

Eradicating the Practice of Female Circumcision/ Female Genital Mutilation in Nigeria within the Context of Human Rights

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Abstract

This article is divided into seven segments. It examines the questions whether the practice of FC/FGM violate some of the rights of women and female children in Nigeria; or on the contrary, the prevention of the practice is a violation of the cultural right of this category of persons. In tackling these questions the article gratifyingly clears some fogs and definitional issues which might hitherto becloud the understanding of the topic; it delves into considering the human rights instruments on FC/FGM applicable in Nigeria; and the categories of and specific rights in controversy both from the arguments of the proponents and the exponents of the eradication of FC/FGM. The article points out that despite the medical implications of FC/FGM, the practice persists as it is deeply rooted by culture; and advocates for awareness-raising and education in addition to other non-penal measures to eradicate the practice in Nigeria.

Keywords:Female Circumcision/ Female Genital Mutilation, Human Rights, Women, Female Children, Non-penal Measures.

I.INTRODUCTION

The arguments for and against the eradication of FC/FGM, from the human rights perspective, border on universality of human rights and cultural relativism. The claim that international human rights are universal and most be the same everywhere is the stand of the proponents of the universality of human rights as opposed to the claim of the advocates of cultural relativism, who argue that most rights and rules about morality depend on cultural context; and to push universality of norms is to destroy the diversity of cultures. Proponents of FC/FGM consider the eradication of FC/FGM as an abandonment of an important cultural tradition against the exponents of the FC/FGM who believe that the practice is a blatant human rights violation (Mgbako, *et al.*: 2010:114).

Although, it is not within the scope of this paper to dabble into the veracity and application of the arguments marshaled for and against FC/FGM, it is necessary to reveal from the onset that the practice is a tradition that is practiced world-wide which affects the lives and health of millions of female children and women around the world with 2-3 million of these persons cut every year. The practice is deeply rooted and widely spread in large parts of Africa where about 92 million women from 10 years of age and above have undergone FGM (WHO, 2010). 28 African countries, including Nigeria, practice FGM, with Somalia, in 2005, having the highest estimated prevalence of 97.9%. (Amnesty Inter'l,7).

FGM is a deeply entrenched socio-cultural practice in all geo-political zones in Nigeria; and is widespread among the poorly educated, low socio-economic and low social status groups (Kolawole and Anki, 2010). Being a multi-cultural State, the history of FGM in Nigeria differs from one culture to another. So the question of the effectiveness of law in combating the practice of FGM in Nigeria seems to be questionable as research has shown that “unfortunately, the practice continues unabated” (Idowu,111; Women’s Rights to Education Programme WREP; 2006: Chapter 1). In some countries, efforts to eliminate FGM have proven unsuccessful when FGM opponents have ignored its social and economic significance. In fact, the intervention of law or any external intervention, ignoring the community has been considered by the communities as cultural imperialism, “thereby strengthening the resolve of communities to continue FGM” (Frances, 1997) in secret or only encourages the practice to occur secretly, avoiding detection by authorities (Obiora, 1997, in J.A. Platt: 23).

Nigeria is a party to many international and regional human rights instruments that have provisions against the practice of FC/FGM. At the international plane, these instruments include: The Universal Declaration of Human Rights(UDHR),1948, the International Covenant on Civil and Political Rights(ICCPR) 1966, The International Covenant on Economic, Social and Cultural Rights,(ICESCR) 1966, Convention on the Elimination of all forms of Discrimination against Women (CEDAW), 1979, Convention against Torture, (CAT), 1984, *et cetera*. At the regional level, the human rights instruments that set the issue on FC/FGM in controversy include: the African Charter on Human and Peoples’ Rights, the African Charter on the Rights and Welfare of the Child, 1990, the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 2003. In Nigeria, the Constitution of the Federal Republic of Nigeria, 1999 (as amended), though has no express provisions on the rights of women in Nigeria, provides for the right against discrimination. The Child Rights Act, 2004 and its equivalent, adopted by various states in Nigeria, also provides for the rights of women, including

girl-children. The categories of rights that set the arguments in place are civil rights and socio-economic rights. This article focuses on these rights.

II. DEFINITIONAL ISSUES

A. Female Circumcision/Female Genital Mutilation

FC/FGM is a practice which involves a procedure of partial or total removal of the external part of female genital organ or other injury to female *genitalia* for cultural, religious or some other non-therapeutic purposes (WHO 2007, Ibekwe, *et al.* 2012:117). FGM has been defined by medical experts as a destructive, invasive procedure during which part of the entire clitoris is surgically removed, usually before puberty. This practice usually leaves the victims with the reduced or no sexual feeling; orgasm is sometimes impossible to be experienced later in life during sexual intercourse (WREP, 2006).

In most cultures, the circumcision is often performed before the girl child/adolescent attains fifteen years of age and may depict a form of violence against women, since the act is perpetrated without the victim's consent or awareness of possible social and health implications (Kolawole and Anke, 2010:510; WHO, 2007). The conduct of the act of FC/FGM was an exclusive practice of traditional practitioners, using instruments such as scalpels, pieces of broken glass, *et cetera*. Recent development, however, shows that qualified medical practitioners are getting into the practice (Maurice, 2006).

It is important to reveal that even though the acts that constitute FC/FGM may seem precise and definite, there is no consensus on the conceptualization and classification of the concept. Some scholars have observed that women are more comfortable with the use of neutral and non-judgmental words like "genital cutting" as against "genital mutilation" (WHO, 2007). FC/FGM, genital cutting, genital surgeries, excision are all synonyms used to describe the procedures. The term "female genital mutilation" was used to distinguish the significant differences between male circumcision and the procedure that is practiced in women; and to make emphasis on the fact that the act is a violation of the rights of girls and women guaranteed and or recognized in the various international and regional human rights instruments.

There are various forms of FC/FGM. The description of each depends on the intensity of the act. The type I, type II, type III and type IV have been identified by the World Health Organization (WHO, Info.kit. 1996).

