A Critical Analysis of Social Regulatory Policy: the Case of Female Genital Mutilation Legislation in Nigeria
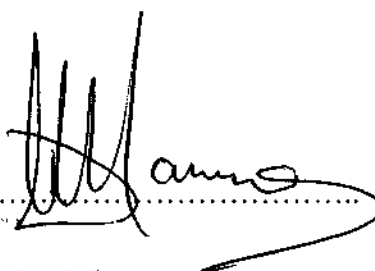
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DECLARATION

I, the undersigned, hereby certify that the content of this research study is my own original work, unless specifically indicated in the text. This project has not been submitted to any other university for similar or any other examination.

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Abstract

The practice of female genital mutilation is a global problem and it is prevalent in Africa. According to the United Nations Children's Education Fund (2005), each year about three million women and girls are subjected to female genital mutilation, predominantly in parts of Africa and a few Asian and Middle East countries. The situation is the same in Nigeria, Africa's most populous country, where a large number of women and children have undergone and continue to undergo female genital mutilation. According to a UNICEF study, over 32% of Nigeria's female population has endured female genital mutilation and its attendant negative health and human rights consequences (UNICEF 2003: 2).Though Nigeria does not, at present, have a federal law banning female genital mutilation, the process of introducing one has been set in motion by the House of Representatives (lower house), which passed the HB22 Bill in 2007 (Deen 2008:1), which is still awaiting ratification by the Senate (Upper House) and acceptance by the Executive. However, eight out of the thirty-six states in Nigeria have passed laws prohibiting the practice of female genital mutilation (Jimoh 2005).

The broad focus of this study was to explore the implementation of social regulatory policy, using the case of the implementation of female genital mutilation legislation in Nigeria. A policy analysis of social regulatory policy was investigated, with secondary studies on the implementation of female genital mutilation legislation in Nigeria.

The broad issues investigated in the study include identifying the main aims and objectives of social regulatory policy; the policy instruments employed in the implementation of social regulatory policy; the implementation process of social regulatory policy; and the challenges and successes experienced by implementors in implementing social regulatory policy. The key issues the study sought to investigate include identifying the aims and objectives of female genital mutilation legislation in Nigeria; the policy instruments employed to implement female genital mutilation legislation; the implementation process of female genital mutilation legislation; and the

challenges and successes experienced by implementors in implementing female genital mutilation legislation.

The findings of social regulatory policy analysis showed that public participation is critical to the effective implementation of social regulatory policies, as they may encounter implementation difficulties if there is no provision for public participation during policy formulation. This in itself can give the government a better understanding of the socio-cultural issues at stake. These studies also showed that the wrong combination of policy instruments can hinder the effectiveness of social regulatory policy. Out of the varying policy instruments employed for policy implementation, government must choose the right combination of instruments that suits the intended policy outcome, in order to produce different effects. In order for social regulatory policies to be effective, implementers responsible for implementing social regulatory policy need to understand policy goals and be committed to its objectives. Adequate resources, both capital and human, must be invested in employing and training implementing agents. Finally, building and fostering networks and collaboration with civil society are critical to the successful implementation of social regulatory policies.

In terms of application to this case study, the present investigation revealed that the implementation of female genital mutilation legislation in Nigeria has been difficult, and crippled with challenges, due to a number of factors that hinder effective policy outcome. These challenges are not unrelated to the fact that democracy is still nascent in Nigeria. First, there was a lack of public participation in the policy formulation process, which had negative consequences for effective implementation. Second, policymakers did not employ suitable policy instruments and this has hindered the implementation of female genital mutilation legislation. Third, a lack of common goal definition between implementing agents and policymakers has led to problems during the implementation of the policy. Other problems which have hindered the effective implementation of the policy include lack of skilled adequate resources, both capital and human, needed for the implementation of the policy. Finally, this study showed that government's failure to

involve and collaborate with other actors/stakeholders through building networks with non-governmental organizations negatively affected the policy process. Building networks encourages the exchange of skills and information which can bring about effective policy implementation.

The study concludes that these problems are pertinent to social regulatory policies, in general. Public participation in the policy formulation process must be encouraged, through active collaboration with civil society; employing the right policy implementation instruments and building institutional capacity (manpower) and providing adequate funding remain critical to the effective implementation of female genital mutilation legislation, not only in Nigeria, but in other places where such practices are deeply rooted in cultural beliefs. Also, for legislation to be effective, it must comprise the appropriate legal measures (that is, creating proper legal structures and legislation that will constrain and guide the behaviour of targets), regulatory measures (this involves the use of enforcement measures in order to compel the desired behavioural change) and policy measures (which encourages the participation of the targets in the policy process).

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CHAPTER ONE

INTRODUCTION AND BACKGROUND TO THE STUDY

The broad focus of this study is an investigation of the implementation of social regulatory policy. Using the case of the implementation of female genital mutilation legislation in Nigeria, the study explores the challenges of implementing social regulatory policies in general. In more specific terms, the study sought to examine:

- The main aims and objectives of female genital mutilation legislation
- The processes and structures employed to implement female genital mutilation legislation in Nigeria
- The different ways of implementing female genital mutilation legislation
- The challenges and successes experienced by implementors in implementing female genital mutilation legislation in Nigeria

1.1 Female Genital Mutilation

Female genital mutilation (FGM), also known as female genital cutting or female circumcision, comprises "all procedures which involve the partial or total removal of the external genitalia or injury to the female genital organs; whether for cultural or any other non-therapeutic reasons" (WHO Report 2008). Amnesty International (2008) defines FGM as the "the term used to refer to the removal of part, or all, of the female genitalia". Similarly, Gruenbaum (2001:2) defines FGM as "the cutting, or partial or total removal, of the tissues of the external female genitalia to conform to cultural, religious, or other non-medical reasons". From these various definitions, FGM encompasses any practice that excises part of or tampers with the female genitalia.

