

COMPARATIVE CRITIQUE ON THE PROHIBITION OF FEMALE CIRCUMCISION IN NIGERIAN

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ABSTRACT

Qur'an does not contain express text that resolve arguments on the cultural practice of Female Circumcision, whereas there are Sunnah of the Prophet (s.a.w) that describe the practice as optional. The Sunnah of the Prophet (s.a.w) does not directly prohibit the practice. However, it allows the exercise to be light with caution against harming women, On the other hand, female circumcision is outrightly prohibited and sanctioned by municipal, regional and international laws. Nigeria being responsible member of the international community has promulgated legislations and policy guidelines for effective and sustainable eradication of female circumcision. It is in the light of the foregoing; this paper appraised the practice of female circumcision within the Nigerian legal framework. It also appraised the subject from Islamic law perspective. The paper further appraises the effectiveness of the laws and policies as to whether it has achieved its objectives. The paper principally employed doctrinal research methodology, but due to the complexities and sensitivity of the subject, interviews were conducted on selected respondents. It is found that the existing legal framework prohibiting the practice of female circumcision has not achieved it desirable objective,

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because of lack of awareness of the existence of the laws
by majority of the victims.

Keywords: Prohibition, Female Circumcision, Islamic Law, Nigerian Law

1.0.0 Introduction

The prevalence of female circumcision in Nigeria cannot be down played because plethora of studies and reports have creditably established a worrisome dimension of the practice in across all geo-political zones and respective states in Nigeria. According to UNICEF the menace of female circumcision is of universal practice. Globally, there are over 200 million women age 15 to 49 that are circumcised largely based on cultural or religious reasons.¹ The report maintained that the practice is sample from 30 different countries in the world where female circumcision is endemic. These countries includes Somalia, Djibouti, Sudan, Iraq, Yemen, Guinea, Cameroun, Saudi Arabia, Indonesia, Malaysia, Columbia among others.² Thus in Nigeria there are about 19.5 Million women and girls that are circumcised, but the practice is declining largely due to intensive international campaign against it and equally domestic efforts from respective countries.³ The Nigerian Government enacts laws and the recent one is National Policy and Action Plan on the elimination of female genital mutilation (FGM) in Nigeria (2021 to 2025).

However, the prevalence of the practice is high in southern Nigeria than the north, because of the fact that, there is a divergent views of Muslims scholars on the cultural practice of female circumcision. Some permitted it, some disallowed it while others consider it prohibited because it poses significant risks to the woman's health.⁴ The above factors have been the major reasons why the practice is not common in

¹ UNICEF data on female genital mutilation (February 2018) available at <https://www.data.unicef.org/topic/child-protection/female-genital-mutilation> accessed on 10/09/19

² Ibid

³ Ibid

⁴ Brief citation from Sheikh Mohammad Ibn Lotfy Al Sabbagh's Legal Ruling on Male and Female Circumcision: Al Huda Al Sihi series, WHO Middle East Regional Office, 1995, p.9.(4) Imam Sham

the Muslim dominated Northern Nigeria.⁵ But even in the northern part of Nigeria, the practice of female circumcision is highly entrenched in the tradition of Shuwa Arab in Borno state. They are approximately about 2 million people and basically nomadic and herders. They are predominantly Muslims and their cultural orientation is increasingly Arabic, because they are from the Arabs extraction. Simple geographical circumstances make them Nigerians. The most essential cultural system for socialism of the women and girls in the shuwa cultural society is female circumcision; they perceived it from religious dimension and practice it with passion. About 98 percent of its women and girls are duly circumcised.⁶ Their cultural persuasion is vibrant, bold and imminently patriarchal and thus the practice of female circumcision is essentially a means to controlling women sexuality.⁷

