

The Menace of Female Genital Mutilation (FGM) in Africa, Legal Implications and the Way Forward

ABOH, Fidelis Isomkwo.

Affiliation: University of Calabar, Calabar, PMB 1115, Etagbor, Cross River State, Nigeria

ABSTRACT

The menace of Female Genital Mutilation (FGM) is a viral practice across the face of Africa that undermines the rights of women and female children, causing them health, emotional and social traumas. Nigeria is nonetheless left out of this practice, as reported cases of FGM abound across Nigeria. This is an internet research to expose the dangers of FGM in Africa, giving reasons why the harmful practice remains a challenge, the procedure through which it is carried out, the human rights/legal edge to the practice and the way out of the wilds of FGM.

Keywords: FGM, FGC, FGM/C, human rights, African Charter, Child's Charter, Women's Rights Protocol

INTRODUCTION

“Female genital mutilation” (FGM) or “female genital cutting” (FGC) or “female genital mutilation/cutting” (FGM/C) defines all procedures involving partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons. According to WHO, between 100 and 140 million girls and women in the world are estimated to have undergone such procedures, and 3 million girls are estimated to be at risk of undergoing the procedures every year. Female genital mutilation has been reported to occur in all parts of the world, but it is most prevalent in the western, eastern, and north-eastern regions of Africa; some countries in Asia and the Middle East and among certain immigrant communities in North America and Europe (WHO, 2008.) Having no known health benefits, female genital mutilation is known to be harmful to girls and women in many ways. In the first place, it is excruciatingly painful and traumatic. The removal of, or damage to, healthy, normal genital tissues interferes with the natural functioning of the body and causes several immediate and long-term health consequences. For instance, babies born to women who have undergone FGM suffer a higher rate of neonatal death compared with babies born to women who have not undergone the procedure (WHO, 2008.)

Communities that practise FGM report a variety of social and religious reasons for continuing with it; but from a human rights perspective, the practice reflects deep-rooted inequality between the sexes, and constitutes an extreme form of discrimination against women. Female genital mutilation is nearly always carried out on minors and is therefore a violation of the rights of the child. The practice also violates the rights to health, security and physical integrity of the person, the right to be free from torture and cruel, inhuman or degrading treatment (UN Convention, 1984), and the right to life when the procedure results in death.

Several years of prevention work, undertaken by local communities, governments, and national and international organizations, have contributed to a reduction in the prevalence of female genital mutilation in some areas. Communities that have employed a process of collective decision-making have been able to abandon the practice. Indeed, if the practising communities decide themselves to abandon FGM, the practice can be eliminated very rapidly.

Several governments have passed laws against the practice, and where these laws have been complemented by culturally-sensitive education and public campaigns, the practice has diminished. National and international organizations, such as OHCHR, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM, WHO, have played a key role in advocacy against the practice and producing research data that confirm its harmful consequences.

In the African continent where the practice is most prevalent and poses difficulty to eliminate, the African Women's Organization met in Dakar, Senegal, to discuss the health consequences of female circumcision. The group formed the Inter-African Committee against Harmful Traditional Practices (IAC) with national committees in more than 20 African countries in that meeting. IAC was able to bring the harmful consequences of female circumcision to the attention of most African Government (Althaus, 1997).

Anti-FGM movements focus, among many other arguments, on lack of religious evidence supporting FGM. The main accusation against FGM is the enormous health hazards, both physical and psychological on girls (the primary victims). Numerous studies and case reports have been published on health complications of FGM (Toubia, 1994.) Yet, several efforts are still needed to eradicate the phenomenon.

This paper looked at the multiple reasons for the practice of FGM, Procedure of FGM, harmful effects of FGM, the cultural and legal aspects of FGM and made suggestions on the way forward.

In Nigeria, FGM is practiced for a number of reasons. These reasons could be psychosexual, sociological and religious, among others.

REASONS FOR THE PRACTICE OF FGM

For psychosexual reason, it is done to attenuate sexual desire in the female, maintain chastity and virginity before marriage and fidelity during marriage, and increase female sexual pleasure. For sociological reason, it is done for identification with the cultural heritage, initiation of girls into womanhood, social integration and maintenance of social cohesion and social acceptance. For religious reason, female genital mutilation is practised in a number of communities, under the mistaken belief that it is demanded by certain religions. For hygienic and aesthetic reason, it is practiced among some societies because the external female genitals are naturally considered unclean and unsightly, and so are removed to promote hygiene and provide aesthetic appeal. Other reasons include the enhancement of fertility, promotion of child survival, better marriage prospects, and enhancement of the delivery of babies.

PROCEDURE OF FGM

This involves partial or total removal of the external female genital and/or injury to the female genital organs whether for cultural or any other non-therapeutic reasons, and is commonly classified into three types, namely:

Type1 – Clitoridectomy is the least severe form of the practice and involves the removal of the hood or of the clitoris and/or part of the clitoris itself.

