

EFFECTS OF FEMALE GENITAL MUTILATION IN NIGERIA: ANY LEGAL REMEDIES?*

Abstract

Female genital mutilation is another form of sexual politics. FGM is recognized internationally as a violation of the human rights of girl child. It reflects deep-rooted inequality between the sexes, and constitutes an extreme form of discrimination against women. Given these backdrops, this study became a prerequisite task to critically explore the malaises and legal prospects vis-à-vis the status of female genital mutilation in Nigeria. The objectives of this study were to appraise the legal status and effects of FGM as human rights violation that prevents girls from enjoying optimal health. It was also to examine the challenges faced by the girl child and to proffer the way-forward to curbing the menace of FGM in the Nigerian society. The research design and methodology was doctrinal approach, using analytical and descriptive research methodology. The main sources of data collection were various legal documents and materials, both from the library and internet, and covering the primary sources and the secondary sources. For the summary of findings, it was submitted among others that the term FGM is common all over the third world countries and has inflicted dangerous and devastating effects on young girls who are compelled to undergo this dehumanizing and painful cutting of their genitals. It was further observed that FGM is driven by superstitious belief and has many effects on girls' health which included increased risk of infections, cervical cancer, death during childbirth, and obstetric fistulas. Moving from the prevailing cankerworms, the study rested its prospect on the law as the leeway to the malaises. That is to say, the necessity for the enforcement of the fundamental rights provided under chapter 4 of the Constitution of the Federal Republic of Nigeria, 1999, as amended cannot be overemphasized. Accordingly, it was therefore recommended among others that all perpetrators, violators, and supporters of FGM should be sanctioned by enacting relevant law to that effect, prosecution, and enforcement of fundamental rights. This study was tailored to have significant to civil societies, human right lawyers, judges, legislators, traditional aficionados, and every stakeholder in relation to FGM.

Keywords: Child, female, Genital, Mutilation, Cutting, Legal, Human Rights, Medical, Social, Psychological, Prospects.

1. Preamble

Female genital mutilation (FGM), also known as female circumcision or female genital cutting, is another form of sexual politics in Nigeria. It is defined by the World Health Organization (WHO) as all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons.¹ Dirie narrated the plight of a girl thus 'Mama tied a blindfold over my eyes. The next thing I felt my flesh was being cut away. I heard the blade sawing back and forth through my skin. The pain between my legs was so intense I wished I would die'² The WHO estimates that 140 million women and girls around the world have experienced the procedure.³ It is estimated that approximately 100-140 million African women have undergone FGM worldwide and each year, a further 3 million girls are estimated to be at risk of the practice in Africa alone.⁴ FGM is typically carried out between the ages of four and ten, usually by a traditional circumciser using a knife, razor or scissors, scalpels, pieces of glass and no anesthesia, often iodine or a mixture of herbs is placed on the wound to tighten the vagina and stop the bleeding, although wealthier families may have it performed in a hospital. The practice is rooted in gender inequality, cultural identity, ideas about purity, modesty, aesthetics and honour, and attempts to control women's sexuality by reducing their sexual appetite, thereby promoting chastity and fidelity⁵.

2. Female Genital Mutilation and Inspections for Virginity

The Nature and Practice

Circumcision is basically the process of removing the foreskin of the genital organ for hygienic. Circumcision is generally referred to the male sex. This is because it is restricted to the removal of the foreskin that covers the tip

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¹W Dirie, 'Safeguarding Rights and Dignity' *Online Database* <www.forwarduk.org.uk/key.issues/fgm> accessed on 10th September, 2021.

²*Ibid.*

³ H Sumaye, 'Female Genital Mutilation' *Online Database* <<http://wkippaedia.org/wiki/female-genitalmutilation>> accessed on 10th September, 2021.

⁴ Dirie (n1).