There are different types and forms of FGM. For example, the World Health Organization (2008) identifies four types, which are listed below:

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i. Type 1: This type of FGM is also known as clitoridectomy. It involves the partial removal of the hood of the clitoris or the excision of all the area of the clitoris

ii. Type 2: This involves the excision of the clitoris, with partial or total excision or removal of the labia minora, including/excluding the excision of the labia majora

iii. Type 3: This type of FGM is also known as infibulation and it involves the excision of the external genitalia and narrowing of the vaginal opening, creating a little opening to enable the passage of urine and menstruation

iv. Type 4: According to the World Health Organization Report (2008), this type of FGM is unclassified; it includes any other form of incision of the clitoris or any other variation of female genital mutilation that does not fall under the preceding types.

Female genital mutilation is a common cultural practice in Africa and in parts of Europe. According to a 2005 report of the United Nations Children's Education Fund (UNICEF), each year about three million women and girls are subjected to FGM, predominantly in parts of Africa and a few Asian and the Middle East countries. In Africa, different countries have responded to the problem of FGM with social regulatory legislation aimed primarily at eradicating the practice. However, studies done on the implementation of female genital mutilation legislation in some of these countries show that public participation is critical to the effective implementation of female genital mutilation legislation and *ipso facto* social regulatory policies (Rasmussen, 2006: 32-33; Behrendt, 2006: 31-36).

The import of encouraging public participation when implementing social regulatory policy is that it ensures that people at the grassroots have a sense of ownership of the policy and this will encourage them to comply with the policy. This is very significant, because policy aimed at changing behaviour, in this case, FGM legislation is complex (Behrendt 2006:32). According to Behrendt (2006:32), "participating in the process of analysis and problem solving is an essential step towards sustained change of behaviour". A good example of successful participatory approach is the model adopted in Guinea, known as intergenerational dialogue (Behrendt 2006: 33). This approach, apart from encouraging different sets of people with different opinions to participate in forums where they can deliberate on issues

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concerning FGM, also allows communication between ordinary people and the policy-makers, which eventually leads to a change of attitude and beliefs (Behrendt 2006:33). Another successful approach in this regard is the Care International programme implemented in Ethiopia, Kenya and Sudan (Rasmussen 2006: 35). This programme not only encourages participation but also uses the forum to educate and enlighten the target groups on the disadvantages of FGM (Rasmussen 2006: 35-36).

In this context, this study critically examines the trend and practice of FGM in Nigeria and the implementation of various FGM legislations enacted in different parts of the country, which are all aimed at eradicating the practice. Nigeria is one of many countries in Africa where the practice of female genital mutilation is prevalent and where all four types of FGM are practised in varying degrees by different ethnic groups and geographical locations, cutting across the numerous cultures, traditions and customs that exist in Nigeria (WHO1994). A later study, conducted by the Inter-African Committee of Nigeria (IAC) to examine the different types of FGM that was prevalent in twenty- two states in Nigeria, revealed that only three types of female circumcision were prevalent in Nigeria, and these are; clitoridectomy (type I), excision (type II), and infibulations (type III) (IAC: 1997). More recently, in terms of prevalence, a study conducted by UNICEF (2003) in 20 of the 36 states in Nigeria showed that over 32% of the country's total female population has endured female genital mutilation (UNICEF 2003: 2). However, because of its wider representation, the present study will use the findings of the Nigerian Centre for Gender, Health and Human Rights (NCGHHR) which conducted a survey to show the prevalence of female genital mutilation in 31 out of the 36 states in Nigerian between 2001 and 2002. The result of the study is presented in Table 1 below:

Table 1: Prevalence of female genital mutilation in Nigeria, 2001 - 2002

STATES	PERCENTAGE (%) PREVALENCE
Abia	70
Abuja	7
Adamawa	72
Akwa Ibom	65
Anambra	60

Bauchi	55
Benue	95
Bornu	87
Cross River	60
Delta State	90
Edo State	40
Enugu	45
Imo	40-50
Jigawa	60-70
Kaduna	50-70
Kano	80
Kastina	95
Kebbi	100
Kogi	25
Kwara	60
Lagos	30
Niger	49
Ogun	35
Ondo	98
Osun	80-90
Oyo	68
Plateau	58
Rivers	70
Sokoto	32
Taraba	5
Yobe	20

Source: NCGHHR (2003)

On average, 60% of Nigerian women have undergone FGM in Nigeria and have suffered the harmful health effects associated with this gross violation of the human dignity of most Nigerian women.

