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LOCATING THE CONSTITUTIONAL BASIS FOR THE LAWS PROHIBITING FEMALE GENITAL MUTILATION OR CUTTING IN NIGERIA

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ABSTRACT: The prohibition of the practice of “FGM/C” has been resisted in some parts of Nigeria both for cultural and social reasons thus throwing up the question of constitutionality of the Violence Against Persons Prohibition Act, 2015 which expressly outlawed the practice. To resolve this quagmire, this paper critically analyzed the provisions of the VAPP Act, 2015 relating to FGM/C and subjected it to scrutiny alongside relevant constitutional provisions. The paper established that the VAPP Act is valid and constitutional as its prohibition of the practice of FGM/C accords with the constitutionally guaranteed rights to dignity and freedom from discrimination. It was therefore recommended that the prohibition of FGM/C should be embraced and that the provisions of the VAPP Act should be adopted and domesticated in all the States in Nigeria so that there will be an end to the practice of FGM/C and its associated health and human rights infractions.

KEYWORDS: Cutting, Dignity, Female, Genital, Mutilation

INTRODUCTION

This aim of this paper is to provide constitutional justification for the provisions of the “Violence Against Persons (Prohibition) Act, 2015” which outlaws the practice of “Female Genital Mutilation” or “Cutting” and to encourage all the thirty-six States in the Federal Republic of Nigeria to domesticate the law in order to put an end the obnoxious practice nationwide. For ease of understanding and to achieve the above stated objective, the paper is further subdivided into the following segments namely: Establishing the hegemony or “supremacy” of the National Constitution; Meaning of “Female Genital Mutilation” or “Cutting”; Locating FGM/C prohibition under of the national Constitution; Conclusion and recommendation.

2.0 Establishing the hegemony or “supremacy” of the National Constitution

It is important to firstly establish the overriding or preponderant authority of the national Constitution over all other laws as a prelude to determining the constitutionality of law that prohibits the practice of “female genital mutilation”. Undeniably, the extant Constitution of the Federal Republic of Nigeria,¹ 1999 as amended is the “supreme law, the *fons et origo* and the *grandmom*”. The principle of the “supremacy of the Constitution” is firmly entrenched in *section 1(1) and (3)* of the CFRN, 1999 as amended. It is provided in *section 1(1)* that “This Constitution is Supreme and its provisions shall have binding force on the authorities and persons throughout the Federal Republic of Nigeria while *section 1(3)* thereof provides that “If

any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall, to the extent of the inconsistency, be void.” In the now notorious case of *CBN v Ochife & Ors*,ⁱⁱ it was reiterated that “the Constitution is the *grandmom*, the basic law of the land. It stands head and shoulders above any other law or instrument enacted by the National Assembly, State House of Assembly or any other person or authority empowered in that regard. It is from the Constitution that every other enactment or instrument derives their validity and binding force”. The hegemony of the Constitution is recognized in a long line of decided cases such as *A-G Federation v A-G Abia State & Ors*,ⁱⁱⁱ *Shelim & Anor v Goban*,^{iv} and *Olubunmi v State*.^v

Thus, any law that does not obey the principle of “supremacy of the constitution” is liable to be declared “unconstitutional, null and void” by the Courts. It is against this sacred principle of “supremacy of the Constitution” that the law prohibiting female genital mutilation or cutting in Nigeria will be assessed to determine its constitutionality. Before this is done, the paper will seek to ascribe a meaning to the term or concept of “**Female Genital Mutilation**” or “**Cutting**”.^{vi}

3.0 Meaning of “Female Genital Mutilation” or “Cutting”

The conceptual definition of mutilation refers to “the intentional alteration or damage to a body part or organ, often resulting in permanent disfigurement, disability, or harm”. According to UNICEF, “Female genital mutilation, also known as ‘female genital cutting’ or ‘female circumcision’, refers to “all procedures involving partial or total removal of the female external genitalia or other injury to the female genital organs for non-medical reasons.”^{vii} The terminology used to describe the practice has “potentially offensive connotations and has thus been a subject of ongoing debate”. Many commentators initially used the term ‘female circumcision’, since in some societies genital cutting is incorporated into both male and female initiation rites. The account further states that “A number of African languages, in fact, use the same term for cutting performed on both women and men. Starting in the 1970s, some activists objected