⁵M Smith and J Segal, 'Domestic Violence and Abuse: Signs of Abuse and Abusive Relation' *Online Database* <<http://google.com-domesticviolence-fsnc8237...>> accessed on 20th October, 2021.

of the penis. This is done at infancy of a boy child because adult male can hardly bare the excruciating pains in the circumcision process. It can be done traditionally or in formal health centre. However, female circumcision on the other hand is basically referred to as female genital mutilation. This is because it serves different purpose from circumcision which is for hygienic purposes, but it is rather for deprivation of sexual pleasures in order to check female promiscuity. According to Arinze-Umobi, the word '[M]utilate' means to severely and violently damage someone's body or change something so much that it is completely ruined.⁶ Female, on the other hand, means belonging to the sex that can have babies, or produce eggs,⁷ while the word genital refers to sex organs. FGM is a violent damage caused to the outer sex organs of a group of people that can bear children, or produce eggs.⁸ The most severe form of FGM is when all external genitalia are removed and the vaginal opening is stitched nearly closed.⁹ This act is carried out at a very young age, and violates the right to life,¹⁰ the right to dignity of human person, the right to health, private and family life.¹¹ Female genital mutilation (FGM) involves part or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons.¹² FGM is a practice is mostly in secrecy, uncertainty, and confusion.¹³ The origin of FGM is fraught with controversies either as an initiation ceremony of young girls into womanhood or to ensure virginity and curb promiscuity, or to protect female modesty and chastity. Girls usually undergo the FGM without their consent, depriving them of opportunity to make independent decision about their bodies.¹⁴ It is a culture in some communities to carry out obligatory inspections for virginity on the female sex. This practice is discriminatory and manifests high level of sexual politics. The issue for concern is the inference drawn from this practice which is done only to female folk and not to both sexes. Also, it can be inferred that only men have the right to enjoy sex and be promiscuous. On the other hand, it implies that females are merely used as sex object and for male's sexual satisfaction. Dirie¹⁵ narrated the plight of a girl thus: [M]ama tied a blindfold over my eyes. I felt my flesh was being cut away. I heard the blade sawing back and forth through my skin. The pain between my legs was so intense I wished I would die. WHO estimates that 140 million women and girls have experienced the procedure.¹⁶ It is estimated that in the past five decades, approximately 100-140 million African women have undergone FGM and each year, a further 3 million girls are estimated to be at risk of the practice in Africa alone.¹⁷

The practice is rooted in gender inequality, cultural identity, ideas about purity, modesty, aesthetics and honour, attempts to control women sexuality by reducing their sexual desires, thereby promoting chastity and fidelity.¹⁸ FGM is recognized internationally as a violation of the human rights of women and it violates a person's rights to health, torture and the right to life when the procedure results in death.¹⁹ It has several immediate and long-term health consequences, in respect of difficulties in childbirth while being injurious also to the child.²⁰ FGM may involve cutting out all or part of the clitoris, the labia majora²¹ and/or minora,²² and stitching the labia together so as to narrow the opening.²³

Historical Background of Female Genital Mutilation

FGM is a practice whose origin and significance is shrouded in secrecy, uncertainty, and confusion.²⁴ The origin of FGM is fraught with controversy either as an initiation ceremony of young girls into womanhood or to ensure

⁶ P Longman, *Dictionary of Contemporary* (8thedn, West Publishing Company, 2004) 178.

⁷'Female Genital Cutting Fact Sheet' *Online Database* <<http://www.womenshealth.gov/publications/our-publications/facts-sheet>> accessed on 28th August, 2020.

⁸ *CFRN*, s. 34.

⁹ *Ibid*, s. 37.

¹⁰ *CFRN*, s 33; A Odoi, 'Female Genital Mutilation' In E Kwawukume (Ed), *Comprehension Gynecology in the Tropics* (Accra Graphics, 2005) 2.

¹¹ *CFRN*, s 37

¹² Dirie (n1).

¹³ J Mertus, *Local Global Change* (Uniform Publishers 1999) 28.

¹⁴ B Derek, *Human Sexuality in Fundamentals of Obstetrics and Gynaecology* (Alden Press, 1986) 91.

¹⁵ Dirie (n1).

¹⁶World Health Organization, 'Female genital Mutilation' *Online Database* <<http://www.who.int/topics/femalegenitalmutilation/en/>> accessed on 10th September 2020.

¹⁷ *Ibid*.

¹⁸M Smith and J Segal, 'Domestic Violence and Abuse: Signs of Abuse and Abusive Relation' *Online Database* <<http://google.com-domesticviolence-fsnc8237..>> accessed on 20th May, 2021.

¹⁹ *Ibid*.

²⁰ *Ibid*.

²¹Around the opening of the vagina, there are 2 sets of skin folds. The inner set, called the labia minora, are small and hairless. The outer set, the labia majora, are larger, with hair on the outer surface. (Labia is Latin for lips.)

²² *Ibid*.