There are different socio-cultural reasons behind the practice of FGM in Africa. According to Kopelman (1998: 251), studies carried out in Sudan by El Dareer (1982), Sierra Leone by Koso-Thomas (1987) and Somalia by Abdalla (1982) show that there are various reasons for the practice of female genital mutilation and these included: adherence to religious requirements; the protection and preservation of the culture of the particular group; ensuring

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cleanliness and hygiene; the prevention of promiscuity and protection of virginity; and, finally, the promotion of sexual pleasure for men. Similarly, studies by the Women's Centre for Peace and Development (WOPED) in Nigeria concluded that Nigerians perform FGM due to cultural beliefs that "label uncircumcised women as promiscuous, unclean, unmarriageable, and/or potential health risks to their children during childbirth" (US International Women's Issues: June 2001). Even though these beliefs are not empirically verifiable, they are widely held and accepted, especially in societies where the practice is common.

Conversely, verifiable views and interpretations on the negative consequences of female genital mutilation on women are emerging. These are rooted in human rights discourses and from a women's health perspective. Speaking at a workshop on 'Female Genital Mutilation and Violence against Women in Nigeria', Senator Daisy Ehanire-Danjuma, representing Edo South Senatorial district, one of the states with a significant prevalence (40%) rate of FGM, stated that "female genital mutilation undermines the rights of women; and the constitution of Nigeria states that the rights of Nigerians must be protected, which also includes the rights of women" (Imoukhuede 2004:1). Apart from being identified as a human rights issue, FGM is linked to women's health. Koso-Thomas (1987: 29-30) identifies common immediate risks of female genital mutilation to women and these include hemorrhage shock, infection (bacterial /viruses e.g. HIV), septicemia pain, failure to heal, urine retention from swelling and/or blockage of the urethra, damage to adjoining organs from the use of blunt instruments by unskilled operators and in the worse cases, death. A study conducted by Obuekwe *et al.* (2005: 21-22) among 150 women aged between 30 and 60 years in an urban Bini community in Edo State, to reveal the consequences of female genital mutilation, it was concluded that FGM leads to dysmenorrhea, a harmful health condition that affects the reproductory system of women.

Based on these negative implications, which are manifestly suffered by a majority of women across rural and urban areas in different parts of the country, international organizations, in collaboration with civil society groups in Nigeria, started a campaign to eradicate the practice of FGM, prompting various state governments in the Federation to respond with anti-FGM legislation and policies. Examples of these organizations include the United Nations Organization (UNO), the former Organization of African Unity (OAU), Women in Nigeria

(WIN), Women's Rights Watch (WRW), Women Advocates Research and Documentation Centre (WARDC) and Girls' Power Initiative (GPI). Other civil society groups involved in lobbying and advocacy against the practice of FGM in Nigeria include the National Association of Nigerian Nurses and Midwives (NANNM), the Nigerian Medical Women's Association (NMWA) and the Nigerian Medical Association (NMA).

1.2 Background to the Formulation of Female Genital Mutilation Legislation in Nigeria

The enactment of female genital mutilation legislation in Nigeria was influenced by international policy initiatives and global conventions, which sought to protect women's rights. Examples of such declarations and conventions are the Universal Declaration of Human Rights (UDHR), which stipulates in Article 5 that "no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment" (UDHR 1948), the Declaration on the Elimination of Violence Against Women (DEVAW), which included gender rights violation as a violation of human rights (DEVAW 1993), and the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT), which ensures that signatory states provide asylum and protection to anyone in danger of cruel treatment (CAT 1987).

According to Aina (2003:26), the United Nations Decade for Women (1975-1985) made the women question into a global issue which influenced Nigerian states to implement policies which ensure that the rights of women are protected. She contends that after the United Nations Decade for Women (1975- 1985) and the Beijing Conference (1995), the Nigerian government created new departments, for example, the Women Affairs Ministry, charged with the responsibility, "to ensure all rights of women as enshrined in international law and norms to which Nigeria is signatory to are protected" (Aina 2003: 27). In 1989, the Nigerian government, in compliance with the United Nations Directive established the National Commission for Women (NCW), which aimed at establishing an acceptable national policy document on the development of women (Aina 2003: 28).

Signatories to these international conventions are expected to ensure compliance through the formulation of policies aimed at eradicating discriminatory practices that perpetuate discrimination against women, including traditional practices such as FGM (Fabunmi 2003: 118). Another example is the Convention on the Elimination of All Forms of Discrimination

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Against Women (CEDAW), of which Nigeria is a signatory. CEDAW is an international human rights convention that condemns all forms of discrimination against women (Fabunmi 2003: 125). The various forms of discrimination against women identified by CEDAW include FGM, domestic violence and religious repression. Because Nigeria is a signatory to this convention, the government has formulated policies to domesticate this international initiative (Fabunmi 2003: 123- 124). In summary, global initiatives and conventions that protect women rights influenced the formulation and implementation of FGM legislation in Nigeria.

Though the Federal government has made efforts to address the women question in Nigeria, it has failed to put these actions into practice. For example, after the end of the military dispensation in 1999, there was a constitutional revision that the new constitution will be more democratic and accommodating of women's rights. In the early period of the life of the new civilian administration, the Federal Ministry of Women's Affairs and Social Development, in collaboration with other female non-governmental organizations, succeeded in creating the Affirmative Action Committee, which made recommendations to the National Assembly to ensure that issues on women were included in the new constitution (Agina-Ude 2003: 99). The committee sought to include a subsection that states that "nothing in this section shall be deemed to allow the subjection of any person, man, woman or child to any cultural or traditional practice that constitutes a degradation to human dignity" in the proposed new constitution (Agina-Ude 2003: 99). According to Agina-Ude, this recommendation was missing in the 1999 Nigerian constitution and was "silent on issues of harmful traditional practices…and blank on the specific issues of women's right that are routinely violated in the name of traditional practices" (Agina-Ude 2003: 98).

