

THE SOCIO-LEGAL CONUNDRUM OF MALE GENITAL MUTILATION OR CUTTING IN NIGERIA- A REFLECTION

*Andrew Ejovwo Abuza**

Abstract:

The Nigerian Government has enacted laws and taken other measures to promote and protect rights of Nigerian children. This article reflects on the socio-legal conundrum of male genital mutilation or cutting (MGM/C) in Nigeria. The research methodology adopted is mainly doctrinal analysis of applicable primary and secondary sources. The author is of the view that the practice of MGM/C of a male child which inflicts agonising pains on him is barbaric, criminal, amoral, undemocratic, unconstitutional, unlawful and contrary to international human rights' norms or treaties. It is concluded that for the scourge of MGM/C of a male child in the country to be effectively addressed, the Nigerian Government must, among other recommendations, work towards the ban of MGM/C of a male child, except for medical indication in line with the approach in other countries, including the United States of America (USA) and Iceland.

Keywords: *Child, Male genital mutilation or cutting, Female genital mutilation or cutting, Child's Rights*

*The author is a PhD degree holder; B.Sc (Hons); PGDE; M.Sc; LL.B (Hons); LL.M); B.L. Teachers Registration Council of Nigeria (TRCN) Certificate of Registration as Certified Teacher. Senior Lecturer and former Acting Head of Department of Commercial and Property Law and Sub-Dean, Faculty of Law, Delta State University, Abraka (Oleh Campus) Nigeria, Legal Consultant and Principal of the Law Firm of Abuza and Associates. Email: andrewabuza@yahoo.com

1. INTRODUCTION

The Constitution of the Federal Republic of Nigeria 1999 (the Constitution) ¹ came into effect on 29th May 1999 signaling the commencement of Nigeria's Fourth Republic. Chapter Four of the Constitution contains the fundamental rights guaranteed to all citizens of Nigeria. Its section 42 (1) guarantees to all citizens of Nigeria, including the male child the right to freedom from discrimination, that is:

... a citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person (a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.

The provisions above constitute the "Equal Protection of the law and Non- discrimination Principle". ² Section 42 above is not one of the sections mentioned in section 45 (1) of the Constitution for which the law-making authorities in Nigeria can make a law which

¹ Cap. C 23 Laws of the Federation of Nigeria (LFN) 2004.

² This Principle is also enunciated in Article 26 of the International Covenant on Civil and Political Rights (ICCPR) 1966.

derogates from the fundamental rights guaranteed under the same provided it is reasonably justifiable in a democratic society (a) in the interest of defence, public order, public morality, public health, public safety or (b) for the purpose of protecting the rights and freedom of other people.³ The only qualification to section 42 (1) (a) and (b) above is that it shall not invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the State or as a member of the armed forces of the Federation or a member of the Nigeria Police Force or to an office in the service of a body corporate established directly by any law in force in Nigeria.⁴

In the exercise of their legislative powers under section 4 of the Constitution, the National Assembly of the Federation⁵ and some Houses of Assembly of the States of the Federation have between 1999 and 2015 made numerous laws which are inconsistent with or contravene the provisions of section 42 (1) (a) and (b) above. Examples of such laws include the Delta State Female Circumcision and Genital Mutilation (Prohibition) Law 2006,⁶

³ Quoted in Abuza., A. E . , "Lifting of the Ban on Contrasting out of the Check-off System in Nigeria: An Analysis of the Issues Involved", 42(1) *Banaras Law Journal* (BLJ) , 2013, p. 58, at pp. 65-6, available at <<http://www.bhu.ac.in/Lawfaculty/blj/banarasLawJournal.2013.Vol.4.2.No.1.pdf> > (accessed 10 October 2015). The provisions of s. 45 (1) above are similar in wording to the provisions of s. 41 (1) of the Constitution of the Federal Republic of Nigeria 1979 Cap. 62 LFN 1990.

⁴ The Constitution of the Federal Republic of Nigeria 1999, as amended, s. 42(3).

⁵ The National Assembly of the Federation is made up of the House of Senate and House of Representatives.

⁶ Cap. F1 Laws of Delta State of Nigeria 2006. See, also, the Cross River State Girl-Child Marriages and Female Circumcision or

enacted by the Delta State House of Assembly. The Violence against Persons (Prohibition) Act 2015, enacted by the National Assembly of the Federation is another example. It is applicable only in the Federal Capital Territory, Abuja. These laws specifically proscribe female genital mutilation or cutting (FGM/C) of a female child or woman without also specifically proscribing MGM/C of a male child or man.⁷ In this way, the practice of MGM/C has continued in some parts of Nigeria unabated. It is even perpetrated by its practitioners openly in many villages, towns and cities of Nigeria without any fear of being arrested and prosecuted by law enforcement agencies, since it is not an offence to so do.

The male child or man is being discriminated against by these laws and therefore they are in conflict with the right of a male child to equal protection of the law as enshrined in Article 3(2) of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act⁸ 2004. They are also in conflict with the "Equal Protection of the Law and Non-discrimination Principle" enunciated in Article 26 of the ICCPR. Furthermore, they are invalid or void on ground of inconsistency with the "Equal Protection of the law and Non-discrimination Principle", as enunciated in section 42 (1) (a) and (b) above. Worse still, the procedure of MGM/C is being carried-out on a male child in Nigeria in spite of the rights of every individual, including a male

Genital Mutilation (Prohibition) Law 2000 and Ekiti State Female Circumcision (Prohibition) Law 2002.

⁷ This is, also, the approach in other countries like the USA. See Solomon, L.M and Noll, R.C., "Law, Ethics, and Gender-Male versus Female Genital Alteration: Differences in Legal, Medical, and Socio-ethical Responses", 4(2) *Gender Medicine*, 2007, p. 89, at p. 92.

⁸ See African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act Cap. 10 LFN 1990 (now Cap. A 9 LFN 2004).

child- to freedom of expression, to respect for the dignity of the human person, not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment, to be protected against physical, mental or emotional injury, abuse, neglect or negligent treatment, maltreatment or exploitation and not to be subjected without his consent to medical or scientific experimentation, among other rights, guaranteed by various international human rights' treaties signed by the Federal Government of Nigeria (FGN), the Nigerian Child's Rights Act ⁹ 2003 and the Child's Rights Law of the various States in Nigeria.¹⁰

MGM/C of a male child has deleterious effect on the health of a male child. For instance, it may lead to the transmission of sexually-transmitted diseases (STDs), including Gonorrhoea, Syphilis and Human Immuno-deficiency Syndrome (HIV) or Acquired Immune-Deficiency Syndrome (AIDS), due to the utilisation of an instrument which was not sterilised or properly sterilised on a male child after such instrument had been used on a male child or man already afflicted with STDs or HIV/AIDS.¹¹ Also, it has engendered haemorrhages or excessive bleeding which has resulted in the death of many innocent Nigerian male children, including one Goodluck Caubergs.¹² Other harmful effects of MGM/C of a male child on the health of the same

⁹ The Child's Rights Act 2003 Cap. C 50 LFN 2004, ss. 10 & 11.

¹⁰ See, for example, the Delta State Child's Rights Law 2008, ss. 5-13.

¹¹ See "Male Genital Mutilation (MGM)", available at <<http://www.wikigender.org/wiki/male-genital-mutilation-mgm/>> (accessed 12 August 2016).

¹² "Nurse who caused baby boy to bleed to death after botched home circumcision walks free from court", available at <<http://www.dailymail.co.uk/news/article-2276006/Nurse-Grace-Adeleye-caused-baby-boy-bleed-death-botched-home-circumcision-walks-free-court.html>> (accessed 24 August 2016).

include: severe pain; loss of the penis in some cases; increased friction and pain during sexual intercourse in some cases; and damage to psychosexual and psychological health.¹³

This article reflects on the socio-legal conundrum of MGM/C in Nigeria. It analyses applicable laws. It also takes the position that MGM/C of a male child is equally as amoral, criminal, unconstitutional, barbaric, undemocratic and unlawful as FGM/C of a female child or woman and therefore ought to be banned in Nigeria. It also highlights the lessons or take-away from other countries and offers suggestions, which, if implemented, could eradicate the problem of MGM/C of a male child in Nigeria.

