

**Violence Against Women Law in Oyo State, Nigeria: Addressing
barriers to eradicating Female Genital Mutilation**

by

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DEDICATION

To all women and girls who are still victims of Female Genital Mutilation in Africa.

DECLARATION

I, ANTHONIA LOLA, DICKSON, do hereby declare that this research 'Violence Against Women Law in Oyo State, Nigeria: Addressing barriers to eradicating Female Genital Mutilation' is my original work. It has not been submitted either in whole or in part to any other institution. Where other people's ideas have been used, it has been duly acknowledged.

SIGNED at **PRETORIA** THIS **12TH** DAY OF DECEMBER, 2018.

A.L Dickson

.....
Anthonia Lola, DICKSON

We, CHARLES NGWENA and EBENEZER TEMITOPE DUROJAYE, the supervisor and co-supervisor respectively, have read this research work and approved it as partial fulfilment of the requirements of the Masters of Law Degree, Sexual and Reproductive Rights in Africa at the Centre for Human Rights, Faculty of Law, University of Pretoria.

THIS DAY OF DECEMBER, 2018.

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Prof. Charles Ngwena

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Prof. Ebenezer Temitope Durojaye

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LIST OF ABBREVIATIONS

ACHPR	African Charter on Human and Peoples' Rights
ACRWC	African Charter on the Rights and Welfare of the Child
CEDAW	Convention on the Elimination of All Forms of Discrimination
CAT	Against Women Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CRC	Convention on the Rights of the Child
CRA	Child's Right Act
CEDAW	Committee on the Elimination of Discrimination Against Women
DEVAW	Declaration on the Elimination of Violence Against Women
FAWE	Forum for African Women Educationalists
FC/FGM	Female Circumcision/Female Genital Mutilation
FGM	Female Genital Mutilation
FIDA	Federation of Women Lawyers
ICCPR	International Covenant on Civil and Political Rights
ICPD	International Conference on Population and Development
LACVAW	Legislative Advocacy Coalition on Violence Against Women
NGO	Non-Governmental Organisations
SDGs	Sustainable Development Goals
SRHR	Sexual and Reproductive Health Rights
UDHR	Universal Declaration of Human Rights
UNFPA	United Nations International Children Emergency Fund
UNICEF	United Nations Population Fund
VAPP	Violence Against Persons (Prohibition) Act
WACOL	Women's Aid Collective
WHO	World Health Organisation

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CHAPTER 1

INTRODUCTION

1.1 Background to the study

In Nigeria, many women are prone to gender - based violence.¹ The reason for this is not far - fetched. Patriarchy is highly predominant and it has its roots in the long standing cultural history of the people. While this differs among ethnic groups, the subordinate status of women remains a challenge. This culturally accepted status of women as second-class citizens, encourages silence in the face of oppression, a forceful embrace of violence by women and also, the refusal to engage in legislative processes that will address this situation. The enactment of the Violence Against Persons (Prohibition) Act (VAPP), 2015 suggests that a shift is occurring, however, compliance with the Act seems to be a herculean task.

The persistence of female genital mutilation (FGM), which is a form of violence against women, has become a global concern.² FGM is a threat to the reproductive health of women and girls in Oyo state, Nigeria despite the domestication of the VAPP Act in 2016.³ With a prevalence of 67.9% and being the 3rd highest state in Nigeria with a high prevalence rate, FGM in Oyo State, Nigeria, becomes a serious issue.⁴ In addition, some local governments in Oyo State, have very high prevalent rates: Kajola (98%), Oyo West (86.9%), Ibarapa (84.2%) and Ogbomoso South (75%).⁵

Though legislation has been promoted as an important tool for the elimination of FGM, the fact remains that, the enactment of legislation prohibiting FGM alone, does not guarantee the elimination of the practice. Enforceability becomes very vital. Compliance

¹ SC Okwundu 'Violence in Nigeria: A review of attitude and perceptions, health impact and policy implementation' (2017) 5(4) *Texila International Journal of Public Health* 3.

² Pan African Urological Surgeons Association 'Female genital cutting/mutilation in Africa deserves special concern: an overview' (2013) 19 *African Journal of Urology* 119.

³ The VAPP Act was domesticated in 2016 as the Violence Against Women Law, 2016.

⁴ At the Action Health Incorporated dissemination meeting in 2016, reference was made to the UNFPA-UNICEF 2016 Survey showing the high prevalence rate of FGM in Nigeria. www.actionhealthinc.org (Accessed 29 October 2018).

⁵ (no. 4 above).

must be promoted and monitored in response to the violations committed through FGM, otherwise, resistance becomes palpable.

The word 'mutilation' sounds horrific and may provoke negative and sharp reactions from FGM practitioners who consider the practice as one being done in good faith and not as a mutilation.⁶ The word 'mutilation' alienates the FGM-practising community from the outside world because they feel a strange and unacceptable definition is about to be given to what they believe in.⁷ In other words, such a term may be seen as derogatory. Therefore, using the word 'mutilation' may not be healthy for research because circumcisers may refuse to entertain interactions with researchers for the purpose of data collection. This may result in a frustrating research exercise.⁸ Though the authors of the book titled '*Female Genital Mutilation*'⁹ described the word 'mutilation' as an effective term for policy and advocacy in the international community, they decided to use the term FC/FGM¹⁰ to describe the practice,¹¹ in order to err on the side of safety.

Despite these concerns, the term 'mutilation' would be used to describe the practice, for the purpose of this research as any other description would not only trivialise the practice but also, water down its looming pain and harmful effects.¹²

Oyo State has one of the highest percentages of the practice of FGM in Nigeria¹³ in total disregard to the existing state law criminalising FGM. The Constitution of the Federal Republic of Nigeria,¹⁴ which is the supreme law in Nigeria, provides for every

⁶ R Chauhan 'The female circumcision controversy: an anthropological perspective to female genital mutilation: a guide to laws and policies worldwide' (2002) 14 *NWSA Journal* 1.

⁷ E Gruenbaum '*The female circumcision controversy: an anthropological perspective*' (2000) 3.

⁸ MG Mugo 'Elitist anti-circumcision discourse as mutilating and antifeminist' (1997) 47 *Case Western Reserve Law Review* 468.

⁹ N Toubia & A Rahman '*Female genital mutilation*' (2000).

¹⁰ An acronym for Female Circumcision/Female Genital Mutilation.

¹¹ N Toubia & A Rahman '*Female genital mutilation*' (2000) 3. FC/FGM stands for female circumcision/female genital mutilation.

¹² UNFPA 'Female genital mutilation (FGM) frequently asked questions' <https://www.unfpa.com> (Accessed 30 October 2018).

¹³ P Ekeanyanwu 'Two years after ban, FGM still rampant in Nigeria' (2017) Development Cable http://www.thecable.ng/two_years-ban-fgm-still-rampant-nigeria (Accessed 30 October 2018).

The Nigerian Demographics and Health Survey report of February, 2018, places the FGM prevalence rate of Oyo State at 65.6%.

¹⁴ Constitution of the Federal Republic of Nigeria, 1999.

person's right to dignity¹⁵ as well as freedom from discrimination¹⁶ on the basis of sex.¹⁷ However, paradoxically, FGM is still widely practiced in Oyo State, Nigeria.¹⁸

As a proof of the historical antecedent of FGM in Oyo state, Nigeria, an article published in 1985 titled *Female genital mutilation in Nigeria: a fact or a farce*,¹⁹ reveals that, 70.3% of women in Ibadan, Oyo state, Nigeria, had been circumcised during their childhood. In addition, 48.6% of them, had their last daughter circumcised. These women were found to support FGM and advocate for its continuity because of the following reasons: their desire to maintain their strong cultural traditions; the reduction in sexual promiscuity; the prevention of perinatal mortality as well as the reduction in excessive vaginal secretion²⁰ FGM is regarded as necessary²¹ for women's socialisation,²¹ for sexuality control thereby ensuring chastity,²² as a 'must do' for marriage preparation,²³ among other reasons. It however causes severe and long-lasting damage to the sexual and reproductive health of the victim(s).²⁴

The World Health Organisation (WHO) defines FGM (Female Genital Mutilation) as all procedures that involve the partial or total removal of the external female genitalia or injury to the female genital organs, for non-therapeutic reasons.²⁵ It classified Female Genital Mutilation (FGM) into four major types:²⁶

- Clitoridectomy - the partial or total removal of the clitoris which is a small and sensitive part of the female genitals. In very rare cases, only the prepuce is removed. This is the fold of skin surrounding the clitoris. Excision - the partial or

¹⁵ (n 14 above) sec 34.

¹⁶ (n 14 above) sec 42.

¹⁷ (n 14 above) sec 42 sub 1(a) and (b).

¹⁸ Ekeanyanwu (no 13 above).

¹⁹ MO Onadeko & LV Adegunle 'Female circumcision in Nigeria: a fact or a farce?' (1985) 31(4) *Journal of Tropical Pediatrics* 180.

²⁰ Onadeko & Adegunle (no 18 above).

²¹ A Kaplan et al 'Female genital mutilation/cutting: the secret world of women as seen by men' (2013) *Obstetrics and Gynecology International* 2.

²² D Gilbert 'For the sake of purity (and control). female genital mutilation' (1993) 9(5) *Winter* 30.

²³ Girls not brides 'Child Marriage and FGM/C: What you need to know' 2018, <https://www.girlsnotbrides.org/child-marriage-fgmc-need-know> (accessed 31 March, 2018).

²⁴ World Health Organisation 'Health risks of female genital mutilation' http://www.who.int/reproductivehealth/topics/fgm/health_consequences_fgm/en/ (accessed 31 March 2018).

²⁵ World Health Organisation 'Classification of female genital mutilation' <http://www.who.int/reproductivehealth/topics/fgm/overview/en/> (accessed 10 March, 2018).

²⁶ World Health Organisation (n 25 above).

total removal of the clitoris and labia minora, with or without excision of the labia majora (the labia is often described as the 'lips' around the vagina).

- Infibulation, the most severe type of FGM that involves the cutting and also repositioning of the inner or outer labia, with or without removal of the clitoris. The edges of the wound are stitched together in order to create a small opening for urine and menstrual flow.
- This includes all other procedures carried out on the female genitalia such as piercing the clitoris, stretching the labia, introducing dangerous substances into the vagina, among other procedures.

FGM is practised for many reasons. In Oyo state, Nigeria for instance, the following are some of the reasons why FGM is practised in Oyo State: it upholds a woman's virtue thereby preventing her from being promiscuous;²⁷ a woman's sexuality should be guided otherwise, it may lead to her downfall, among other reasons.²⁸ In certain communities, the child to be circumcised has little or no knowledge of the excision exercise. In some other communities, the opposite is the case because of the planned ceremony where the child is given a royal treatment prior to the exercise.²⁹ In many cases, mothers, aunts and even sisters, who have been circumcised, are the initiators of this practice.³⁰ The infant³¹ or girl is immobilised on her back³² and forced to submit to the circumciser who may be a barber, traditional birth attendant, midwife or even, an elderly woman.³³ More often than not, unsterilised razors and instruments³⁴ are used to cut off the targeted flesh usually under no anesthesia, to reduce pain or even antiseptics, to avoid infections.³⁵ The duration of the exercise usually depends on the expertise of the circumciser.³⁶ If infibulation is carried out, the freshly cut edges of the labia minora are sewn together with

²⁷ See Annexure 3b showing a girl who had just undergone circumcision.

²⁸ Ekeanyanwu (n 13 above).

²⁹ EM Baron & FL Denmark 'An exploration of female genital mutilation' (2006) 1087 (1) *Annals New York Academy of Sciences* 341.

³⁰ Baron & Denmark (no 29 above).

³¹ See Annexure 2 showing an infant undergoing circumcision.

³² See Annexure 3a showing a child undergoing circumcision.

³³ Baron & Denmark (no 29 above).

³⁴ see Annexure 1 showing the unsterilised instruments sometimes used by local circumcisers.

³⁵ Baron & Denmark (no 29 above).

³⁶ Baron & Denmark (no 29 above).

thorns (in some cases) and an opening is left for urine and menstrual flow by inserting a small straw into the vagina.³⁷ Sometimes, after this procedure, some healing ointment is added and the girl's legs are bound together.³⁸

Another reason is social constructionism. This implies that, the identity of girls and women in FGM-practising communities, is socially constructed consequent upon their interaction with others and the expectations of the society.³⁹ This leads to, as well as, increases their desire to undergo FGM. The thought of societal approval, is also one of the reasons why mothers decide to have their daughters undergo the procedure. In communities where FGM is regarded as a rite of passage into womanhood, it is intended to make a girl a 'proper' member of the society.⁴⁰ In many FGM-practising communities, FGM opens the door to marriage. Since women have been societally structured in such communities to depend on men economically, they have fewer options outside marriage. Therefore, they look forward to their circumcision.⁴¹

In addition, FGM is sometimes rooted in rewards to the girl or woman involved. After undergoing the FGM procedure, she is publicly celebrated and regarded as a 'woman'.⁴² In other words, the practice has become the 'cultural identity' of women and girls in such communities. This gives FGM a conventional nature and further makes it almost impossible for families to refuse to be involved in the practice. In a bid to prevent peer pressure and for fear of being regarded as deviant by not adhering to traditions, some girls personally decide to undergo FGM.⁴³

³⁷ J Whitehorn et al 'Female Genital Mutilation: cultural and psychological implications' (2002) 17 *Sex and Relationship Therapy* 161 - 170.

³⁸ Baron & Denmark (no 29 above).

³⁹ S Brown 'Social constructionism'

<https://www.khanacademy.org/test-prep/mcat/society-and-culture/social-structures/v/social-constructionism> (accessed 15 March 2018).

⁴⁰ O Khazan 'Why some women choose to get circumcised' 2015

<https://www.theatlantic.com/international/archive/2015/04/female-genital-mutilation-cutting-anthropologist/389640/> (accessed 31 March, 2018).

⁴¹ N Toubia 'Female circumcision as a public health issue' (1994) *The New England Journal of Medicine* 714.

⁴² Khazan (n 40 above).

⁴³ Khazan (n 40 above).