1.3 Research Methodology

The present study is a conceptual analysis of literature on social regulatory policy using studies of FGM legislation. The study will analyze secondary data on reported studies done on the implementation of FGM legislation, to explore the broader issues affecting the implementation of social regulatory policy.

The study is divided into various chapters. Chapter Two provides the conceptual and theoretical framework to the study. It identifies and discusses pertinent theories of policy formulation, policy implementation, public participation and networks, showing how they explain the implementation of social regulatory policy. It outlines a number of factors that influence the successful implementation of social regulatory policy. Chapter Three contextualizes social regulatory policy, by discussing the implementation of FGM legislation in Nigeria. It identifies the various female genital mutilation legislation implemented in eight states in Nigeria and applies the various theories discussed in the preceding chapter. Finally, Chapter Four is the summary and conclusion of the study. It gives the findings of the secondary data analysis. It also makes recommendations how to improve the implementation of social regulatory policies, employing evidence shown in the case study of FGM legislation in Nigeria.

1.4 Limitation(s) of Study

This study is circumscribed by the fact that it mostly relied on the author's ethnographic knowledge of Nigeria and reviews of books, academic journal articles, archival materials and Government publications, as well as internet-based documented source materials.

Also, due to resource constraints (time and money), it was not quite feasible to go to Nigeria and carry out empirical research, which would have helped with soliciting the views of the different stakeholders, based on their experience, or lack of it, in formulating and implementing FGM legislation in all eight states. Through interviews it would have been possible to get information on why civil society groups such as the Inter Africa Committee (IAC), Nigeria, started its lobbying and advocacy for FGM legislation in the southern parts of the country instead of in the north, which has higher prevalence rates than in the south. The study is also compromised by the fact that it was nigh impossible for the author to carry out a comparative study of how each state implemented its FGM legislation in Nigeria, or how Nigeria compares with other parts of Africa, where such legislation has been successfully implemented.

The author recommends further in-depth empirical studies, to control the validity and reliability of the information. For example, representative(s) of the police agency need to be interviewed to

verify some of the documented information utilized in this work. This effort will not only distil the role of the police in implementing social regulatory policies such as FGM legislation, but may also stimulate the Nigerian police into being more effective policy implementers.

CHAPTER TWO

THEORETICAL FRAMEWORK

2.1 Introduction

Chapter Two provides the theoretical framework of the study. It starts with a conceptual discussion of public policy and engages in public policy analysis, employing theories on policy implementation, participation of civil society organizations in policy-making and policy networks to show how they, in combination with other factors, explain the implementation of social regulatory policy. These factors include the availability of resources, skilled manpower, appropriate use of policy instruments and measures and also of clear lines of communication between policy implementers at different levels of the policy process.

2.2 Public Policy

Public policies are central to government as it directs and steers the society towards an articulated goal. Therefore public policy is "a formally articulated goal that the government intends pursuing with society or with a societal group" (Hanekom 1987: 7). Hanekom (1987: 8) states that public policies are guidelines decided by government which influence their course of action. Kingdon (1995: 7) points out that public policy is complex, as it involves various decisions and actions from different individuals, groups, institutions and agencies. Dye (1995: 3) provides an explicit definition of public policy as decisions made by government based on its choice to carry out an action, or not to. Public policy is therefore not limited to government's actions but also government's inactions.

In spite of Dye's definition, conceptualizing public policy remains a complex endeavour, as it is diverse and therefore lacks a homogeneous approach to understand it (John, 1999: 9). The varied definitions of public policy by different scholars are based on different perspectives and areas of emphasis. For example, some authors base their definition of public policy on government's action to address a need, while others on government's choice or decision (Ikelegbe 2006: 2). From these various perspectives, a broader definition of policy can be achieved. Ikelegbe (2006: 4) defines public policy as "the output or product of the governmental process and activity, which is usually expressed in legislative enactments or

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laws, executive decrees or orders, executive and official statements or speeches, government budgets, judicial decisions and, sometimes, political party manifestos". The main reason behind the formulation of public policies is to solve an identified need or problem. Policies are often implemented through programmes and, if successfully implemented, address the problem identified.

There exist different stages in the policy process. These include identification of policy problems, agenda-setting, policy formulation, adoption of policies, implementation and policy evaluation (Porter and Hicks 1995: 8). Problem identification and agenda-setting involve the identification of the need, the definition of the problem and the analysis of various options, to address the problem in order to select the right action; policy formulation involves the initiation and development of policy; policy implementation involves ensuring that the accepted policy (which is at that time a statement of intention) is put into action, in order to reach its goal and objective, which is to address the problem; and policy evaluation is the last stage of the policy process and involves the analysis of the total results or effect of the implemented policy (Porter and Hicks 1995: 8).