2. CONCEPTUAL FRAMEWORK OF MALE GENITAL MUTILATION OR CUTTING

2.1 Concept of child

The word “child” is a key word in this article. It is significant to make known from the outset the meaning of this key word and by extension the meaning of other key words in this article, which is “male child” and “female child”. The Child’s Rights Act 2003 defines “child” as thus: “a person who has not attained the age of 18 years”.¹⁴ Under the Constitution, “a ‘child’ includes step-child, a child born out of wed-lock and any child to whom any individual

¹³ “Male Genital Mutilation (MGM)”, above note 11 and “Time to Ban Male Circumcision”, available at <http://www.theguardian.com/Law/2011/jun/14/circumcision-ban-row-san-francisco> (accessed 9 August 2016).

¹⁴ The Child’s Rights Act 2003, s. 277. See also s. 2 of the Delta State Child’s Rights Law 2008 which states that “a child means a person under the age of Eighteen years”. This definition is in alignment with the definition of a child under International Law. To be specific, art. 2 of the African Charter on the Rights and Welfare of the Child (ACRWC) 1990 states that “a child means every human being below the age of 18 years”.

stands in place of parent”.¹⁵ While a female child is a child of the female sex, a male child is a child of the male sex.

2.2 Concept of male genital mutilation or cutting

The words “male genital mutilation or cutting” are other key words in this article. It should be noted that male circumcision is often referred to as MGM/C. The English word “circumcision” comes from the Latin word *circumcidere*, meaning to cut around.¹⁶ Without doubt, “circumcision” is derived from the English word “circumcise”. The latter means “to remove the foreskin of a boy or man for religious or medical reasons” or “to cut-off parts of the sex organs of a girl or woman”.¹⁷ Male circumcision is, therefore, the removal of the foreskin of a boy or man for religious or medical reasons. MGM/C is a broader and more embracing or encompassing concept. In actuality, it comprises all procedures involving partial removal of the external male *genitalia* or other injury to the male genital organ whether for medical, cultural, religious, or other non-therapeutic reasons.¹⁸

¹⁵ The Constitution, Fifth Schedule, Part 1, Para 19.

¹⁶ See World Health Organisation (WHO), “Male Circumcision: Global trends and determinants of prevalence, safety and acceptability” (PDF), World Health Organisation, 2007, quoted in “Circumcision. From Wikipedia, the free encyclopedia”, available at <<http://www://en.wikipedia.org/wiki/circumcision>> (accessed 10 August 2016).

¹⁷ The first quotation refers to male circumcision while the second quotation has to do with female circumcision or FGM/C. See Wehmeier, S et al (eds.), *AS Hornsby's Oxford Advanced Learner's Dictionary of Current English* (7th edn.) Oxford University Press, 2005, at p. 254.

¹⁸ “Traditional Male Circumcision in Nigeria”, available at <http://intactwiki.org/wiki/Traditional_Male_Circumcision_in_Nigeria> (accessed 10 August 2016). Note that a similar broader and more embracing or encompassing definition of FGM/C has been proffered by the WHO. It defines FGM/C as all procedures that involve partial or total removal of the external genitalia or other injury to the female genital organ for non-medical reasons. Eleven major types of MGM/C can be discerned. First, excision or injury of part or all of the skin and specialised mucosal tissues of the penis,

2.3 Brief history of male genital mutilation or cutting in Nigeria

The practice of MGM/C in Nigeria dates back to the period before the advent of British colonial rule in Nigeria which came into being on 1 January 1914.

Pursuant to certain religious and cultural beliefs before the advent of British colonial rule in Nigeria MGM/C was widely practiced by the various religious and ethnic groups in the territories that were brought together to make-up Nigeria. One cannot say with exactitude how and when the practice of MGM/C started among these groups. It suffices to state that the practice of MGM/C continues till these days. The people generally consider MGM/C a significant part of their cultural and religious practices. MGM/C is typically carried-out in Nigeria on young boys sometime between infancy and age 15 by traditional circumcisers who often play other central roles in communities, including attending child births.¹⁹ The scenario of traditional MGM/C in Nigeria is depicted thus:

including the prepuce and frenulum. This is circumcision or dorsal slit without closure. Second, excision or injury to the glans, that is penectomy and or penis shaft that is penectomy along with the first type of MGM/C above. The truth is that this second type of MGM/C is any procedure that interferes with the reproductive or sexual function in the adult male. Third, excision or destruction of the testes, that is castration or orchidectomy with or without the second type of MGM/C. Fourth, pricking, piercing or incision of the prepuce, glans, scrotum or other genital tissue. Fifth, cutting and suturing of the prepuce over the glans, that is infibulation. Sixth, slitting open the urethra along the ventral surface of the penis, that is sub-incision. Seventh, slitting open the foreskin along its dorsal surface, that is super-incision. Eighth, severing the frenulum. Ninth, stripping the skin from the shaft of the penis. Tenth, introducing corrosive or scalding substances into the genital area. Lastly, excision of the foreskin, that is circumcision. This is the most common type of MGM/C accounting for the vast majority of all cases of MGM/C. See "Male Genital Mutilation (MGM)", above note 13.

¹⁹ "Traditional Male Circumcision in Nigeria", see *Ibid*.

The child is forcefully restrained by two adults...Anesthesia has not been used. The knife (used by the circumciser to do the mutilation or cutting) is not sterile (and after using it) the circumciser puts it in his mouth). The child is crying, fully aware of what's happening and of his inability to remove himself from the situation. The knife attacks for the second time. The video shows the abdomen of the child heaving as he cries continuously. The circumciser then uses a powder to stop the bleeding, applied with his bare hands. The child keeps crying after the cutting. His eyes reflect abandonment and betrayal. The circumciser dresses the wound. On the top left you can see the string that he will use to tie the bandage... It's on his mouth. The string is tied to hold the bandage in place. If the string is tied too tight, it could cause necrosis and gangrene and lead to the loss of the penis. The child is still crying, so now to top it all, the circumciser slaps the child's face.²⁰

The procedure above can be criticised on a number of grounds. First, the infant boy is subjected to the use of dirty tools, hands and environment. Second, there is a lack of the use of any traditional medicine to reduce pain of the infant boy. Third, there is the forceful restraint of the infant boy. Lastly, there is loss of tissue from the external *genitalia* of the infant boy.

Over the years, MGM/C began and continued to be carried-out in Nigeria by doctors and other trained medical professionals attending child births (QB/GYN) in hospitals and other health care facilities or providers, whose specialty has little or nothing to do with the male *genitalia*.²¹ Indeed, in hospitals and other health

²⁰ Ibid.

²¹ This is, also, the position in other countries like the USA. See Ibid.

care facilities or providers, the environment is clean. Also, the tools and hands utilised to carry- out the procedure of MGM/C are clean. Furthermore, there is the use of injected anaesthesia, most often, to reduce pain of the infant boy. In any event, it is amply clear that the procedure of MGM/C adopted by the medical professional shares important similarities with the procedure of MGM/C employed by the traditional circumciser. First, there is the forceful restraint of the infant boy. Lastly, there is loss of tissue from the external *genitalia* of the infant boy.

The procedure is not explicitly mentioned in the Quran-Holy. Nonetheless, Muslims in Nigeria consider it as a tradition established by Islam's Prophet Muhammad directly (following Abraham), and so its practice is considered a *sunnah*, that is prophet's tradition and very important in Islam.²² For Muslims, MGM/C is a matter of cleanliness, purification and control over one's *baser self (hafs)*.²³

Some Christians in Nigeria who practice MGM/C also place reliance on Chapter 17 of the Book of Genesis in the Christian Holy Bible which describes the circumcision of Abraham and his relatives as well as slaves.²⁴ They also place reliance on the narrative in the Christian Gospel of Luke in the Holy Bible, which

²² "Circumcision. From Wikipedia, the free encyclopedia", above note 16.

²³ A note-worthy point is that there is no consensus across many Islamic communities about the age at which MGM/C should be carried out. It may be performed soon after birth up to about age 15. Most often, the procedure of MGM/C is carried-out about six to seven years of age. The timing can correspond with the boy's completion of his recitation of the whole Quran, with a coming of age event such as taking on the responsibility of daily prayer or betrothal. Among the Muslims, MGM/C may be celebrated with an associated family or community event. While MGM/C is recommended for converts to Islam, it is not required of converts to Islam. See Clark, M (10 March 2011) *Islam for Dummies*; John Wiley and Sons p.170, ISBN 978-1-118-05396-6, quoted in *Ibid*.