to the use of this term; one reason is that it erroneously suggests that female circumcision is analogous to male circumcision. To emphasize the different nature of female genital cutting and to create a linguistic distinction, many favour the term ‘female genital mutilation’ and its acronym. The term ‘female genital mutilation’ was adopted in 1990 by the Inter-African Committee on Traditional Practices Affecting the Health of Women and Children, and in 1991 the World Health Organization (WHO) recommended that the United Nations adopt it as well. However, objections have been raised because the term also confers judgement and condemnation of what is an age-old practice in many communities.^{viii} In an effort to become more culturally sensitive, the term ‘female genital cutting’, or FGC, has become widely used among researchers as well as various international development agencies. In 1999, the UN Special Rapporteur on Traditional Practices called for “tact and patience” regarding this area and drew attention to the risk of “demonizing cultures under cover of condemning practices harmful to women and the girl child.”^{ix} UNICEF and the United Nations Population Fund (UNFPA) currently use a hybrid term, ‘female genital mutilation/cutting’ or FGM/C. This is meant to capture the significance of the term ‘mutilation’ at the policy level and highlight that the practice is a violation of the rights of girls and women. At the same time, it recognizes the importance of employing respectful terminology when working with practising communities.^x In reality, these are all blanket terms describing a broad range of practices performed on girls and women, mostly before the age of 15 and often in infancy or early childhood. More precise anatomical descriptions are provided by a typology developed by WHO in 1995 and updated in 2007.”^{xi}

Against the foregoing exposition, suffice it to say that mutilation can be physical, psychological, or emotional, and may be inflicted through various means, including (a) Surgical or medical procedures (for example, FGM). (b) Violence or trauma (for example, torture, assault). (c) Cultural or ritual practices (for example, scarification, circumcision). (d) Self-inflicted harm (for example, self-mutilation, cutting). Mutilation can have severe consequences, including physical harm or disability; emotional or psychological

trauma; social stigma or isolation; loss of bodily autonomy or integrity. The conceptual definition of mutilation encompasses: (a) Intentionality: Mutilation is a deliberate act, rather than an accidental or natural occurrence. (b) Harm: Mutilation results in harm or damage to the individual. (c) Permanence: Mutilation often has lasting effects, which may be irreversible. (d) Context: Mutilation can occur in various contexts, including cultural, medical, or violent settings. This definition recognizes the complexity and severity of mutilation, highlighting the need for empathy, support, and protection for those affected.

4.0 Prohibition of “FGM/C” in Nigeria

It should be noted that the first legislation that directly addressed concerns about FGM/C and expressly outlawed it in Nigeria is the Violence Against Persons (Prohibition) Act, 2015. Although the law does not define or interpret the term “Female Genital Mutilation” or “Cutting”, however in its *section 46*, it provided that “circumcision of a girl or woman” means “cutting off all or part of the external sex organs of a girl or woman other than on medical ground”. In addition, it interpreted that “harmful traditional practices” means “all traditional behavior, attitudes or practices, which negatively affect the fundamental rights of women, girls, or any person and includes harmful widowhood practices, denial of inheritance or succession rights, female genital mutilation or female circumcision, forced marriage and forced isolation from family and friends”. This is an all-embracing interpretation that signifies the intention of the law to wipe out harmful traditional practices against women and girls in Nigeria.

Expressly, the VAPP Act, 2015, in *section 6* prohibits “female circumcision or genital mutilation”. Out of abundant caution, and for emphasis, the verbatim provision of *section 6* of VAPP Act, 2015 is reproduced below –

- (1) The circumcision or genital mutilation of the girl child or woman is hereby prohibited.
- (2) A person who performs female circumcision or genital mutilation or engages another to carry out such circumcision or mutilation commits an offence and is liable on conviction to a term of imprisonment not exceeding 4 years or to a fine not exceeding N200,000.00 or both.

(3) A person who attempts to commit the offence provided for in subsection (2) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding N100,000.00 or both.

(4) A person who incites, aids, abets, or counsels another person to commit the offence provided for in subsection (2) of this section commits an offence and is liable on conviction to a term of imprisonment not exceeding 2 years or to a fine not exceeding N100,000.00 or both.