2.3 Types of Public Policies

Various scholars have classified public policies on the basis of different criteria, based on the problem or need they aim to address. For example, McKinney and Lawrence classified policies into fundamental policies, major policies, functional policies and rules and standard operating procedures (McKinney and Howard 1979: 75-79). Lowi (1964: 677- 711) classified public policies as distributive, redistributive and regulatory policies. These classifications are different. Lowi's classification of public policy is based on four issues, which are basis of intent, operating processes, issues and clientele (Ikelegbe 2006: 6). Lowi's classification of public policy will be employed because of its relevance to the present study.

2.3.1 Distributive Policies

Distributive policies involve providing and rendering additional goods and services to different segments of the population, groups or institutions (Lowi, 1964: 690). They involve

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the provision of goods and services to a specific group target who are the beneficiaries of the policy. Those that do not benefit from the policy are compensated in different ways (Lowi, 1964: 691). Ikelegbe (2006: 6) describes distributive policies as "favours, benefits or patronage policies, dispensed to a small number of people". These policies are identified as favours and benefits because they impose no obligation on the targets or beneficiaries; rather they provide them with privileges, which they benefit from (Heckathorn and Maser 1990: 1108). There is no need for enforcement or negotiation in the implementation of distributive policies, because it is not conflictual and the dominant activity in implementation is planning how to distribute the goods and services (Heckathorn and Maser 1990: 1108). Examples of distributive policies are those policies that relate to public land usage, rivers, harbours, parks, agriculture, tariff or tax concessions and awarding of contracts (Ikelegbe 2006: 7).

2.3.2 Redistributive Policies

Redistributive policies, conversely, provide services for specific categories of people who are, or were, previously disadvantaged in the society (Lowi, 1964: 710). According to Anderson (1975: 9), redistributive policies are meant to bridge existing gaps between different segments of a population. In other words, these services are rendered to special categories of disadvantaged people due to common characteristics that pertain to them. Anderson (1975: 58) feels that redistributive policies are discriminatory because some categories of people benefit over others and this leads to struggles amongst groups of people (aged and young, employed and unemployed, working and retired) within the population. The result is a pattern of politics that provides two sides: the advantaged and the disadvantaged (Lowi 1964: 711). According to Heckathorn and Maser (1990: 1107), there exists no enforcement mechanism in the implementation of redistributive policies, as they employ incentives aimed at encouraging implementors to succeed in bridging existing inequalities. Examples of this policy include social welfare programmes, some tax policies and educational policies (Ikelegbe 2006: 8). In the South African context, the Black Economic Empowerment redistributive policy of government is an example of a redistributive policy.

2.3.3 Regulatory Policies

Lowi (1985: 85) defines regulatory policy as decisions to formulate or implement rules which compel targets to constrain or control their activities and it also involves providing punishment for non-compliance. This distinct function of regulatory policy differentiates it from the distributive and redistributive policies. Conversely, Ikelegbe (2006: 7) defines regulatory policies as laws or legislation that regulate distribution, behaviours, practices and actions of private individuals or organizations. In addition, Meier (1985: 1) defines regulatory policies as restrictions created by government in an attempt to control behaviour of citizens, corporations, or sub-governments. Regulatory policies are difficult to formulate and implement because of the diverse interests of those involved and the potential conflicts and the bargaining, compromises, concessions that are involved (Ikelegbe 2006: 7). This implies that the implementation of regulatory policies affects those involved in terms of gains and losses; where some policies will favour the interests of some groups and negate the interests of others. Groups and organizations compete for favourable directives or regulations that complement their interests. Lowi (1964) limited his work on regulatory policies to economic regulatory imperatives alone and did not accommodate Smith's (in Tatalovich and Daynes 1998: xxix) definition of policy as an "emotive symbolism" that "generates emotional support for deeply-held values". This implies that some policies that are formulated are based on values held by policy-makers.

Ikelegbe (2006: 8) distinguishes between two types of regulatory policies: economic regulatory policies and social regulatory policies. These distinctions are made on the basis of the behaviour or activity the policies seek to control (Ikelegbe 2006:8). Economic regulatory policy is concerned with regulating "conditions under which firms may enter or exit the market, competitive practices, the size of economic units, or the prices firms can charge" (Eisner *et al.,* 2006: 3). The impact or direct target of economic regulatory policy is "narrow and limited to particular sectors or aspects of business, commerce and politics, such as import and export, drugs, urban planning sectors of the economy and politics" (Ikelegbe 2006: 7). Concisely, economic regulatory policies deal with the economic sphere; these policies regulate economic activities, practices and behaviour.

Social regulatory policies are concerned with regulating social behaviour and actions of citizens (Tatalovich and Daynes 1988: 2). They stress that social regulatory policies regulate social relationships and not economic transactions or financial matters and also attempts to regulate behaviour and change or influence values in society. They state that some public policies, especially those involving crime, can be classified as social regulatory policies (Tatalovich and Daynes 1988: 2 - 3). Howlett and Ramesh (2003: 104) contend that regulations are divided into two groups, economic and social regulations, which vary depending on "whether they are targeted towards economic or social spheres of human activity". According to them, social regulatory policies have to do with issues around individual rights and social morality, rather than economic or material issues. Wilson (2006: 8) emphasises that social regulatory policies are policies formulated by government to regulate values, norms and relationships. Social regulatory policies are thus aimed at changing values and behaviour that are defined or identified by society as morally wrong.