²⁴ "Circumcision. From Wikipedia, the free encyclopedia", above note 22.

makes a brief mention of the circumcision of Jesus Christ, the founder of the Christian religion. Albeit, the New Testament Chapter, that is Act 15 records that MGM/C is not a requirement to become a Christian. Regardless, Christianity does not forbid it either.²⁵ It is significant to note that the Catholic Church presently maintains a neutral stance on the practice of non-religious MGM/C.²⁶

The various ethnic groups in Nigeria, as indicated earlier, customarily undertake MGM/C for their infant sons. A notable example can be seen in the culture of *ibi-ugwu*, meaning circumcision among the Igbo in the South-East of Nigeria. The removal of the foreskin covering the head of the penis is an ancient Igbo tradition and practice that has its origin in Igbo traditional religious rites.²⁷ Most Igbo parents have their sons undergo MGM/C for cultural reasons.²⁸ For some new-born, male *ibi-ugwu* is done on the third day after birth.²⁹ While for other new-born, male *ibi-ugwu* is performed on the eighth day after birth, which incidentally is the same as two weeks in Igbo calendar.³⁰

It should be pointed out that in some Igbo settlements outside the territory of Nigeria, male *ibi-ugwu* is postponed until adulthood, as a sign that one is now a man ripe for marriage and the responsibilities of life.³¹ Be that as it may, the Igbo are basically

²⁵ Ibid.

²⁶ Ibid.

²⁷ "Culture of Ibi Ugwu (Circumcision) in Igbo land", available at <[http:// www.obindigbo.com.ng/2015/11/culture of -ibi-ugwu-circumcision-in-igbo-land](http://www.obindigbo.com.ng/2015/11/culture_of_ibi-ugwu-circumcision-in-igbo-land)> (accessed 9 August 2016).

²⁸ Ibid.

²⁹ Ibid.

³⁰ Ibid.

³¹ Ibid.

known for undertaking MGM/C upon their sons on the eighth day after birth.³²

2.3.1 *The Practice of MGM/C in other countries and its legal status in Nigeria*

A vital point to make at this juncture is that the practice of MGM/C is not peculiar to Nigeria. It is in accord with what obtains in other countries, including the USA, the United Kingdom (UK), Taiwan, South Korea, Australia, Canada, Philippines, Uganda, Sudan, Congo, Bulgaria and Kenya. To be specific, about 93 per cent (%) of Filipino men went through MGM/C.³³ In the Philippines, MGM/C called *tuli* is sometimes viewed as a rite of passage into adulthood.³⁴

On 25 May 2015, the Federal Government enacted the Violence against Persons (Prohibition) Act 2015 which bans FGM/C in the Federal Capital Territory, Abuja. This decision was made pursuant to the United Nations' (UN) ban on FGM/C in 2012. The Act above was also influenced by the decision of many State Governments in Nigeria to ban FGM/C in their respective States. Whereas, the practice of FGM/C is today unlawful in the Federal Capital Territory, Abuja and various States that have enacted their own Female Circumcision and Genital Mutilation (Prohibition) laws, including Lagos, Delta, Oyo, Osun, Ondo, Ekiti, Edo, Rivers, Ebonyi, Enugu, Anambra and Cross-River States,³⁵ the practice of

³² Ibid.

³³ Circumcision. From Wikipedia, the free encyclopedia", above note 26.

³⁴ Ibid.

³⁵ See Borokini, A.A., "The Legal Framework for the eradication of Female Genital Mutilation (FGM) in Nigeria", 1(1) *Benson Idahosa University (BIU) Law Series*, 2013, p. 30 at p. 46. These States seemed to have prohibited the practice of FGM/C because of agitations of Non-Governmental Organisations (NGOs), particularly women groups which consider the traditional practice of FGM/C to be harmful to the girl-child or woman and against Child's rights, as guaranteed under the United Nations Convention on

MGM/C in Nigeria is not unlawful. This so because it has not been specifically prohibited by any Federal or State Law. In this way, it has continued unabated in Nigeria. The practice continues partly because the traditional circumcisers lack alternative means of livelihood.³⁶

It should be noted that child's rights protection comes under the residual list or legislative competence of the House of Assembly of a State under section 4(7)(a) of the Constitution, since they are not placed under the exclusive legislative list or concurrent legislative list of the Constitution. Thus, the Act above a law of the Federal Government of Nigeria on child's rights protection is applicable only in the Territory above, as disclosed before, as the National Assembly of the Federation is considered as the House of Assembly of the Territory above which is considered by the Constitution as one of the States in Nigeria. Any State desirous of a law to prohibit FGM/C must have to enact the Act above as a State law or its own law to prohibit FGM/C by the House of Assembly of the same.³⁷

3. THE LAW AND MALE GENITAL MUTILATION OR CUTTING IN NIGERIA

Discussions on the law and MGM/C in Nigeria embrace both International instruments and Nigerian legislations. The core laws in relation to MGM/C are discussed below.

the Rights of the Child (UNCRC) 1989 and African Charter on the Rights and Welfare of the Child (ACRWC) 1990.

³⁶ "Nigerian genital cutters give conditions for ending female genital mutilation", available at <<http://www.premiumtimesng.com/news/headlines/204040-nigerian-genital-cutters-give-conditions-ending-female-genital-mutilation>> (accessed 9 August 2016).

³⁷ See below p.12 and notes 51, 52 & 53.

3.1 International instruments:-

These international instruments are:

3.1.1 African Union (AU) African Charter on Human and Peoples' Rights (ACHPR) 1981

Nigeria has, not only signed and ratified the ACHPR but has, made it a part of national law, as enjoined by its provisions and section 12(1) of the Constitution, as amended. In *Sanni Abacha v. Gani Fawehinmi*,³⁸ the Supreme Court of Nigeria held that since the African Charter had been incorporated into Nigerian law, it enjoyed a status higher than a mere international convention and that the same was part of the Nigerian *corpus juris*.

MGM/C of a male child infringes on the right to life when it leads to death and other core norms or civil, political, economic, social and cultural rights of the child, including rights to equal protection of the law, liberty, freedom of conscience, the profession and free practice of religion, the best attainable status of physical and mental health and take part in the cultural life of the community, as guaranteed in Articles 3 to 19 of the ACHPR.

A major criticism of the ACHPR concerns its “claw-back” clauses. They are actually qualification and limitation clauses that permit, in normal circumstances, breach of an obligation for a specified number of public reasons.³⁹ These clauses such as “abides by the law” which permeate the African Charter permit African States to

³⁸ [2000] 6 NWLR (part 660) 221, at p. 228 Supreme Court of Nigeria (SCN).

³⁹ Rosalyn H., “Derogations under Human Rights Treaties”, 48 Brit.Y B Int, 1976–1977, p. 281, quoted in Odiaka, N. O., “Examination of the Claw – Back Clauses in the African Charter on Human and Peoples’ Rights”, 11 *Unizik Law Journal*, 2015, p. 180 at p. 183.

restrict basic human rights to the maximum extent allowed by domestic legislation, thus weakening their content and scope.⁴⁰

3.1.2 United Nations Convention on the Rights of the Child (UNCRC) 1989

MGM/C of a male child violates the rights to life, survival and development where the procedure leads to death and other basic norms or civil, political, economic, social and cultural rights of the child, including right not to be discriminated against on ground of sex and much more, right to be protected against physical or mental violence or abuse, neglect or negligent treatment, maltreatment or exploitation, right to express views freely in all matters affecting him, such views being given due weight in accordance with the age and maturity of the child, right to enjoyment of the highest attainable standard of health, right to be protected against traditional practices prejudicial to the health of children, right to liberty and the right not to be subjected to torture

⁴⁰ See Ouguergouz, F., “*The African Charter on Human and Peoples’ Rights*” , (Martinus Nijhoff, 2003), quoted in Ibid and Mutua, M., “The African Human Rights System: A Critical Evaluation”, p. 6, available at <<https://www.hdr.unpd.org/sites/default/files/mutua.pdf> > (accessed 13 September 2016). See also arts. 9, 10, 12 & 13 (1) of the ACHPR. See also Sheila B.K., “Major African Legal Instruments”, available at <<https://www.kas.de/upload/auslandshomepages/namibia/Human-Rights-in-Africa>>, quoted in Odiaka, above note 39. For details on discussion of the African Charter and or criticisms of the African Commission on Human and Peoples’ Rights which monitors the ACHPR, see Mutua, above; Salman, R.K., “An Appraisal of the Nigerian National Human Rights Commission”, 1 (1) *Afe Babalola University Ado-Ekiti Law Journal*, 2014, p.1 at p. 4; Shaw, C.M., “The Evolution of Regional Human Rights Mechanism: A focus on Africa” , 6 *Journal of Human Rights*, 2007, p. 200 at p. 215, quoted in Salman, see above; Odiaka, see above pp. 177-94; and Danladi, K.M., “An Examination of Problems and Challenges of Protection and Promotion of Human Rights under European Convention and African Charter”, 6 (1) *Port-Harcourt Law Journal*, 2014, p.76 at p. 83.

or other cruel, inhuman or degrading treatment, as guaranteed in Articles 2, 6, 12, 14, 15, 19, 24 and 27 of the UNCRC.