From the foregoing, it is axiomatic that the law frowns at FGM/C and prescribes sundry punishments against the principal offender, the person who attempts to commit the offence as well as any person who aids, abets and or enables the act of FGM/C. It is apposite at this juncture to accentuate that as forward looking as the VAPP Act, 2015 is, it is still subject to some drawbacks. One significant downside is that the law does not enjoy nationwide application. The VAPP Act “applies only to the Federal Capital Territory, Abuja”.^{xii} This means that it does not apply in all the 36 States that make up Nigeria. This state of affairs has given room for some States not to be bound by its provisions as they have not domesticated the provisions of the VAPP Act with the implication that FGM/C is still being practiced without consequences in those areas. The second drawback is that “only the High Court of the Federal Capital Territory, Abuja empowered by an Act of Parliament shall have the jurisdiction to hear and grant any application brought under this Act”.^{xiii} This limited application of the law has adversely affected the right of access to justice concerning FGM/C.

5.0 Locating FGM/C prohibition under of the national Constitution

In addressing Female Genital Mutilation/Cutting (FGM/C) and its prohibition under the VAPP Act, 2015, it is important to determine its constitutionality or validity within the framework of the Constitution of the Federal Republic of Nigeria, 1999, as amended. This is important because it had earlier been noted that any law that is in conflict with the “principle of supremacy of the Constitution” remains “null, void and of no effect to the extent of its inconsistency”. As will be shown shortly, several constitutional provisions exist to support the prohibition of the harmful

effects of the practice of FGM/C. The national Constitution provides a foundation for the protection of fundamental human rights which directly combats FGM/C by safeguarding the rights to dignity, health, and freedom from discrimination. Details of these rights are serially examined hereunder.

(a) Section 34- "Right to Dignity of the Human Person"

Section 34(1)(a) of the CFRN guarantees every individual the right to dignity, explicitly prohibiting torture or any form of inhuman or degrading treatment. Female Genital Mutilation, by its very nature, constitutes a violation of this right due to the physical and psychological trauma inflicted on victims. FGM/C subjects individuals, especially young girls, to severe pain, lifelong health complications, and psychological distress, all of which undermine their dignity as human beings. The constitutional provision therefore, offers a strong legal basis for condemning and prohibiting the practice as it constitutes a form of inhuman treatment.

In *Eziegbo & Anor v ASCO Investment Ltd & Anor*,^{xiv} it was decided regarding what the right to dignity entails as follows-

... the provisions in *section 34(1)(a)* guarantee respect for the dignity of the person of all persons in Nigeria and that a person shall not be subjected to torture or to inhuman or degrading treatment. This is one, and in deed the 2nd of the fundamental right provided for and guaranteed by the Grund norm and Fountain of all laws in Nigeria. See *Rabiu v The State* (1980) 8 11 SC, 130, *A.G., Bendel State v A.G., Federation* (1981) 10 SC, 7 at 132 - 134, (1982) 3 NCLR, 1, under Chapter IV for all persons (Nigerians and others living in Nigeria). Accordingly, no other person/s and/or authority in Nigeria shall subject a person or person to any form of torture; physical, psychological, mental, etc., inhuman or other degrading treatment, but shall accord due respect for the dignity of the person/s. See *Fawehinmi v Abacha* (1998) 1 HRLRA, 541, *Uzoukwu v Ezeonu* (1991) 6 NWLR (Pt. 200) 708.

There is no doubt that FGM/C is "a cruel, inhuman and degrading treatment". It is also an act of torture. In *Odiong v Ass. I-GP*,^{xv} the Court of

Appeal was prepared to hold that the phrase "inhuman treatment" is defined as "physical or mental cruelty so severe that it endangers life or health". In addition, in the case of *Nigeria Customs Service Board v Mohammed*^{xvi} construed that "torture" is "to inflict intense pain to body or mind for purposes of punishment, or to extract a confession or information, or for sadistic pleasure". It also interpreted "inhuman treatment" as "such mental or physical cruelty or severity as endangers the life or health of the party to whom it is addressed or creates a well-founded apprehension of such danger" while "degrading" treatment is "reviling; holding one up to public obloquy; lowering a person in the estimation of the public; exposing to disgrace, dishonor or contempt". Thus, any action which inflicts intense pain to the body or mind of a person of any act of physical cruelty which endangers the life or health of a person or creates a well-founded apprehension of such danger or an act done in such a manner as to bring a person to public ridicule, disgrace, dishonor or contempt comes with the provision of *section 34(1)(a)* of the CFRN, 1999 as amended.