Unlike in the southern states, where one in every four women or girls is circumcised at the age of 5 years, this clearly suggest that in Nigeria, the practice is observed while at the infant stage.⁸ The survey maintained that the mothers whom were educated are less incline to the practice, it is very rampant amongst the traditionalist people in the rural area and more likely not educated.⁹ The most prevalent tribe that indulge in the practice is Yoruba tribe, with over 55 percent of its women are circumcised. This is the cultural tribe that constituted the entire south-west geo-political zone, the highest practice of female circumcision is from the following states; Osun state has 77 percent of its women are circumcised while Ebonyi state has 74 and Ekiti state has 72 percent respectively, while Katsina state, in the northern part, is the lowest with only one percent of its women circumcised.¹⁰

⁵ Nigeria demographic and health survey 2013, National population commission, Abuja, Nigeria, (2014) P, 345

⁶ M.A. Umar, Violence against women: Towards formulating an enforceable legal regime in Nigeria, International Islamic University, Malaysia, (unpublished Thesis, 2018)

⁷ Ibid P, 78

⁸ Ibid P, 345

⁹ Ibid p, 346

¹⁰ UNICEF data on female genital mutilation Op, cit, P, 351, This study will hereinafter interchangeably refer to female circumcision and FGM, but this will be done carefully so as not to offend those that practice it as cultural expression or traditional identity.

2.0.0 Origin and Conceptual Definition of Circumcision

According to historians this practice could be traced to 800 years BC from ancient Egypt that it is one cultural practice that is observed with passion and zeal. Whenever their girls reached fourteen or begin to have menstrual flow they promptly circumcised the them, as a mark of significant cultural practice.¹¹ Furthermore according to Wikipedia between the periods 1813 to 1825 doctors were performing female circumcision as a medical remedy in Europe.¹² In the United States of America a surgeon in New Orleans was said to have performed the procedure for a different reason, which is connected to the practice of medicine.¹³ Thus, it is obvious that female circumcision was a universal practice but it is performed for different reasons. While to some is cultural others perceived it as a medical therapy¹⁴ to remedy some biological or psychological defects. It is quite significant to note that female circumcision is prevalent in the regions that defined it as an essential cultural practice.

In Arabic, the practice is referred to as *khifad* and *Khitan* which literally means male circumcision.¹⁵ Female circumcision is cutting a fold of skin in the upper part of the vagina, which resembles a fruit stone or a rooster comb, but without removing the whole fold.¹⁶ It is also being defined as the cutting off the lowest part of the fold of skin in the upper part of the vagina.¹⁷

3.00 Circumcision under Islamic Law

Even though, the Qur'an does not mention female or male circumcision. However, female circumcision is said to have been praised and described in a Hadith of Prophet (s.a.w) as noble but

¹¹ Ibid P, 526

¹² P.L. Allen, *The wages of sin: sex and disease past and present*, Chicago, University of Chicago press, 1st edition (2002) Pp, 112 – 143

¹³ Ibid P. 128

¹⁵ Dawood A A, *Islamic Ruling on Male and female circumcision* (2005) <www.just.edu.jo/~mafika/733_reproductive_endocrinology/Islam_and_Circumscision.htm> accessed on 12/06/24

¹⁶ Brief citation from Sheikh Mohammad Ibn Lotfy Al Sabbagh's *Legal Ruling on Male and Female Circumcision: Al Huda Al Sihi series*, WHO Middle East Regional Office, 1995, p.9.(4) Imam Sham

¹⁷ Ibid

optional. However, the Prophet warned against harming women when performing it.¹⁸ according to the following Hadith as narrated by Abu Dawood, a woman¹⁹ used to perform female circumcision in Medina. The Prophet (s.a.w) said to her,

“Do not overdo it because that [clitoris] is lucky for the woman and dear to the husband.”²⁰

In another related hadith of Prophet (s.a.w) narrated by Ali (RA), the Prophet (s.a.w) sent for a female circumciser and told her,

“When you circumcise, cut slightly and not make it too deep.”²¹

There are other accounts that “circumcision is a *Sunnah* of the Prophet (s.a.w) for men and *Makrumah* (an honorable deed, ennobling act) for women”²² The authenticity of this hadith has been questioned and designated as weak by scholars, who view it as not sound and authentic enough to serve as a basis for fatwa. Fatwa (*pl. Fatawa*) have been issued on female circumcision, some allowed it and others leave it to the decision of the parents but advise against it.²³