The UNCRC can be vilified as it contains “claw-back” clauses in some of its provisions, including Articles 13 and 14. These clauses permeate the UN Convention and permit States to restrict basic child’s rights to the maximum extent allowed by domestic legislation, thus weakening their content and scope. Another major weakness of the Convention is that not all member-nations of the UN are committed to the goals and objectives of the UNCRC. For example, the USA, Somalia and South Sudan have refused to ratify the Convention.⁴¹

⁴¹ See Svoboda, J.S., “Circumcision of Male Infants as a Human Rights Violation”, *Journal of Medical Ethics*, 2013, p. 1, at p. 4. Available at <<http://www.doi:10.1136/medethics-2012-101229>> (accessed 9 September 2019). Other international instruments include: (a) The Charter of the United Nations 1945. MGM/C of a male child violates the Charter, since the same can be considered as an affront on human rights of persons, including children guaranteed under the same; (b) The Universal Declaration of Human Rights (UDHR) 1948. MGM/C of a male child violates the rights to life, liberty and security of persons, not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment and equal protection of the law and not to be discriminated against on ground of sex and so on guaranteed in arts. 3-20 of the UDHR; (c) The UN International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966. MGM/C of a male child violates the right to health of children or the ICESCR norms on health and the right freely to take part in the cultural life. See, for example, art. 12(1) of the ICESCR. The ICESCR now has the effect of a domesticated enactment as required under s. 12(1) of the Constitution, as amended and therefore has force of law in Nigeria, since the same guarantees labour rights and has been ratified by Nigeria. See, for example, art. 8(d) of the ICESCR. The same argument applies to the UN ICCPR 1966, since the same guarantees labour rights and has been ratified by Nigeria. See, for instance, art. 22 (1) of the ICCPR. See Abuza, A.E., “Derogation from Fundamental Rights in Nigeria: A Contemporary Discourse”, 1(1) *North Eastern Hill University (NEHU) Law Journal*, 2016, p.1, at pp. 16-7; (d) UN International Covenant on Civil and Political Rights 1966. MGM/C of a male child is a violation of the rights not to be subjected to torture or to cruel, inhuman or degrading treatment or punishment and not to be discriminated against on ground of sex and so on guaranteed in ss. 6-26 of the ICCPR; (e) United Nations Convention against Torture and other Cruel,

3.2 Nigerian Legislations:

These Nigerian Legislations are:

3.2.1 The Constitution of the Federal Republic of Nigeria 1999

This Constitution is the fundamental law in Nigeria. Under its Chapter Two, it is provided that: (a) every citizen shall have equality of rights, obligations and opportunities before the law; and (b) the sanctity of the human person shall be recognised and human dignity shall be maintained ⁴². It is also provided under its Chapter Two that the State shall direct its policy towards ensuring that: (a) conditions of work are just and humane, and that there are adequate facilities for leisure and for social, religious and cultural life; (b) there are adequate medical and health facilities for all persons; and (c) children; young persons and the aged are protected against moral and material neglect.⁴³

Inhuman and Degrading Treatment or Punishment (UNCAT) 1984. It defines carefully the term "torture" in its art. 1. MGM/C of a male child is a violation of the right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment guaranteed under arts. 4 & 16 of the UNCAT; and (f) African Charter on the Rights and Welfare of the Child (ACRWC) 1990. MGM/C of a male child is a violation of the rights to life, survival, protection and development when the procedure leads to death and other basic norms or civil, political, economic, social and cultural rights of the child, including right to express his opinions freely in all matters affecting the child, right to freedom of thought, conscience and religion, right to privacy, right to be protected from all forms of torture, inhuman or degrading treatment and especially physical or mental injury or abuse, neglect or maltreatment and right to be protected against social and cultural practices affecting the welfare, dignity, normal growth and development of the child, harmful to the health and life of the child and discriminatory to the child on the ground of sex or other status, as guaranteed in Arts. 5, 7, 8, 9, 10, 16 and 21 of the ACRWC.

⁴² See s. 17 (2).

⁴³ See s. 17 (3).

A significant provision to bear in mind is section 45(1) of the Constitution which provides that nothing in sections 37, 38, 39, 40 and 41 of the Constitution shall invalidate any law that is reasonably justifiable in a democratic society in the interest of defence, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedom of other people.⁴⁴

The provision above which is known as the derogation clause is in alignment with the practice in other countries like India, Ghana, Tanzania and South Africa.⁴⁵ Evidently, the fundamental rights in section 34 (1), that is right not to be subjected to torture, or to inhuman or degrading treatment and section 42 (1), that is right to equal protection of the law and not to be discriminated against on ground of sex and so on which are guaranteed under ICCPR, UNCRC, ACRWC and ACHPR, as disclosed before, cannot be derogated from by any law under section 45 (1) above.

MGM/C of a male child violates the right to life when the procedure leads to death and the other basic norms or fundamental rights of the child, including right to personal liberty; right to respect for the dignity of the person and accordingly no person shall be subjected to torture or to inhuman or degrading treatment;⁴⁶ right to privacy of citizens and family life; right to freedom of thought, conscience and religion, right to freedom of

⁴⁴ For criticisms of this provision, see Abuza above note 41, pp. 6-7.

⁴⁵ See the Constitution of India 1949, art. 19 (2) – (5); the Constitution of Ghana 1992, arts. 21 (4), 24 (4) & 31; the Constitution of Tanzania 1977, as amended by Act No. 1 of 2005, art. 30; and the Constitution of the Republic of South Africa 1996, s. 36.

⁴⁶ See the decision of the trial High Court in the Nigerian case of *Solomon Oluwo v. Nigerian Police Force and Three Others* (unreported) Suit No. FCT/HC/M/361/2010, which upheld the plaintiff/applicant's fundamental right not to be subjected to torture or inhuman or degrading treatment, as guaranteed under s. 34(1) of the Constitution.

expression; and right to equal protection of the law and not to be discriminated against on ground of sex and much more,⁴⁷ as guaranteed in sections 32 to 42, under Chapter Four, of the Constitution. This is consistent with the provisions of the ICCPR, UNCAT, ACHPR, UNCRC and ACRWC.

There are some problems of the Constitution that are relevant to note. First, the Constitution does not define the term 'torture' unlike the UNCAT. Second, many Nigerians are unaware of the Constitution and or import and purport of the fundamental rights guaranteed to all citizens of Nigeria under Chapter four of the Constitution. Third, the Constitution fails to define the elastic terms "defence", "public safety", "public order", "public morality" and "public health", as used in section 45 (1) above.⁴⁸ Fourth, the rights guaranteed in Chapter Two have been rendered non-justiciable by the provisions of section 6(6)(c) of the Constitution.⁴⁹ Lastly, the Constitution contains "claw-back" clauses in section 45 (1) above and in many other sections which guarantee fundamental rights so as to make it possible for the law-making authorities in Nigeria to make laws which derogate from or restrict many of the fundamental rights constitutionally guaranteed to all Nigerians.

3.2.2 Child's Rights Act 2003

This Act is principally based on the UNCRC and ACRWC, as enjoined by their provisions. MGM/C of a male child violates the

⁴⁷ This right was upheld in the case of *Lafia Local Government v. the Executive Governor, Nasarawa State* [2012] 17 NWLR (part 1328) 94, at pp.127-28 (SCN).

⁴⁸ Abuza, above note 44, p. 7.