²³Medi Lexicon International, 'Medical New Study' *Online Database* <<http://www.medicalnewstudy.com/articles/24172.php>> accessed 19th September, 2020

²⁴ A Odoi, 'Female Genital Mutalatin' In E Kwawukume (Ed), *Comprehension Gynaecology in the Tropics* (Accra Graphics 2005) 2.

virginity and curb promiscuity, or to protect female modesty and chastity.²⁵ It may also have sprang from a hidden patriarchal misdeed targeted to debase womanhood and turn them into a log of wood that has no feelings and no sexual urge just for sexual satisfaction and enjoyment of the male folk. The women's bodies are cut into pieces just to reduce them into sex object to procreate, nurse babies and perform domestic chores which are never remunerated. The tightening of the vagina in the process of infibulations and the forceful entry of the penis during sexual intercourse is just for the husband's pleasure. The painful intercourse and delayed labour due to the tight vagina is simply at the detriment of the wife and unborn child with many health hazards. The ritual has been so widespread that it could not have risen from a single origin.

Classification of Female Genital Mutilation

Basically, female genital mutilation is classified into types as follows:

Type 1 – Clitoridectomy: Partial or total removal of the clitoris.

Type 2 – Excision: Removal of the clitoris and the labia minora (the inner vaginal lips).

Type 3 – Infibulations: It is excision or removal of all the external genitalia (clitoris, labia minora and labia majora),²⁶ and the stitching or narrowing of the vaginal opening to allow the flow of menstrual blood and urine; the stitches are removed when the girl is married with very strong surgical scissors.²⁷

Type 4 – There is also the miscellaneous and introduction of corrosive substance into the vagina.²⁸ Arize-Umobi observed another form of FGM as gradual dropping of hot water on the clitoris and the general area of the female vulva, so that the sensitivity of that area is gradually killed or waned.²⁹

Health Consequences of Female Genital Mutilation

FGM causes both short-term and long-term health problems. In most cases, it causes complications in pregnancy. Also, it may lead to psychological and emotional stress, and frigidity. The female may withdraw, or exhibiting the tendency of marital disharmony with her husband.³⁰ Short term health problems of FGM include bleeding or haemorrhaging, infection from the wound can develop into an abscess (a collection of pus), also the girl can get fever, sepsis (a blood infection), shock, and even die, if the infection is not treated. Physically or psychologically traumatic, as well as pains, from routinely cut genital without first being numbed or having anaesthesia, tends to occur the day after, when the girl have to urinate onto the wound.³¹ On the other hand, the long term complications are not limited to extensive damage of the external reproductive system or the uterus, vaginal, and pelvic infections. It is not also limited to resulting in cysts and neuromas, increased risk of vesico vaginal fistula, complications in pregnancy and child birth, indelible psychological marks, sexual dysfunction and dissatisfaction, difficulties in menstruation and the cramps. It goes beyond effects on the victim to the society both the immediate and global society.

3. Analysis of Rationale Proffered for the Practice of FGM

There are many reasons FGM is practiced, including social, economic and political reasons. Those who support FGM believe that it will empower their daughters, ensure the girls get married, and protect the family's good name. In some group FGM is performed to show a girl's growth into womanhood and, in some community, marks the girl's sexual debut. It is also performed to keep a woman's virginity by limiting her sexual behaviour. FGM is believed by those who practice it to limit a woman's sexual desire. In some group women who are not cut are viewed as dirty and are treated badly. While FGM predates both Christianity and Islam, religion is also used to promote the practice. Some communities believe that in order to be good Muslims, parents must have their daughters cut. FGM is part of a community's tradition. Most parents who support FGM believe they are protecting their daughter's future marriage prospects, and not hurting her. It is seen by parents as part of a girl's upbringing. Mothers chose to subject their daughters to the practice to protect them from being ostracized, beaten, shunned, or disgraced. FGM is due to several factors, and often a combination of them, including those of a religious, social and cultural nature. There are also many superstitions about FGM, such as:

²⁵ *Ibid.*

²⁶ Around the opening of the vagina, there are 2 sets of skin folds. The inner set, called the labia minora, are small and hairless. The outer set, the labia majora, are larger, with hair on the outer surface. (Labia is Latin for lips.)

²⁷ L Hanny, 'The Sexual Experience and Marital Adjustment of Genitally Circumcised and Infibulated Females' [1989] (26) (3) *Journal of 800 Research*, 375.