Classical jurists hold that Female Circumcision is *Mandoob* (recommended). Nevertheless, on the basis of modern medical knowledge and advances, these views are not necessarily admissible given the harmful impacts of circumcision on women. The harmful impact according to this view, include woman’s spiritual, physical, and sexual health.²⁴ A majority of modern jurists describe Female Circumcision as permissible (*Mubah*) except where it poses significant risks to the woman’s health then it is prohibited (haram) because it puts her life in jeopardy.²⁵

¹⁸ Sunan Abu Dawoud with an explanation (Awn Al Ma’boud). 14/125-126

¹⁹ Umm Atiyah al-Ansariyyah

²⁰ Sunnan Abu Dawoud with an explanation (Awn Al Ma’boud). 14/125-126

²¹ Abu Dawoods anthology of authentic hadith. Muhammad Naser al-Din al-Albani, ed. Arab Office of Education, 1409 AH

²² Ibid

²³ Ibid

²⁴ Brief citation from Sheikh Mohammad Ibn Lotfy Al Sabbagh’s Legal Ruling on Male and Female Circumcision: op.cit p.9.

²⁵ Quran 2:195

Another jurisprudential perspective on Female Circumcision could be summarized according to the views of Yusuf al-Qaradawi, a contemporary and a popular Islamic law scholar, to him there is no evidence in the Quran, *Sunnah*, *Ijma*, and *Qiyas* that Female Circumcision is obligatory (*fard*), required (*wajib*), or recommended (*mandoob/mustahabb*). He supported his views with the following,²⁶

- i. The relevant hadiths are either weak or do not involve a binding provision.
- ii. Some pre-Islamic tribes developed this habit, and the Prophet (s.a.w) did not prohibit it as it was a custom. However, he told them “not to overdo it.”
- iii. Medical authorities unanimously agree that cutting out the clitoris in particular is harmful.
- iv. Therefore, this procedure should be banned according to the rule that “it is permissible to prohibit a permissible act by *ulu al-amr* (those vested with authority) when it proves to cause harm.”

Several Muslim leaders have called for an end to the practice, after CNN broadcast images of a girl in Cairo undergoing FGM in 2004, the then Grand Mufti of Egypt Muhammad Sayyid Tantawi issued a radical change in female circumcision.²⁷ Equally, a 12-year-old Egyptian girl died during circumcision procedure in 2007 which prompted the Al-Azhar Supreme Council of Islamic Research in Cairo to ruled according to UNICEF that :“Female circumcision had no basis in core Islamic law or any of its partial provisions and that it is harmful and should not be practiced”.²⁸

Furthermore, a scholarly conference was held under the sponsorship of al-Azhar University in November 2006 and attended by many scholars and experts from around the world. The most important decisions adopted during this meeting were as follows:²⁹

²⁶ Awn Al Ma’boud, Volume 14, p.126. Reference to the non- authenticity of Hadith on female circumcision, pp. 122-126

²⁷ Time magazine, September 26, 1994, p. 65 <://time.com/> accessed on 12/06/24

²⁸ Middle East Times, September 18-24, 1994, pp. 1 and 16 < /www.mideast-times.com/> accessed on 12/06/24

²⁹ Ibid

- i. Allah created all humans, men and women alike, as precious and sacred beings.
- ii. Female circumcision is a customary practice performed by some people with no Islamic ground, be it Quran or authentic hadiths.
- iii. Islam prohibits inflicting any physical or moral harm on any human being. This tradition inflicts significant physical and psychological harm on women.
- iv. The participants of the meeting advice Muslims to renounce this harmful practice, strive to raise consciousness among the people, and urge governments to take legal measures against it.”

It could be observed that these *Fatawa* were issued based on the prevailing circumstance at the time due to the harm suffered as a result of the procedure conducted. This is based on the general principle of Islamic law on injuries and harm.