Preservation of the family honour is another reason for the practice of FGM. In some FGM - practising communities, a girl is expected to remain a virgin until marriage. Therefore, it is believed that, cutting off a significant amount of flesh from the female genitalia, will help the girl to be chaste and this will bring honour to her parents upon marriage.⁴⁴

The female genitalia is regarded as ugly and can emit a bad odour and so, for anesthetic reasons, the clitoris needs to be cut off.⁴⁵ In addition, it is believed that, it is a taboo for the head of an infant to touch the clitoris during childbirth and further that, the clitoris secretes a substance that is life-threatening to a man during sexual intercourse.⁴⁶ The narrowing of the vagina is to increase the sexual pleasure of the woman's husband during sexual intercourse. She in turn, is expected to remain obedient to the sexual dictates of her husband, docile and asexual because it is believed that this will keep the marriage alive. No doubt, the inferior status of a woman keeps receiving a boost by the practice of FGM.⁴⁷

The United Nations Committee on the Elimination of Discrimination Against Women (CEDAW), at various sessions, recommended that states parties take appropriate and effective measures towards the eradication of female circumcision.⁴⁸ In addition, some conference documents also urge the government of nations to take steps towards the eradication of FGM in their respective states. Some of such documents are: the Programme of Action⁴⁹ of the International Conference on Population and Development,⁵⁰ the Beijing Declaration and Platform for Action⁵¹ held in Beijing, China, which particularly urges states to come up with legislations, policies and actions towards

⁴⁴ Baron & Denmark (no 29 above) 247.

⁴⁵ Darija Šćepanović 'Position statement: Female genital mutilation' (2018) The International Organization of Physical Therapists in Women's Health (IOPTWH), an official subgroup of the World Confederation for Physical Therapy takes a position on female genital mutilation (circumcision) 1.

⁴⁶ L Burstyn 'Female circumcision comes to America' (1995) 17 *Atl. Mon.* 28 - 35.

⁴⁷ RF Lax 'Socially sanctioned violence against women: female genital mutilation in its most brutal form' (2000) 28 *Clin. Soc. Work Journal* 403 - 413.

⁴⁸ 9th session, 1990 (General Recommendation No. 14), 11th session, 1992 (General Recommendation No. 19) and 20th session, 1999 (General Recommendation No. 24).

⁴⁹ International Conference on Population and Development (ICPD) (Program of Action) Paragraphs 4.22, 5.5, 7.6 and 7.40.

⁵⁰ International Conference on Population and Development, Cairo, Egypt (5th - 13 September, 1994).

⁵¹ Beijing Declaration and Platform for Action paras 39, 107, 113, 124, 232 and 277.

the eradication of FGM.⁵² The Beijing Declaration and Platform for Action specifically urges states to prohibit and eliminate any harmful aspect of traditional, customary or even modern practices that violates women's rights.⁵³ In addition, the Vienna Declaration and Programme of Action,⁵⁴ calls on governments of states to take steps towards the eradication of conflicts between the rights of women and the harmful effects of customary or traditional practices, religious extremism and cultural prejudices.⁵⁵ The World Conference further urges states to abolish practices and customs that place the girl child at a disadvantaged position and which also cause harm to her.⁵⁶

The enactment of the Violence Against Persons (Prohibition) Act, was influenced by various international policy initiatives as well as global conventions protecting the rights of women. Some of these are: the Universal Declaration on Human and People's Rights (UDHR) which protects everyone against 'torture, inhuman and degrading treatment or punishment';⁵⁷ the Declaration on the Elimination of Violence Against Women (DEVAW) which makes gender rights violation, a violation of human rights;⁵⁸ the Convention on the Elimination of All Forms of Discrimination Against Women, prohibiting all forms of discriminatory cultural practices against women;⁵⁹ the Maputo Protocol, particularly describing FGM as a form of discrimination⁶⁰ and the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) which mandated states to provide asylum protection to everyone who is vulnerable to cruel and inhuman treatment.⁶¹

The adoption of the Violence Against Persons (Prohibition) Act (VAPP Act)⁶² in Nigeria, was met with jubilation, high expectations and hope for freedom from torture, cruel and inhuman treatment exemplified by the practice of FGM. The Act was hailed for

⁵² The conference was held from 4 to 15 September, 1995 and the name given to the conference was 'Action for Equality, Development and Peace'.

⁵³ Beijing Declaration (no 51 above) paragraph 224.

⁵⁴ Vienna Declaration and Programme of Action, adopted by the World Conference on Human Rights, 25 June, 1993.

⁵⁵ Vienna Declaration (no 54 above) section II (B) (3) Para 38).

⁵⁶ Vienna Declaration (no 54 above) paragraph 49.

⁵⁷ Universal Declaration on Human and Peoples' Rights, 1948 article 5.

⁵⁸ Declaration on the Elimination of Violence Against Women, 1993, arts 1 & 2.

⁵⁹ Convention on the Elimination of All Forms of Discrimination Against Women, 1979 article 5.

⁶⁰ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003 article 5.

⁶¹ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1987 article 3.

⁶² Violence Against Persons (Prohibition) VAPP Act, 2015.

its unique features of prohibiting violence against persons in private and public life, providing maximum protection for victims of violence, providing effective remedy for such victims as well as punishing offenders.⁶³ Of particular relevance to this research is section 6 of the Act⁶⁴ which prohibits FGM:

- 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 N 200,000⁶⁵ 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, 000.00⁶⁶ 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 two years or to a fine not exceeding N 100, 000⁶⁷ or both.

This expectation was soon short-lived with the continuation of FGM in some parts of Nigeria, one of which is Oyo State despite the domestication of the VAPP Act as the Violence Against Women Law, 2016. Section 9 of this Law prohibits FGM thus:

- 1) The circumcision or genital mutilation of female or a woman is hereby prohibited.
- 2) Any person who performs female circumcision or genital mutilation or engages another to carry out such circumcision or mutilation is guilty of an offence and liable on conviction to imprisonment for a term not exceeding four years or to a fine of N100, 000 or both.

⁶³ VAPP Act (n 61 above) preamble.

⁶⁴ VAPP Act (n 61 above) section 6.

⁶⁵ N 200,000 is approximately 557 US dollars as at June 30, 2018.

⁶⁶ N100,000 is approximately 279 US dollars as at June, 2018.

⁶⁷ (n 66 above).

3) Any person who attempts to commit the offence under this section is guilty of an offence and liable on conviction to imprisonment for a term not exceeding two years or to a fine of N80, 000.00 or both.

4) Any person who incites, aids, abets or counsels another person to commit the offence under this section is guilty of an offence and liable on conviction to imprisonment for a term not exceeding two years or a fine of N80, 000.00 or both.

5) Any person who receives or assists another person to commit the offence under this section is an accessory after the fact and is guilty of an offence and liable on conviction to imprisonment for a term not exceeding six months or a fine not exceeding N50,000 or both.

1.2 Problem Statement

In Oyo State Nigeria, FGM is highly prevalent and its continuance seems to have significant societal approval. Despite the protective provision of section 9 of the Violence Against Women Law of Oyo State,⁶⁸ the practice of FGM is highly prevalent in Oyo State, Nigeria with socio-cultural and religious undertones. Even though this practice poses a threat to the lives of girls and of course, a general threat to the development of the country, its continuance has significant societal approval. Ironically, the situation is unabated by law enforcement officers and hardly any legal action has been taken to put a stop to it. It is against this backdrop that this research focuses on the barriers to compliance with the Law and an attempt to proffer solution to the eradication of FGM in Oyo State.

1.3 Objectives of the Study

This research seeks to identify the barriers to compliance with section 9 of the Violence Against Women Law of Oyo State and to propose effective means of eradicating female genital mutilation (FGM) in Oyo State, Nigeria. To achieve this, this research seeks to make use of the compliance theory for a better understanding of factors that promote compliance with laws.

⁶⁸ Violence Against Women Law of Oyo State, 2016.

Owing to its general nature, this overall objective has been broken down into the following specific sub-objectives:

- to explore the nature and consequence of FGM on women and girls in Oyo State, Nigeria,
- to investigate its continuance in that part of the country despite the enactment of the Violence Against Women Law of Oyo State,
- to investigate the factors promoting non - compliance with the Violence Against Women Law of Oyo State through the lens of the compliance theory
- to make suggestions on factors that can promote compliance with the Violence Against Women Law of Oyo State
- to make recommendations for the eradication of FGM.

1.4 Research questions

Section 9 of the Violence Against Women Law of Oyo State seeks to address the menace of FGM. Yet, the practice still continues in Oyo State, Nigeria and has consequently led and could further lead to the health hazards of its victims in the region. This research work therefore seeks to respond to the puzzle: what are the barriers against compliance with the Violence Against Women Law of Oyo State and how can the barriers be overcome? Arising from the above central question are the following sub questions:

- Why does FGM continue in Oyo State despite the existence of the Violence Against Women Law of Oyo State?
- What are the factors influencing non-compliance with section 6 of the VAPP Act and section 9 of the Violence Against Women Law?
- Do section 6 of the VAPP Act and section 9 of the Violence Against Women Law, meet up with international human right standards?
- What lessons can be drawn from other countries in addressing FGM through legislation?

1.5 Research Methodology

This research adopts the socio - legal perspective within the broader framework of the compliance theory, in order to present a holistic picture of the complexities that surround non - compliance with section 9 of the Violence Against Women Law of Oyo State, Nigeria. A socio - legal perspective, among other things, is useful in analysing and understanding the factors, both historic and contemporary, that led to the enactment of a particular law as well as the development of a particular legal system. In addition, it helps to analyse and understand the nature of a law and legal phenomenon and how these affect the State and the larger society.

Against this backdrop, the analytical qualitative method is employed for this study and the data collection method is also qualitative. This is because a qualitative data collection method is useful for content analyses, inference making as well as recommendations for policy actions. The study maximises secondary sources of data collection based on books and academic journals on the subject of FGM both local and international. Besides, reliable online news sources, reports, newspapers, human rights instruments, legislation as well as relevant cases, are employed as a triangulation to the study.

1.6. Significance of the Research

Many authors have written on the criminalisation of FGM as well as the non - implementation status of anti - FGM laws in Nigeria. Currently, there is no academic work on non - compliance with the anti - FGM provision in the Violence Against Women Law of Oyo State, Nigeria despite the high prevalence of FGM practice in Oyo State. This research therefore seeks to be the foremost extensive study on factors contributing to non - compliance with the FGM provision of section 9 of the Oyo State Violence Against Women Law.

1.7 Literature Review

This study primarily seeks to complement existing works on the criminalisation of FGM in Nigeria. No research has been undertaken on the non - compliance status of section 9 of

the Violence Against Women Law, a section which criminalises FGM hence, some depth of originality will be introduced.

Human rights scholars overtime, have expressed concern over whether or not outsiders can be judgmental in issues regarding cultural practices and beliefs that are different from theirs, such as FGM.⁶⁹ Sometimes, such judgmental influence occurs because of the political and economic dependence of a nation or society on the other. Cultural relativists therefore suggest that, a behavior that is culturally connected, should be judged through norms, values and even belief systems that are culturally specific, rather than making universal declarations.⁷⁰

Nnamuchi refers to international human rights as containing broad provisions on the prohibition of FGM. His emphasis is on the failure to recognise that FGM falls within the ambit of freedom and liberties that are inherent in all persons.⁷¹ Therefore, everyone has the right to make choices, whether or not those choices are unpalatable to another person, as long as it does not constitute an injury or offence to others. According to him, there is an inconsistency with the basic principles of human rights which seek protection for one class of people while at the same time, denying a similar protection or benefit to another class of people (FGM practitioners for example), if there are no sufficient grounds to justify such distinctions.⁷²

Lewis gives an analytical description of the three categorisations of human rights and noted that African human rights scholars seem to place a higher preference on the economic, social and cultural rights over the civil and political rights. This is because of the understanding that, a meaningful human rights standard is one that should apply across cultural boundaries.⁷³ Lewis describes the modern criminalisation of FGM as having a connection with the history of colonialism and imperialism. This according to her creates a notable barrier to the implementation of the laws criminalising the practice. According to her, criminalisation of FGM gives an unpleasant memory of colonialism and

⁶⁹ H Lewis' 'Between Irua and female genital mutilation' (1995) 8 *Harvard Law Review* 17.

⁷⁰ Lewis (n 69 above) 17.

⁷¹O Nnamuchi 'Hands off my pudendum: A critique of the human rights approach to female genital ritual' (2011) 15 *Quinnipiac Health Law Journal* 243.

⁷²Nnamuchi (n 70 above) 243.

⁷³ Lewis (n 69 above) 19.

imperialism which has generated resentment among African communities where FGM is practised.⁷⁴ The word 'memory' however, has some elements of ambiguity as Lewis does not explain in detail the depth of the word 'memory'. For clarity, 'memory', in this context is the memory of domination in all facets of life. African social and political structure experienced domination through power relations which create two roles: the dominant role and the submissive role.⁷⁵ The African people, who fell into the submissive category, were compelled to bid farewell to some of their most cherished cultural practices, such as FGM.

To further explain the connection of colonialism with criminalisation of FGM, Slack points to the fact that, the African people refused to accept the move to ban FGM because they believed anti - FGM laws were by-products of external pressure. In order to avoid the stings of the harshness of the law, they resorted to an underground practice of FGM.⁷⁶ The memory of colonialism and neo-colonialism, has triggered resentment from the African people towards efforts at making FGM a subject of discussion in the domestic and international human rights sphere.⁷⁷ To buttress this point, Lewis referred to the article written by Boulware - Miller⁷⁸ who looked at FGM from an individual rights-based perspective and critiqued the same. According to him, African women see the condemnation of their cultural beliefs as judgmental.

Gunning raises the challenge of who the society will penalise with regard to laws imposing penalties such as fines and imprisonment. She is of the opinion that, if the government arrests the parents of a young girl who has been circumcised, the psychological impact of that arrest will be felt by the girl. Alternatively, if the family of such a girl is fined for such a practice, such a fine may constitute an enormous financial burden on the family. It would therefore be ironical if the law which is intended to stop the practice now becomes a tool for economic collapse of such a family.⁷⁹

⁷⁴ Lewis (n 69 above) 40.