Understanding the nature of social regulatory policy is imperative to the present study, because the formulation and implementation of FGM in Nigeria seeks to, amongst other objectives, change societal behaviour towards harmful cultural beliefs and traditional practices that have negative health, social and human rights consequences for a significant segment of Nigerian societies where FGM is widely practised. According to Tatalovich and Daynes (1988: xxx), social regulatory policy involves 'the exercise of legal authority to affirm, modify or replace community values, moral practices and norms of interpersonal conduct". According to Haider- Markel (1998: 71), "social regulatory policies seek to change behaviour that is linked to the normative debate concerning the morality of individual actions and the subsequent consequences of those actions to the rest of the society". Social regulatory policies are morally based, that is, the policies are formulated to change a social behaviour identified as bad, to a good one. Tatalovich and Daynes (1988: xxix) state that the formulation of social regulatory policy represents a variant of moral conflict. Moral conflict occurs when there exist different values among groups and these groups compete for the right value to be accepted. This shows that social regulatory policies are conflictual in nature, as groups may resist novel values imposed on them. Yenor et al., (2004:1) state that the court is often employed as a legal instrument in the implementation of social regulatory policies to protect individuals against traditional norms.

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Social regulatory policies seek to regulate behaviour and actions of individuals and to redistribute values based on morality in society. Examples of these policies include drug policies, alcohol policy, capital punishment and abortion policies (Haider-Markel 1998: 71). In parts of Nigeria, where FGM is prevalent and especially where there has been social regulation (FGM Legislation), the moral conflict question remains a challenge as people oppose legislation based on socio-cultural grounds. This is worse in cases where there has been little or no participation of the people (policy targets) in the policy process to educate them on the myths associated with the practice and on the need for change.

2.4 Public Policy Analysis

Public policy analysis involves the use of diverse models and theories to explain and resolve policy issues. It is a systematic study that deals with the "causes, processes, formation, implementation and consequences of public policy" (Ikelegbe 2006: 16). There are various policy models and theories, but in order to answer the research questions, this study will employ models on policy implementation, civil societies and policy networks. Together these will be used to critically appraise the implementation of female genital mutilation legislation in Nigeria.

2.4.1 Policy Formulation

Policy formulation involves the activities that precede the implementation of policy. It entails "the identification of the policy problem, the development and analysis of policy alternatives and the choice or selection of an alternative which is enacted as policy" (Ikelegbe 2006:84-85). Policy formulation can be described as the design stage of the policy process. It is a very important stage, because it forms the blueprint for the implementation of the policy and implementing an option that is not feasible or effective may result in an ineffective outcome.

Ikelegbe identifies three stages of policy formulation. These include policy problem, policy agenda and policy-making (Ikelegbe 2006:85). According to Sharkansky and Van Meter (1975:71-81), public problems are social needs, as well as the lack of goods and services which specific targets do not have access to and which require government intervention.

Public problems must be perceived by the government and identified as such before any intervention to address them. Public authorities may be influenced by individual contacts, complaints and petitions by civil society groups such as non-governmental organizations or through the media to identify a social need as a public problem (Ikelegbe 2006:86-87).

The public problem subsequently enters the policy agenda, having been identified by government. This is the phase where the problem is defined and alternatives identified to solve the problem. However, not all public problems get onto the public agenda. According to Ikelegbe (2006), this is due to a number of factors, which include high sensitivity on the issue, resistance by powerful pressure groups within society, negative precedence or some dominant beliefs and values that may restrict potential action (Ikelegbe 2006:88).

The last stage of policy formulation, policy-making, involves the development and consideration of policy alternatives in relation to a public problem that has reached the policy agenda. According to Ikelegbe, it entails "the recommendation, consideration and approval of a policy proposal by relevant public agencies and executives and the enactment of the policy by legislative houses" (Ikelegbe 2006:89). This implies that policy-making involves a government decision to intervene in a public problem, the identification of alternatives and the decision to implement a feasible solution aimed at addressing the social need or problem.

In seeking to address social needs or societal problems, policy formulation is targeted at people. Therefore people's participation in the policy process is critical to achieving policy goals and objectives. According to Brinkerhoff and Crosby (2002:51), the successful implementation of policies (distributive, redistributive, regulatory and constitutive) depends on building constituencies. This involves ensuring that the beneficiaries, who are those affected directly or indirectly by the policy, take part in the policy process (formulation and implementation) (Brinkerhoff and Crosby 2002:51). According to them, public participation in policy formulation is "a process through which stakeholders influence and share control over development initiatives and the decisions which affect them" (Brinkerhoff and Crosby 2002:53). They contend that encouraging public participation is aimed at ensuring that the people at the grassroots have a sense of ownership of the policy and that this ensures policy legitimization and constituency building. Policy legitimization involves encouraging support from those at the top, while constituency building involves developing support for the policy

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by the constituent, who are the beneficiaries of the policy (Brinkerhoff and Crosby 2002: 26) and civil society is central to this participatory approach to policy formulation and implementation.

2.4.2 Policy Implementation

"Public policy is a programme for action towards an objective or purpose in the public sector, often chosen from a number of alternatives, within the constraints of political circumstances and ideology, and accepted by those responsible for its implementation" (Chapman 1997:1). Policies must be put into action to attain their required goals and objectives. Public policy is a formally articulated goal that the government intends pursuing with society or with a societal group (Hanekom 1987: 7). "The adopted policy is merely a statement of intentions, expectations, goals, prescriptions, standards and requirements. It is merely a carefully drafted set of exhortations, directions and hopes" (Ikelegbe 2006: 91). Therefore, policy-making is not the end of the policy process. Policies have to be implemented to give meaning to the formally articulated goals, statement of intentions, standards, directions and hopes that are articulated in policy documents. What, then, is implementation within the context of the policy process?