⁴⁹ See also *Bishop Anthony Okojie, Trustee of Roman Catholic Schools and Ors. v. Attorney General of Lagos State* [1981] 2 *Nigerian Constitutional Law Reports* (NCLR) 329, at p. 337, Court of Appeal (CA).

right to survival and development when it leads to death and other basic norms or civil, political, social, economic and cultural rights of the child, including the right not to be subjected to physical, mental or emotional injury, abuse, neglect or maltreatment, including sexual abuse, right not to be subjected to torture, inhuman or degrading treatment or punishment as guaranteed in sections 4, 10, 11, 12 and 13 of the Act.⁵⁰

There are some problems associated with the Act. First, the Act provides in its section 11 that no child shall be subjected to physical, mental or emotional injury, torture, inhuman or degrading treatment or punishment as well as attacks upon his honor (sic) or reputation without prescribing any penalty for a violation of the provisions of the section. Second, the Act contains “claw-back” clauses. These permeate the Act and permit derogations from the rights of the child guaranteed under the same. Third, the Act fails to guarantee the right of a child to express his own views in all matters concerning him, as guaranteed in the UNCRC and ACRWC. Fourth, contrary to the view-point of Kabo, the Act is not a law of the National Assembly of the Federation applicable to nooks and crannies of the Federation of Nigeria and therefore, requires no domestication by the National Assembly or the Houses of Assembly of the various States in Nigeria.⁵¹ Many States in the Northern part of Nigeria, including Kano, Sokoto, Yobe and Zamfara have correctly resisted the application of the

⁵⁰ The right to survival can be used interchangeably with the right to life. Available at <<http://www.hrea.org>> (accessed 26 May 2011), quoted in Alkali, U., “An Appraisal of Child’s Right to life and Health under the Child’s Rights Act 2003”, 1 (2) *University of Ibadan Law Journal*, 2011, p. 20 at p. 29.

⁵¹ Kabo, S.E., “Legal Framework for the Right of the Child in Nigeria and the Imperative Question of Enforceability”, 8 *Kogi State University Law Journal*, 2016, p. 168 at p. 175.

Act.⁵² They argue rightly that until the Act is enacted by the Houses of Assembly of the States as a State Law, the Act cannot be applicable in those States because Child's rights protection is not an item of legislation within the exclusive legislative competence of the National Assembly; but under the residual list or legislative competence of the House of Assembly of a State under section 4(7)(a) of the Constitution since they are not placed under the Exclusive Legislative list or Concurrent legislative list of the Constitution above. In their view, any State desirous of having a law on the rights of the child must have to replicate the Act as a State Law.⁵³

Fifth, the Act is not a domestication of either the UNCRC or ACRWC, as required under section 12 (1) of the Constitution. Nigeria signed as well as ratified the ACRWC and has enacted the Act, principally based on the same, as enjoined by its provisions. Nigeria not only signed the UNCRC but ratified the same in 1991 and signified its intention to protect the rights of the child as well as to domesticate the UNCRC.⁵⁴ What the Nigerian Government did was to enact some provisions of the UNCRC and ACRWC which it considers palatable in the Act. This is not what domestication of the Convention or Charter above entails. Domestication of either treaty, requires the enactment of the

⁵² See Ladan, M.T., "The Child Rights Act 2003 and the Challenges of its Adoption by State Governments of the 19 States", Paper presented at a One-Day Interactive Forum for Sokoto State House of Assembly Legislators, organised by the Sokoto State Ministry of Women Affairs and United Nations Children Emergency Fund (UNICEF), Sokoto, 23 July 2007 at p. 1, quoted in Kabo, see *Ibid.*

⁵³ AjaNwachuku, M.A., "Historical Development of Child's Rights protection in Nigeria – A Forensic Review", Mensah, H.H et al., (eds), *A Colossus of Legislative Governance*. Enugu: Rocana Nigeria Ltd., 2012 at p. 50, quoted in *Ibid.*

⁵⁴ *Ibid.*

provisions of the UNCRC or ACRWC into national law just like the case of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 2004, as can be clearly seen from the provisions of section 12 (1) of the Constitution To cut matters short, the Act is an ordinary statute of the National Assembly, even though embraced some of the principles enunciated in the UNCRC and ACRWC.

Sixth, many Nigerians are unaware of the Act and or the import and purport of the rights of the child guaranteed under its sections 3, 4, 6, 7,10,11,12 and 13. Lastly, the right to enjoy the best attainable state of physical, mental and spiritual health and right to participate fully in the cultural and artistic activities of communities guaranteed by the Act to the Nigerian child are social, economic and cultural rights under Chapter Two of the Constitution dealing with "Fundamental Objectives and Directive Principles of State Policy" in Nigeria which have been rendered non-justiciable under section 6(6)(c) of the Constitution above. Thus, a Nigerian male child may not be able to enforce the rights above in the court of law in view of the express provisions of the Constitution.⁵⁵

⁵⁵ Other Nigerian legislations include: (a) The African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 2004. MGM/C of a male child without his consent violates the right not to be subjected to torture, cruel, inhuman or degrading treatment and punishment, the right to equal protection of the law and other rights guaranteed in arts. 3-17 of the Act; (b) National Human Rights Commission (NHRC) Act 2004. It establishes the NHRC for the promotion and protection of human rights guaranteed by the Constitution, the ACHPR, the UN Charter, the UDHR and other international treaties on human rights to which Nigeria is a signatory but fails to define human rights. MGM/C of a male child is a human right violation which can be reported to the Commission for its investigation and help to seek redress in the court of law on behalf of the victims as provided by the Act; (c) Violence against Persons (Prohibition) Act 2015. MGM/C of a male child constitute the offences of willfully causing or inflicting of physical injury by means of any weapon, substance or object on another person and carrying-out of harmful traditional practices, both offences being considered as acts of domestic violence or violence in the private sphere under ss. 2(1), (2) and (3), 5(1), 10(1), 20(1)

4. IS THE CONTINUED PRACTICE OF MALE GENITAL MUTILATION OR CUTTING IN NIGERIA ETHICAL AND LEGAL?

The question above is the last issue that comes to the fore for consideration by the author. Put in another words, the question being asked is: Is the continued practice of male genital mutilation or cutting in Nigeria morally-correct or acceptable and allowed or required by law? The answer is apparently in the negative for certain reasons. First, the informed consent of a patient is required under medical ethics to surgically remove any healthy, natural and normally-functioning tissue from a human being.⁵⁶ It is against medical ethics or unethical to undertake the irreversible surgery or procedure of MGM/C of a male child who cannot consent for himself.⁵⁷ This is the main reason why leading health professionals in Iceland a liberal democratic European country have refused to perform MGM/C.⁵⁸To be specific, the Children's Hospital in Reykjavik completely stopped MGM/C of male children in 2011.⁵⁹ It should be noted that, most often, it is the parents or

20(3) and 46 of the Act. (d) Criminal Code Act Cap C38 LFN 2004. MGM/C of a male child is an offence of assault occasioning harm under s. 355 of the Act; and (e) Penal Code Law Cap 89 Laws of the defunct Northern Nigeria 1963. MGM/C of a male child constitutes the offences of voluntarily causing hurt or grievous hurt by dangerous means and assault or criminal force occasioning grievous hurt without provocation under ss. 248(1) and 265(b) of the law, respectively.

⁵⁶ Quoted by Hess, M., "Banning Male Circumcision. Male Genital Mutilation (MGM) Bill", available at <<http://www.theguardian.com/Law/2011/jun/14/circumcision-ban-row-san-francisco>> (accessed 9 August 2016).

⁵⁷ "Circumcision Deaths-CIRP.Org", available at <<http://www.cirp.org/library/death>> (accessed 12 August 2016).

⁵⁸ "Is Male Circumcision a form of genital mutilation?", available at <<http://www.vice.com/read/is-male-circumcision-a-form-of-genital-mutilation>> (accessed 9 August 2016).

⁵⁹ Ibid.

legal guardians of a male child who give consent for MGM/C of their male child or ward. This practice is wrong. It is argued that it is only upon attainment of adulthood, which is age 18 that a male child can validly or legally give consent to the procedure of MGM/C.