4.0.0 Female Circumcision under Nigerian Law

Although, female circumcision was not defined, but female genital mutilation was jointly defined by international institutions which includes the World Health Organisation (WHO), United Nations International Children Emergency Fund (UNICEF) among others.³⁰ There are quite a number of terms that were proposed to be used to describe female circumcision which includes excision, purification, ritual passage, female genital cutting, among others. But all were rejected for not being comprehensive, certain and appropriate in either meaning, effect or implication. Thus, female genital mutilation was widely used by the United Nation since 1997. It was officially adopted in 2008 by all UN agencies.³¹ FGM was first coined by the famous feminist campaigner Fran Hosken in 1979, and this major breakthrough

³⁰ Factsheet details on female genital mutilation, Geneva, World health organisation < <https://www.who.int/news-room/fact-sheet/details/female-genital-mutilation>> accessed on 18/05/24

³¹ Y. Raafat Controversial term “Female genital mutilation”, < www.28toomany.org/fgm-controversial> accessed on 11/06/24

is underscored by therapeutic reasons which explained that the procedure is against acceptable medical practice.³²

Thus, female genital mutilation (FGM) is defined at the World Health Organisation (WHO) as any procedure perform which involves the partial or substantial removal of external female genitalia or inflicted an injury on the female genital organ whether for traditional purposes or for any non-medical reasons.³³ Conversely term ‘FGM’ was adopted in Africa by the inter-African committee on traditional practices (IAP) since 2005 and declared as part of harmful traditional practices and abhorring category of violence against women in Africa.³⁴

The global concerted efforts to stem the tide of the FGM menace was first at the world health assembly at Geneva in 1994 under the auspices of the world health organisation, the participating states resolved that FGM is harmful traditional practice and state parties are obligated to eradicate it through the promulgation of domestic policies and programmes.³⁵ Nigeria has participated in the 47th world health assembly and undertook the obligation to eradicate FGM absolutely and completely.³⁶ The procedure is mostly performed by traditional circumcisers whom were usually birth attendants and in the related services. There is no health benefit accruing for the performance of FGM. In fact, there is serious adverse health consequences and implications which may lead to death as a result of FGM.³⁷

4.1.0. Statutory Prohibition of Female Circumcision in Nigeria

International Human Rights instruments such as the Universal Declaration of Human Rights (UDHR),³⁸ the Convention on the Rights

³² <www.endviolencenow.org/female-genital-mutilation/un-women> accessed on 03/07/24

³³ Y. Raafat Controversial term “Female genital mutilation”, Op, cit.

³⁴ Declaration: on the Terminology FGM; 6th IAC General Assembly, 4 – 7 2005, Bamako/Mali (hereinafter referred to as The Bamako declaration) and officially applicable in all African Union system

³⁵ WHA47.10,47th World health Assembly: Resolutions and Decisions, Geneva, World health organisation (WHO) 1994, P, 10

³⁶ T.C. Okeke, U.S.B. Anyaehie, C.C.K. Ezenyeaku, An overview of female genital mutilation in Nigeria, Annals of medical and health sciences research, (2012) 2 (1): 70-73

³⁷ Ibid

³⁸ Universal Declaration of Human Rights (UDHR) 1948

of the Child (CRC),³⁹ the International Convention on Economic, Social and Cultural Rights (ICESCR),⁴⁰ the Beijing Declaration of 1995, amongst others provides a framework for the promotion and protection of the rights of women and girls. This position is further reiterated by regional instruments such as the African Charter on Human and Peoples' Rights,⁴¹ and the Protocol on the Rights of Women in Africa, 2006 (the Maputo Protocol).⁴² Nigeria is a signatory to several international treaties and instruments and therefore has obligations to protect and promote the rights of women and girls. Nigerian Government is further required by these international instruments to provide an effective framework for the protection of the rights of women and girls.

The Sustainable Development Goals (SDGs) also provides a framework for respecting the rights of women and girls. The goal specified as SDG stipulates that countries should aim to achieve gender equality and empower all women and girls. The targets of this goal include;⁴³

- i. End all forms of discrimination against all women and girls everywhere
- ii. Eliminate all forms of violence against all women and girls in the public and private spheres, including trafficking, sexual and other types of exploitation
- iii. Eliminate all harmful practices, such as child, early and forced marriage and female genital mutilation.