²⁸ T C Okeke et al, 'Female Genital Mutilation' *Online Database* <<http://www.ncbi.nlm.nih.gov/pmc/articles/pmc3503121/>> accessed on 10th September, 2020.

²⁹ C Arinze-Umobi, *Domestic Violence against Women in Nigeria: A Legal Anatomy* (Folmech Publishers, 2011) 72; also see: R Heitman, 'Female Genital Mutilation' *Online Database* <<http://wolvesdreams.tripod.com/FGM.html>> accessed on 28th August, 2021.

³⁰ C Ezobi, 'Breaking the Culture of Female Circumcision' *Online Database* <www.thisdaylive.com/articles/breaking-the-c...2015003444> accessed on 14th November, 2020.

³¹ M Thiel, *Introducing Queer Theory in International Relations* (Miami & Research Associate, 2018) 88 – 89.

- i. In most FGM societies, one important belief is that this procedure will reduce a woman's desire for sex and in so doing will reduce the chance of sex outside the marriage. This is vital to this society as her honour for the family is dependent on her not to be opened up prior to marriage.
- ii. Some view the clitoris and the labia as male parts on a female body, thus removal of these parts enhances the femininity of the girl.
- iii. It is also believed that unless a female has undergone this procedure she is unclean and will not be allowed to handle food or water.
- iv. Some groups believe that if the clitoris touches a man's penis the man will die. As well as the belief that if a baby's head touches the clitoris that the baby will die or the breast milk will be poisonous.
- v. The belief that an uncut cannot conceive, therefore the female should be mutilated in order to become fertile.
- vi. Bad genital odour can only be eliminated by removing the clitoris and *labia minora*.
- vii. FGM prevents vaginal cancer.
- viii. An unmodified clitoris can lead to masturbation or lesbianism.
- ix. Prevents nervousness from developing in girls and women.
- x. Prevents the face from turning yellow.
- xi. Makes a woman's face more beautiful.
- xii. Older men may not be able to match their wives sex drive.
- xiii. Intact clitoris will generate sexual arousal and in women if repressed can cause nervousness.
- xiv. The clitoris will continue to grow as a girl gets older and so it must be removed.
- xv. The external genitalia are unclean and can actually cause the death of an infant during delivery.³²
- xvi. FGM is often considered a necessary part of raising a girl properly, and a way to prepare her for adulthood and marriage.
- xvii. FGM is often motivated by beliefs about what is considered proper sexual behaviour, linking procedures to premarital virginity and marital fidelity. FGM is in many communities believed to reduce a woman's libido and therefore believed to help her resist illicit sexual acts. When a vaginal opening is covered or narrowed (type 3 above), the fear of the pain of opening it, and the fear that this will be found out, is expected to further discourage illicit sexual intercourse among women with this type of FGM.
- xviii. FGM is associated with cultural ideals of femininity and modesty, which include the notion that girls are clean and beautiful after removal of body parts that are considered male or unclean.³³
- xix. The clitoris is a cap of prostitution which vagina wears from heaven, if we do not clip the clitoris young, it is going to be asking for great sacrifices from the penis when it grows up;
- xx. The fortune gathered by penis is taken up by the vagina;
- xxi. An uncircumcised woman is not to be respected;
- xxii. And as the penis grows, so does the clitoris.³⁴

In countries where Muslims practices FGM, they can justify it in the words of the Prophet Mohammed, in these two controversial sayings that are found in the Sunnah (words and actions of Mohammed). A discussion was recorded between Mohammed and Um Habibah or (Um Alyyah) a woman performed infibulations on slaves. She said that she will continue the procedure unless it is forbidden and you order me to stop doing it. He replied according to one translation. Yes it is allowed, come closer so that I can teach you: if you cut, do not overdo it, because it brings more radiant to the face and it is more pleasant for the husband. Mohammed is recorded as speaking of the Sunna circumcision to Ansar's wives saying 'cutting slightly without exaggeration because it is more pleasant for your husbands'. Women's bodies are cut into pieces just for men's sexual enjoyment and to reduce or eliminate a woman's pleasure during the act. This is man's inhumanity to man and it is the greatest highest sexual politics ever meted to women folk. The above passages are regarded to have little credibility or authenticity with the Muslim religion and is contradiction in the Qur'an: God apparently created the clitoris for the sole purpose of generating pleasure. It has no other purpose. There no instruction in the Qur'an or in the writings of Prophet Mohammed which require that the clitoris be surgically modified. Thus God must approve of its presence. And also it should not be removed or reduced in size or function. The Qur'an promotes the concept of a wife being given pleasure by her husband during sexual intercourse. Mutilated genitalia reduce or eliminate a woman's pleasure during the act.³⁵