Hill and Hupe (2002: 46) define implementation as a process that begins after policies have been formulated, aimed at transforming policy mandates to attained objectives. Pressman and Wildavsky (1973: xiii) define implementation as the process of policy-making which extends to putting the policy into action. It involves translating policies that are formulated into actions in order to effect change and attain their objectives (Pressman and Wildavsky 1973: 181). This means that implementation entails the processes involved in the execution and administration of a policy. Sharkansky and Van Meter (1975: 33) define implementation as the process of translating "policies into concrete, tangible and meaningful policies". This implies that policies are ineffective until they are implemented. On their part, Van Horn and Van Meter (1975: 455) define implementation as policies that are enforced in order to ensure the attainment of the objectives stipulated during their formulation. Although there exist different definitions of policy implementation, a most simple, but yet compelling, definition

that straddles different conceptualizations see policy implementation as putting formulated policy into action by implementers (Dye, 1995: 3).

Barrett and Fudge (1981: 2) explain that policy implementation is a complex and complicated process to understand and they provide a broad understanding of the process. According to them, in order "to understand actions and responses, we need to look at the group of actions involved, the agencies within which they operate and the factors which affect their behaviour. We need to consider actors and agencies not just in single roles as makers of the policy for others or the implementers of someone else's policy... but in combination of roles including a third, that of interested parties affected by outcomes of policy made and implemented by themselves or others" Barrett and Fudge (1981: 26). In other words, to get a broad understanding of policy implementation, the policies, the implementers and conditions in which they operate, and those targets affected by the policy, must be examined. Understanding the process of policy implementation is important because successful policy outcomes are not achieved by formulating the best policies alone, but also by being able to manage these policies during implementation (Brinkerhoff and Crosby 2002: 6).

2.4.3 Factors Affecting Effective Policy Implementation

According to Ikelegbe (2006: 200), "policy implementation is a long, tenuous, complex and tedious one, which is inundated with myriads of activities, decisions, interactions and problems". The main problem in attaining a successful policy objective is poor administration (Levine 1972: 80). The environment of implementation also influences successful policy implementation. The policy plan may be well-structured and organized, but may fail due to lack of co-operation among agencies, political leaders, beneficiaries and citizens (Ikelegbe 2006: 200). Different scholars have identified various factors affecting the success of implementation. A few are outlined below.

Gunn (1978: 169-176) identified ten conditions that affect effective policy implementation:

i.   There should be no external output by other actors that will hinder the implementation process and this can be curtailed by reducing the number of agencies involved in implementation;

ii.   Implementers must have adequate time and sufficient resources available for them to carry out their duties;

iii. The appropriate combination required for each stage of implementation must be available and this means skilled implementers, money and other items necessary for implementation;

iv.   Policy-makers must understand the problem and the cause of the problem before policy formulation, because implementation failure may be due to the application of the wrong solution for the problem;

v.   In connection with the fourth criterion, there must be a connection between the cause and effect of the problem;

vi.   A single and independent agency must engage in policy implementation;

vii. The implementers must have a common understanding of, and agreement on the policy objectives;

viii. Tasks to be performed by implementers must be clearly stipulated and organized;

ix.   There must be perfect communication and co-ordination between various implementers;

x.   Those in authority have the power to ensure the compliance and co-operation needed for successful policy implementation.

By focusing a great deal more on the policy targets (citizens), Ikelegbe's (2006) criteria for successful policy implementation differ from those of Gunn (1978). He identifies eleven factors that influence policy implementation:

i.   Employing the right means, methods and instruments of implementation. This can be tested and experimented on by carrying out proper studies or pilot tests which will influence the formulation of the right implementation design;

ii.   Ensuring that the implementation design is feasible, practical and suitable to solve the problem or need. The policy will be feasible if it is accepted, particularly by the public or citizenry;

iii. Ensuring that policy-makers make adequate preparations before embarking on implementation, to prevent "sluggish implementation, slow and poor output, poor results, implementation gaps and gaps between societal expectations and actual outcomes;

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iv. The implementing organizations or agencies must ensure that there is clear communication from the top to the bottom and *vice versa*;

v. The employment of competent programme leaders and managers to manage programme resources, control implementing activities and evaluating problems encountered in implementation;

vi. There must be adequate resources to effectively effectuate policy implementation. These resources include sufficient funds, adequate, skilled and competent staff;

vii. Multiple agencies involved in implementing a policy must ensure that there is considerable inter-agency communication, co-ordination, collaboration and co-operation;

viii. The prevention of duality of policies, as some agencies are charged with addressing the same problem and this may dissipate government energies and resources;

ix. Corruption may hinder successful policy implementation, as some implementers might be motivated by self-aggrandizement;

x. Policies or programmes that depend on private contracts to function may be problematic, as contracting out may not be based on the capability or expertise, but rather on low cost or political patronage;

xi. Changing events, crises and culture of the society may influence the implementation of the policy. Crises like economic inflation and changing events such as political change may hinder the policy trend and the societal culture may hinder citizen compliance with the policy (Ikelegbe 2006: 201-212).