Nigeria has adopted the SDGs' framework and is obliged to meet the targets. One of which is the reduction of proportion of girls and women aged 15-49 years who have undergone female genital mutilation.

The Government through its National Policy and Plan of Action for the Elimination of Female Genital Mutilation in Nigeria was in place from 2013 – 2017 with an extension to the end of 2019.⁴⁴ One of the

³⁹ Convention on the Rights of the Child (CRC) 1990

⁴⁰ International Convention on Economic, Social and Cultural Rights (ICESCR) 1966

⁴¹ African Charter on Human and Peoples' Rights

⁴² Protocol on the Rights of Women in Africa, 2006 (the Maputo Protocol).

⁴³ National Policy and Plan of Action for the Elimination of Female Genital Mutilation in Nigeria (2021 -2025) < /nigeria.unfpa.org/sites/default/files/pub-pdf/fgm_national_policy_and_plan_of_action_nigeria.pdf> accessed on 06/06/2024

⁴⁴ Ibid

objectives of the 2013 Policy was “to establish a legal framework for the elimination of FGM at National and State levels” with targets of supporting the advocacy for the passage of the Violence Against Persons Prohibition (VAPP) Bill by 2015 and increasing the number of states with legislation against FGM from 11 in 2013 to 36 states, and the Federal Capital Territory (FCT) by 2017.⁴⁵

Before the passing into law of the Violence Against Person Prohibition Act (VAPP) Act in Nigeria, most lawyers, NGOs and anti-FGM campaigners in Nigeria were relying on the Nigeria Constitution and on the Child’s Rights Act (CRA) to speak against FGM in Nigeria. But one thing about the two foregoing laws is that none has explicitly mention FGM as a criminal offence.⁴⁶ The Constitution of the Federal Republic of Nigeria, 1999 provides for protection of fundamental rights of all Nigerians, including women and girls. It does not specifically make reference to gender-based violence or to FGM. Some of the provisions in the Constitution and in The Child’s Rights Act as it relates to FGM though not explicitly;

- i. The 1999 Constitution of the Federal Republic of Nigeria (CFRN) which is the supreme law of the land provides that:
“No person shall be subjected to any form of torture, inhuman or degrading treatment or punishment”.⁴⁷
- ii. The Child Rights Act (CRA), which was passed in 2003 in Nigeria also has some provisions that outlaws this practice. It provides also that
“No child shall be subjected to any form of torture, inhuman or degrading treatment or punishment”.⁴⁸

One particular thing you will note from the two foregoing provisions is that there is no mention of FGM. It was because of this fact that most lawyers, NGOs and anti-FGM campaigners in Nigeria rallied round and started to advocate for a Law which will specifically sanction FGM as a criminal offence. However, it sets out the rights to freedom from

⁴⁵ Ibid

⁴⁶ Ibid

⁴⁷ Section 34 of 1999 Constitution of the Federal Republic of Nigeria (CFRN)

⁴⁸ **Section 11(B)** of the Child Right Act,2003

discrimination on the basis of sex⁴⁹ and the right of every individual to respect for the dignity of their person and to freedom from torture and inhuman or degrading treatment.⁵⁰

It was as a result of this push, that the Violence Against Persons Prohibition Act (VAPP) Act was passed into law. This particular Act specifically mentioned FGM as a criminal act. It also made FGM and other forms of Gender based violence like rape, spousal battery, forceful ejection from home, harmful widowhood practices etc. punishable offences in Nigeria. Apart from this, the VAPP Act also made provisions for the maximum protection of victims and also for the effective remedies for victims.