⁷⁵ A Skurtu 'Power dynamics in sexual relationships' The Blog (2016) <https://www.huffingtonpost.com/angela-skurtu/power-dynamics-in-sexual> (accessed 9 April 2018).

⁷⁶ A T Slack 'Female Circumcision: A critical appraisal' (1988) 10 *Human Rights Quarterly* 478.

⁷⁷ Lewis (n 69 above) 41.

⁷⁸ K Boulware-Miller 'Female Circumcision: challenges to the practice as a human rights violation' (1985) 8 *Harvard Women's Law Journal*.

⁷⁹ I R Gunning 'An arrogant perspective, world-travelling and multicultural feminism: the case of female genital surgeries' (1992) 23 *Colombia Human Rights Law Review* 229.

Instead of introducing draconian laws for the eradication of FGM, Gunning suggests a world-travelling approach. This is a contextualised grassroots approach which promotes health education towards the gradual abandonment of the practice of FGM. To achieve this, she suggests a cross-cultural consensual dialogue in respect of norms that address FGM.⁸⁰ Gunning has however failed to put into consideration the complexities that may come to play in reaching a consensus. This is in consideration of the various class structures (social stratification) and diversities across nations in terms of cultural backgrounds, educational backgrounds, religion, belief systems among others. All these vary across nations, societies and peoples and may pose a barrier to the suggested world-travelling approach.

The CEDAW General Recommendation No. 14⁸¹ suggested an integrated approach to the eradication of FGM. This will involve for example, integrating discussions around FGM into the health policies of the government of nations, sensitising traditional birth attendants to explain to the people the harmful effects of FGM, among other methods. Lewis explains the integrated approach as a combination of domestic, legal and non-legal approaches. She is of the opinion that, the use of multiple techniques such as this, has a better prospect than a mere outright condemnation and rejection which she describes as a characteristics of Western influence.⁸²

Byrnes on the other hand, sees the CEDAW Committee's Recommendation as unrealistic because of the weak nature of the United Nations' enforcement procedure.⁸³ This may make the Committee's recommendation unacceptable by the African women at the grassroots.⁸⁴ In addition, the CEDAW⁸⁵ is besieged with several substantive reservations by member states who have decided to take an independent stance only on

⁸⁰ Gunning (n 79 above) 202-203.

⁸¹ UN Committee on the Elimination of Discrimination Against Women (CEDAW), CEDAW General Recommendation No. 14 on Female Circumcision, 1990 A/45/38.

⁸² Lewis (n 69 above) 45.

⁸³ AC Byrnes 'The 'other' human rights treaty body: the work of the Committee on the Elimination of Discrimination Against Women' (1989) 14 *Yale Journal of International Law* 51 & 52.

⁸⁴ Byrnes (n 83 above) 51 & 52.

⁸⁵ Convention on the Elimination of Discrimination Against Women (CEDAW), 1979.

the international commitment they have chosen to strictly adhere to.⁸⁶ In other words, some member states have refused to commit themselves to the provisions of the CEDAW that address discrimination against women and harmful customary practices such as FGM.⁸⁷

As regards reservations on the provisions of the CEDAW⁸⁸ that address discrimination against women and harmful customary practices, Nigeria is an exception. Nigeria signed and ratified the CEDAW and does not have any reservation regarding any of its provisions. Nigeria, by her signature and ratification, has agreed to commit herself to the provisions of the CEDAW. In fact, Nigeria has enacted the VAPP Act as a sign of her commitment to the CEDAW. The implementation of the Act however becomes an issue because only three states have domesticated the Act, one of which is Oyo State. A greater issue however, is compliance with the domesticated law.

Shell-Duncan *et al* are of the view that, there must be a well laid out plan for implementation, enforcement and monitoring, if anti-FGM laws are to be used for the eradication of the practice of FGM. In addition, they are of the view that, legislation does not necessarily mean abandonment of the practice and further that, legislation may precipitate negative reactions and hidden FGM practices. Therefore, legislation should instead be used to complement reform strategies by creating what is called an 'enabling environment' for those who have undergone FGM and those who have decided to halt the practice.⁸⁹

Tyler considers 'illegitimacy' as a barrier to compliance with a legislation.⁹⁰ According to him, people decide to comply with the law if they can attest to its legitimacy. To buttress his point, he compared the 'normative' perspective and the 'instrumental' perspective of compliance. He described the normative perspective as one which leads

⁸⁶ Byrnes (n 83 above) 51 & 52.

⁸⁷ CEDAW (n 85 above). An example of such provision is Article 2(f) which mandates states parties to put measures in place including legislative measures, for the abolition of customs and practices which constitute a form of discrimination against women.

⁸⁸ CEDAW (n 85 above).

⁸⁹ Shell-Duncan *et al* 'Legislating Change?' Responses to criminalising female genital cutting in Senegal' (2013) 47(4) *Law Soc Rev.* 803-835 <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3997264>, (accessed 29 March 2018).

⁹⁰ TR Tyler *Why people obey the law* (1990) News Haven: Yale University Press 24 and 25.

to a focus on a person's internalised pattern of justice and obligation. In other words, the normative perspective of compliance, focuses on what citizens think and what their values are. On the other hand, the instrumental perspective sees compliance as a type of behavior which responds to external pressures. He concludes that, if legal authorities are to ensure the voluntary acceptance of their actions, such authorities have a duty to balance public support against the effective regulation of public behavior. This is in other to maximise compliance with laws and minimise resentment and hostilities by the citizens.⁹¹ In agreement with Tyler, to achieve compliance, lawmakers and law enforcers must be tactful in creating a legal system that is worthy of respect rather than instilling the fear of punishment in the people concerned. Section 9 of the Violence Against Women Law of Oyo State, instils the fear of punishment by punishing anyone who performs female genital mutilation, attempts to commit the offence and a person who incites, aids, abets or counsels another person in the practice of FGM.

The African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol),⁹² in Article 5, mandates all member states to put measures in place, including legislative measures backed by sanctions, for the eradication of FGM. The Protocol however failed to include compliance strategies for the realisation of this provision

The next chapter would therefore consider factors that motivate compliance with laws, particularly anti-FGM laws.

⁹¹ Tyler (n 90 above).

⁹² The African Charter on Human and Peoples' Rights on the Rights of Women in Africa, 2003 is popularly called 'Maputo Protocol'.

CHAPTER 2

FACTORS MOTIVATING COMPLIANCE WITH LAWS

2.1 Introduction

In this chapter, there will be an exposition of the work of Tom Tyler on '*Why people obey the law*',⁹³ using the compliance theory, as a basis for evaluating section 9 of the Violence Against Women Law of Oyo State. This dissertation topic focuses on compliance motivations within the context of anti - FGM law (section 9 of the Violence Against Women Law of Oyo State). An in - depth study on existing literature, an evaluation of various theoretical frameworks and also considering the fact that the research questions focus on compliance with section 9 of the Violence Against Women Law of Oyo State which is a domestication of the VAPP Act, motivates the choice for the compliance theory framework for this research. This theory helps to investigate the factors that influence compliance with laws particularly focusing on the work of Tom Tyler;⁹⁴ why there is non-compliance as well as strategies that can be adopted by the government to ensure compliance. The point of entry is from Tyler's argument that, people obey the law if it is legitimate.

2.2 Legitimacy of law, criminal sanctions and compliance

The main goal of every legal authority is to ensure widespread compliance with laws, policies and directives in order to tackle a problematic situation.⁹⁵ As a means of addressing FGM, the international community advocate for laws such as anti - FGM legislation as a major reform strategy for the eradication of FGM. At the International Conference on Population and Development (ICPD) in Cairo in 1994, a call was placed on the government of nations to enact anti - FGM legislation and to see to its enforcement.⁹⁶ Also, the World Health Organisation urged the government of nations to enact anti - FGM laws in order to guarantee the protection of girls.⁹⁷ To this end, Nigeria

⁹³ Tyler (n 90 above).

⁹⁴ Tyler (n 90 above).

⁹⁵ TR Tyler and J Jackson 'Popular legitimacy and the exercise of legal authority: motivating compliance, cooperation and engagement' (2013) *Psychology Public Policy and Law* 1.

⁹⁶ EH Boyle & SE Preves 'National politics as international process: the case of anti-female genital cutting laws' (2000) 34 *Law and Society Review*, 37.

⁹⁷ World Health Organisation 'Female genital mutilation: programmes to date: what works and what doesn't' (1999) Geneva: World Health Organisation 14 and 115.

enacted the VAPP Act in 2015, which criminalised FGM.⁹⁸ The Act was domesticated as the Violence Against Women Law of Oyo State, in 2016 with a provision criminalising FGM.⁹⁹ However, dissenting opinions seem to question the narrative of whether or not criminal sanctions influence compliance with laws? Some scholars have argued that, the threat of criminal sanction may have limited impact on FGM deterrence.¹⁰⁰ In support of this argument, Tyler submits that, legitimacy and not sanction, plays an important role if compliance is to be achieved. That is, people obey the law if the law is legitimate and not if a sanction is attached.¹⁰¹

Tyler describes legitimacy as a 'psychological property' of an authority, an institution or even, a social arrangement, which creates an understanding in those who are connected to that authority, institution or social arrangement, that it is appropriate, just and proper.¹⁰² Must all laws be fair for it to be valid? This point may be faulted as racial laws e.g. during the apartheid era in RSA were nothing but fair but yet laws! In other words, it is a situation where the governed voluntarily decide to obey rules out of obligation and not out of fear of punishment (sanction) or even in anticipation of a reward. He considers legitimacy as an important tool if an authority, institution or even an institutional arrangement is to be successful. This is because exerting influence over others solely with the use of power, may pose a difficult task. In agreement with Tyler, to achieve compliance, lawmakers and law enforcers in Oyo State must be tactful in creating a legal system that is worthy of respect rather than instilling the fear of punishment in the people concerned. Section 9 of the Violence Against Women Law of Oyo State, instils the fear of punishment by subjecting anyone who performs female genital mutilation, attempts to commit the offence and a person who incites, aids, abets or counsels another person in the practice of FGM,¹⁰³ to fine and or imprisonment:

⁹⁸ An Act that criminalises the practice of female genital mutilation, section 6.

⁹⁹ Violence Against Women Law, 2016 Section 9.

¹⁰⁰ B Shell-Duncan, K Wander, Y Hernlund & A Moreau 'Legislating change? Responses to criminalising female genital cutting in Senegal' (2013) 47 *Law and Society Review* 814.

¹⁰¹ Tyler (n 90 above).

¹⁰² TR Tyler 'Psychological perspectives on legitimacy and legitimation' (2006) 57 *Annual Review of Psychology*, 375.

¹⁰³ Section 9 (1), (2), (3), (4) and (5).

Section 9(1) The circumcision or genital mutilation of female or a woman is hereby prohibited.

(2) Any person who performs female circumcision or genital mutilation or engages another to carry out such circumcision or mutilation is guilty of an offence and liable on conviction to imprisonment for a term not exceeding four years or to a fine of N100, 000 or both

(3) Any person who attempts to commit the offence under this section is guilty of an offence and liable on conviction to imprisonment for a term not exceeding two years or to a fine of N80, 000.00 or both.

(4) Any person who incites, aids, abets or counsels another person to commit the offence under this section is guilty of an offence and liable on conviction to imprisonment for a term not exceeding two years or a fine of N80, 000.00 or both.

(5) Any person who receives or assists another person to commit the offence under this section is an accessory after the fact and is guilty of an offence and liable on conviction to imprisonment for a term not exceeding six months or a fine not exceeding N50,000 or both.

Despite the above provision, Oyo State has a high prevalence of FGM.¹⁰⁴This validates Tyler's position on the need for legitimacy and not sanction, if laws are to be complied with.

Tyler considers the connection between legitimacy and compliance and concludes that, legitimacy makes the governed to comply.¹⁰⁵ Jackson puts it this way 'legitimacy involves the recognition of the public, of a social order that needs a framework of laws that can promote compliance'.¹⁰⁶ When the governed see authorities as legitimate, motivating them to comply with the law, becomes an easy task. When the people see a

¹⁰⁴ P Ekeanyanwu 'Two years after ban, FGM still rampant in Nigeria' (2017) Development Cable http://www.thecable.ng/two_years-ban-fgm-still-rampant-nigeria (Accessed 30 October 2018).

The Nigerian Demographics and Health Survey report of February, 2018, places the FGM prevalence rate of Oyo State at 65.6%.

¹⁰⁵ Tyler and Jackson (n 95 above) 3.

¹⁰⁶ J Jackson et al 'Why do people comply with the law? Legitimacy and the influence of legal institutions' (2012) 52(6) *The British Journal of Criminology* 1053.

legal authority as legitimate, they feel they have an obligation to obey the law. Therefore, the right of an authority to exercise power is strengthened by the authorisation of the governed of its legal authority, in other words, its legitimacy.¹⁰⁷ Smith puts it differently. According to him, one of the requirements of stability in any political system, is a voluntary acceptance by the governed, of political decisions that are legitimate.¹⁰⁸ This means that such decisions must be in accordance with the values of the governed as well as their belief systems.¹⁰⁹ If political decisions rely on the use of force exclusively for the execution of such decisions, compliance may not be achieved.¹¹⁰ However, if force is transformed into right and obedience into duty, a stable political system is inevitable.¹¹¹

2.3 Models of influencing behaviour

In order to establish effective governance, it is imperative to understand the relationship between human beings and institutions. That is, how human beings relate with laws, policies and regulations. Tyler and Jackson, while discussing what they described as the three constituent elements of legitimacy, described various models that influence human behaviour.¹¹² The three elements are the authorisation of those in authority, trust and confidence of the governed in those in authority because of the genuine concern of the authority for them and lastly, their belief in the moral judgement of those in authority.

2.3.1 The procedural justice model of policing

The procedural justice model shapes the views of the governed on the legitimacy of the law as well as the legal system.¹¹³ According to this model, the people decide to comply with the law because they are confident in the moral judgement of the legal institutions. Therefore, when institutions adhere to the principles that depict procedural fairness, then legal authorities will be confident to encourage adherence to the law. The aftermath effect being avoidance of cost, danger and even alienation, which may be connected with

¹⁰⁷ Tyler & Jackson (n 94 above) 3.