The Courts in Nigeria have interpreted this provision to the extent that harmful traditional practices that degrade human dignity, and FGM/C, fit squarely within this scope. Legal arguments rooted in this section form the basis for many anti-FGM/C advocacy efforts, emphasizing that the practice violates constitutionally protected human rights.

(b) Section 42 – "Right to Freedom from Discrimination"

Section 42(1) of the CFRN, 1999 as amended prohibits discrimination on the grounds of gender, religion, or ethnic origin. FGM/C is a gender-specific practice that discriminates against women and girls by subjecting them to harmful traditional procedures solely based on their gender. The practice perpetuates gender inequality by infringing on the physical and mental well-being of females while enforcing societal norms that view women as subordinate to men. In *NMCN v Adesina*,^{xvii} it was held that "The Black's Law Dictionary, Ninth Edition defines discrimination on page 534, inter alia, as "Differential treatment; esp; a failure to treat all persons equally when no

reasonable distinction can be found between those favored and those not favored."

Thus, the right to freedom from discrimination guaranteed in *section 42* of the CFRN, 1999 as amended serves as a constitutional shield for women and girls, reinforcing the notion that gender-based harmful practices such as FGM/C are discriminatory, cruel, barbarous and unconstitutional. Needless to overemphasize that the practice of FGM/C in Nigerian violates the anti-discrimination provisions of the Constitution.

6.0 Conclusion and recommendation

This paper has settled with finality the question of the constitutionality of the VAPP Act, 2015 prohibiting FGM/C in Nigeria. From various provisions of the Constitution discussed in this paper, it has become clear that FGM/C remains an unconstitutional act or practice. Thus, the VAPP

Act, 2015 and other such laws enacted at State levels that outlaw FGM/C draw their authority from the constitution. Rather than being antagonistic, they reinforce the enjoyment of rights enshrined in the Constitution by criminalizing FGM/C and holding perpetrators accountable. Thus, the VAPP Act, 2015 aligns with the constitutional mandate to promote human dignity, eliminate discrimination and harmful practices against all citizens especially women. The snag or difficulty with the law is that it is a federal legislation applicable only in the national capital in Abuja, It is therefore recommended that all States in Nigeria should adopt the stringent anti-FGM/C posture of the VAPP Act, 2015 and ensure that its provisions are domesticated and enforced in all the States of the Nigeria.

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ⁱ Hereinafter abbreviated and referred to as "CFRN".

ⁱⁱ (2025) LPELR-80220(SC).

ⁱⁱⁱ (2024) LPELR-62576(SC).

^{iv} (2009) LPELR-3043(SC) (Pp. 15 paras. B).

^v (2023) LPELR-60331(SC) (Pp. 32-33 paras. B-B).

^{vi} Hereinafter abbreviated and referred to as "FGM/C".

^{vii} WHO, *Eliminating Female Genital Mutilation: An interagency statement*, p. 4, 22.

^{viii} Eliah, E., 'Reaching for a healthier future', *Populi*, (New York, United Nations Population Fund, 1996) 12-16.

^{ix} United Nations Economic and Social Council, Commission on Human Rights, *Third report on the situation regarding the elimination of traditional practices affecting the health of women and the girl child, produced by Mrs. Halima Embarek Warzazi pursuant to Sub-Commission resolution 1998/16*, UN document E/CN.4/Sub.2/1999/14, 9

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^{xii} *Section 47* of the VAPP Act, 2015.

^{xiii} *Section 27* of the VAPP Act, 2015.

^{xiv} (2022) LPELR-56864(SC) (Pp. 6-7 paras. B).

^{xv} (2013) LPELR-20698(CA) (Pp. 28 paras. E).

^{xvi} (2015) LPELR-25938(CA) (Pp. 37-40 paras. D).

^{xvii} (2016) LPELR-40610(CA) (Pp. 22-23 paras. F).