Type I, also referred as "clitodectomy," is the excision of the prepuce with or without excision of the clitoris. It is the mildest and less medically threatening form of circumcision predominantly practiced in Muslim countries as *Sunnah* circumcision (Mandara, 2004; McGee, 2005).

Type II, commonly referred as 'excision', is the excision of the prepuce and clitoris together with partial or total excision of the *labia minora*. It is said to be a more radical form of FC/FGM (WHO, 2012). It is a very harsh type of FC/FGM. It is practiced in some African countries like Lesotho.

The type III, also referred as 'infibulation,' is the excision of part or all of the external *genitalia* and stitching or narrowing of the vaginal opening. It involves the closing up of the vulva, which is usually carried out after the age of five years (Democratic Health Survey of Nigeria (DHSN), 2003). It is considered as the most severe FC/FGM, and the one resulting in the most adverse health hazard (Mandara, 2004: 29). It is characterized by the entire removal of the clitoris and some or all of the *labia minora*. Incisions are also made on the *labia majora* to evolve raw surfaces which are stitched together to cover the urethra and vaginal introitus to create only a small opening for urine and menstrual flow (Broussard, 2008). The infibulated area is deinfibulated during child birth to allow for passage of child and reinfibulated after the child has been delivered.

The type IV form of FC/FGM includes all forms of harmful acts to the female *genitalia* for non-medical reasons. This may include pricking, piercing, scraping and cauterization of the female genital area. This may also include: "burning of the clitoris and surrounding tissue; scrapping of tissue surrounding the vagina orifice (*angurya*) or cutting of the vagina (*gishiri* cuts)". The practice also involves the introduction of corrosive substances into the vagina for the purposes of tightening and causing bleeding (WHO, 2012; Honor Diaries, FGM Fact Sheet, Website).

Harmful effects of the practice of FC/FGM include: failure to heal, abscess formation, cysts, excessive growth of scar tissue, urinary tract infection, painful sexual intercourse, hepatitis and other blood-borne diseases, reproductive tract infection, pelvic inflammatory diseases. Others are infertility, painful menstruation, chronic urinary tract obstruction, bladder stones, obstructed labour and increased risk of bleeding and injection during child birth. It has also been discovered that FC/FGM has increased susceptibility to HIV/AIDS. FC/FGM can also lead to Vesico Virginal Fistula (VVF) (Nigeria, FGM: Web site)

B. Human Rights

The word "right" means moral, justice, what the law supports or approves (Mike Ikhariale, 1995:51). It is an instrument used for the protection and advantage of an individual or group. The word "human," means: "pertaining to, characteristic of, or having the nature of mankind" (Rutherford and Bone (eds.), 1993:293).

The combination of these words- “human” and rights (human rights)- denotes a broad spectrum of rights ranging from the right to life to the right to a cultural identity; involving all the elementary preconditions for a dignified human existence (M. Sepulveda, *et al*, 2004:7). The concept of human rights indicates that individuals by their nature as human beings, have moral rights, which no State or society should deny (Donnelly, 1982:305).

At the international plane, these rights are grouped into civil and political rights and social, economic and cultural rights, even though the distinction does not reflect an international consensus (Sepulveda, *et al*, 2004:7). Also, the point that all human rights are universal, indivisible and interrelated implies that no right is more important than any other.

At the domestic forum this distinction is made in terms of fundamental rights and fundamental objective and directive principles of state policy. An example is the Constitution of Nigeria, 1999 (as amended) (Chapters IV and II respectively); or justiciable and non- justiciable rights or enforceable and non-enforceable rights (Yerima, 2007:205–215). But classification of human rights on this basis would mean that there is a clear hierarchy of rights, with some rights being more fundamental than others. For this reason contemporary scholars argue that all human rights are important and should be mutually reinforcing (Scott., 1989:27, in Toope, Website:178).

Sometimes distinctions are made between positive rights and negative rights. The former, unlike the latter, were said to be individual rights that requires active State intervention, such as economic, social and cultural rights (Toope, Website: 178)

Yet another classification of human rights is based on “generations” of rights. The first generation of rights, include: personal rights, political and moral rights, propriety rights, procedural rights and equality rights (Yerima, 1999:194 –199). The second generation of rights includes all the economic, social and cultural rights, such as the right to food, health, education, work and social security. The third generation of rights relates to “peoples” rights or “collective rights,” including the right to self-determination, favourable to development, *et cetera*. (Yerima, 2011:52).

III. AN OVERVIEW OF THE PREVALENCE OF FEMALE CIRCUMCISION/FEMALE GENITAL MUTILATION IN NIGERIA

In Africa, FC/FGM is practiced in Nigeria and other 27 African countries (Ibekwe *et al*, 2012). As far back as 1996, it was estimated that 32.7 million Nigerian women have been affected by the practice of FC/FGM (WHO, 1997). The prevalence varies from one State or socio-cultural group to another (Abiodun, *et al*, 2011: 89); but the exact prevalence is not yet known. While UNICEF (2005) estimated 19%, some put it from 1.5%-61% (Kolawale and Anki, 2010). Yet, others put it at 50%, ranging from 0% in parts of Kogi, Ogun and some Hausa/Fulani States to from 90%-100% in parts of Benue and Kebbi States (U.S. Dept. of State, 2001: 1; Onuh, *et al*, 2006). On geo-political zone basis, it was estimated that the percentage of women circumcised are as follows: North- Central, 1.3%; North -West 0.4%; South- East, 40.8%; South- West, 56.1% (Demographic Health Survey of Nigeria (DHSN), 2003).

On tribal bases, the NDHS found that there is 61% prevalence of FC/FGM amongst the Yorubas, 45% prevalence amongst the Igbos and 1.5% prevalence amongst the Hausa/Fulani tribes in Nigeria. This clearly reveals that the FC/FGM is mostly practiced in South-West part of Nigeria. The type III form of FC/FGM is discovered to have been performed among the yorubas of Ekiti and Atakumasi in Osun State to prevent the head of the new born baby coming in contact with the clitoris during delivery (Mandara: 292).