¹⁰⁸ RW Smith 'The concept of legitimacy' (1970) 35 *Journal of Social and Political Theory* 17.

¹⁰⁹ Tyler & Jackson (n 94 above).

¹¹⁰ Smith (n 108 above) 17.

¹¹¹ Smith (n 108 above) 17.

¹¹² Tyler & Jackson (n 95 above).

¹¹³ Tyler & Jackson (n 95 above) 6.

policies, laws, rules and regulations that have the threat of deterrence.¹¹⁴ In summary, when power is wielded in a neutral, just and fair manner, this will validate the authority of the legal institutions.¹¹⁵

2.3.2 The traditional model of social regulation¹¹⁶

In this model, legitimacy is centralised as a felt obligation. This means that the governed feel obliged to obey the law because they see the law and the legal authorities as legitimate.¹¹⁷ Here, it is not only the question of the legitimacy of the law but also, the legitimacy of the law makers (legal authorities). That is, legal authority is centralised in legal elites who are the decision and policymakers. Legal authorities expect obedience, the acceptance of their authority by the public which will lead to compliance with the law. Succinctly put, when legitimacy equals authorisation and consent equals felt obligation, people would submit to legal authorities to prescribe and enforce laws. Tyler and Jackson describe this as power that turns into legitimate authority. In other words, people decide to obey the law because of their trust and confidence in the legitimate authority to dictate appropriate behaviour.¹¹⁸

2.3.3 The normative model of crime control

According to this model, the law and the legal system are used to facilitate committed engagement by the community, through the provision of basic amenities, thereby promoting economic, social and political development in the community.¹¹⁹ Thus, the governed will be able to see that the legal authorities have their interest at heart. Therefore, for institutions to secure compliance and cooperation, they must be ready to develop policies that will generate legitimacy.¹²⁰ This will encourage the governed to comply with law and the legal system.

¹¹⁴ Schulhofer S.*et al* 'American policing at a crossroad: Unsustainable policies and the procedural justice alternative' (2011) 101 *Journal of Criminal Law and Criminology* 335.

¹¹⁵ J Jackson, B Bradford, M Hough, A Myhill, P Quinton, and Tyler, T. R. (2012a). 'Why do People Comply with the Law? Legitimacy and the Influence of Legal Institutions', (2012a) 52 *British Journal of Criminology* 1051 - 1071.

¹¹⁶ Tyler & Jackson (no 95 above) 3.

¹¹⁷ TR Tyler 'Psychological perspectives on legitimacy and legitimation' (2006) 57 *Annual Review of Psychology* 377 &378.

¹¹⁸ Tyler & Jackson (no 95 above) 3.

¹¹⁹ Tyler & Jackson (no 95 above) 2.

¹²⁰ Tyler (n 117 above) 379.

2.4 Inadequacies in Tyler and Jackson's Analysis

The three constituent elements (a felt obligation to obey, trust and confidence in the authorities and the moral alignment of the leaders), cannot apply in every geographical polity. Tyler has failed to consider other factors that can hinder compliance with the law despite its legitimacy. Some of them are: i) the capacity to comply, capacity here does not refer to physical capacity but rather, intellectual capacity. By this, what is implied is a situation where people know that there is a law but, they lack the intellectual capacity to read or comprehend its content because of their illiteracy status; ii) the knowledge of the existence of the law, that is, a situation where people, especially those at the grassroots, do not know that a particular law exists and iii) inadvertence on the part of the government, that is inattention by the government to eliminate or even reduce obstacles that can negatively influence the behaviour of the people.

2.4.1 The capacity to comply and the knowledge of the law

There is a low literacy rate in Nigeria.¹²¹ Oyo State, Nigeria in particular has a large population of illiterates.¹²² For information to be accessed, the people need to be literate. Literacy is not limited to the four walls of a classroom, it extends to the freedom to seek, receive and even impart information and ideas orally in print, in writing, in the form of an art or through any other media.¹²³

Education is a human right in Nigeria.¹²⁴ Without access to education, the Violence Against Women Law of Oyo State is compromised as it would be difficult for the people of Oyo state, especially the rural dwellers, to understand the provisions of the law if at all they have the knowledge of the existence of the law. Every Nigerian resident has a right to access freely information regarding legislation in his or her state of residence in

¹²¹ JO Akintayo 'Circulation of elites in Oyo State Nigeria' (n.d) Academia.edu 13 https://www.academia.edu/19510917/circulation_of_Elites_in_Oyo_state_Nigeria (Accessed 29 October 2018).

¹²² Akintayo (n 121 above).

¹²³ United Nations Human Rights Committee, General Comment No. 34, adopted in 2011, Paragraph 19 paras 18 and 19.

¹²⁴ The right to information is a fundamental human right enshrined in Section 39 (1) of the 1999 Constitution of the Federal Republic of Nigeria as amended which provides that ' every person shall be entitled to freedom of expression including freedom to hold opinions and to receive and impart ideas and information without interference.

Nigeria.¹²⁵ This freedom to access information, is an important aspect of the freedom of expression which includes, the right to impart information and ideas, the right to seek and receive information.¹²⁶

Various international instruments protect an individual's right to access information as well as to express their opinions within the ambit of the law. Some of them are: the African Charter on Human and Peoples' Rights,¹²⁷ the Universal Declaration on Human Rights, to mention a few.¹²⁸ Notable is the effort of the African Commission on Human and Peoples' Rights on the adoption of a Declaration on Principles of Freedom. Public bodies hold information as custodian of the public good and everyone has the right to access such an information.¹²⁹ That is, there must be easy, prompt, effective and practical access to information of public interest.

Flowing from the above, the government of Oyo State will have to shift from an enforced model of compliance through sanctions to a more relaxed atmosphere by ensuring that the people are well informed of the existence of the law as well as of its contents. For the needed information to be readily accessible, simplified versions of the Violence Against Women Law need to be made available to people at the grassroots. There is also a need for massive public education in order to create access to information on anti - FGM law in Oyo state as well as understand the contents of the law.

Lastly, not having the knowledge of the law, is not the same as ignorance of the law, which is not an excuse, *ignorantia juris non excusat*. Rather, it is ignorance of the knowledge of the law. Knowledge is one of the degrees of *mens rea* when determining whether or not a crime has been committed. *Mens rea* can be explained as the mental element of an intention to commit a crime. Therefore, in Oyo State, Nigeria, perpetrators cannot be said to refuse to comply with the law and therefore, guilty of an offence, if intention not to comply, cannot be established. As earlier explained, in Oyo State, Nigeria,

¹²⁵ FO Omotayo 'The Nigerian freedom of information law: Progress, implementation challenges and prospects' (2014) *Library Philosophy and Practice* 1219.

¹²⁶ NO Obiaraeri 'Access to public information in Nigeria: Celebrating with caution' (2011) 4(2) *Confluence Journal of Jurisprudence and International Law* 1.

¹²⁷ African Charter on Human and Peoples Rights 1981 Article 9.

¹²⁸ Universal Declaration on Human Rights 1948 Article 19.

¹²⁹ United Nations Human Rights Committee, General Comment No. 34 (no. 117 above) para 19.

among other reasons, FGM is regarded as a must - do to prevent promiscuity in women and not as a criminal act. Therefore, FGM is carried out without any intention to commit a crime.

2.4.2 Inadvertence on the part of the government

Inattention by the government to eliminate or even reduce obstacles that can negatively influence the behaviour of the people, can pose a threat to compliance. In order to elicit compliance with the Violence Against Women Law of Oyo State, these obstacles need to be dealt with. Some of such obstacles are: the history of the communities practicing FGM in Oyo state, their religious belief systems, their social and cultural antecedents, to mention a few.

Religion has been described as a social phenomenon, which blends perfectly into the way of life of an individual, a people and a community. It therefore becomes almost impossible for religion to be practiced in isolation of culture. Consequently, it becomes very important to understand the cultural context within which people's religion operates. The studying of the culture of a people without including its religion component becomes a herculean task.¹³⁰ Culture has therefore been explained to be a cumulative manifestation of a people's achievement and religion, an important pillar of culture.¹³¹ In order to understand the relationships among people, religion has to be approached as a significant part of cultural reality.¹³² To advance this point, reference is made to the article titled '*Between Irua and female genital mutilation*'¹³³ where Lewis describes the modern criminalisation of FGM as having a connection with the history of colonialism and imperialism. This according to her creates a barrier to the legitimacy of anti - FGM laws because of the unpleasant memory of colonialism and imperialism which has generated resentment among African communities where FGM is practised.¹³⁴ To address this situation, a contextualised grassroots-approach which promotes health education towards the gradual abandonment of the practice of FGM, may be a better option. To achieve this,

¹³⁰ JNK Mugabi *Religion and social construction of reality* (1996) Nairobi University Press 25.

¹³¹ Mugabi (n 130 above) 31.

¹³² S Thorpe and C Le Roux '*Science of religion study guide 1*' (1986) 7.

¹³³ Lewis (n 69 above) 17.

¹³⁴ Lewis (n 69 above) 40.

consensual dialogue in respect of norms that address FGM in Oyo state as well as a language structure that is grassroot-friendly, should be encouraged by the Oyo State government.

2.5 Conclusion

Tom Tyler on '*Why people obey the law*' argued that, the legitimacy of a law is what determines compliance. This research however, has identified a flaw in Tyler's argument because he failed to consider compliance from other perspectives: i) the illiterates who do not have the intellectual capacity to understand the provisions of a law even when they know about the existence of that law, ii) those who do not have any knowledge of the law, knowledge here, refers to knowledge of their actions constituting an offence, that is, the intention to commit a crime and lastly, iii) non - compliance by the people because of the inattention of the government (legal authorities) to certain factors that can constitute an obstacle to adherence to the law.

CHAPTER 3

AN OVERVIEW OF SECTION 6 OF THE VIOLENCE AGAINST PERSONS (PROHIBITION) ACT 2015

3.1 Introduction

This chapter presents the origin of the VAPP Act and the various interventions and advocacy, which led to its successful passage into law. In addition, an analysis of the provisions of section 6 of the Act will be made to determine whether or not, the VAPP Act meets up with international standards. Article 5 of the Maputo Protocol in particular, will be examined, being the first legally binding international treaty to provide for female genital mutilation.¹³⁵ Thereafter, a spotlight would be shed on the similar provisions of section 6 of the VAPP Act and the Violence Against Women Law of Oyo State, 2016 especially as it relates to female genital mutilation and finally, the impact (if any) of the Violence Against Women Law of Oyo State (the Oyo State domesticated version of the Violence Against Persons (Prohibition) Act), on the eradication of female genital mutilation in Oyo State, Nigeria.

3.2 The Origin of the VAPP Act

The VAPP Act emerged through the efforts of various women groups, gender activists, non-governmental organisations, faith-based organisations, to mention a few, who saw the need to advocate for the repeal of various provisions of existing laws that discriminated against women in Nigeria¹³⁶ They also saw the need to advocate for the enactment of new laws that will adequately cater for the protection of women against violent practices. There were lots of legislative advocacy and the result was the enactment of new laws at both state and federal levels prohibiting violence against women and children. One of those laws was the Child Rights Act¹³⁷ which is an Act providing for the protection of the Nigerian child and which is a true reflection of the

¹³⁵ Maputo Protocol (n 92 above) Article 5.

¹³⁶ C Onyemelukwe 'Legislating on violence against women: a critical analysis of Nigeria's recent Violence Against Persons (Prohibition) Act, 2015' (2016) 5 *DePaul J. Women, Gender & L* 8.

¹³⁷ The Child Rights Act, 2003.

Convention on the Rights of the Child¹³⁸ since it domesticated several provisions of the Convention. Despite these efforts, there were still gaps to be filled as regards the protection of women from various forms of gender-based violence.

A legislative workshop on violence against women¹³⁹ was organised in 2001. After the workshop, the participants formed a coalition which they called the Legislative Advocacy Coalition on Violence Against Women (LACVAW).¹⁴⁰ The coalition is the coming together of organizations dealing with various aspects of women's rights and social justice such as women organizations and civil rights organisations. This Coalition had the mandate of amplifying the voices of women rights' organisations in proposing a bill on domestic violence.¹⁴¹ The mission of the coalition was to push for a national 'Bill' which will prohibit violence against women in Nigeria by incorporating provisions from international human rights instruments to which Nigeria is a party. LACVAW played a remarkable role in the passage of the VAPP Act, which was a 14-year-long activism.¹⁴²

LACVAW developed a 'Violence Against Women Bill' and presented it to the National Assembly in 2002. The Bill focused on violence against women. After years of activism, the Bill was eventually changed to 'Violence Against Persons (Prohibition) Bill'. There was continued advocacy that eventually led to President Goodluck Jonathan assenting to the bill in 2015.¹⁴³ This led to the birth of the VAPP Act.¹⁴⁴ The VAPP Act marked the first federal legislation, which gave a legal recognition to domestic violence in Nigeria.¹⁴⁵ This new Bill focused on violence against persons as against violence against

¹³⁸ The Convention on the Rights of the Child is a human rights treaty which was adopted in 1989. It sets out the rights of children and defines a child as a person under the age of eighteen subject to the stipulated age of majority under a particular national legislation.

¹³⁹ The workshop took place in Abuja, Nigeria in 2001.

¹⁴⁰ Press Conference by the Legislative Advocacy Coalition on Violence Against Women held on 26 May, 2015.

¹⁴¹ MG Hammawa 'The role of gender technical unit in influencing the passage of Violence Against Persons Prohibition Act in Nigeria' (2015) *UPM-SAGE Publications Young Writers' Award* 150.

¹⁴² Hammawa (n 141 above).

¹⁴³ Synopsis by Women's Aid Collective (WACOL) (n.d) 'Violence Against Persons (Prohibition) Act, 2015, Nigeria' <https://www.law.utoronto.ca> (accessed 1 August 2018) 1.

¹⁴⁴ O Nwankwo 'Effectiveness of legislation enacted to address violence against women in Nigeria' (2008) http://www.un.org/womenwatch/daw/egm/vaw_legislation_2008/expertpapers/EGMGPLVAW%20Paper%20Oby%20Nwankwo_.pdf (accessed 1 August 2018).