Other reasons for the practice include various myths citing the clitoris as dangerous, able to poison a woman's breast milk if her baby touches it during birth, cause excess cranial fluid in babies, and harm a man if his penis touches it. Aesthetically, female genitalia are regarded by communities that practice FGM as dirty and ugly; they

³²R Heitman, 'Female Genital Mutilation' *Online Database* <<http://wolvesdreams.tripod.com/FGM.html>> accessed on 28th August, 2021.

³³ World Health Organization (n16).

³⁴ IAC, *Female Genital Mutilation in Nigeria* (University Press, 2000) 10.

³⁵ Heitman (n32).

prefer women's genitalia to be flat, rigid and dry.³⁶ The procedure and its rituals offer its practitioners a way to identify with their local culture, thereby promoting social cohesion. Type III FGM also guarantees virginity and encourages chastity and fidelity, because of the pain associated with sex and the difficulty of undoing an infibulations without being discovered. These proverbs demonstrate the deeply ingrained perceptions about clitoris and its threat to male dominance. It perceived as a rival to penis, and the only way which the rivalry can be checked, so it seems in a patriarchal society like Nigeria, is to cut it off. F.G.M is performed in order to reduce libido among women³⁷. It is important at this point to make a clear distinction between male circumcision and female genital mutilation. While circumcision in males does not result in any impairment of sexual function, F.G.M is carefully designed and aimed at physical removal of the features, which are essential to sexual function and pleasure. Male circumcision beautifies the organ, thus improving the aesthetic value, making it more pleasant to behold, F.G.M terminates life and sensitivity out of the entire organ, reduces the victim to a mere log of wood and in doing this, exterminates the sexual libido of a woman. This practice violates a woman's right to life, bodily integrity, health and sexuality. It is also in correcting the erroneous impression about the F.G.M and male circumcision, the initial discourse about the anatomical composition in males, females as well as sexual responses help to clear the issues and medically establish the need to totally eradicate F.G.M.³⁸

4. Justification for Need to Eradicate Female Genital Mutilation

Medical Jurisprudence has established that circumcision, which may be the oldest form of surgery, is a practice medically unwarranted. This is so because it has no significant physiological benefits and is performed without anesthesia, leaving the victims with wounds in which urinary salts, burns, carry a significant risk of complication including death, or severe deformity, bleeding, infections, urinary retention, and tetanus infections regarded as short term consequences, while keloid formations, pelvic inflammation, H.I.V infections and AIDS, clitoris neuronal, vesico-vaginal fistulae, recto-vaginal fistulae problem such as neurosis, as long term effects³⁹. Derek⁴⁰ had maintained that sexually responses in women and men are arbitrarily divided into four phases (a) Excitement, (b) Plateau, (c) Organism (d) resolution. The stimuli for the excitement phases tend to form a pattern to each peculiar individual. Visual stimuli are said to be more potent for men than for women. Women are said to be stimulated more by psychological and tactile stimuli, as the excitement stage tend to be longer in women than in men, before the plateau phrase is reached. During the excitement, the breast responds by erection of nipples, tumescence of the areolae and increase in the mammary size due to congestion of the capillary plexus. Simultaneously, the clitoris increases in width and the Labia minora becomes softer and thicker from passive venous congestion. The degree of clitoral and labia responds vary from woman to woman, according to Derek. The excitement phases, the pelvic tissue including the vaginal sub-mucosa become congested. The pleasure of the excitement phases is intensified in both sexes if the couple pleasures each other sexually. This is called foreplay, but more professionally called mutual pleasuring, which involves cuddling and body contact, made up of stroking and body exploration with fingers, tongue, lips and thighs. This involves specific stimulations of each other's erotic zones by fingers, lips or tongue; in a woman, her breast and clitoral area, but in a man, his penis, scrotum and anal area. Mutual pleasure is a learning experience and has no set formula. Each partner's needs and desires are unique, and each has to discover what turns the others partner to the greatest extent. The woman reaches the plateau stage when she is desirous of having the man's penis contained in her moist vagina. This penile movement stimulates the clitoral area, as well as the vagina, and brings the woman to orgasmic phase. However it may be that the male orgasm occurs too rapidly, and the woman fails to achieve orgasm. In this event, unless an orgasm is induced by the man stimulating her clitoral area, her sexual tension may not be relieved as posited by Derek⁴¹. An orgasm is triggered off by clitoral stimulatory impulses being relayed to the lumber spine where a reflex mechanism occurs. The reflex is under the control of psychic influences which can be facilitating or inhibitory, the later leading to a failure in orgasm⁴². Derek went on to posit that many women experience orgasm only after digital stimulation of the clitoral area, or from cunnilingus. In women, general sexual dysfunction or lowered drive differs substantially from that of her partner. In a woman, this may be more marked because of the woman's genital morphology.