Among the Yorubas, FC/FGM is usually performed at infancy- before the first birth day of the female child (DHSN, 2003). Some parts of Igbo, Edo and Ketu-Yoruba speaking people, FC/FGM is practiced at puberty before marriage. Some other tribes were said to perform FC/FGM during pregnancy or when the first child was delivered with complications ((Kolawole, 2010)). In Nigeria the milder form of FC/FGM is more prevalent except in South-South region where infibulation is also practiced.

Type I, Type II and Type III discussed in the previous segment are the most common form of FC/FGM practiced in Nigeria. Type IV is only minutely prevalent. Of the six largest ethnic groups in Nigeria, it is only the Fulanis that do not practice any form of FC/FGM. Yorubas, Hausas, Igbos, Ijaws and Kanuris practice one form of FC/FGM or the other (U.S. Dept. of State, 2001).

The Government of Nigeria has publicly opposed the practice of FC/FGM. The Federal Ministry of Health and Federal Ministry of Women Affairs have also been supporting the nationwide campaign against FC/FGM over the years. Nigeria was one of the five (5) countries that sponsored a Resolution at the 46th World Health Assembly calling for eradication of harmful traditional practices including FC/FGM. Ironically, Nigeria has no Federal Law criminalizing the practice (U.S. Dept. of State, 2001).

It is also gratifying to observe that even though the practice of FC/FGM is said to be prevalent in Nigeria, recent developments have shown that modernity and enlightenment, consequent upon the campaign against the practice is gradually reducing indulgence into the act. The Association of Nigerian Nurses, the

Nigerian Medical Association, Women's Centre for Peace and Development (WOPED) and others, through the support of the WHO, have also been striving hard to eradicate the practice of FC/FGM (Idowu:120). As the DHSN Report of 2003 revealed, the percentage of young girls being subjected to FC/FGM will certainly be lesser than what it used to be. The survey found that amongst youngest women the prevalence is 13%; while amongst oldest women it is 28% (DHSN, 2003). Though the practice seems to be reducing, it is still very deep rooted in some societies in Nigeria, depicting that people who still practice it are subjected to the dangers and ills of the practice; and a more proactive steps are required to tackle the menace of FC/FGM.

IV. HUMAN RIGHTS INSTRUMENTS ON FEMALE CIRCUMCISION/FEMALE GENITAL MUTILATION APPLICABLE IN NIGERIA

A. Universal Human Rights Instruments

The imperative of human rights documents in the UN system culminated into the adoption of the UDHR, ICCPR and ICESCR.

The UDHR is not a treaty and was not intended from the onset to be a binding document, it is the earliest comprehensive human rights instrument that expanded the meaning of the term "human person" that is of the equal and inalienable (UDHR, 1948: Preamble, Para. 1). Today, the UDHR has significant impact in the realization of human rights; and is utilized to support the abrogation and prohibition of FC/FGM in the international community on the basis of customary international law.

The UDHR catapulted the adoption of the ICESCR and ICCPR, which reinforce its legal authority and buttressed and concretized the rights in more detail (Yerima, 2007:34). While the ICCPR deals with the civil and political rights, the ICESCR focuses on the economic, social and cultural rights; some of which are controversial in the fight for and against the eradication of FC/FGM. The first Protocol to the ICCPR gives individuals, including victims of FC/FGM, the right to petition Human Rights Committee cases of violations of the rights under the ICCPR (ICCPR, 1966: Art. 28).

Convention on the Elimination of Discrimination against Women (CEDAW), 1979 is aimed at eliminating discrimination against women by creating equality between men and women and ensuring the freedom of women or women's rights universally (Platt:17). The 30 Articles of the CEDAW spell out specifically internationally accepted principles and measures to achieve equal rights for women everywhere irrespective of marital status (CEDAW Arts 1 & 2). CEDAW is an effective instrument relied upon by the proponents of the eradication of FC/FGM. The CEDAW Committee interprets the Convention as an instrument that is aimed at prohibiting any type of violence against women and to require signatory States to take affirmative measures to prevent and punish any such violence (CEDAW: Art. 18).

However, the Convention does not consider individual complaints, for the reason that the only enforcement procedure available under it is the State Reporting and Monitoring Procedure; there are no remedies for individual women whose rights have been violated (WREP, 2006).

The Convention on the Rights of the Child (CRC) is another important document under the UN system for the protection of female children and against the practice of FC/FGM. The Convention sets out many of the rights proclaimed in the Bill of Rights and specifically grants children rights and protection as autonomous human beings. In decisions affecting a child- a "human being below the age of 18 years"- the best interest of the child should be the primary consideration (CRC, Arts. 1 and 3 respectively). The Convention set out civil and socio-cultural rights which are relied upon both by the proponents and the exponents of FC/FGM. It has been identified that "FGM is currently recognized as one of the worst violations of the Convention on the Rights of the Child" (The Circumcision Reference Library).

Proponents of the eradication of FC/FGM also rely strongly on the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), 1984, to foster their claim on the eradication of FC/FGM. Although, torture was already prohibited by international law, the CAT was adopted as a legally binding document for the purpose of reinforcing "the existing prohibition with specific preventive and remedial measures." (Rodley and Pollard, 2006:115). One distinctive feature of this Convention, unlike other Conventions considered in this segment, is, apart from the human rights perspective, it imposes on State Parties legally binding obligation to ensure that all acts of torture and attempt to commit torture are offences under their respective criminal law. It, therefore, deals both with human rights and criminal law aspects of FC/FGM. This is considered as "an important bulwark against impunity" (Rodley and Pollard, 2006:116).