Type 2 – This is a more severe practice, involving the removal of the Clitoris along with partial or total excision of the labia minora.

Type 3 – This is known as infibulations and the most severe form of FGM. It involves the removal of the clitoris, the labia minora and the adjacent medial part of the labia majora, and the stitching of the vaginal

opening leaving an opening the size of a pinhead to allow for the flow of urine and menstrual blood.

HARMFUL EFFECTS OF FGM

The harmful effects of FGM are numerous. They include among others, failure of the wound to heal, abscess formation, cyst formation, excessive growth of scar tissue, urinary tract infection, painful sexual intercourse, hepatitis and other blood-borne diseases, reproductive tract infection, pelvic inflammatory diseases, infertility, painful menstruation, chronic urinary tract obstruction/bladder stones, obstructed labour, Keloid scar, increased risk of bleeding and infection during childbirth.

Increased Susceptibility to HIV/AIDS

FGM calls for urgent attention in the context of HIV/AIDS, as the use of contaminated instrument in the operation could be an important mode of transmission. The risks are high from the fact that the operation is mainly carried out by practitioners of traditional medicine and by traditional birth attendants, using unsanitary knives and other instruments, in generally unhygienic conditions. The transmission of HIV/AIDS is an obvious danger, alongside the usual gynecological and psychological problems associated with the practice. These multiple risks are compounded in the case of infibulations by the need to cut open the infibulated area for childbirth. Carried out with crude, unsterilised instruments and without anaesthesia, the reopening operation causes intense pain and frequently results in infection and heavy bleeding. In the worst of cases it can lead to:

- (i) the opening of passages between the vagina and bladder or anus, producing Vesico-Vaginal Fistula (VVF), a condition more commonly associated with the results of obstructed labour in early pregnancy but arising also in some cases from the cutting open of infibulated women,
- (ii) Recto-Vaginal Fistula (RVF) – where, due to age of the pregnant girl, whose pelvis and birth canal are not fully developed, relentless pressure from the baby's skull damages the birth canal, causing breakage in the wall, allowing uncontrollable leakage from the bladder into the vagina or uncontrollable leakage of faeces. (UNICEF, 2014)

CULTURAL/ ETHNOGRAPHICAL ASPECTS

FGM, practised in nearly every community in Africa and beyond, is practised for cultural reasons. First of all, FGM is practised as a form of initiation into womanhood in some African communities. Secondly, FGM is practised as a pre-condition for marriage in some African communities. For example, among the Bekwarra, Obudu and indeed neighbouring communities,

a woman who is uncircumcised would never get married, Christianity and awareness on the negative effects of FGM is gradually changing this. Lastly, FGM is a means of getting the girl-child or woman integrated into the league of womanhood. It gives her psycho-social confidence in a cultural society like Africa that believes every woman must be circumcised. It would be a shame to any woman for her peers to hear that she is not yet circumcised.

LEGAL ASPECTS

African Regional Human Rights Instruments

Nigeria was a member of the Organization of African Unity (OAU), now African Union (AU). Since 1963 till date the Assembly of the 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 (Child's 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 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 (Yerima & Atidoga, 2014.) The African Charter is an amalgamation of both traditional and contemporary formulations of human rights. For the reason that FGM is deeply rooted in cultural tradition and the fact that the arguments posed 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 (Yerima & Atidoga, 2014.)

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, quoted in Yerima & Atidoga, 2014.) 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. 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, given their peculiar vulnerabilities and circumstances" (NBA, 2010:5, quoted in Yerima & Atidoga, 2014.) 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 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 FGM affects 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, 2009:193). 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 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 FGM, the Charter also emphasizes the need to incorporate African cultural values and experiences when dealing with the child (NBA, 2010:6).

Nigerian Domestic Human Rights Instruments

Apart from the criminal law perspective, the act of 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, Section 46). But for consideration of the practice of 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 FGM relied upon are recognized in Chapter II of the Nigerian 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 FGM is practised in Nigeria seems to defy this fact.

THE WAY FORWARD

- (i) Some of the 36 States of the Federation that have not implemented the Child Right Acts and adopted the international conventions that protect the rights of women should do so immediately in order to protect women from FGM and create awareness of its criminality through prosecution of cases.
- (ii) Government, through its agencies, like the National Orientation Agency (NAO), should create awareness on the dangers of FGM and to refute, through proofs, those superstitious beliefs about FGM that encourage its practices. They should take their awareness to the rural areas where the practice is prevalent.
- (iii) Schools, especially Secondary schools, should form clubs that enlighten members about their rights and about the dangers of FGM. This will go a long way in preparing their young minds about their dignity and

rights, and sharpen their mental capacities against any form of abuse or discrimination.

- (iv) Native doctors and quacks who practise FGM should be brought to book. They should be made to face the full weight of the law, so that it will serve as a deterrent to others.

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