A woman with a low sexual drive can accommodate her man's high sexual drive, by accepting, but not obtaining the full pleasure of sexual intercourse. But in a reverse situation, she may become increasingly frustrated, as an erect penis is necessary for vaginal intercourse, and a willing interested partner is needed for clitoral or other stimulation. All forms of sexual inadequacies can lead to disharmony, to depression, or to variety of

³⁶Centers for Disease Control and Prevention CDC, 'Sexual Violence' *Online Database* <[http://www.cdc.gov/violenceprevention/sexual violence/index.html](http://www.cdc.gov/violenceprevention/sexual%20violence/index.html)> accessed on 4th October, 2021.

³⁷Ezobi, C. 'Breaking the Culture of Female Circumcision' *Online Database* <[www.thidaylive.com/articles/ breaking-th-c.](http://www.thidaylive.com/articles/breaking-the-culture-of-female-circumcision)2015003444> accessed on 14th November, 2020.

³⁸ C Arinze-Umobi, *Domestic Violence against Women in Nigeria: A Legal Anatomy* (Folmech Publishers, 2011) 74.

³⁹ J Mertus, *Local Action Global Change* (Uniform, 1999) 28.

⁴⁰ B Derek, *Human Sexuality in Fundamentals of Obstetrics and Gynaecology* (Alden Press, 1986) 91.

⁴¹ *Ibid.*

⁴² *Ibid.*

psychosomatic disorders and in this case a woman may fake sexual enjoyment including orgasm to please her partner. The clitoral is the homologue of the penis and is a small structure almost hidden by the fore parts of the labia major. The clitoris consists of erectile tissues richly supplied with nerves, which make it the most erotically sensitive part of the vulva. Also the female perineum is richly endowed with nerves and vessels, carrying blood supply to that part of the body.⁴³ It is a gainsaying that a disruption of the structure of this female perineum in any form would cause inadequate supply of blood to this part of the body, thus causing numbness, and lack of feeling in the area, as would happen to peripheral areas when blood supply is disrupted. Simultaneously, the penis is also not without rich blood supply through the numerous blood vessels, nerves as endowed by nature.⁴⁴ The natural essences of this are to make it as sensitive as the clitoris in a woman. A cut of the clitoris means exactly the same and in equal proportion to a cut of penis. The network of blood vessels and nerves are self-explanatory, as supported by the Latin maxim *Res Ipsa loquitur* and this has led to a very serious warning by Grant that all the tissues of the vulva are extremely vascular, so that even a minor operation in that area should not be attempted except in well-equipped surroundings.⁴⁵

The need to go into the different levels of sexual response both in males and females did not arise as a result of unnecessary curiosity or adventure into concupiscence. This has helped to expose the need for a clear and perfect understanding of the arrangement of the entire sexual system by God Almighty, in order that utmost sexual pleasure and planned maternal arrangements are derived by both males and females. This is why the little medical exposure about the organs, their functions, and placements comes in timorously, to help us understand the acute danger to which females are exposed in FGM, and there appears to be little or no appreciation of the medical dangers involved., both immediate and remote, afore mentioned, the medical basis for eradication of F.G.M becomes absolutely justified and desired.⁴⁶ Having understood the blood vessels in their complicated arrangement designed for perfection, and bearing in mind the warning of Grant J. in relation to even a very minor surgery in that area, what would therefore agitate the minds of right thinking person is why some people would want to disrupt what nature had perfectly arranged for optimum utility; why most women must not be allowed by society to live and enjoy their full-blossomed sex life, and allowed to arrange their maternity to suit their desire positions in their lives, and not mutilated by society on ordeal to keep them under check.⁴⁷ For a while, this good act of protecting the woman by societal patriarchal values and norms, for patriarchy and effects are ingrained, there is no corresponding 'good act' by women in order to check the males. The societies rather allow men these unimagined and unlimited degrees of sexual jamboree, hanging their justification on the mundane maxim that has no basis that African men are polygamous and gregarious by nature. This act of protecting the women of course is nothing but a mere patriarchy benevolence, which has nothing at its base except to continuously put women in a position of perpetual servitude/slavery, and objects to be used and dropped at will. F.G.M in any form is the greatest injustice and cruelty meted out to women by the society and the damage is irreparable.⁴⁸

