended that States Parties should prohibit FGM by criminal legislations.³⁸

6. The African Union and the African Charter on Human and People’s Rights

The scourge of FGM has been felt most in Africa. The OAU now AU had promulgated several Resolutions to deal with the scourge.³⁹ The African Charter on Human and People’s Rights (African Charter) was adopted to promote social, economic, cultural, civil and political rights especially right to life, and human dignity. It also prohibits discriminations based on ethnic religious and sex grounds. All the above rights are infringed upon by FGM.⁴⁰ The African Union on several occasions had taken concrete steps in rooting out FGM in Africa in form of adoptions of Declarations and Protocols.⁴¹

7. Protocol to the African Charter on Human and People’s Rights on the Rights of women in Africa (Maputo Protocol)

The Maputo Protocol was adopted by the African Union as a comprehensive document codifying in totality the rights of women in Africa.⁴² It recognises the low status and injustice suffered by African Women and it was adopted to elevate the status of women as well as to promote, protect and preserve their rights. The Protocol is a legal instrument to combat FGM. It urged all States Parties to take all necessary legislative and other measures including “prohibition through legislative measures backed by sanctions of all forms of female genital mutilation, scarification, medicalization and para-medicalization of female genital mutilation and all other practices in order to eradicate them”⁴³

8. Local Legislations to Eradicate FGM

One of the ways to eliminate FGM is legislation in form of criminal prohibition. The Beijing Declaration,⁴⁴ the Vienna Declaration and the Programme of Action of the International Conference on Population and Development⁴⁵ call on States to take all measures including legislations to tackle the menace of violence against women especially female circumcision. In view of this about twelve States in Nigeria have criminalised the practice.⁴⁶ For instance in Edo State in 1999 a law was promulgated prohibiting the practice. Offenders are liable to a fine of ₦1,000.00 or imprisonment of six months or both.⁴⁷ Similar law was promulgated in Cross River State in 2000 making offenders liable to a fine of not less than ₦10,000.00 and imprisonment of not less than three years.⁴⁸

9. Conclusion

Gender based violence (GBV) and violence against women (VAW) which manifested itself in Africa in form of FGM has acquired a global notoriety as a result of the exportation of the practice from Africa to Europe and North America by African immigrants. The European Union, some European States, Canada and United States have passed resolutions and legislations criminalising the practice.⁴⁹ The United Nations (UN) has also intervened to declare the practice a criminal act by adopting a resolution and plan of action for its eradication.⁵⁰ In 1994 the UN adopted the UN plan for the Elimination of Harmful Traditional Practices Affecting the Health of Women and Children.

The Plan recognised FGM as a harmful traditional practice and call on States to eliminate the practice by doing the following:

- Functional literacy campaign should be set up to expose the dangers of FGM.
- Motivational campaigns should be launched to educate society about the worth of a girl-child and eliminate FGM.
- Courses on ill effects of FGM should be included in the training of medical and para-medical personnel.
- States to promulgate legislation to prohibit female genital mutilation (FGM).

The United Nations by virtue of the above plan had sent a strong signal to the practitioners of the practice that they are liable for prosecution and there is no hiding place for them globally.

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