The VAPP Act aims to eliminate gender-based violence in private and public life by criminalising and setting out the punishment for acts including rape (but not spousal rape), incest, domestic violence, stalking, harmful traditional practices and FGM. The VAPP Act 2015 was an epochal event, marking a national commitment to eradicating FGM through legislation by the National Assembly. The VAPP Act does not provide a clear definition of FGM, but prohibit it in the following simple statement, ‘The circumcision or genital mutilation of the girl child or woman is hereby prohibited.’⁵¹

The VAPP Act 2015 provides a legislative platform on which FGM can be prohibited nationally. It provides for the prohibition of FGM with a penalty not exceeding 4 years’ imprisonment or a fine not exceeding N200,000 or both for anyone found guilty of performing FGM or engaging another person to perform it.⁵² The law also prescribes a punishment of 2 years imprisonment or a fine not exceeding N100,000 or both for anyone who attempt, aid, abet, counsel or incites anyone to perform FGM.⁵³

The VAPP Act 2015 has been adopted by a number of States including, Lagos, Ekiti, Oyo, Osun, Ogun, Edo, Ebonyi, Enugu, Akwa Ibom, Cross River, Abia, Anambra, Kaduna, FCT, Nasarawa, Benue, Bauchi,

⁴⁹ Section 42 of 1999 Constitution of the Federal Republic of Nigeria (CFRN)

⁵⁰ Section 34 op. cit.

⁵¹ Section 6(1) of the VAPP Act 2015 mutilation.

⁵² Section 6(2) of the VAPP Act 2015 mutilation.

⁵³ Section 6 (3) and (4) of the VAPP Act 2015

Borno, Plateau, Yobe, Jigawa and FCT.⁵⁴ Seventeen (17) of these states have also established Sexual Assault Resource Centers (SARC), which is a key provision of the VAPP Act 2015.

Equally, several states had already enacted state laws dealing with child abuse, child protection issues, violence against women and girls and criminalising the practice of FGM, prior to the VAPP Act, 2015 which includes:⁵⁵

- i. Bayelsa State – FGM (Prohibition) Law (2004)
- ii. Cross River State – The Girl-Child Marriages and Female Circumcision (Prohibition) Law (2000)
- iii. Ebonyi State – Law Abolishing Harmful Traditional Practices Against Women and Children (2001)
- iv. Edo State – Prohibition of Female Genital Mutilation Law (1999)
- v. Enugu State – FGM (Prohibition) Law (2004) and
- vi. Rivers State – Child Rights Act (2009) amongst others.

In some northern states, the Sharia Penal Codes of states including Zamfara, Kano Kebbi, Kaduna and Sokoto are in place to protect children against various forms of physical and psychological violence.⁵⁶

However, FGM continues to be practiced in several states and communities. This calls into questioning the level of implementation of the laws, in particular, the underlying social norms entrenched in communities and the potentially effective approaches to address and transform the social norms. Although work remains to be done in ensuring all 36 States adopt law prohibiting FGM. Significant progress has been made towards the achievement of this objective and the targets, with making legislation against FGM.⁵⁷

5.0.0. Effect of Female Circumcision

There are four major known type and procedure of performing female circumcision and they all adversely affect the health being of the woman or girl. The four different types are practiced in Nigeria. Some

⁵⁴ National Policy and Plan of Action for the Elimination of Female Genital Mutilation in Nigeria (2021 -2025) op.cit

⁵⁵ Ibid

⁵⁶ Ibid

⁵⁷ Some Legal Provisions on the Prohibition of FGM in Nigeria.

are severe while others are less severe, but all have their adverse dimensions.⁵⁸ The first type is popularly called ‘clitoridectomy’, is the partial or total removal of the clitoris and in very rare cases the removal of fold of the skin surrounding the clitoris is done. The second type is called ‘excision’,⁵⁹ which involved a partial or total removal of the clitoris and the inner fold of the vulva with or without removal of the outer fold or skin of the vulva. Accordingly, the type three form of female circumcision is often called ‘Infibulation’ and it involves a severe procedure of narrowing of the vaginal opening through the creation of a covering seal. The seal is form by cutting and repositioning of the inner skin or outer skin of the vulva, through stitching with or without excision of the clitoris. While type four involves piercing, incising, cauterizing and pricking the female genital area, or any other harmful procedure to female genitalia for non-medical purpose.⁶⁰

However, the most extreme form of female circumcision is followed by stitching or sewing together of the raw vulva so that a small opening will be preserved for the purposes of passage of urine and menstrual fluid.⁶¹ Consequently time will come when de-infibulation may be necessarily required when a woman is infibulated and there is need for smooth sexual intercourse or to facilitate child birth.⁶² Therefore, those women that were cut by infibulation suffer two injuries at the first time. When it was super imposed on them and when they were about to deliver a child. Medically, female circumcision, and infibulation in particular, has severe consequences, which are summed up as follows.