5. The Way Forward Towards Eradication of FGM

Sections 33, and 34 (1)⁴⁹ of the Constitution of the Federal Republic of Nigeria 1999 fall directly within chapter four clearly headed Fundamental Rights, in which certain rights are guaranteed to all citizens of Nigeria against FGM and it establishes the legal authority upon which this argument of eradication of Female Genital Mutilation, is predicted, and not just a mere wild goose chase. Thus section 33⁵⁰ stipulates that: Every person has a right to life, and no one shall be deprived intentionally of his save in the execution of the sentences of a court in respect of a criminal offence of which he has been found guilty in Nigeria. Section 33(2)⁵¹ states the situation in which a person shall not be regarded as having been deprived of his life. It states as follows:

A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary-

- (a) for the defense of any person from unlawful violence or for the defense of property;
- (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained;
- or
- (c) for the purpose of suppressing a riot, insurrection or mutiny.

⁴³ R Mead, 'Sexual Politics and the Feminist Work that remains Undone' *Online Database* <www.marxist.org.subjectwoman-authors-millet-katesexualpoliticsnewyorker.com/books/page-turner> accessed on 27th May, 2021.

⁴⁴ *Ibid.*

⁴⁵ T Okeke, et al, 'Female Genital Mutilation' *Online Database* <<http://www.ncbi.nlm.nih.gov/pinc/articles/pmc3503121/>> accessed on 10th September, 2020.

⁴⁶ G Buga, 'Sexual Behaviour, Contraceptive Practice and Reproductive Health among School Adolescents in Rural Transkei, [2011] (86) *South African Medical Journal*, 523.

⁴⁷ *Ibid.*

⁴⁸ C Arinze-Umobi (n38) 65.

⁴⁹ *Constitution of Federal Republic of Nigeria*, 1999, as amended.

⁵⁰ *Ibid.*

⁵¹ *Ibid.*

Obviously these exceptions did not include the offences of being a woman, and consequently subject to F.G.M. Also section 34 (1) (a) ⁵² holds that: Every individual is entitled to respect for the dignity of his person and accordingly, (a) no person shall be subjected to torture or to inhuman or degrading treatment.

Again, African Chapter on Human and Peoples Rights which has become part of our domestic law guarantees and states 'Human beings are inviolable. Every human being shall be entitled to the respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right'.⁵³ It also states

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.⁵⁴

Furthermore the Convention against Torture and other Cruel, Inhuman or degrading Treatment or Punishment states the term torture means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person.⁵⁵ It also states that 'each states party shall take effective, legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction'.⁵⁶ It also mandates:

Each state party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture. Each state party shall make these offences punishable by appropriate penalties which take into account their grave nature.⁵⁷

Moreover, the Child's Rights Act provides that:

Every child is entitled to respect for the dignity of his person, and accordingly no child shall be

- (a) Subjected to physical, mental or emotional injury, abuse, neglect or maltreatment, including sexual abuse;
- (b) Subjected to torture, inhuman or degrading treatment or punishment.⁵⁸

It goes further to provide that:

Every child is entitled to enjoy the best attainable state of physical, mental and spiritual health. Every government, parent, guardian, institution, service, organization or body responsible for the care of the child shall endeavour to provide for the child the best attainable state of health. Every government in Nigeria should endeavour to reduce infant and child mortality rate.⁵⁹

The Convention on the Rights of the Child states that states parties should recognize that every child has the inherent right to life.⁶⁰ It further states that no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment.⁶¹ In addition to the statutory provisions against neglect and abuse of human dignity, is the judgement of justice Niki Tobi in *Uzokwu v Ezeonu*⁶² where he stated that the word 'Torture' etymologically means to put a person to some forms of pain which could be extreme... it also means to put him in a form of anguish, or excessive pain... He also defined inhuman treatment to mean 'A barbarous, uncouth, and cruel treatment, a treatment which has no human feelings on the part of the person inflecting the barbarity or cruelty.'