B. African Regional Human Rights Instruments

Nigeria was a member of the Organization of African Unity (OAU) now transformed into the African Union (AU). Since 1963 till date the Assembly of the OAU/AU has adopted a number of human rights instruments that deal with the rights of women and female children. The instruments were adopted in addition to other instruments which protect human rights generally. Of specific recognition are: The African Charter on Human and Peoples' Rights (African Charter) 1981, the African Charter on the Rights and Welfare of the Child (Childs

Rights Charter) and most importantly, the Protocol to the African Charter on the Rights of Women in Africa (Women's Rights Protocol) 2003.

Nigeria has not only ratified the African Charter but has also gone ahead to incorporate the provisions of the Charter into its municipal Law known as the African Charter on Human and Peoples' Rights (Ratification and Enforcement Act) 2004. Any discussion on FC/FGM in Nigeria requires consideration of the Charter for the obvious reason that the Charter remains the primary normative instrument of the African human rights system; every other human rights instrument in Africa either complements or draws inspiration from the Charter.

The African Charter is an amalgam of both traditional and contemporary formulations of human rights; reflecting the three generations of rights. For the reason that FC/FGM is deeply rooted on cultural tradition and the fact that the argument pondered by the proponents of its eradication is also anchored on universality of human rights, depict that the African Charter is a very important instrument that can be armed and utilized to reconcile the conflict and find a way forward.

The Women's Rights Protocol, essentially seeks to improve on the status of African women by bringing about gender equality and eliminating discrimination through appropriate legislative, institutional and other measures (Women's Rights Protocol, Art. 2). The adoption of the Protocol became imperative because African women continue to fall victims of discrimination and harmful cultural practices. The Protocol, therefore, establishes a legal framework for special protection of the rights of women in Africa (NBA, 2010:7); and points out the crucial role of women in the preservation of African values based on "the principle of equality, peace, dignity" *et cetera*. The Protocol also emphasizes that "human rights of women are inalienable, integral and indivisible part of universal human right" (Women's Rights Protocol, Para. 5); and recalled that the rights of women have been guaranteed in all international human rights instruments. For discussion on FC/FGM the definition that "women means persons of female gender including girls" (Women's Rights Protocol, Art. 1(k)) is very important. The protocol did not only enjoin State Parties to prohibit and condemn all forms of harmful practices, which negatively affect the human rights of women but also the parties agree to take necessary legislative and other measures to eliminate such practices.

The Child Rights Charter is the first regional treaty on the rights of children; widely ratified by African States. No doubt, "its popularity among Member States underscores the consensus on the need to provide a special tool for the protection and promotion of the rights and welfare of African children giving their peculiar vulnerabilities and circumstances" (NBA, 2010:5). The Charter notes with serious concern that the situation of most African children remains critical due to unique factors - socio-economic, cultural, traditional factors-including the practice of FC/FGM. The Charter considers the cultural heritage, historical background and the values of the African civilization, which should inspire and characterize the concept of the rights and welfare of the child" (African Child Rights Charter, preamble, para.7). Since FC/FGM affect adult females and female children, the Child Rights Charter has to be read and applied together with the Women's Rights Protocol because women's rights and children's rights cannot be disconnected. (Yerima, 2008:193).

The fundamental principles guiding the implementation of the African Child Rights Charter include: non-discrimination; the best interest of the child, the life, survival and development of the child, *et cetera*. The significance of the Charter with regard to FC/FGM cannot be overemphasized because, apart from guaranteeing specific rights of the child- some of which are utilized by the proponents of the eradication of FC/FGM- the Charter also emphasizes the need to incorporate African cultural values and experiences when dealing with the child (NBA, 2010:6).

C. Nigerian Domestic Human Rights Instruments

Apart from the criminal law perspective, the act of FC/FGM is a human rights issue, which in Nigeria is also a constitutional matter. The current Nigeria Constitution reserves Chapter IV, with various civil and political rights as fundamental or justiciable rights (Nigeria Constitution: S. 46). But for consideration of the practice of FC/FGM in Nigeria, the political rights are irrelevant.

On the other aspect of the rights, what have been considered as socio-economic and cultural rights under the various international and regional human rights instruments which both the proponents and the exponents of the practice of FC/FGM relied upon are recognized in Chapter II of the Nigeria Constitution under the head: "Fundamental Objectives and Directive Principles of State Policy". Unfortunately, the enforceability or justiciability of these rights under the Nigeria Constitution is still controversial in view of the provision of section 6(6)(c) of the Nigeria Constitution, which ousts the jurisdiction of any Court to determine matters emanating from Chapter II of the Constitution.

Nigeria ratified the Child Rights Charter in 2001, and passed its equivalent in 2003. Many States have also passed the Child Rights Act in their respective States. An example is the Kogi State Child Rights Act, 2010. These are signs showing that "the Government wants to take seriously its obligation to respect, protect, promote and fulfill the rights of the child" (NBA, 2010:7). But the rate at which FC/FGM is practiced in Nigeria seems to debunk this point.

V. CATEGORIES AND SPECIFIC RIGHTS IN CONTROVERSY

A. Civil Rights

In our definition section of this paper, distinction was drawn between civil and political rights or the first generation of rights and socio-economic and cultural rights or second generation of rights. The Nigeria Constitution, like the Constitutions of some African countries, makes the first generation of rights justiciable or enforceable rights (Nigeria Constitution, S. 46). But for examination of FC/FGM, it is gratifying to note that the political rights aspects of the first generation of rights are not in controversy; and not all aspects of the civil rights are contested by the proponents of the eradication of FC/FGM. Within the civil rights, the contested rights violated by the practice of FC/FGM are: the right to life; the right against torture, cruel, inhuman and degrading treatment; the right to privacy and family life and the right to religion. As Nigeria is signatory to many international and regional human rights instruments that guarantee these rights; and saddle the State with responsibility of protecting, promoting and fulfilling these rights, the rights in controversy in these instruments are very important for consideration.