Second, it has been disclosed before that MGM/C of a male child violates the rights of the male child guaranteed by the UNCRC and ACRWC. Nigeria has signed and ratified both international instruments, as disclosed before. They are, therefore, legally binding on the country. It needs to be re-iterated that the nation is obligated under section 19 (d) of the Constitution to show respect to international law and its treaty obligations. MGM/C is fast becoming unacceptable to many members of the international community. It is not only an affront to decency and privacy but also to dignity of the human person. To be specific, in September 2013, the Child's Rights International Network released a joint statement signed by representatives from Norway, Sweden, Finland, Denmark, Greenland and Iceland as the Children's Ombudsmen of the Nordic countries that the procedure of MGM/C is in conflict with Articles 12 and 24 (3) of the UNCRC which provide that children should have the right to express their own views in all matters concerning them and be protected from traditional practices that may be harmful to their health, respectively.⁶⁰

Aside from UNCRC and ACRWC, many members of the international community have placed reliance on the UDHR,

⁶⁰ Ibid. See also "Circumcision Ban in Sweden and Denmark", available at <<http://www.huffingtonpost.com/2014/01/07/circumcision-ban-sweden-denmark-n-4674547.html>> (accessed 8 August 2016) and "Denmark and Sweden ban non-medical circumcision of boys", available at <http://www.ibtimes.com.au/denmark-sweden-ban-non-medical_circumcision-boys-1330592> (accessed 8 August 2016).

ICCPR, ICESCR and European Convention on Human Rights and Fundamental Freedoms (ECHRFF) to buttress their arguments against MGM/C. It should be noted that the UDHR provides that all human beings are equal in dignity and rights; they are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.⁶¹ On its part, the ICCPR provides that all persons are equal before the law and are entitled without any discrimination to the equal protection of the law.⁶² In this respect, according to the Covenant, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as colour, race, sex, religion, political or other opinion, national or social origin, property, birth or other status.⁶³

The ICCPR goes further to declare that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment and in particular, no one shall be subjected without his true consent to medical or scientific experimentation.⁶⁴ It may be necessary to mention that the Preamble to the ICESCR proclaims that human rights “derive from the inherent dignity of the human person”.⁶⁵ The right to bodily or physical or genital integrity is indisputably a derivation of the inherent dignity of the human person. Unlike the Constitution, the Constitution of the Republic of South Africa 1996 in its section 12, the Constitution of the Republic of Rwanda 2012 in its Article 15, and the Constitution of the Republic of Zimbabwe 2013 in its section 52 guarantee to every person the right to physical, bodily or psychological or

⁶¹ The UDHR, art. 1.

⁶² The ICCPR, art. 26.

⁶³ Ibid.

⁶⁴ Ibid., art. 7.

⁶⁵ Paragraph 2 of the Preamble to the ICESCR.

mental integrity. Section 12(2) of the 1996 South African Constitution specifically-provides for this right thus: “Everyone has the right to bodily and psychological integrity, which includes the right- (a) to make decisions concerning reproduction, (b) to security and control over their body, and (c) not to be subjected to medical or scientific experiments without their informed consent”.

Perhaps, it is in recognition of the right above and or the inherent dignity of the human person hence; the UNCRC enjoins States-Parties to take all appropriate legislative, administrative, educational and social measures to protect the child, including the male child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or other people who have the care of the child.⁶⁶ A view which is rapidly gaining ground among many members of the international community is that MGM/C of a male child is a physical or psychological damage or harm and that the child’s right to bodily or physical integrity supersedes parental rights.

It is gratifying to note that on 7 May 2012 a District Court in the Cologne district of Germany declared MGM/C of a male child illegal in the Cologne case where a four-year old Muslim boy was forced to go through the procedure of MGM/C.⁶⁷ Two days after the MGM/C, the boy was brought to the emergency room of the hospital where the doctor performed the procedure, due to hemorrhage or profuse bleeding. A charge was brought against the doctor who performed the procedure by the Cologne Public Prosecutor before the District Court in Cologne. As the charge

⁶⁶ The UNCRC, art. 19 (1).

⁶⁷ “German Circumcision ban. Is it a parent’s right to choose?”, available at <<http://www.bbc.com/news/magazine-18793842>> (accessed 1 September 2016).

puts it, the doctor “physically mistreated another person and injured that person’s health by means of dangerous instrument”. This is similar to the offence of voluntarily causing hurt or grievous hurt by dangerous means under the Nigerian Penal Code Law 1963, as disclosed before, and the offence of voluntarily causing grievous hurt by dangerous weapons or means under section 236 of the Indian Penal Code Act 1860. In its ruling, the District Court discharged and acquitted the accused-doctor. The Court held that MGM/C was illegal but that the accused could not have been expected to have known this position. It stated that MGM/C had been done for so long that it seemed legal when it was not so.⁶⁸ The Cologne District Court further held that MGM/C for “the purpose of religious up-bringing constitutes a violation of physical integrity”.⁶⁹

On 26 June 2012, the Cologne Regional Court upheld the ruling of the lower court.⁷⁰ It held that MGM/C of young boys is a criminal act, prohibited by law, even if parents have consented to the procedure. The decision was grounded on the reasoning that such circumcision cause “illegal bodily harm to children, and that the child’s right to physical integrity superseded parents’ rights and the freedom of religion”.⁷¹ In the *Oberlandesgericht Hamm’s* case, decided after the German Parliament passed a law allowing the religious circumcision of males in the wake of the Cologne case decisions, the Higher Regional Court in Hamm a city in Western

⁶⁸ Ibid. The Court can be criticised for exonerating the doctor. Note the Latin maxim: *Ignorantia legis neminem excusat*, meaning ignorance of the law is no excuse in law.

⁶⁹ Ibid.

⁷⁰ “Germany: Regional Court Ruling Criminalizes Circumcision of Young Boys”, available at <<http://www.ioc.gov/law/foreign-news/article/germany-regional-court-ruling-criminalizes-circumcision-of-young-boys/>> (accessed 1 September 2016).

⁷¹ Ibid.

Germany delivered a ruling on 27 September 2013 dis-allowing the procedure of a MGM/C to be carried-out on a six-year old boy, stating that it could cause psychological harm to the child. The Judges of the Court held that the mother had an inherent right to decide whether to have the procedure performed as long as the child could not make that decision himself, but that the parents and doctors were obliged to inform the child “in a manner appropriate to his age and development” about the procedure and be mindful of his wishes. The Court emphasised that this did not occur in the instant case.

Third, it has been disclosed before that MGM/C of a male child: (1) violates certain fundamental rights of a male child guaranteed under the Constitution; (2) violates certain rights of a male child guaranteed under the Nigerian Child’s Rights Act 2003; (3) constitutes, among other offences, the offences of willfully causing or inflicting of physical injury by means of any weapon, substance or object on another person and carrying out of harmful traditional practices, both offences being considered as acts of domestic violence or violence in the private sphere under the Violence against Persons (Prohibition) Act 2015; (4) constitutes the offence of assault occasioning harm under the Nigerian Criminal Code Act 2004; and (5) constitutes the offences of voluntarily causing hurt or grievous hurt by dangerous means and assault or criminal force occasioning grievous hurt without provocation under the Nigerian Penal Code Law 1963.

Fourth, it has been shown earlier that FGM/C of a female child or woman has been prohibited in Nigeria under the Violence against Persons (Prohibition) Act 2015 and some State laws on FGM/C. This appears to be predicated on the same grounds above. It is, also, on the same grounds above that the UN seemed to have banned FGM/C of a female child or woman in 2012. A vital

question to ask here is: Should Nigerian law, not also prohibit the procedure of MGM/C of a male child? The answer is in the affirmative. It is argued that if FGM/C is wrong, because it involves cutting into the genitals of a vulnerable female child without a medical indication and without her consent, thereby exposing the female child to surgical risk, without the presence of any disease and, in some cases, removing a healthy part of her body that she might later wish she could have experienced intact then MGM/C is equally wrong on those grounds.⁷² This is true whether sexual pleasure is “destroyed” or not and whether a complaint is made later or not.⁷³ A relevant popular saying is: “What is good for the goose is also good for the gander”. It is wise to admonish that the issue of genital mutilation or genital integrity should be approached holistically and not as if women are the only persons being harmed. MGM/C and FGM/C should be done with a medical indication.⁷⁴

It is argued that aside from medical indication, children of whatever gender should not have healthy parts of their most intimate sexual organs removed before such a time as they can understand what is at stake in such a surgery and agree to it themselves.⁷⁵ It is mind-boggling why the UN and WHO are not opposed to the procedure of MGM/C of a male child or man

⁷² See Earp, B.D., “Female Genital Mutilation and Male Circumcision: Should there be a Separate Ethical Discourse?” , *Practical Ethics* (University of Oxford) February 18, 2014, available at <<http://www.i2researchhub.org/articles/female-genital-mutilation-and-male-circumcision-should-there-be-a-separate-ethical-discourse>> (accessed 9 August 2016).