Furthermore, the provision of the Criminal Code⁶³ strengthens the legal position that a person is protected against assault and violence to his/her person, and provides thus:

A person who strikes, touches, or moves, or otherwise applies any kind to the person of other, either directly or indirectly, without his consent, or with his consent, if the consent is obtained by fraud or who by any bodily act or gestures, attempts, or threatens to apply

⁵² *Ibid.*

⁵³ *African Charter on Human and Peoples' Rights*, 1981. Art. 4

⁵⁴ *Ibid* Art. 5

⁵⁵ *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, 1984, Art.

⁵⁶ *Ibid*, Art 2.

⁵⁷ *Ibid*, Art 4.

⁵⁸ *Child Rights Act*, 2003. s. 11.

⁵⁹ *Ibid*, s 13.

⁶⁰ *Convention on the Rights of the Child*, 1989, Art. 6.

⁶¹ *Ibid*, Art 37.

⁶² [1991] 6 NWLR (pt. 200) 708.

⁶³ *Criminal Code Act*, C 38 I LFN 2004 s.252.

force of any kind to the person of another without his consent, in such circumstances that the person making the attempt, a threat has actually or apparently a present ability to effect his purposed, is said to assault that other person and the act is called an assault. The term 'applies force' include the case of applying heat, light, electrical force, gas, odour, or any other substance or thing whatever, if applied in such a degree as to cause injury or personal discomfort.⁶⁴

These provisions elegantly drawn up in our statute book, strong judicial pronouncements in their support made, but the problems is the issue of applicability, and even the knowledge about the existence of these provisions, so that the benefits will avail the people, or the fact that these provisions are mere ornamental in nature that they simply adorn our statute books without application becomes the problems. We must note that these rights as guaranteed are inalienable and universal, and these rights are rights, which a person cannot be deprived of without great affronts to justice. These rights can be said to inure in a person without any further assurances.

Justice Kayode Eso in *Ransom Kuti v A.G Federation*⁶⁵ also described human rights thus:

It is a right which stands above the ordinary laws of the land, and which in fact is antecedent to political society itself. It is a primary condition to a civilized existent, and what has been done by our constitution since independence is ... to have these rights enshrined in the constitutions, so that they could be immutable to the extent of non-immutability of constitution itself.

Justices Chukwudifu Oputa, in *Ransom Kuti v A. G. Federation*⁶⁶ distinguished Fundamental Rights from Human Rights thus:

Not every civil or legal right is a fundamental right. The idea and concept of fundamental rights both derive from the premise of the inalienable rights of man, life, liberty and pursuit of happiness. Emergent nations with written constitutions have enshrined in such constitutions, some of these basic human rights or fundamental right. Each right that is thus considered fundamental is clearly spelt out.⁶⁷

6. Conclusion and Recommendations

The researcher is of the view that FGM should be stopped with immediate effect because it is a wicked and barbarous act which is, against the tenets of the constitution. The perpetrators must be duly punished. The People's Human Rights must be respected. Everybody has a right to life and every individual is entitled to respect to dignity of his or her person. Specific cases on FGM are scanty in courts, if at all there is any. Sequel to this, there is likely no judicial precedent on FGM. Therefore, civil societies at different levels should provocatively embark on elaborate sensitization project to stir-up the consciousness of women, whose right to self-determination, right to life, right to dignity of human person, etc. have been infringed upon as a result of genital mutilation, to challenge such debase act in court . Also, human right lawyers should take up pro bono litigation for women who have been identified as victims of genital mutilation. Prosecution departments should not stand back in instituting criminal actions and charges against perpetrators of FGM, and the judiciary as well should ensure that justice is practically done. The Fundamental Human Rights provisions explicitly stated in the Constitution and it should be remembered that nobody and the law is no respecter of any person. This debase act of cutting the female's genitals must be trampled upon and relegated to the historic abyss. Unlike male circumcision which is specifically for hygienic health, the conception that FGM is the preservation of culture is rather barbaric, inhuman, and repugnant to equity and good conscience.

⁶⁴ *Ibid.*

⁶⁵ [1985] 2 NWLR (pt. 6) 230.

⁶⁶ *Ibid.*

⁶⁷ *Ransom Kuti v A. G. Federation (Supra.)*