1. *Right to Life*

Right to life is protected and guaranteed by all international, regional and domestic human rights instruments applicable in Nigeria (UDHR, Art. 3; ICCPR, Art. 6; Child Rights Convention, Art. 6; African Charter, Arts. 3 and 4; African Child Charter, Art. 5; Nigeria Constitution, S. 33; Child Rights Act (Nig.), S.). The right to life is considered fundamental, core and inviolable right because the enjoyment of other species of human rights depend on this right (Idowu:117). The African Commission on Human and Peoples' Rights stated in *Forum of Conscience v. Sierra Leone* ((2000) AHRLR 293), that the right to life is the fulcrum of all other rights; the fountain through which other rights flow and any violation of this right without due process amounts to arbitrary deprivation of life. At the universal system, the Human Rights Committee interpreted the right to life as requiring government to adopt positive measures to preserve life (Human Rights Committee, Website).

We agree with the point that the practice of FC/FGM violates the right to life. This occurs in cases in which death results from the procedure or because of complications later in life (UNICEF, 2010:19; Idowu:117). This point is predicated on the effect of FC/FGM to the spread of HIV, the uncontrolled loss of blood resulting in anaemia, infection, tetanus, hepatitis B. This in turn has resulted to the death of many victims of FC/FGM. The Report that in Nigeria about 32.7 million women were seriously affected by this practice in 1996 is clear evidence of this fact (Office of the Senior Co-ordinator for International Women's Issues Report on FGM, 2001).

2. *Right against Torture and Inhuman Treatment*

The right against torture and inhuman treatment protects the dignity of human person, both under international and regional human rights instruments as well as the Nigeria Constitution (UDHR, Art. 5; ICCPR, Art. 7; African Charter, Art. 5; Women's Rights Protocol, Art. 3). In view of the special protection of this right under the universal system, the UN adopted the Convention against Torture and other Cruel, Inhuman, Degrading Treatment or Punishment (CAT), 1984. Section 34(1) of Nigeria Constitution declares in explicit words that: "Every individual is entitled to respect for the dignity of his person, and...(a) no person shall be subjected to torture or to inhuman or degrading treatment..."

Torture has been defined as the deliberate infliction of pain (physical or mental) for a purpose desired by the perpetrator. It is an instrument used to impose the will of the strong over the weak by suffering and degrading them (NBA, 2010:14). This is the definition of torture given by the CAT (Art. 1). Acts of violence that threatens a person's safety, such as FGM, violate a person's right to physical integrity (Centre for Reproductive Rights, 2006:14). FC/FGM is cruel and dehumanizing (Ibidapo- Obe, 2005: 154-155). The exponents of the eradication of FC/FGM do not debunk the fact that the practice violates the dignity of human person but to them such fundamental assault is the price to be paid by every culture. An advocate of this notion noted that any attempt at excising the clitoris would amount to a fundamental assault on the bastion of female power; but reserves that this is a price to be paid by every culture for its liberties or its superstitions (Ibidapo- Obe, 2005: 155). FC/FGM "can amount to torture if States fail to act with due diligence" (Nowak, 2008). States Parties to the Child Rights Charter undertake to adopt specific legislation, administrative, social and educational measures to protect the children from all forms of tortures, inhuman or degrading treatment (Child Rights Charter, Art. 15).

Beyond treaty obligation, the right against torture is a custom under international law. Thus, the UN Special Rapporteur on Violence against Women reported that cultural practices involves pain and suffering and violation of physical integrity as amounting to torture under customary international law, which attract strict penal sanctions and maximum international scrutiny regardless of ratification of CEDAW (UN Special Rapporteur on Violence against Women, 1994-2009). The same position was maintained by the House of Lords in *A [FC] & Ors v. Secretary of State for the Home Department* ([2005] C.H.R. 2 at 58). It is submitted that to the extent that FC/FGM leads to severe pain and shock, it is a violation of the right against torture as the proponents of the eradication of FC/FGM argue.

3. *Right to Equal Protection of the Law and Prohibition against Discrimination*

Another civil right of women, including female children in Nigeria, is the right to equal protection of the law and

prohibition against discrimination, protected or guaranteed under international, regional and domestic human rights instruments applicable in Nigeria (UN Charter, Art. 1, Para. 3; UDHR, Art. 7; ICCPR, Arts. 2 & 3; CEDAW, Arts. 1 & 26; Child Rights Convention, Art. 2; Child Rights Charter, Art. 3).

Apart from the fact that the foregoing laws apply in Nigeria against the practice of FGM- either by treaty or customary international law, under section 42 of the Nigeria Constitution, Nigeria women, including female children, shall not, by reason of their sex as person of female gender, be subjected to disabilities or restrictions to which men gender are not subjected to. The notion behind this protection lies on the fact that men and women have equal protection of the law. This is made explicit under CEDAW (Art. 1) and Women's Rights Protocol (Art. 1). The CEDAW mandates State Parties to combat "all forms of discrimination against women through appropriate legislative, institutional and other measures...including those prohibiting and curbing all forms of discrimination particularly those harmful practices which endanger the health and general well-being of women" (Women's Rights Protocol, Art. 2(6)). Obligation of State Parties, including Nigeria, extends to modifying "the social and cultural patterns of conduct of women and men through public education, information, education, and communication strategies. This is for the purpose of elimination of harmful cultural and traditional practices and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes (Women's Rights Protocol, Art. 2(2)). Article 18(1) of the ICCPR requires State Parties to eliminate "all practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotype roles for men and women."