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid.

without his consent.⁷⁶ This does not tell well of both international organisations. It bespeaks, for instance, that the UN is not actually or truly committed to the elimination of human rights abuse worldwide but merely paying lip service to the issue of promotion and protection of human rights. Also, the WHO which is a specialised agency of the UN in-charge of health matters and manned by officials who are supposed to be very knowledgeable in medical or health issues ought to know that it is contrary to medical ethics or unethical to undertake the procedure of MGM/C of a male child who cannot consent to it himself.⁷⁷

Lastly, it has been disclosed before that the Violence against Persons (Prohibition) Act 2015 and State enactments which proscribe the procedure of FGM/C are discriminatory against the male child or man and therefore they are in conflict with the right of a male child to equal protection of the law, as enshrined in Article 3(2) of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 2004, and the "Equal Protection of the Law and Non-discrimination Principle", as enunciated in Article 26 of the ICCPR and section 42(1) of the Constitution. The Act above is a statute with international flavour and therefore the provisions of Article 3(2) above prevail over those of the 2015 Act above and State Laws on FGM/C, as the latter statutes are ordinary statutes in Nigeria.⁷⁸ As disclosed before, the Covenant has the effect of a domesticated enactment as required under section 12(1) of the Constitution and therefore it not only has force in Nigeria but also prevails where there is a conflict between the same and an ordinary statute in Nigeria.⁷⁹

⁷⁶ Available at <<http://www.theguardian.com/law/2011/jun/14/circumcision-ban-row-san-francisco>>, above note 56.

⁷⁷ Available at <<http://www.cirp.org/library/death>>, above note 57.

⁷⁸ See above note 38.

⁷⁹ Ibid.

Furthermore, they are void on ground of inconsistency with the Nigerian Constitution as disclosed before, going by section 1(3) of the Constitution.

5. OBSERVATIONS

It is glaring from the foregoing reflection on the socio-legal conundrum of MGM/C in Nigeria that MGM/C of a male child is barbaric, amoral, criminal, contrary to international human rights norms or treaties, unconstitutional, unlawful and undemocratic. Regardless, it is observable that the practice of MGM/C of a male child has continued unabated in Nigeria. The resultant effect is that many of the human rights of the male child guaranteed under international human rights' norms or treaties, the Constitution, the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 2004 and the 2003 Nigerian Child's Rights Act have been unduly eroded under the guise of performing MGM/C of a male child on grounds of religion, culture, medical or parental rights. This is attributable to the fact that the domestic enactments above provide for "claw-back" clauses in their provisions dealing with human rights. Again, the Nigerian Violence against Persons (Prohibition) Act 2015 and State legislations on FGM/C do not specifically-proscribe MGM/C.

Other factors responsible for the continuation of the menace of MGM/C of a male child in Nigeria include: (1) a lack of awareness of the laws;(2) a lack of alternative means of livelihood for traditional circumcisers; (3) a lack of knowledge by many Nigerians, including Executives, Legislators, judges, medical professionals, children, parents, legal guardians, community or traditional leaders, religious leaders and legal practitioners of the import and purport of the rights guaranteed to all citizens of Nigeria, including children under the Constitution, African Charter

on Human and Peoples' Rights (Ratification and Enforcement) Act 2004 and 2003 Nigerian Child's Rights Act; (4) a lack of knowledge by many Nigerians of the dangers associated with MGM/C of a male child;(5) a lack of enforcement of the laws; and (6) desire among many Nigerians, including parents, legal guardians, religious, community and traditional leaders to stick to religious rites and or cultural or traditional practices of old which are inimical to the health of the child.

A continuation of the socio-legal conundrum of MGM/C of a male child poses a grave danger to the survival, protection and development of the male child in Nigeria. The male child is a future leader of Nigeria. His survival, protection and development must be of paramount interest to all Nigerians and therefore must be ensured. It should be noted that under Article 5 (2) of the ACRWC, States-Parties shall ensure, to the maximum extent possible, the survival, protection and development of the male child.

The sad effect of MGM/C of a male child which is unquantifiable and life-long cannot be underscored. MGM/C of a male child has, not only undermined but also, inhibited the effectiveness of Nigeria's practice of democracy. Torture, cruelty, violence, whether domestic or not, and inhuman or degrading treatment have nothing in common with democracy. Also, MGM/C of a male child has, in many cases, engendered haemorrhage or excessive bleeding, resulting into the death of many innocent Nigerian male children. This is contrary to the right to survival guaranteed to the male child under section 41 of the Nigerian Child's Rights Act 2003 and the right to life guaranteed to the male child under section 33(1) of the Constitution. A typical example is the case of an 18-days old Nigerian boy who died on 18 November 2007 in Tarrogonia, Spain. The boy died of massive blood loss, following a

botched-MGM/C thought to have been performed by the baby's mother.⁸⁰ The case of Good Luck Caubergs a four-weeks old Nigerian boy who died in the UK on April 2010⁸¹ also deserves to be mentioned.

It should be noted that the majority of deaths arising from MGM/C are being concealed because of the unethical operation.⁸² Death arising from MGM/C has further aggravated the problem of infant mortality in Nigeria. The country has one of the highest infant mortality rates in the world.⁸³ In fact, Nigeria's infant mortality is only better than 13 other countries in the world with an alarming figure of 110 Nigerian children dying out of every 1,000 live births.⁸⁴ It should be recalled that on 25 May 2017 members of the Senate of Nigeria actually expressed worry about the growing rate of infant mortality which has risen to one million per annum in the country, due largely to poor nutrition and inadequate medical facilities.⁸⁵

It is an open secret that mortality rate for male children is higher than mortality rate for female children. To be specific, in 1990

⁸⁰"Nigerian baby boy bleeds to death", available at <<http://www.nairaland.com/96483/nigerian-baby-boy-bleeds-to-death>> (accessed 12 September 2016).

⁸¹ Available at <<http://www.dailymail.co.uk/news/article-2276006/Nurse-Grace-Adeleye-caused-baby-boy-bleed-death-botched-home-circumcision-walks-free-court.html>>, above note 9 and <<http://www.naij.com/15493.html>> (accessed 12 September 2016).

⁸² Available at <<http://www.cirp.org/Library/death>>, above note 77.

⁸³ Note that, according to the World Bank, infant mortality rate is the number of infants dying before reaching one year of age. Available at <<http://www.tradingeconomics.com/nigeria/mortality-rate-infant-per-1.000-live-births-wb-data-html>> (accessed 12 September 2016).

⁸⁴ Available at <<http://www.Nigerianobservernews.com/01112010/features/2.htm>> (accessed 12 September 2016).

⁸⁵ See *The Guardian* (Lagos) May 26 2017, at p. 5.

mortality rate for a female child is 101.5 per 1,000 female children while the mortality rate for a male child is 117.6 per 1,000 male children.⁸⁶ Under Article 19(1) of the UNCRC, Article 16(1) of the ACRWC and section 11 (a) of the Nigerian Child's Rights Act 2003 children, including male children are guaranteed the right not to be subjected to physical, mental or emotional injury, abuse, neglect or maltreatment, including sexual abuse. Additionally, Article 24 (1) of the UNCRC, Article 14 (1) of the ACRWC and section 13 (1) of the Nigerian Child's Rights Act 2003 guarantee the right of children, including male children to enjoy the highest or best attainable state of physical, mental and spiritual health. While Article 24 (2) (a) of the UNCRC, Article 14(2)(a) of the ACRWC and section 13 (3) (a) of the Nigerian Child's Rights Act 2003 obligate the Nigerian Government to take appropriate measures to reduce infant and child mortality rate, including male infant and male child mortality rate.

One thing which is pellucid is that legal solution is not the antidote to the menace of MGM/C of a male child in Nigeria. Both legal and non-legal solutions must be warmly embraced so as to give a devastating assault to the hydra-headed menace of MGM/C of a male child, currently ravaging all parts of Nigeria. The problem of MGM/C of a male child must be quickly arrested or check-mated to pave way for the rapid socio-political development of Nigeria.