¹⁴⁵ Hammawa (n 141 above) 148.

women.¹⁴⁶

3.3 The Passage of the Violence against Persons (Prohibition) Bill

LACVAW devised various strategies for the passage of the Bill. Some of such strategies were conducting trainings for police officers (this will consider both male and female officers), legislators as well as the members of the judiciary; educating the public; organising rallies and very impressively; organising a mock trial court in the National Assembly during a public hearing. The mock trial was organised by Women's Aid Collective (WACOL)) on 23 October 2014.¹⁴⁷ The mock trial focused on sexual and gender-based violence, executed in collaboration with a committee called the National Assembly Women Affairs Committee and Ipas. The aim of this mock trial court was to raise awareness on incidents of gender-based violence in Nigeria and also, amplify the voices of victims and survivors alike in order to make the government of Nigeria see the need for protective laws.¹⁴⁸ Another landmark move by LACVAW was the creation of a unit called the 'Gender Technical Unit'.¹⁴⁹

3.4 Bills initiated prior to the VAPP Act

Between 1999 and 2014, the LACVAW and some legislators initiated nine bills that did not succeed. Below are the Bills and their sponsors:¹⁵⁰

- Circumcision of women (Prohibition) Bill 2000. It was sponsored by Hon. Janet Febisola Adeniyi;
- Violence Against Women (Prohibition) Bill, 2001. It was sponsored by Hon. Dorcas Odujinrin – Junaral;
- Violence Against Women (Prohibition) Bill, 2003. It was sponsored by Hon. Florence Aya and Hon. Farouk Lawal and it was co-sponsored by thirty other members;
- Public Nudity, Sexual Intimidation and Other Related Offences (Prohibition and

¹⁴⁶ Hammawa (n 141 above).

¹⁴⁷ WACOL as a foundational member of the Coalition (LACVAW) was actively involved in legislative and social advocacy for the passage of the bill on violence against persons.

¹⁴⁸ WACOL (n 147 above) 2.

¹⁴⁹ Hammawa (n 141 above) 149.

¹⁵⁰ Hammawa (n 141 above) 150.

Punishment) Bill, 2007. It was sponsored by Senator Eme Ufot Ekaette;

- Discrimination and Related Offences (Prohibition and Punishment) Bill 2008. It was sponsored by Chris Anyanwu;
- Domestic Violence (Prevention) Bill, 2008. It was sponsored by Senator Daisy Danjuma;
- Abolition of Discrimination Against Women Bill, 2009. It was sponsored by Ndoma Egba who was the senate leader at that time; Elimination of Violence in Society Bill, 2011. It was sponsored by Senator Victor Ndoma-Egba;
- Sexual Offences Bill, 2013. It was sponsored by Chris Anyanwu.

These bills were later harmonised and the outcome was the Violence Against Persons Prohibition Bill, 2015.

The role of Women's Aid Collective (WACOL), cannot be overemphasised. WACOL submitted comprehensive memoranda to the Senate Committee on Judiciary, Human Rights and Legal Matters and backed up this effort with a strong case for the immediate passage of the Bill along with suggestions for its expansion. This took place at the public hearing of the Senate of the National Assembly on 2 March, 2015.¹⁵¹

3.5 Definition of 'violence' in the VAPP Act

In the VAPP Act, violence was defined as an act or an attempt to commit an act, which has the aftermath effect of causing harm sexually, physically, verbally, psychologically, economically or even emotionally in public or private life and in peaceful and conflict situations.¹⁵² This definition gives 'violence' a very broad description.

3.6 Division of the VAPP ACT

The VAPP Act has forty-eight sections. It is divided into six parts: part 1 which starts from section 1 and ends at section 26 is the offences and penalties section; part 2 which starts from section 27 and ends at section 38 covers the jurisdiction of the court; part 3 which starts from section 39 and ends at section 43 is the section which empowers service providers; part 4 which is only one section, that is section 44, provides for the regulatory

¹⁵¹ (n 147 above) 2.

¹⁵² Violence Against Persons (Prohibition) Act, 2015 section 46.

body to administer the Act; part 5 which is also only one section, that is section 45, is the consequential amendment section and lastly; part 6 which starts from section 46 and ends at section 48, is the interpretation section. The VAPP Act caters for and prohibits a range of violence such as violence relating to female genital mutilation,¹⁵³ spousal battery,¹⁵⁴ harmful traditional practices,¹⁵⁵ among others. The Act also has a schedule.

3.7 Laws relied upon prior to the passage of the VAPP Act

Prior to the passage of the VAPP Act into law, heavy reliance was placed on the Nigerian Constitution¹⁵⁶ and the Child's Right Act (CRA)¹⁵⁷ by lawyers and non-governmental organisations alike, for the eradication of FGM. The provision relied upon in the Constitution of the Federal Republic of Nigeria, was the protection of everyone from any form of torture, inhuman and degrading treatment and punishment, a category in which FGM falls. Similarly, the Child's Rights Act¹⁵⁸ also protects against cruel, inhuman and degrading treatment and punishment of children.¹⁵⁹ However, these two legislation do not expressly mention FGM in any way. This situation propelled lots of advocacy against FGM practice by stakeholders. Continuous advocacy eventually led to the passage of the Bill into law.

In addition, the Criminal Code and the Penal Code were the existing laws punishing acts of violence in the country prior to the enactment of the VAPP Act. They were not sufficient to address the issue of violence against women, the resultant effect being patriarchy, discrimination against women in all facets of life and inequality.¹⁶⁰ There was a need for women in Nigeria to satisfactorily access justice.

The enactment of the VAPP Act in 2015 seems to be a step in the right direction as it addresses gaps in women's protection as well as available remedies in cases of

¹⁵³ (n 152 above) Section 6.

¹⁵⁴ (n 152 above) Section 19.

¹⁵⁵ (n 152 above) Section 20.

¹⁵⁶ Nigerian Constitution (n 14 above).

¹⁵⁷ Child's Right Act 2003. The Act domesticated the Convention on the Rights of the Child.

¹⁵⁸ (n 152 above) preamble.

¹⁵⁹ (n 152 above) 11b.

¹⁶⁰ Onyemelukwe (n 136 above).

various forms of violence.¹⁶¹ Interestingly, as a progressive move, the VAPP Act criminalises actions that had hitherto not been recognised as offences under the Nigerian criminal law system. An example of such acts is FGM.¹⁶² FGM is a discriminatory act against women and girls. The Constitution of the Federal Republic of Nigeria prohibits discrimination by the reason of the circumstances of a person's birth.¹⁶³ FGM violates this provision as it has its roots in gender inequality, male preference and supremacy.

3.8 The VAPP Act on FGM and compliance with international standards

The VAPP Act, domesticated as the Violence Against Women Law of Oyo State, 2016, has many unique features one of which is its compliance with the United Nations standard¹⁶⁴ and that of other international instruments. This is evident in its comprehensiveness, integration of various interventions such as the provision of reasonably sufficient punishment for perpetrators, reasonable compensation for victims of violence, provision of a legal framework, criminalisation of various forms of violence, acknowledgement of women as beneficiaries of the provisions of the Act, attributing violent practices to women, provisions on the effective implementation of the Act, evaluation and monitoring, to mention a few.

FGM violates article 3 of the Universal Declaration of Human Rights (UDHR), 1948 on the right to life, liberty and security of the person. FGM takes away the victim's dignity and security of person. As earlier mentioned, the victim suffers a lot of pain and sometimes, life - threatening complications which is a violation of the victim's right to life. Article 5 protects girls and women against torture, cruel and inhuman treatment or punishment. FGM takes away a girl and woman's right against torture, cruel and inhuman treatment consequent upon the traumatising inhuman experience the victim passes through. Many of the victims are circumcised as infants. Others have the circumcision arranged by people they trust such as their parents, grandmothers, aunts, to mention a

¹⁶¹ (n 152 above) sections 1 to 26.

¹⁶² (n 152 above) section 6.

¹⁶³ (n 14 above) section 42.

¹⁶⁴ The United Nations Handbook for Legislation on Violence Against Women (2012) 1. The Handbook clearly states the obligations of States under international law towards enacting, implementing and monitoring legislation that addresses all forms of violence against women.

few, without their knowledge. This makes it a cruel and torturous experience. Other international instruments containing provisions against FGM are listed in the annexure.¹⁶⁵

According to the United Nations Handbook for Legislation on Violence Against Women, a legislation on violence against women must be gender-sensitive.¹⁶⁶ It must point to the fact that, the experiences of men and women as regards violent practices, differ. It must also point to the fact that, violence against women is a form of discrimination against women.¹⁶⁷ To a large extent, the VAPP Act meets up with these requirements but falls short of the latter requirement, that is, it does not adhere to the requirement of acknowledging violence against women as a form of discrimination.¹⁶⁸

In addition, the UN Handbook recommends that, main forms of violence should be defined and criminalised. It mentions FGM as one of such forms of violence against women.¹⁶⁹ The VAPP Act seems to pass this test as it criminalises several acts of violence against women among which is FGM. In fact, it also makes provision for penalties which includes fines and or imprisonment for these offences.

3.9 An analysis of the provisions of the Maputo Protocol (Article 5) vis - a - vis the VAPP Act (section 6) and the Violence Against Women Law (section 9)

Several international instruments define violence against women and mandate States parties to take measures to ensure adequate protection of women from all forms of gender-based violence as well as practices that are harmful to women and girls. One of them is the Maputo Protocol.

The introduction of sanctions on FGM in the VAPP Act as well as the Violence Against Women Law of Oyo State is indeed highly commendable. It has a corresponding connection with the duty of states to prohibit FGM in all its forms, through legislative

¹⁶⁵ Annexure 4.

¹⁶⁶ United Nations Handbook for Legislation on Violence Against Women (2012) 12.

¹⁶⁷ (n 166 above) 15.

¹⁶⁸ (n 166 above) 20.

¹⁶⁹ (n 166 above) 8.

measures backed by sanctions.¹⁷⁰ However, these two legislation fail to introduce complementary measures to criminal sanctions such as public awareness through information, both formal and informal, as well as outreach programmes, for the eradication of FGM.¹⁷¹ In addition, these two legislation fail to provide for the rehabilitation of the victims of FGM. The Maputo Protocol clearly spells out the need for rehabilitation of victims of FGM through basic services such as health services, legal and judicial support, emotional and psychological counselling and even, vocational training so that they would be self - supportive.¹⁷² Ngozi *et al* describe this as a serious omission by the drafters and a regrettable one indeed as there is no consideration for the well - being of the victims.

3.10 Application for a Protection Order

Also unique about the VAPP Act is the fact that, it issues a Protection Order to victims of domestic violence.¹⁷³ The Oxford Advanced Learners Dictionary defines domestic violence as violence that occurs between members of the same family.¹⁷⁴ In the context of this research, the researcher will expand on the connection of FGM with the violation of the external genital organ of a girl or woman. More often than not, the circumciser, exciser or cutter, performs the mutilation exercise, under the permission of the parents, grandparents, aunt or even a very close family member.¹⁷⁵ This gives FGM a domestic outlook. FGM can therefore be regarded as a form of domestic violence because of the family domestication and connection involved. In other words, at least a close family member supports the execution of that operation. This application is preceded by a complaint of violence by the complainant. This application is usually made before the High Court.¹⁷⁶ If the Order is granted, it would be effective throughout the Federal Republic of Nigeria. One unique feature of this Order is the fact that there is no limitation of time within

¹⁷⁰ Maputo Protocol (n 92 above) article 5b.

¹⁷¹ Maputo Protocol (n 92 above) article 5a.

¹⁷² Maputo Protocol (n 92 above) article 5c.

¹⁷³ (n 152 above) section 28(1).

¹⁷⁴ A.S Hornby & J Crowther *Oxford advanced learner's dictionary of current english* (1995) 5th ed. Oxford: New Delhi Oxford University Press.

¹⁷⁵ AM Peabody 'Female genital mutilation considered a form of domestic violence?'

<http://globalwomanpeacefoundation.org/2018/03/27/is-female-genital-mutilation-considered-a-form-of-domestic-violence/> (accessed 5 August 2018).

¹⁷⁶ (n 152 above) section 30.

which the complainant can apply for it.¹⁷⁷ The Violence Against Women Law of Oyo State also makes provision for a Protection Order for FGM victims.¹⁷⁸

3.11 The effect of the Protection Order on domestic violence

Through the Protection Order, the court has the power to prohibit the respondent from committing an act of domestic violence,¹⁷⁹ enlisting or assisting another person to commit such an act,¹⁸⁰ entering a shared household¹⁸¹ or a specified part of it¹⁸² provided it is in the interest of the complainant,¹⁸³ entering the residence of the complainant,¹⁸⁴ entering the complainant's place of employment¹⁸⁵ among other prohibitions. The Protection Order seems to be all encompassing as it empowers the court to give additional orders as the court deems necessary, in order to ensure the health, safety and well-being of the complainant.¹⁸⁶ Such an order includes the temporary relocation of the respondent to a safe place,¹⁸⁷ the non-disclosure of the respondent's physical address,¹⁸⁸ refusing the respondent any contact with the complainant¹⁸⁹ to mention a few. It is interesting to know that, the Act empowers the court to issue protective orders despite the existence of legal remedies already available to the complainant.¹⁹⁰ Lastly, in the exercise of the protective order, if the court in the interest of justice, is of the opinion that, a better relief can be sought under a relevant law, the court shall order that such provision of the relevant law shall be in place for a stipulated period by the court.¹⁹¹

The Act allows the application for a protection order to be brought by persons other than the complainant, provided the written consent of the complainant is obtained.¹⁹² In

¹⁷⁷ (n 152 above) section 28 (1).

¹⁷⁸ Violence Against Women Law, 2016 section 29(1).

¹⁷⁹ (n 152 above) section 31(1a).

¹⁸⁰ (n 152 above) section 31(1b).

¹⁸¹ (n 152 above) section 31(1c).

¹⁸² (n 152 above) section 31(1d).

¹⁸³ (n 152 above) section 31(1d).

¹⁸⁴ (n 152 above) section 31(1e).

¹⁸⁵ (n 152 above) section 31(1g).

¹⁸⁶ (n 152 above) section 31(2).

¹⁸⁷ (n 152 above) section 31(2d).