In particular, Article 5 of the Women's Rights Protocol requires State Parties, including Nigeria, to prohibit and condemn all forms of harmful practices which affect the rights of women, including all forms of FGM and its medicalization, through necessary legislative and other measures. The duties of State Parties also include the protection of women who are at risk of being subjected to harmful practices. Victims of harmful practices are also to be supported through basic services – health services, legal and judicial support, emotional and psychological counseling *et cetera* (para. (b)-(d)). The Child Rights Charter urges State Parties to discourage any custom, tradition, cultural or religious practices that are inconsistent with the rights, duties and obligations contained in the Charter (Art. 1(3)). State parties undertake to adopt appropriate measures to eliminate harmful, social and cultural practices affecting the welfare, dignity, normal growth and development of the child (Art. 21(1)). The point had earlier been made that: "particularly, the State Parties would eliminate those customs and practices prejudicial to the health or life of the child and those discriminatory to the child on the grounds of sex or other status (Yerima, 2008:194).

Plethora of research carried out on FC/FGM reveals that the practice of FC/FGM is aimed primarily at controlling women's sexuality and supporting their role in society. FGM/FC has reduced women to instruments of male pleasure; ensuring the sexual control or suppression of the sexual behaviour of women. African groups practice FC, ostensibly to reduce female libido (Ibidapo- Obe, 2005: 200). No doubt, "most women will be unable to experience orgasm as a result of the removal of their clitoris" (Broussard, 2008: 2008: 27). This is discriminatory; a violation of their right to equality and against discrimination.

The right of women and female children against discrimination extends to gender-based violence; that is "all acts perpetrated against women which cause or could cause harm- physical, sexual, psychological and economic harm..." (Women's Rights Protocol, Art. 1). The Preamble of CEDAW also considers gender-based violence as: "violence directed against a woman because of her status or violence that affects women disproportionately- acts that "inflict physical, mental or sexual harm or suffering...and other deprivations of liberty." The CEDAW Committee has identified FC/FGM as a form of violence against women; considering gender-based violence as: "[t]raditional attitudes by which women are regarded as subordinate to men or as having violence or coercion, such as...female circumcision." (UN. Doc. A/47/38, 1992:1).

Similarly, the Committee on the Convention on the Rights of the Child declared that State Parties to the Convention are saddled with obligation "to protect adolescents from all harmful traditional practices, such as early marriages, honour killing and female genital mutilation" (Committee on the Rights of the Child, 2003:No. 4). It is the duty of State Parties to the Women's Rights Protocol to take appropriate and effective measures to, among other things, enact and enforce laws to prohibit and eradicate all forms of violence against women (Wmen's Rights Protocol, 2003: Art.3(4)). It has been uncovered that "harmful traditional practices such as FGM affect children disproportionately and are most often imposed on them by parents or leaders of their community" (Pinheiro, in Amnesty Inter'l, Website: 11).

4. *Right to Privacy and Family Life*

One civil right that researchers often sink into oblivion on the discourse of FC/FGM is the right to privacy and family life protected and guaranteed under several human rights instruments applicable in Nigeria (UDHR, Art. 12; ICCPR, Art. 12; Child Rights Convention, Art. 16; Child Rights Charter, Art. 10). Ironically, the right to privacy is not expressly found under the African Charter and the Women's Rights Protocol. However, the Nigeria Constitution, which uses the words: "Right to private and family life" provides that: "[t]he privacy of citizens...is hereby guaranteed and protected" (S. 37). We are convinced by the words of a scholar, where he

stated:

The right of women and girl – children to privacy is violated when their genitals are mutilated with or without their consent. Every process of FGM is a violation of the right of women and female children to their personal autonomy. Hence, it is a process which violates their fundamental rights to be protected from public exposure, intrusion and interference (Idowu: Centre for Reproductive Rights, (CRR), Website).

The rationale based on women's sexuality, apart from being an act of discrimination, also affects the right of women and female children to family life; since these persons "require their genitals to consummate their marriage and family life" (Idowu,). It will be difficult for women to consummate their marriage, where the act of FC/FGM has caused permanent damage to the genitals. Even where the act does not cause permanent harm to the genitals, the "removal of bodily tissue also compromises a woman's right to the full enjoyment of her sexual life" (UNICEF, 2010:19), which in turn is a violation of the right to privacy and family life.

5. *Right to Freedom of Expression of Opinion or Consent*

FC/FGM in Nigeria, like in other countries, is mostly practiced on girls in the range of 0-15 years. The practice is sometimes carried out by the girl's family or guardian; but because of the social consequences of failure to be circumcised the girls submit themselves to be cut. In most cases, however, the girl child would have no voice in the decision made on her behalf by her family members. So, the decision is taken and the act performed without her consent. Even where the child's consent is given, it is done out of social pressure or in fear of non-acceptance by their communities and families (UN Special Rapporteur on Torture, 2008); this cannot be said to be a genuine consent. This goes to mean that FC/FGM violates the right of the child to freedom of expression under various human rights instruments applicable in Nigeria (UDHR, ; ICCPR ; African Charter). Article 7 of the Child Rights Charter guarantees every child, who is capable of communicating his or her own views, the assurance of the right to express his opinions freely in all matters. This is not the case with the practice of FC/FGM.

6. *Right to Religion*

It is reiterated that some societies have relied on the traditions of Prophet Mohammad (SAW) as a source and rationale for practicing FC/FGM. It has been pointed out that "...[m]uslims in countries that ... practice these surgeries (FC/FGM), consider the circumcision a prerequisite to the practice of their religion", relying on the statement of Prophet Mohammad (SAW) that "if you cut, do not over do it." (Mc Gree, 2005:137); and "cut slightly without exaggerating." It has also been uncovered that "[c]ircumcision is not an individual right under Sharia (Islamic Law)...There is nothing in the *Quran* that authorized it" (Platt: 11). Although, writers are unanimous that the practice of FC/FGM has no basis in the *Qur'an*, Prophet Mohammad's Hadith contains several references to the practice (Platt: 9; Mc Gree, 2005:137). Researchers have also debunked the support of FC by some Christian groups who linked it to Africa's past, adding that "the Bible, like the *Quran*, does not specifically mention FC" (Platt: 10).