- i. This form of circumcision is a distortion of the female organ that has a terrible psychological effect on women, causing depression, nervous tension, and anxiety.
- ii. It weakens the sexual desire, and being so, when the girl gets married, it spoils marital life for her and becomes a major obstacle in the way of her sexual satisfaction.

⁵⁸ Ibid

⁵⁹ E.H. Boyle et al Op, cit, P.526.

⁶⁰ Factsheet details on female genital mutilation, Geneva, World health organisation Op, cit

⁶¹ E.H. Boyle et all Op, cit, at P, 527

⁶² Factsheet details on female genital mutilation, Geneva, World health organisation Op, cit

- iii. It may cause infection and introduce germs into a woman's pelvis when it is performed by ignorant practitioners and at locations with poor sanitary conditions and with non-sterilized instruments. A girl exposed to such conditions usually gets sick and is exposed to inflammations, and her fallopian tubes become blocked. She may suffer acute, often fatal, bleeding after the operation. Although using non-sterilized instruments is not restricted to female circumcision, but it is common in male circumcision. This is common in some countries.
- iv. It may result in sterility. If it does not and the woman concerned gets pregnant, delivery will be difficult, and will have to be surgical.
- v. Dr Salah Abu Bakr" says, female circumcision has adverse effects on the urinary system, and may cause a urinary fistula, which causes, in turn, retention of the urine and the menstrual blood. Salah further noted other possible complications including inflammation in other organs, such as in the cervix of the uterus, which is known as a uterine ulcer, or in the endometrium (inner lining of the womb).⁶³

The antagonists of female circumcision rely on the risks that are involved and argue that it cannot be legitimize under Islamic law. They also rely the established rule which is provided in the hadith that: "Do not harm yourself or others".⁶⁴

The consequences and effects of female circumcision as outlined and prohibited by the Nigerian law cannot be over emphasized. The act is directly against the provisions of International Human Rights Instruments, Regional Human Rights Instruments to which Nigeria is a signatory as well the Nigerian Constitution and other domestic legislations amongst others which provide a framework for the promotion and protection of the rights of women and girls.⁶⁵ Although significant milestones have been recorded in the implementation of the

⁶³ E.H. Boyle et al Op, cit, P.526.

⁶⁴ Ibn Majah's *Sunan*, II, 784, item 2340; Malik's *Al-muwatta*, II, 745; Al-Baihaqi's *Al-sunan al-kubra*, XI, 69; Al-Hakim, *Al-mustadrak*, II, 28; Al-Daraqutni's *Sunan*, IX, 227; *Mujamma al-zawaed*, IX, 110, This *hadith* is one of the basic principles of Islamic jurisprudence; Sheikh Ahmad al-Zarqa, *Sharh al-qawa'id al-fiqhiya*, p. 113.

⁶⁵ National Policy and Plan of Action for the Elimination of Female Genital Mutilation in Nigeria (2021 -2025) op.cit

policy since 2013, including the enactment of new legislation, challenges remain in the elimination of this practice throughout the country.⁶⁶ The new National FGM Policy aims to providing a renewed framework for targeted interventions towards the elimination of FGM in the country. In providing such a framework, the policy provides a continued basis for a comprehensive and effective approach to the elimination of FGM, such as focusing on the current status of FGM, Social-norms, drivers of the practice, Stakeholder analysis, and Multi-sectoral needs for prevention and management as well as health care support for survivors.⁶⁷

Despite the provision of the Violence Against Persons (Prohibition) Act 2015 prohibiting the practice of FGM in Nigeria and the Law Abolishing Harmful Traditional Practices Against Women and Children in Ebonyi State, the type of FGM mostly practiced in Ebonyi State is Type I (Clitoridectomy), just as in many other countries in Africa, Middle East and Asia.⁶⁸