6. CONCLUSION AND RECOMMENDATIONS

This article has reflected on the socio-legal conundrum of MGM/C in Nigeria. It identified short-comings in the various applicable

⁸⁶ Available at <<http://www.tradingeconomies.com/nigeria/mortality-rate-infant-per-1.000-live-births-wb-data-html>>, above note 83.

laws and stated clearly that MGM/C of a male child is equally as amoral, criminal, unconstitutional, barbaric, undemocratic and unlawful as FGM/C of the female child or woman and therefore ought to be banned in Nigeria. This article also highlighted the lessons or take-away from other countries. In order to overcome the problem of MGM/C of a male child, the author strongly recommends that Nigeria should ban MGM/C of a male child. In this respect, the Violence against Persons (Prohibition) Act 2015 should be amended to specifically-prohibit MGM/C of a male child, except for medical indication. Also, the Nigerian State Legislatures are called upon to enact or amend their own Laws to prohibit MGM/C of a male child, except for medical indication. This is consistent with the approach in other countries like Sweden, Iceland, Finland, Norway, Greenland, Denmark and the USA.

It should be noted that in Sweden and Denmark, the medical associations have recommended the ban of non-medical MGM/C of a male child.⁸⁷ Also, it should be placed on record that in the USA, genital integrity advocates have submitted to the Congress of the USA and ten State Legislatures proposed Legislations to ban MGM/C of a male child. The Male Genital Mutilation Bill in the USA, if enacted would amend existing Female Genital Mutilation laws in the USA by making them gender-neutral.⁸⁸ It was not astonishing, therefore, when a USA Justice of the Supreme Court, Antonin Scalia opined that the 2011 ballot measure on San Francisco Male Genital Mutilation Bill, which makes it unlawful to circumcise, cut or mutilate the foreskin, testicles or penis of another person under 18 years, except for medical indication,

⁸⁷ Available at <<http://www.huttingtonpost.com/2014/01/27/circumcision-ban-sweden-denmark-n-4674547.html>>, above note 60.

⁸⁸ Available at <<http://www.disabled.world.com/health/male/mgmbill.printer.php>> (accessed 12 September 2016).

would have been perfectly in order and valid had it been enacted.⁸⁹ Furthermore, children's ombudsmen from Sweden, Norway, Finland, Denmark and Iceland had joined the Chair of the Danish Children's Council and the children's spokes person for Greenland to pass a resolution urging their respective governments to ban MGM/C of under-aged boys or male children.⁹⁰

Again, a Bill proposing a ban on MGM/C is currently before the Parliament of Iceland.⁹¹ It proposes a prison sentence for up to six years for anyone who carries-out a MGM/C on a male child for non-medical reasons. The Bill states that the view has become wide-spread and prevalent in Europe that circumcision carried-out for any purpose other than health reasons is a violation of the human right of boys due to irreversible interventions to their bodies in which they have not had a say. The Bill is sponsored by Silja Dogg Gunnarsdottir a Progressive Party member of Parliament (MP) with the support of eight MPs. She says that non-medical circumcision of boys violates their human rights as guaranteed in the UNCRC. Of course, the approach in these countries is consistent with the ICCPR, UDHR, UNCRC, ACRWC, ECPHRFF and other international human rights' norms. The ECPHRFF deserves special mention. Article 3 of the Convention out-laws the kind of "harm" that MGM/C can cause while Article 14

⁸⁹ Ibid. Note that the ballot could not hold due to a court order. San Francisco Superior Court Judge, Loretta Giorgi had ruled that the measure to criminalise MGM/C must be withdrawn from the November 2011 ballot because it would violate a California law that makes regulating medical procedure a State and not a city matter. Available at <<http://www.abcnews.go.com/health/san-francisco-circumcision-ba-strikehistory?id=141>> (accessed 27 September 2016).

⁹⁰ Ibid.

⁹¹ Available at <<http://www.icelandreview.com>> news 2018/02> (accessed 3 September 2018) and <<http://www.icelandmonitor.mbl.is>>2018> (accessed 4 September 2018).

of the same forbids the discrimination that prevents baby-boys from enjoying the same protection of their *genitalia* as baby-girls. Nigeria cannot afford to stand aloof. It must take positive steps to identify stoutly with the international law-motivated efforts in these countries where MGM/C of a male child may be on the road to becoming illegal. In the final analysis, it is argued that MGM/C of a male child, save for medical reason, is not in his best interest.

Both the UNCRC and ACRWC stress that in all actions concerning the child undertaken by any person or authority the best interest of the child, including the male child shall be the primary consideration.⁹² This emphasis should be perceived, however, not as one seeking to achieve the propagation of the welfare and best interest of the child, including the male child as an end itself, but instead, as a means to assuring the welfare and best interest of mankind.⁹³ As a member of the UN and AU as well as State Party to UNCRC and ACRWC, Nigeria is obligated to apply the provisions of the UNCRC and ACRWC. It should be reiterated, in this instance, that the country must show respect to international law and its treaty obligations, as enjoined by section 19(d) of the Constitution.

Other recommendations of the author include: (a) the Constitution should be amended to provide specifically for a fundamental right to bodily or physical or genital and psychological integrity; (b) the Constitution should be amended to define “torture”; (c) the

⁹² See UNCRC, art. 3(1) and ACRWC, art. 4(1). This provision can be found in s. 1 of the Nigerian Child’s Rights Act 2003.

⁹³ Ochem, C.E., “A Critical Appraisal of the Rights of a Child under Nigerian and International Law”, 4 (2) *Port-Harcourt Law Journal* 2012, p. 20, at p. 27 and Adeyemi, A.A., “An Overview of Child Justice Administration under the Child Rights Legislation in Nigeria”, 17 (1) *The Nigerian Law Journal* 2015, p. 1, at p. 34.

Constitution should be amended to define the elastic terms of “defence”, “public safety”, “public order”, “public health” or “public morality”; (d) the Nigerian Child’s Rights Act 2003 should be amended to provide for a right of the child to express his opinions freely in all matters that affect him; (e) the Nigerian Government should organise public lectures as well as other public enlightenment and awareness programmes to sensitise Nigerians on the import and or purport of the rights of the child in Nigeria; (f) the rights of the child, particularly the right not to be subjected to physical, mental or emotional injury, abuse, neglect or maltreatment, including sexual abuse should be enforced by the Nigerian courts; (g) The Nigerian Police and other law enforcement agencies must rise to the challenge of faithfully enforcing the Nigerian criminal law; (h) The agencies of socialisation must re-double their efforts to socialise Nigerians on the dominant norms with regard to the MGM/C of a male child; (i) The Nigerian Government should provide alternative means of livelihood for the traditional circumcisers who are mostly poor old men and women in the towns or villages of Nigeria; (j) the National Human Rights Commission Act 2004 should be amended to define human rights to be the fundamental rights guaranteed in Chapter Four of the Constitution in accord with what obtains in other countries. For instance, section 7(c) of the Ghanaian Commission on Human Rights and Administrative Justice Act 1993 gives the human rights to be promoted and protected by the country’s NHRC to be the fundamental human rights and freedoms provided for in Chapter Five of the Constitution of Ghana 1992 which embrace civil, political, social, economic and cultural rights; (k) the Constitution should be amended to place the social, economic and cultural rights guaranteed in Chapter Two of the Constitution under Chapter four of the Constitution, so as to make them justiciable rights in Nigeria in alignment with what obtains in other countries like Ghana and South Africa where the social, economic and

cultural rights guaranteed to their citizens are placed side by side with the civil and political rights under one chapter dealing with fundamental human rights. The authors recalls sections 24, 26(1), 27(1), 29(1), 30 and 31(1) under Chapter Two of the Constitution of the Republic of South Africa, 1996 and sections 20, 24, 25, 26, 27 and 28 under Chapter Five of the Constitution of Ghana, 1992; (l) The Constitution should be amended to place issues of child's rights protection in the Exclusive Legislative list of the Constitution, so as to make them applicable in all States of Nigeria; (m) The Nigerian Government should intensify the campaign against harmful traditional or cultural practices such as MGM/C of a male child which are deep-seated or rooted in the tradition or culture of the Nigerian People and (n) Nigeria should domesticate or enact the provisions of the ACRWC and or UNCRC into a national law. The writer is of the view that these recommendations, if implemented, could effectively address the problem of MGM/C of a male child in Nigeria.