Our research shows that religion as the basis of FC/FGM is a very weak point in Nigeria. On regional estimation, the prevalence of FGM among the Hausa-Fulanis, who are predominantly Muslims, is only 1.5% compared to 61% and 45% among the Yorubas and Ibos respectively, who are predominantly Christians. We agree with the observation that "[t]here is also no direct correlation between religious belief and the practice of FGM" (Mandara, 2004: 296).

Beyond the foregoing point, religion cannot be used as the basis for practicing FC/FGM. Although, the right to religion is protected and guaranteed both in international and regional human rights instruments applicable in Nigeria (UDHR, Art. 18; ICCPR, Art. 18; Child Rights Convention, Art. 14; African Charter, 8; Child Rights Charter, Art. 9; Nigeria Constitution, S. 38), the right is not absolute but subject to public health and for the purpose of protecting the rights and freedoms of other persons. Taking into consideration the health risks, life-long psychological and physical effects of FC/FGM on women, including female children, the argument based on religion cannot stand. The US Congregational findings on the legislation limiting the practice of FC in the US made it explicit that "female circumcision can be prohibited without abridging the exercise of any rights guaranteed under the freedom of religion clause of the Constitution or under any other Law" (18 U.S.C.A., Section 645 (a) Div. C of Pub. L. 104-208).

B. Socio-Economic and Cultural Rights

Among the second generation of rights, the right to health and cultural rights are the most controversial in the arguments for and against the eradication of FC/FGM. This is because they are relied upon both by proponents and exponents of the eradication of FC/FGM.

1. *Right to Health*

At the universal system, provisions of a number of instruments deal with the right to health (UDHR, Art. 25; ICESCR, Art. 12; CEDAW, Art. 12; Child Rights Convention, Art. 24). Article 12 of the ICESCR specifically

states that everyone has the right to “the highest attainable standard of physical and mental health”.

Article 12 of the CEDAW is very explicit on the right to health; with particular focus on equal access to healthcare facilities for women. Specially, State Parties shall ensure that rural women have “access to adequate healthcare facilities, including information, counseling, *et cetera* (CEDAW, Art. 2(d)). The Child Rights Convention goes extra mile to recognize the right of the child to “the highest attainable standard of health” (Child Rights Convention, 1989: Art. Art. 24). At the African regional human rights system, Article 16 of the African Charter provides a *pari materia* provision to Article 12 of the ICESCR, giving everyone, including persons of female gender, “the right to enjoy the best attainable State of physical and mental health”. This is in addition to the rights of the child under Article 14 of the Child Rights Charter. Women’s Rights Protocol makes it mandatory for State Parties to ensure that the right to health of women, including the right to control their fertility, is respected and promoted. The African Charter also makes it explicit that the family “shall” be protected by the State which shall take care of its physical and mental health (African Charter, Art. 18(1)).

In Nigeria, although the right to health is not a justiciable right, it is argued that the right to life will be meaningless if Nigerian women and female children cannot enjoy the right to health. It is predicated on the right to health both under international, regional and domestic human rights instruments applicable in Nigeria that scholars are unanimous that FC/FGM should be eradicated. (Idowu, CRR, Website).

Medical and human rights experts have argued that FC/FGM is a violation of the right to health and development because of its physical and psychological consequences. Severe pain and bleeding culminating to hemorrhaging, chronic infections, infertility, problems during pregnancy, pain during sexual intercourse are all health complications of FC/FGM that call for its eradication.

As proponents of the eradication of FC/FGM rely on its health implications to back their arguments, so the exponents of the eradication of FC/FGM seek to justify their points on “cleanliness” and “health”. FC/FGM “... is believed to make conception and child bearing easier, to prevent malodorous vaginal discharges, to prevent all manner of sickness, vaginal parasites and contamination of mother’s milk” (Foot-Klein, in Broussard, 2008: 33); and “promotes cleanliness and aesthetic quality of the external *genitalia*, increases fertility...” (Aduba, 2011: 15).

It is believed that FC/FGM cures women who suffer from diseases, such as insanity, epilepsy, and truancy” (Steel, in Broussard, 2008: 33). The Yoruba Ekiti and the Yoruba Atakumasi people in Ekiti and Osun States of Nigeria respectively believe that if the new born baby comes in contact with the clitoris, death will occur (Mandara, 2004: 292). But these points are debunked on the ground that “FGM, in fact, causes those very ills that it purportedly meant to rectify.” (Broussard, 2008:34). In fact, FC/FGM is seen as the brutal means devised “to curb female sexual desire and response for the purpose of establishing strong controls over the sexual behaviour of their women” (Thomas, in Schweder, 2000: 210).

2. Right to Culture and Respect for the Cultural Diversity of the Peoples

Another segment of the second generation of rights is the right to culture and respect for the cultural diversity of the peoples. Indivisibility of human rights depicts the inter-connection of the three generation of rights. The argument has been put that to deny human rights on the grounds of cultural distinction is discriminatory; concluding that human rights are intended for everyone, in every culture. Like other socio-economic rights, the right to culture and the obligation to respect the cultural diversity of peoples are well entrenched under the Universal, African regional and domestic human rights applicable in Nigeria.

The UDHR provides in Article 27(1) that: “everyone has the right freely to participate in the cultural life of the community...” State parties to the ICESCR “recognize the right of everyone: (a) to take part in cultural life.” (Art. 15(1)(a)). This would mean that State Parties must take all appropriate measures to eliminate discrimination against women, including granting women the right to participate in all aspects of cultural life (CEDAW, Art. 13(c)). The Child Rights Convention makes similar provision (Art. 31). It is also gratifying that State Parties to the African Charter are under obligation to assist the family which is the custodian of morals and traditional values recognized by the community”(Art. 18 (2)).