Interview conducted by Amelia Ngozi Odo and others in some selected area of Ebonyi state which is reviewed by this paper indicates amongst others that:⁶⁹

- i. FGM involves the removal of the clitoris so that the woman will not have sexual desire and will not be easily aroused sexually, thereby increasing their ability to remain a virgin before marriage and faithful to the husband after marriage, but the act is against the sexual and reproductive rights of women, which are part of their human rights,
- ii. Traditionally, FGM is performed by traditional birth attendants who are mostly older women in the rural areas, but surprisingly, the interview found that some patent medicine dealers and health workers were performing FGM in their drug stores and health facilities, respectively,
- iii. The interview reveals that the instruments mostly used for FGM currently are razor blade, scissors and sometimes locally made

⁶⁶ Ibid

⁶⁷ Ibid

⁶⁸ Odo AN, Dibia SIC, Nwagu EN, Umoke M-J, Umoke PCI. Towards characterization of Female Genital Mutilation (FGM) in rural Nigeria. *Afri Health Sci.* 2020;20(4):1968-78.< <https://dx.doi.org/>> accessed on 02/07/24

⁶⁹ *Ibid.*

objects for several people without sterilization which expose the victim to health hazard.

- iv. The interview further reveals refusal to perform FGM attracts punishments directly or indirectly. The person could be excommunicated or mocked by community members. She may also be maltreated by her husband and his family until she accepts to be circumcised.

However, with all the effort of the government as discussed above, the practice of female circumcision continues in several states and communities. This calls into question the level of implementation of the laws and the root drivers of FGM, in particular. The underlying social norms entrenched in communities and the potentially effective approaches to address and transform the social norms. The Nigerian legal system which consist of the Constitution of the Federal Republic of Nigeria, Islamic law, the received English law, Domestic Legislations, International and Regional human rights instruments to which Nigeria signed and ratified prohibits and sanctioned any cultural practice that causes harm to a person.

6.0.0 Conclusion

From the foregoing paragraphs, it is clear that Islam does not require female circumcision as a religious duty. However, Muslims who perceive its permissibility need not to raise their eyebrows against the Nigerian regime. The practice does not form part of the required religious actions talk less of being spiritually mandatory. Therefore, non-performance of the procedure does not attract spiritual sanction but the domestic law does in the contrary.

By virtue of the Constitution of the Federal Republic of Nigeria, Islamic law, the received English law, Domestic Legislations, International and Regional human rights instruments to which Nigeria signed and ratified Nigeria is under obligation to respect, protect and fulfil the rights of women and girls under these instruments, however, the rights of women and girls remain adversely impacted by negative and harmful traditional practices.

The paper observes as follows:

- i. Despite the efforts of the government and other stakeholder in the campaign against FGM as detailed in this paper, FGM remains widespread, accepted and its practice continues.
- ii. Generally, lack of awareness of the existing legal frameworks prohibiting FGM in Nigeria such as the VAPP Act, 2015 among others on the part of the rural populace and the law enforcement officials who are key stakeholders for curbing the practice affects the effectiveness and implementation of the policy plan.
- iii. There are gaps in the current legislation which need to be addressed through policy interventions such as requirements which mandate reporting of FGM-related offences. The VAPP Act does not expressly criminalise failure to report FGM that has taken place or is about to take place.
- iv. Health officials were commission to carry out the practice of Female circumcision notwithstanding there knowledge of the health hazard involve.

The paper finally makes the following recommendations based on the Nigerian regime;

- i. There is need therefore, for concerted efforts to address the practice of FGM including through policy making and implementation.
- ii. It is also recommended that, the Government at all levels to create public awareness of the existence and importance of this Act in their various States.
- iii. The paper further recommends that, the VAPP Act 2015 and the policy documents need to be amended and reviewed in other to accommodate and address the emerging gaps and challenges in the elimination of FGM in Nigeria

The Federal Government should strengthen ethical conduct and prohibit health official involvement in the practice of FMG.