¹⁸⁸ (n 152 above) section 31(5).

¹⁸⁹ (n 152 above) section 31(6a).

¹⁹⁰ (n 152 above) section 31(7).

¹⁹¹ (n 152 above) section 31(8).

¹⁹² (n 152 above) section 28(4).

addition, there is a proviso, which caters for the peculiarities of certain categories of people with regard to their ability to give their consent. Those in this category are: minors, the mentally retarded, the unconscious or a person whom the court certifies as not having the capacity to give the required consent.¹⁹³ It is interesting to know that, a minor or persons other than the parents or guardian of a minor, who have a good knowledge of the matter in issue, can also apply for this order on behalf of the minor without the consent of the parents of the minor. Such an application must be accompanied by an affidavit¹⁹⁴ and both documents must be filed in court.¹⁹⁵

3.12 Duties of protection officers

Protection officers are appointed by the court and have similar responsibilities with the police officers.¹⁹⁶ However, there is an additional responsibility on protection officers in cases where the court orders payment of some amount of money by the respondent, to the complainant. These officers have a duty to direct the employer of the respondent, the respondent's bank or even a debtor of the respondent, to make payment to the complainant as a form of monetary relief that the complainant is entitled to.¹⁹⁷

3.13 Duties of police officers

The Act further places a responsibility on police officers to explain in detail the remedies a complainant may be entitled to in cases where the complainant does not have a legal representation.¹⁹⁸ The role of police officers in the eradication of FGM cannot be underestimated. When an incidence of violence occurs and it is reported to the police, in the case of FGM for example, the VAPP Act empowers them to assist the victim to file a complaint, provide an alternative residence, assist with access to a medical facility if needed, accompany the victim to collect her belongings from her place of residence, if necessary, explain to the victim her right to lodge a complaint in this regard as well as her

¹⁹³ (n 192 above).

¹⁹⁴ (n 152 above) section 28(5).

¹⁹⁵ (n 152 above) section 28(6).

¹⁹⁶ (n 152 above) section 41(1).

¹⁹⁷ (n 152 above) section 41(2).

¹⁹⁸ (n 152 above) section 28(3).

right to protection against violence and lastly, explain to her the remedies available under the Act.¹⁹⁹ The Violence Against Women Law of Oyo State also has similar provisions.²⁰⁰

3.14 The Relevance of the VAPP Act to FGM eradication

Female genital mutilation and other traditional practices are expressly criminalised and prohibited in the VAPP Act.²⁰¹ This shows the uniqueness and progressive nature of the Act because FGM was not expressly recognised as an offence prior to the enactment of the VAPP Act. In other words, before the enactment of the Act, there was no specific law criminalising FGM. Now, under the VAPP Act, practitioners of FGM are liable to either imprisonment or a fine or even both²⁰² thus:

- the circumcision or genital mutilation of the girl child or woman is hereby prohibited
- 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 N 200,000 or both
- 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 N 100,000 or both
- 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 two years or to a fine not exceeding N 100, 000 or both.

Despite the fact that section 20 of the VAPP Act criminalises harmful traditional practices generally, section 6 of the Act particularly focuses on female genital mutilation which is also a form of harmful traditional practice. This latter provision clearly shows the gravity of violence meted out on victims of FGM hence, a separate provision addressing

¹⁹⁹ (n 152 above) section 32.

²⁰⁰ (n 152 above) section 33.

²⁰¹ (n 152 above) section 6.

²⁰² (n 201 above).

female genital mutilation. The provision on harmful traditional practices,²⁰³ is slightly different from that on FGM. According to the VAPP Act, the practice of harmful traditional practices an offence, punishable with not more than four years imprisonment or an option of fine not exceeding N500,000²⁰⁴ or even both fine and imprisonment.²⁰⁵ A person who attempts to commit this act as well as has a reduced jail term of not more than two years period if convicted as well as an option of fine of N300,000²⁰⁶ or even both fine and imprisonment.²⁰⁷ The same jail term and an option of fine applies in the case of an incitement, aiding, abetting and counselling to perform a harmful traditional practice on another.²⁰⁸ Lastly, a person who knowingly receives another or assists him or her to perform a harmful traditional, 2 years imprisonment and an option of fine of N200, 000.²⁰⁹

Similarly, the Violence Against Women Law of Oyo State, has a separate provision for female genital mutilation²¹⁰ despite the provision on harmful traditional practices.²¹¹

3.15 Oyo State and compliance with the Violence Against Women Law

For an Act of the National Assembly to apply in a state in Nigeria, such an Act needs to be domesticated.²¹² In other words, a subsidiary legislation, containing the provisions of the Act, must be enacted. The Oyo State government successfully domesticated the VAPP Act of 2015 as the Violence Against Women Law of Oyo State, in 2016, criminalising FGM in its section 9. However, since the domestication of the Act²¹³ in Oyo State, Nigeria, there has not been any report of compliance with its anti - FGM provisions in section 9 of the Law. Consequently, FGM is still very prevalent in Oyo State, Nigeria.²¹⁴ According to Tyler and Jackson, people feel obliged to obey the law because of their trust

²⁰³ (n 152 above) section 20.

²⁰⁴ Approximately 1,380 US dollars.

²⁰⁵ (n 152 above) section 20(1).

²⁰⁶ Approximately 829 US dollars.

²⁰⁷ (n 152 above) section 20(2).

²⁰⁸ (n 152 above) section 20(3).

²⁰⁹ Approximately 552 US dollars.

²¹⁰ (n 178 above) section 9.

²¹¹ (n 178 above) section 23 and 24.

²¹² (n 14 above) section 12.

²¹³ (n 152 above).

²¹⁴ S Abe 'Why FGM may be difficult to end in Nigeria' (2018) Youth Voices: Their Perspective

<http://www.yourcommonwealth.org/editors-pick/why-fgm-ma-y-be-difficult-to-end-in-nigeria/> (Accessed 29 October 2018).

and confidence in the moral judgement of the legal institutions and the genuine concern of the authorities for them by promoting economic, social and political development in the community.²¹⁵

With reference to the health sector in Oyo State for instance, hospital management is beset with corrupt practices by health officials and the hospital management board due to ineffective accounting mechanisms, under - financed and badly managed systems, shortage of equipment, drugs, materials, to mention a few.²¹⁶ These corrupt practices have been fueled by weak government policies²¹⁷ and have caused severe consequences on access to effective health - care services especially for the vulnerable and poor people.²¹⁸ In particular, maternal mortality rates are very high in the rural communities of Oyo State, Nigeria. Some causal factors being limited access to health - care facilities and services especially for emergency care, due to transportation and distance issues, lack of good well-maintained roads, low - level of income, among other factors.²¹⁹ The issues alluded to above would very likely create distrust and lack of confidence in the Oyo State government for its inability to genuinely care for the health needs of the people. Therefore, the people of Oyo State may not feel any obligation to obey laws enacted by the government.

3.16 Conclusion

This chapter examined the provisions of the VAPP Act and its protective measures, as well as, its Oyo State domesticated - version and its effectiveness in Oyo State, Nigeria. The preamble of the Violence Against Women Law of Oyo State 2016, is explicit on what the Law sets out to achieve. It is expected to prohibit violence against women in public and private life, harmful traditional practices and to prescribe punishment for offenders.²²⁰ However, majority of the women and girls in Oyo State, Nigeria, do not even know of the

²¹⁵ Tyler & Jackson (no 91 above) 2.

²¹⁶ ME Akokuwebe & DM Adekanbi 'Corruption in the health sector and implications for service delivery in Oyo State public hospitals' (2015) 9(1) *Ilorin Journal of Sociology* 2 - 12.

²¹⁷ Akokuwebe & Adekanbi (n 216 above).

²¹⁸ Akokuwebe & Adekanbi (n 216 above) 4.

²¹⁹ DO Ibrahim 'Socio - economic determinants of maternal mortality in rural communities 'of Oyo State, Nigeria' (2016) 6(9) *International Journal of Scientific and Research Publications* 280.

²²⁰ (n 178 above) preamble.

existence of the law, which is a proof of their non-awareness of the protection it offers. This makes it difficult for them to seek protection against FGM under the law.

In addition, the use of terms such as 'accessory before the fact', 'desertion', 'battery', 'grievous harm', 'emotional, verbal and psychological abuse', to mention a few, as used in the interpretation section of the Law,²²¹ may very likely appear incomprehensible especially to the rural dwellers as well as illiterates in the urban areas.²²² It is in the light of the above that, this research recommends a simplified version of the Law both in English' and in the general local language of the people, 'Yoruba' language.²²³

²²¹ (n 178 above) section 2.

²²² (no. 5 above).

²²³ See Appendix 1 for a draft simplified version of the Violence Against Women Law, in 'English' and 'Yoruba' language. A simplified bilingual hand book?

CHAPTER 4

COMPLIANCE WITH ANTI - FGM LAWS: MIXED EXPERIENCES IN OTHER AFRICAN COUNTRIES

4.1 Introduction

This chapter presents a comparative study of Kenya and Uganda vis-a-vis Nigeria and in particular, Oyo State, Nigeria (which has domesticated the anti - FGM law), on the issue of compliance with anti - FGM laws. This comparison would be made under the following benchmarks:

1. The issue
2. The legal framework
3. The interventions adopted
4. The results generated and
5. The challenges faced.

4.2 FGM in Kenya

4.2.1 The issue

Kenya is known for its great cultural and ethnic diversity.²²⁴ This is evident in the differing rates as well as the type of FGM performed across its ethnic groups. The move to eradicate FGM in Kenya dates back to the pre-independence days' campaign of the protestant Christian missionaries against FGM.²²⁵ In a bid to combat the practice, the colonial government enacted anti-FGM legislation. However, these legislation were revoked consequent upon the ensuing opposition and political resistance.²²⁶

²²⁴ N Sobania Culture and customs of Kenya (2003) Greenwood Press: London 3.

²²⁵ JN Chege, I Askew, J Liku 'An assessment of the Alternative rites approach for encouraging abandonment of female genital mutilation in Kenya' (2001) *A project funded by the United States Agency for International Development (USAID)* 2.

²²⁶ Chege *et al* (n 225 above).

4.2.2 The legal framework adopted

The principal legislation regulating FGM in Kenya is the Prohibition of Female Genital Mutilation Act.²²⁷ It is a federal Act which addresses the gaps in the previous anti - FGM law by criminalising FGM performed on all persons regardless of the ages of the victims, the type of FGM performed, to mention a few. Other unique features of the Act are, the ban on the stigmatisation of women and girls who have not been circumcised, criminalisation of cross-border FGM or even on a Kenyan citizen residing abroad, among others. Lastly, the punishment assigned in this new Act, is more severe than the previous Act and it applies to a broader range of perpetrators.

4.2.3 Interventions adopted

Several interventions and strategies were adopted for the eradication of FGM in Kenya. However, only a few would be discussed in this research.

4.2.3.1 A National Plan of Action

The Ministry of Health launched a twenty-year National Plan of Action in 1999 with the sole aim of eradicating FGM.²²⁸ The National Plan had only four objectives: a reduction in the number of girls and women undergoing FGM; a reduction in the number of communities advocating for FGM; an increase in the number of healthcare facilities providing the needed care for victims of FGM who have been physically and psychologically affected by FGM and lastly, to increase the capacity of organisations and communities involved in FGM eradication processes in terms of their technical and advocacy capacities.

4.2.3.2 The use of the media

As one of the means of eradicating FGM, Kenya chose to adopt the media campaign strategy, that is, the television and radio communication strategy as a method of spreading the message of FGM eradication.²²⁹

²²⁷ Prohibition of Female Genital Mutilation Act, 2011.

²²⁸ Chege (n 225 above).

²²⁹ UNFPA-UNICEF 'Joint programme on female genital mutilation/cutting: accelerating change' (2012) Annual Report on scaling up the abandonment of FGM in 15 African countries 24.

4.2.3.3 Sensitisation through non - governmental organisations (NGO)

Kenya encourages the activities of NGOs towards FGM eradication. One of such NGOs is the Federation of Women Lawyers (FIDA). FIDA is very keen on advocating for the eradication of FGM in Kenya. To this end, the organisation published an abridged version of Kenya's Prohibition of Female Genital Mutilation Act,²³⁰ which provides a general summary, in a simplified way. This simplified version had the following objectives: to help the public as well as stakeholders, to have a better understanding of the contents of the anti - FGM law; to further encourage and deepen dialogue on issues relating to FGM; to promote effective implementation of the law at community levels and also, to ensure compliance with its provisions.²³¹

Another notable NGO is the Forum for African Women Educationalists (FAWE). FAWE's aim is to empower women and girls through the medium of a gender-responsive education. FAWE works in 32 countries in Africa. One of the channels of achieving its aim is to address issues that disrupt the education of girls. One of such issues is FGM. FAWE runs a youth empowerment program in two schools in Kenya.²³² In addition, there are media programs in these two locations to sensitise the community. There is a rescue Centre in the Kajiado school for fleeing girls, accordingly, both schools have experienced a tremendous increase in girls' retention rates.²³³

4.2.4 Results generated

Despite the successes recorded by the various interventions to eradicate FGM in Kenya, there have been lots of resistance to compliance with anti - FGM legislation by some communities. This reaction led to the rise in the practice of FGM conducted underground, that is, secretly in homes as well as in medical clinics, in other words, the medicalisation of FGM.²³⁴

²³⁰ Prohibition of Female Genital Mutilation Act 2011.

²³¹ The Prohibition of Female Genital Mutilation Act, 2011 (Abridged Version), December, 2014.

²³² AIC Girls' Primary Kajiado in Kajiado and Athwana High School. In these two schools, FAWE raises awareness on sexual maturation and FGM.

²³³ Chege *et al* (n 225 above).