The foregoing shows that it is not in doubt that the various human rights regimes acknowledge the importance of culture and the need to respect cultural diversity of the peoples. This is also the reason why the cultural relativists “adhere to the notion that all cultures are equally valid” and human rights should take into account “the cultural context in which they are imposed” (Cassman, 2007:130). Researchers have pointed out that cultural relativism is not a substitute for human rights; nor does the concept deny the declaration that human rights are universal, indivisible, inter-dependent and interrelated (Cassman, 2007:130).

The principle of non-discrimination, which is to the effect that to deny human rights on grounds of cultural distinction is discriminatory because the notion that human rights is intended for everyone, in every culture, today has been interpreted to mean “the need for cultural diversity of people to be respected” (Nabudere, 2005:3). It is on this note that the Constitution of the UNESCO affirms “that the wide diffusion of culture, and education of humanity for justice and liberty and peace are indispensable to the dignity of man and constitute a sacred duty which all the nations must fulfill in a spirit of mutual assistance and concern” (Preamble, UNESCO

Constitution).

The Universal Declaration on Cultural Diversity affirmed that respect for the diversity of cultures tolerance and co-operation, in a climate of mutual trust and understanding are among the best guarantees of international peace and security. (Preamble, Universal Declaration on Cultural Diversity, 2001). Article 4 of the Declaration specifically sees the ethical imperative of defending cultural diversity the same way as respect for human rights.

At the domestic forum, the Nigeria Constitution declares that “[t]he state shall protect, preserve and promote the Nigeria cultures which enhance human dignity and are consistent with the fundamental objectives as provided.” (Nigeria Constitution, S.). In view of the significant place of culture in the foregoing instruments, respect for and defend of culture “implies a commitment to human rights and fundamental freedoms, in particular the rights of persons belonging to minorities and those of indigenous peoples” (Nabudere, 2005:3).

Notwithstanding the new page opened for cultural diversity under the Declaration a person is not allowed to invoke cultural diversity to infringe upon human rights guaranteed by international law, nor can anyone limit their scope. This would mean that respect for cultures and cultural diversity emphasized in many human rights instruments does not extend to cultures that are harmful to human dignity. The UDHR, which emphasizes on indivisibility of human rights does not allow any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms recognized in the Declaration.

VI. CONCLUDING COMMENTS AND THE WAY FORWARD

Deducible from the discourse in this paper is the fact that the practice of FC/FGM has catapulted controversial discussions on some rights under human rights instruments between the exponents and proponents of the practice. It, however, seems the boxing between these two schools is one in shadow as the former do not deny the universality of human rights and the latter do not deny the place of culture in human rights regime. This buttresses the reason why in between the two schools of thought, there exists another school that argues: “[C]ertainly, a practice that inflicts immense psychological and emotional pain and suffering conflicts with such preservation of human rights”, (Cassman, 2008: 130). It is anchored on this point that the argument based on cultural preservation cannot stand; it has been overshadowed by the health implications of the practice, which this paper reveals that in Nigeria, like in other countries, are enormous but the Government has not devoted enough resources to supplying information about the harmful effect of FC/FGM to communities that practice it. This is so notwithstanding that the human rights instruments considered in this paper lay down the obligations of State Parties to the eradication of harmful practices.

It is in the light of the foregoing that the process towards the eradication of FC/FGM is suggested to start with supporting human rights education and awareness programmes that identify the psychological and physical impact of FC/FGM on women and female children; supporting their obligation in Article 26(2) of the Women’s Rights Protocol, which makes it mandatory for State Parties to adopt all the necessary measures and, in particular, to provide budgetary and other resources for the full and effective implementation of the rights recognized in the Protocol.

It is also the duty of State Parties to the CAT, including Nigeria, to provide education and information about the torture (FC/FGM) to citizens at large and anyone who comes in contact with the victim and the torturer (CAT, Art. 10). The awareness campaign should also promote human rights and how the rights are affected by FC/FGM.

The obligation of Government in the eradication of FC/FGM should extend to quality training of those who come in contact with women and female children who are at risk of FGM or have already been cut and their families- training that will demonstrate the nature of FC/FGM as it affects the rights of women and female children; tackling the issue in culturally sensitive and participatory manner with the practicing communities.

We decline our support to the suggestion that clinicalization or medicalization of FC/FGM should be an alternative to outright ban of the practice of FC/FGM; as this will send signal to communities that practise it that FC/FGM it has been accepted- thereby perpetuating female genital mutilation and increasing parents’ interest in the practice (Davies in Cassman, 2008:128).

For the very reason that the practice of FC/FGM is widely spread among the poorly educated, low socio-economic groups depicts that traditional rulers have pivotal role to play in the agenda for eradication of the practice. Through traditional rulers all information about FC/FGM can easily get to the root or to every family. It is also easier to fish out the hiding circumcisers through their traditional rulers.

Active participation of women in the agenda for eradication of FC/FGM is not only necessary but also imperative as majority of acts of FGM are performed by old women. We reiterate that to make possible an impact on those cultures practicing FC/FGM, change must come from within and reflect an understanding of the practice; change is more likely to take place when practicing women are given the opportunity to make their own decisions rather than being told what to do (Cassman, 2000:145).

VII. RECOMMENDATION FOR FURTHER RESEARCH

Eighteen (18) African countries, like their industrialized counterparts, have criminalized the practice of FC/FGM. In Nigeria, at least three (3) States have passed legislation criminalizing FC/FGM. Recent development in Kenya, where a Law was passed in 2000, criminalizing FC/FGM, however, reveals that groups among the Massai people protested the ban of FC/FGM (BBC World News, 2/7/2014). This brings to the fore the question whether strong reliance on criminal law is a way forward towards the eradication of FC/FGM or attention should be geared towards thorough regard and understanding for cultural, religious and ethnic rationales that perpetuate the practice; with a view to finding lasting solution to the problem. This research concentrated on the human rights segment of FC/FGM; it intentionally left out the criminal law segment of FC/FGM as this is an entire different segment of law. The roles of criminal law and criminal justice and their effectiveness in the eradication of FC/FGM require further research.

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