²³⁴ DS Parsitau 'How outlawing female genital mutilation in Kenya has driven it underground and led to its medicalisation' (2018). <https://www.brookings.edu/blog/education-plus-development/2018/06/19/how-outlawing-female-genital-mutilation-in-kenya-has-driven-it-underground-and-led-to-its-medicalisation/>

4.2.5 Challenges

Despite the results generated by the anti - FGM initiators, certain obstacles still pose a threat to the total eradication of FGM. Some of these are: the medicalisation of FGM, the cultural sensitiveness and strong regard placed on the practice of FGM; high illiteracy level; the challenge of reaching the remote populations and areas, lack of rescue homes in some communities as well as adequate rescue homes for runaway girls, resistance from the communities, to mention a few.²³⁵

4.3 FGM in Uganda

4.3.1 The issue

In Uganda, FGM is regarded as a cultural rite of passage from childhood to adulthood, specifically womanhood, by some of the tribes in Uganda. The education of girls in Uganda is challenged by many factors such as poor academic performance and the inability to complete schooling. One of the causal factors is FGM.²³⁶ Girls are taken out of school and made to pass through the circumcision process.²³⁷ Afterwards, they are made to stay away from school for several weeks for the healing process to take place. It is interesting to know that as a way out of governmental pressure, many women now opt for FGM during childbirth, some women even travel deep into the forest and mountains at night in order to have the surgery performed on them.²³⁸ As a result, the annual ceremonious event that follows FGM is gradually becoming history.

By the provisions of the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol)²³⁹ which Uganda ratified,²⁴⁰

²³⁵ Fawe 'FAWE - supported Centre of Excellence shelters girls at risk of FGM and child marriage in Kenya' (2017) <http://fawe.org/home/2017/03/18/fawe-supported-centre-of-excellence-shelters-girls-at-risk-of-fgm-and-child-marriage-in-kenya/> (Accessed 29 October 2018).

²³⁶ Uganda report 'Formative evaluation of the United Nations Girls' Education Initiative' (2012) 29.

²³⁷ A CEHURD assessment of interventions against FGM in Kapchorwa district, Eastern Uganda 'Protecting the right to health in the campaign against FGM' (2015) 2.

²³⁸ JD Mujuzi 'Female Genital Mutilation in Uganda: a glimpse at the abolition process' (2012) Journal of African Law.

²³⁹ Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. It was signed in 2003 and adopted in 2005 Article 5(b).

²⁴⁰ Uganda ratified the Maputo Protocol on 22 July 2010.

FGM is expressly prohibited. However, the stigma associated with refusal to undergo the practice remains a concern. A girl or woman who refuses to be circumcised, is regarded as too young, too dirty, unable to fetch bride price, among other insults that they have to endure.²⁴¹ Uganda's combined fourth, fifth, sixth and seventh reports to the Convention on the Elimination of All Forms of Discrimination Against Women Committee,²⁴² clearly shows the country's efforts to eradicate FGM. However, the strong affection for FGM for various reasons such as financial gains, among others, poses a threat to its discontinuation.

4.3.2 The legal framework on FGM

In 2010, Uganda enacted the Prohibition of Female Genital Mutilation Act of 2010.²⁴³ This law gave new momentum to the campaign against FGM in Uganda. According to the law, there is a prison term of up to 10 years for perpetrators of FGM and life imprisonment if the FGM victim dies.²⁴⁴

4.3.3 The interventions adopted

4.3.3.1 Legal strategies

Uganda adopted among other strategies, notable legal strategies towards FGM eradication: the first was a constitutional court approach towards FGM as a cultural practice, the second was a bye - law against the practice by one of the district local governments (Kapchorwa) and the third, a national law prohibiting FGM.²⁴⁵ The Constitutional Court petition was filed by a non-governmental organisation called 'Law and Advocacy for Women in Uganda'. The basis of the petition was for the court to declare that FGM was a cultural practice that violates women's rights. Consequently, it was

²⁴¹ A CEHURD assessment (n 237 above) 10.

²⁴² Uganda's combined report to the CEDAW Committee on FGM eradication CEDAW/C/UGA/7 submitted on 25 May 2009 paras 175 and 176.

²⁴³ UNFPA 'Driving forces in outlawing the practice of female genital mutilation/cutting in Kenya, Uganda and Guinea-Bissau' (prepared under the guidance of Nafissatou J. Diop, the special adviser and coordinator of the UNFPA-UNICEF Joint Programme on female genital mutilation/cutting)
<http://www.unfpa.org/sites/default/files/resources-pdf/Legislation%20and%20FGMC.pdf>
(Accessed 29 October 2018) 17. UNFPA - United Nations Population Fund, UNICEF - United Nations International Children Emergency Fund.

²⁴⁴ UNFPA (no 243 above).

²⁴⁵ A CEHURD assessment (n 237 above) 16 and 17.

inconsistent with the provisions of the Uganda Constitution²⁴⁶ on the right to equality.²⁴⁷ They argued that the practice of FGM was also contrary to other provisions of the constitution: the right to privacy,²⁴⁸ the right to be free from cruel inhuman and degrading treatment, that is, the right to dignity²⁴⁹ and; the right to be free from discrimination on the basis of sex.²⁵⁰ The petition succeeded and the practice of FGM was declared null and void. Despite these strategies, FGM is still prevalent in Uganda.

4.3.3.2 Legislative partnership

The commitment and leadership of highly regarded and respected elders played a remarkable role in the passage of the law in Uganda. These elders were agents of change at the grassroots since the people had great regard for them and paid attention to the solutions these elders proffered to problems in the villages.²⁵¹

4.3.3.3 Mobilisation of key stakeholders

This strategy involved the mobilisation of key stakeholders like the members of the parliamentary committees responsible for drafting and revising the anti - FGM Bill, while at the proposal stage.²⁵² Notable also was the visible support of the president, which facilitated the passage of the law.

4.3.3.4 Media campaigns

There was massive use of the media to highlight salient features of the legislation in a very simplified version. This was very instrumental in raising awareness about the new law.²⁵³

²⁴⁶ The Constitution of the Republic of Uganda, 1995.

²⁴⁷ (n 236 above) Section 21.

²⁴⁸ (n 236 above) Section 27.

²⁴⁹ (n 236 above) Section 24.

²⁵⁰ (n 236 above).

²⁵¹ UNFPA (no 243 above).

²⁵² UNFPA (no 243 above).

²⁵³ UNFPA (no 243 above).

4.3.3.5 Community dialogues and social networks

Community dialogue was used as an effective tool to create awareness and to build community concern and consensus. Likewise, social networks like the women and youth groups, the churches, solidarity groups, among others, were also employed.²⁵⁴

4.3.4 The results generated

The success of the anti - FGM campaign, is attributed to the various interventions by local governments, individuals, non - governmental organisations, development partners,²⁵⁵ to mention a few. Also remarkable is the fact that, after the enactment of the Act, emphasis was placed on creating awareness about the provisions of the Act. Various advocacy groups played their part in the achievement of this goal. A notable example is the contribution of UNICEF²⁵⁶ and UNFPA²⁵⁷ by supporting the government of Uganda to create a simplified version of the law. Copies of this simplified version were disseminated to 34 counties where the practice of FGM was highly prevalent. In addition, UNFPA supported the Ministry of Gender, Labour and Social Development to prepare training manuals for training facilitators in the community on how to engage in dialogues at the grass-roots. Local law enforcement officers as well as community advocates were also trained so that they could enforce the legislation.²⁵⁸

4.3.5 Challenges

Despite the huge success recorded by the law, there was still the challenge of non - compliance by those who entertain the belief that outsiders are intruding on their culture and customs.²⁵⁹ Two cases were reported and prosecuted in 2014.²⁶⁰ The accused persons were convicted and sentenced to two and three years' imprisonment respectively. This led to the underground practice of FGM consequently, the mark which used to be made on a woman or girl's arm after the circumcision, are now made on the

²⁵⁴ UNFPA (no 243 above).

²⁵⁵ A CEHURD assessment (n 237 above) 3.

²⁵⁶ United Nations Children Emergency Funds.

²⁵⁷ United Nations Population Fund.

²⁵⁸ A CEHURD assessment (n 237 above) 7.

²⁵⁹ A CEHURD assessment (n 237 above) 19.

²⁶⁰ Case File No. 0647/14 and Case File No. 0629/14.

victim's groin, hidden from public view.²⁶¹ Another challenge is the cross-country FGM surgery, that is, many parents decided to take their daughters to Western Kenya for a FGM surgery.²⁶² In addition, strong social bonds as well as the fear of social sanctions, creates a challenge for opponents of the practice, as they refrain from reporting perpetrators or even appearing in court to testify as witnesses.²⁶³ Notable also is the fact that, most communities practicing FGM have a shortage of court rooms, magistrates and legal aid services are inadequate.²⁶⁴

4.3.6 Application of Tyler's theory

In the cases above, the prosecution of the offenders was based on the sanctions attached to the practice of FGM. Despite the sanctions attached, the offenders went ahead with the practice. Tyler's opinion on the need to do away with sanctions if an institutional arrangement is to succeed, comes to play here.²⁶⁵ Instead of sanctions, he suggests voluntary obedience to rules out of obligation.²⁶⁶ Following the prosecution of the offenders in the above cases, the practice of FGM became a secret affair. This shows the limited impact, if any at all, of the anti - FGM legislation in place. In addition, as Tyler rightly explained, there was no proper arrangement in place by the legal authorities,²⁶⁷ to ensure that the people regard the anti - FGM legislation as appropriate, just and proper to be complied with. This is evident in the negligence on the part of the legal institutions to put in place a result - generating justice system. That is, providing adequate court rooms, ensuring that the judiciary is independent and also, providing financial support towards legal aid services.

4.4 Lessons for Nigeria

In 2010, Uganda enacted the Prohibition of Female Genital Mutilation Act. In 2011, Kenya followed suit by enacting the Kenya Prohibition of Female Genital Mutilation Act. In both countries, there were lots of advocacy campaigns and awareness on FGM eradication.

²⁶¹ A CEHURD assessment (n 237 above) 18.

²⁶² A CEHURD assessment (n 237 above) 18.

²⁶³ A CEHURD assessment (n 237 above) 18.

²⁶⁴ A CEHURD assessment (n 237 above) 18.

²⁶⁵ Tyler (n 102 above) 375.

²⁶⁶ (n 265 above).

²⁶⁷ Tyler & Jackson (no 95 above) 2.

Kenya, among other strategies, came up with a twenty-year National Plan of Action in 1999 with four objectives: a reduction in the number of girls and women undergoing FGM; a reduction in the number of communities advocating for FGM; an increase in the number of healthcare facilities providing the needed care for victims of FGM who have been physically and psychologically affected by FGM and lastly, to increase the capacity of organisations and communities involved in FGM eradication processes in terms of their technical and advocacy capacities.

This study notes with concern that, despite Kenya's 20 - year plan, which ends in 2019, FGM is still highly prevalent in Kenya. Similarly, in Uganda, FGM is being regarded as a cultural obligation and therefore remains prevalent. Similarly, despite Nigeria's Violence Against Persons (Prohibition) Act in 2015 domesticated in Oyo State, Nigeria as the Violence Against Women Law, 2016, Oyo State still has an alarming prevalence rate of FGM especially in its suburbs. In fact, in Kenya, the anti - FGM legislation did not only lead to an underground practice of FGM but also, an ongoing proposal for medicalisation of the practice. In Uganda, two cases were prosecuted in 2014 (a brief discussion of the cases and the outcome would help here otherwise, kindly mention these cases in your footnote) under the anti - FGM legislation. The effect was the underground practice of FGM. These findings seem to point to the fact that, the anti-FGM legislation is not sufficient for the eradication of the practice of female genital mutilation.

4.5 Conclusion

This chapter has attempted to analyse the depth of impact of various interventions towards eradicating FGM in Uganda and Kenya and the consequences of each strategy, under the following benchmarks: the legal framework adopted in each of these countries, the various interventions used, the results generated and the challenges that were faced. This research concludes that, besides legislation, other result yielding strategies need to be carefully and well thought out.

CHAPTER 5

CONCLUSION AND RECOMMENDATION

5.1 Conclusion

Though the Constitution of the Federal Republic of Nigeria, which is the supreme law of the land, provides for the protection, preservation and promotion of the Nigerian cultures which enhance dignity,²⁶⁸ it does not make any provision for the protection of women against violence and violent practices such as FGM. The law on the protection of women's rights in Africa is still developing. Consequently, more research is needed as the Maputo Protocol is not comprehensive enough to accommodate the non - legal measures that can address the issue of non - compliance with FGM. Hence, there is discrepancy in how nations deal with issues of non - compliance with anti - FGM legislation. A detailed and well - spelt out procedure that puts into consideration issues relating to culture, tradition, non - literacy, historical antecedent, among other salient issues are germane, if the Maputo Protocol would be relevant in addressing the issue of FGM. This would further enhance uniformity among nations in the move towards eradicating FGM.

Over the years, many governments of nations, women organisations, non-governmental organisations, civil societies, international organisations and also, development agencies, have come up with many proposals on guidelines and plans of actions towards eradicating the practice of FGM. As a positive reaction to this, some governments decided to translate their concern into FGM-prohibiting laws. In Nigeria, the Violence Against Persons (Prohibition) Act, 2015, was an answer to this concern. This Act was translated into the Violence Against Women Law of Oyo State 2016. In Oyo State, Nigeria, Female genital mutilation (FGM) has become a common place. The practice is not only carried out among the illiterates, the literates also play a role in its continuation.

This research sets out to investigate the state of compliance with section 9 of the Violence Against Women Law, 2016, the section criminalising female genital mutilation.

²⁶⁸ Section 21(a).

In order to engage this issue thoroughly, this research addressed diverse issues such as: why people comply with laws, the origin of the VAPP Act in Nigeria and its domestication in Oyo State, Nigeria, the effect of this domestication on the practice of female genital mutilation in Oyo State, the efforts of the governments of other African countries towards eradicating FGM and lastly, the lessons the government of Nigeria can learn from these experiences.

From the findings above, this study comes to the conclusion that section 9 of the Violence Against Women Law, has not had the desired impact on the discontinuation of female genital mutilation in Oyo State. The Violence Against Women Law is not free from flaws. Just like the VAPP Act, it focuses more on criminalising offences and assigning penalties to perpetrators of FGM and fails to look deep into causal factors in order to address the issue of violence against women, from the roots. Tom Tyler concludes that, people obey the law if the law is legitimate and not when a sanction is imposed. Legitimacy is established when the governed feel an obligation to obey the law. That is, the voluntary acceptance by the governed of a legal authority. In order to achieve this, the governed must be able to establish that, the legal authority has their interest at heart, establish trust and confidence in the legal authority as well as belief in the moral judgement of the authorities.

This research however, has identified a flaw in Tyler's argument because he failed to consider compliance from other perspectives: i) the illiterates who do not have the intellectual capacity to understand the provisions of a law even when they know about the existence of that law, ii) those who do not have any knowledge of the law, knowledge here, refers to knowledge of their action(s) constituting an offence, that is, the intention to commit a crime and lastly, iii) non - compliance by the people because of the inattention of the government (legal authorities) to certain factors that can constitute an obstacle to adherence to the law.

The United Nations has called for the eradication of FGM by the year 2030, through its Sustainable Development Goals (SDG). The SDGs set out measures to be followed

towards the eradication of FGM. These include, addressing gender inequalities through dialogues in the communities, collecting of data and also, conducting FGM- eradication trainings in order to promote positive norms, the development of communication strategies and advocacy campaigns which will involve specific people who are influential in the society. Such people are: policy makers, religious leaders, local leaders, to mention a few. Considering the trends in the prevalence of FGM despite various interventions by governments of nations, there is a need for close monitoring of anti-FGM legislation and strategies adopted by FGM practising countries to ensure that they are in line with the United Nations standards.

Certain African countries enacted anti - FGM legislation and embarked on massive campaigns towards the eradication of FGM. However, their efforts resulted into futility. In fact, in some countries such as Uganda and Kenya, FGM practice was driven underground and now takes place in hidden places under the cover of darkness. Celebrations that usually take place after the circumcision, has now become history because perpetrators want to avoid the sting of the law. Uganda witnessed the successful prosecution of two FGM cases. This resulted in resentments from practitioners and no other case has been reported since then, it is now being secretly practiced.

5.2 Recommendations

5.2.1 Educational interventions

This study recommends compulsory studies on gender and human rights in the curricula of schools in Oyo State, Nigeria, that is, from primary school to the university. This would promote a formal integration of human rights issues thereby transforming the attitude of the society towards women and consequently, erase gender stereotypes.

5.2.2 Traditional media

This study recommends the use of Traditional media. This would involve the use of the Oyo State radio station and the television station. Through the radio stations, survivors of FGM would be interviewed in English language and in the local language of the people of Oyo State (Yoruba language), to enable the victims share their experiences and the

complications they have suffered as a result of FGM. The suggestion of a radio station for this purpose, is to hide the identity of these speakers (because of Nigeria's anti-FGM law) and also to protect them from societal stigma.

In addition, on both radio and television broadcasts, this study recommends that, academic researchers and medical practitioners who are well grounded in Sexual and Reproductive Health Rights (SRHR), should be engaged in dialogues on various hashtags addressing FGM. The academic researchers will educate the public on the legal frameworks on FGM violations while the medical practitioners will discuss post-FGM short and long term complications presenting statistics to convince the public.

Lastly on the media, this study recommends the use of religious leaders to help to dismantle the myth connecting FGM to a religious obligation. Since Oyo State Nigeria, is a Muslim-dominated geographical location of Nigeria, this study recommends the adoption of the 'Do no harm principle' of the Quran while dismantling the myth.

5.2.3 Policy

This study recommends the 'Oyo State Action Plan for the eradication of female genital mutilation'. This proposes to be a policy that would help to promote the rights of women to be free from harmful traditional practices such as female genital mutilation. A policy is not legally binding but, it is comprehensive and serves as an interpretative guide for advocacy purposes and even for courts, for a better understanding of a legislation, in this case, the Oyo State Violence Against Women Law.

5.2.4 Awareness

If the Violence Against Women Law of Oyo State, Nigeria, is to be impactful at all in the eradication of FGM, this study recommends greater awareness and publicity on the provisions of the Violence Against Women Law of Oyo State, 2016. This study recommends the use of training manuals for training facilitators in the community on how to engage in dialogues at the grass-roots. To achieve this, the Oyo State government should fund as well as run specialised training courses for actors and facilitators.

5.2.5 Access to justice

This study recommends that, for women to be able to access justice, the efforts of stakeholders, this includes the government of Oyo State, the judiciary, development partners, to mention a few, is very paramount. User - friendly facilities like 'Domestic Violence Help Desks' and 'Units', should be a matter of priority, especially at the community levels and villages in Oyo state, in order for women to be able to easily access justice. In addition, the Oyo State government needs to establish a special fund for legal aid services so that legal aid would have no reason to depend on donors for its financial stability. Awareness measures that would help women to be well knowledgeable about their constitutional rights and the remedies available to them should also be put in place. In addition, the government of Oyo State should address issues relating to the status of women in the family, society, community as well as access to education, health services and social norms that promote FGM in Oyo State. An increase in successful FGM-prosecution rates is also recommended.

5.2.6 Simplified version of the Law

This study recommends the provision and massive dissemination of the simplified version of the Violence Against Women Law of Oyo State, 2016. The use of terms such as 'accessory before the fact', 'desertion', 'battery', 'grievous harm', 'emotional, verbal and psychological abuse', to mention a few; as used in the interpretation section of the Law, may very likely appear incomprehensible especially to the rural dwellers as well as illiterates in the urban areas. This research therefore recommends a simplified version of the Law both in 'English' and in the general local language of the people, 'Yoruba' language.²⁶⁹

²⁶⁹ See Annexure 5 for a draft simplified version of the Violence Against Women Law, in 'English' and 'Yoruba' language.

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H. Annexures

Annexure 1 shows unsterilised instruments sometimes used by local circumcisers.

Annexure 2 shows an infant undergoing circumcision.

Annexure 3 shows a child undergoing circumcision and a child who had undergone Circumcision.

Annexure 4 shows the compatibility of the VAPP Act, 2015 and the Violence Against Women Law of Oyo State, 2016 with international standards on female genital mutilation.

Annexure 5 shows a draft simplified version of section 9 of the Violence Against Women Law of Oyo State, in 'English' and 'Yoruba' language.

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ANNEXURES

WARNING!

These pictures are gruesome and contain sensitive contents which you may find offensive and disturbing. Viewer's discretion is advised.

ANNEXURE 1

Some instruments used for circumcision by local circumcisers



ANNEXURE 2

An infant undergoing circumcision



ANNEXURE 3a and b

A child undergoing circumcision and a child who had undergone circumcision



ANNEXURE 4

Table showing the compatibility of the VAPP Act, 2015 and the Violence Against Women Law of Oyo State, 2016 with international standards on female genital mutilation

Violence Against Persons (Prohibition) Act 2015	Prohibition of female circumcision or genital mutilation	Section 6(1)
Violence Against Women Prohibition Law of Oyo State 2016	Prohibition of female circumcision or genital mutilation	Section 9(1)
International Instruments		
Universal Declaration on Human Rights (UDHR) 1948	The right to life, liberty and security of persons Equality before the law Right to effective remedy under the law Right to privacy	Article 3 Article 7 Article 8 Article 12
International Covenant on Civil and Political Rights (ICCPR) 1966	Freedom from discrimination and effective remedy under the law Freedom from torture, cruel, inhuman and degrading treatment, arbitrary and unlawful interference with a person's privacy Right to liberty and security of the person Right to equality Right to the highest attainable standard of health	Article 2 Article 7, Article 17 Articles 9 and 24 Article 3 Article 12
The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), 1979	Freedom from discrimination General Recommendation 14 (1990), General Recommendation 19 (1992) and General Recommendation 24 (1999)	Article 2
Convention on the Rights of the Child (CRC), 1989	The right to privacy	Article 16

Regional Instruments		
African Charter on Human and Peoples' Rights (ACHPR), 1981	Right to life, integrity and dignity Right to the best attainable standard of health Article 16 Freedom from discrimination Articles 18(3) and 28	Articles 4 and 5
African Charter on the Rights and Welfare of the Child (ACRWC), 1990	Freedom from discrimination, right to survival, protection, privacy, physical, mental and spiritual health	Articles 3, 5(2), 10, 14(1)
Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa 2003	Elimination of Harmful Practices	Article 5
Declarations		
Cairo Declaration for the Elimination of FGM 2003	Calling on governments to recognise and protect the rights of girls and women Calling on governments to implement anti - FGM legislation.	Para 1 and 2
Ouagadougou Declaration of the Regional Workshop on the Fight against FGM 1999	Calling on members of West African Economic and Monetary Union region to serve as a network for combating FGM	
Banjul Declaration on Violence Against Women 1998	On the misuse of religious arguments to promote FGM	
Conference Documents		
Beijing Declaration and Platform for Action: Fourth World Conference on Women 1995	Calling on governments to enact anti - FGM legislation	Paras 39, 107, 113, 124, 224, 232 and 277
Program of Action of the International Conference on Population and Development 1994	Calling on governments to enact anti - FGM legislation	Paras 4.22, 5.5, 7.6 and 7.40

Vienna Declaration and Programme of Action of the World Conference on Human Rights 1993	Calling on governments to eradicate conflicts arising from the rights of women and the harmful effects of customary and traditional practices	Paras 38 and 49
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ANNEXURE 5

A draft of a simplified version of section 9 of the Violence Against Women Law, 2016 in 'English' and 'Yoruba' language

Section 9

(1) The circumcision or genital mutilation of female or a woman is hereby prohibited.

English simplified version - this means that the law does not permit any girl or woman to be circumcised

Yoruba simplified version – Èyí túnmò sí wípé òfin kò fi àyè gbà kí a dá abé fún omo obìnrin.

(2) Any person who performs female circumcision or genital mutilation or engages another to carry out such circumcision or mutilation is guilty of an offence and liable on conviction to imprisonment for a term not exceeding four years or to a fine of N100, 000 or both.

English simplified version - this means that the law does not allow local circumcisers, medical doctors, midwives, nurses, barbers or any other person who perform female genital circumcision, to carry on with the practice. Engaging another to carry out such circumcision or mutilation - Parents, aunts and grandmothers for example, are not allowed under this law, to ask for the services of a circumciser for their daughter. The years of imprisonment for this punishment is 4 years and below or a fine of N100, 000 or even both imprisonment and fine.

Yoruba simplified version - Èyí túnmò sí wípe òfin ko fi àye gbà kí àwon tó ún dá abé, onímòn ìsègùn òyìnbó, agbèbí, nóòsi, gerungerun, tàbí elòmíràn tí ó ún dá abé fún obìnrin láti máa se béè. Béè sìni, àwon òbí àti alágbàtó ko ní èto láti gba enikéni láti dá abé fún omo won obìnrin. Enikéni tí ó bá ta apá sí òfin, yí o fi èwòn odún merin fira tabí kí ó san egbèrún lónà ogórun náírà, tàbí kí ó san owó kí ó sì tún lo sí èwòn.

(3) Any person who attempts to commit the offence under this section is guilty of an offence and liable on conviction to imprisonment for a term not exceeding two years or to a fine of N80,000.00 or both.

English simplified version - this means that the law does not permit anyone to make any preparation towards performing female genital mutilation. This includes buying the items for the circumcision, inviting the girl or woman to the venue of the circumcision, making the necessary preparations towards the exercise. The punishment is a term of

imprisonment for 2 years or less or a fine of N80, 000. It may also be both imprisonment and fine.

Yoruba simplified version - Èyí tún mò sí wípé òfin kò fi àyè gbà kí enikéni ra àwon ohun tí a fi n dá abé fún obìnrin, tàbí mú omo obìnrin lo sí ibi tí wón ti n dá abé, tabí se ètò kankan ní ìgbéràdì àti dá abé fún omo obìnrin kankan. Eni kénéni tí ó bá se eléèyí, èwòn odún méjì òpòju tàbí egbèrún ogórin náíra ni yíò fi gbára, tàbí kí ó lo sí òn kí ó si tún san owó.

(4) Any person who incites, aids, abets or counsels another person to commit the offence under this section is guilty of an offence and liable on conviction to imprisonment for a term not exceeding two years or a fine of N80, 000.00 or both.

English simplified version - this law prevents anyone from aiding and abetting female genital mutilation. To aid and abet mean, to help, assist, encourage, participate or even support another person to perform female genital mutilation. This also includes when a person takes part in activities that lead to female genital mutilation such as selling blades, knives, gloves to a circumciser knowing fully well that, he or she wants to use the materials for female circumcision. A person is also guilty under this section when he gives shelter or even advice towards encouraging female genital mutilation. The punishment is imprisonment for 2 years or less or a fine of N80, 000 or even both fine and imprisonment.

Yoruba simplified version - Èyí tún mò sí wípé enikéni kò gbodò gba kí wón dá abé fun omo obìnrin ní abé òrùlè rẹ̀, tàbí ran enikéni lówó lati dá abé fún omo obìnrin. Eni kénéni tí ó bá se eléyíí, yíò fi èwòn òpòjù osùn méfà gbá ara tàbí kí ó san egbèrún ní ònà àadòta náíra, tàbí kí ó san owó kí ó sì tún lo sí èwòn.

(5) Any person who receives or assists another person to commit the offence under this section is an accessory after the fact and is guilty of an offence and liable on conviction to imprisonment for a term not exceeding six months or a fine not exceeding N50,000 or both.

English simplified version - this means that, this law prevents anyone from allowing anyone to perform female genital circumcision under their roof or in any arranged location. The law also includes when a person helps another with the circumcision process. The punishment is a term of imprisonment for 6 months or less or a fine of N50, 000. The punishment may even be both fine and imprisonment.

Yoruba simplified version - Òfin yí sì tún lòdì sí kí enikéni ran àwon tí ó ún dá abé fún omo obìnrin lówó. Àwon yí ni àwòn tí óún ta abéfélé, ibòwó, òbe tàbí ohun kohun tí a lè fi dá abé fún àwon tí óún dá abé fún obìnrin, tí wón si mò wípé abé dídá fún obìnrin ni wón fé lò ó fún. Òfin yí kò yo eni tí ó bá gba ènìyàn ní ìmòràn láti dá abé fún obìnrin sílè. Eni

tí ó bá ko èyìn sí òfin yi, yí ò lo èwòn odún méjì tàbí kí ó fi egbèrún lónà ogórin náírà gbára, tàbí kí ó san owó kí ó sì tún lo sí èwòn.