2.4.4 Civil Society Organizations and the Policy Process

Various scholars present various definitions of, and positions on, civil society. Some see civil society from an opposition perspective; opposition which connotes adversarial relations with the state. A typical definition of civil society that fits this mode is that of Chabal (1986), who sees civil society as "a vast assemble of constantly changing groups and individuals whose only common ground is their being outside the state, and who have acquired some consciousness of their externality and opposition to the state" (Chabal, 1986: 15). Although this definition acknowledges the plurality of association in civil society, it reduces the activities of civil society to that of opposition. It does not recognize the fact that civil society does not always need to be at 'war' with the state. Other scholars such as Tester (1992)

conceptualize civil society from the realm of the individual's relationship with the society which excludes the state. According to him, civil society is described as "all those social relationships which involve the voluntary associations and participation of individual acting in their private capacities..." (Tester, 1992: 8). This implies that civil society is distinct from the state and involves the private sphere and relationships of individuals which can conflict with the state but is not necessarily political. This non-political view of civil society is starkly different from a politicized conception, as given by Stepan (1988), who defined civil society as the "arena where manifold social movements (such as neighbourhood and associations, women groups, religious groupings and intellectual currents) and civic organizations from all classes (such as lawyers, journalists, trade unions and entrepreneurs) attempt to constitute themselves in an ensemble of arrangements so that they can express themselves and advance their interests" (Stepan, 1988: 3). According to him, civil society can constitute itself politically to select and monitor democratic government through the political institutions of the state (such as political parties and the legislature) and their processes (elections, electoral rules and intra-party alliances) This definition of civil society implies that actors of various social groups can organize themselves and influence the politics of a state in order to pursue their interests, thus portraying civil society as a highly politicized space by actors from all social classes.

Diamond (1995: 9-10) states that civil society "involves citizens acting collectively in a public sphere to express their interests, passions and ideas, exchange ideas, exchange information, achieve mutual goals, make demands on the state, and hold state officials accountable. It is an intermediary entity standing between the private sphere and the state". This means that civil society functions as a buffer between the public sphere of the state and the private sphere of its citizens, where citizens' diverse interests are aggregated and articulated to government for action. In making demands on the state, civil society holds government accountable for its decisions.

Though definitions of civil society vary, what is common to the varying positions and conceptualizations is that it is a sphere outside the state and it engages with itself and the state to advance differing interests, with implications for the common good of society. The operational definition of civil society is "an arena made up of voluntary associations with differing interests and objectives and anchored within the space between state and society,

which are seeking avenues for the co-ordination of those diverse societal interests with the aim of either *promoting change or maintaining the status quo*" (Akintola, 2002: 41). This definition is an attempt to encompass different elements and stand-points of civil society as, for example, it sees civil society as constituting a check on the arbitrariness of the state, while also serving as a buffer between state power and private spheres. A vital utility it has for the present study is the idea of public participation in decision-making which it espouses. For example, through its web of voluntary associations, civil society provides an opportunity for people to participate in joint efforts aimed at allowing the overall development of society.

Civil societies play an important role in the policy process (Obuljen 2005:1). The policy process involves agenda setting, policy formulation, decision-making, policy implementation and policy evaluation (Court *et al.,* 2006: 14). In pursuing their diverse societal interests, civil society groups invariably are affected by, and *ipso facto*, get involved in the different stages of the policy process and their involvement, or lack of it, impacts on the success or failure of policy. According to Gordon (cited in Obuljen 2001:2), "policy models which reflect the realities of civil society are more likely to be effective than something which is imposed from the centre". In other words, policies that are supported or influenced by civil societies tend to be more effective than policies which lack the support of civil societies. However, civil societies tend to experience internal and external constraints which limit their ability to maximize their potential and operate effectively. External constraints have to do with not providing an enabling environment for its operation. These may include lack of recognition by government and restrictions by government through legislation aimed at controlling their activities (CFA Report 2002:1). Internal constraints include inadequate resources and limited capacity or skills needed to function (CFA Report 2002: 1). Court *et al.* (2006:25) identify different criteria necessary for policy-makers to take cognizance of in order to ensure the effective operation of civil societies in the policy process:

   i.   Promoting an enabling environment and political freedom
   ii.   Making policy process overt and transparent in order to enable civil societies to participate
   iii. Ensuring that civil societies have access to information
   iv.   Providing adequate mechanisms for consultation among stakeholders
   v.   Investing in capacity-building skill acquisition

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To maximize the value of civil society operations in the policy process of a given state, it is necessary for the government to emplace an environment conducive for civil society to thrive. To curtail the impact of internal constraints, civil society groups need to be conscious of practising internal democracy within its ranks. Diamond (1995) stresses that ensuring the effective participation of civil society in the policy process is necessary because civil society groups are involved in the formulation of policies that represent groups interests, function as a 'watch-dog' of the state, making it accountable, and provide for exchange of information and resources through co-operation with the state (Diamond 1995: 9-10).

2.4.5 Networks and Policy Implementation

Collaboration involves forming and building networks. This is necessary for effective implementation of policies. Networks, according to Kickert *et al.* (1997:6) are "more or less stable relations between interdependent actors, which takes shape around policy problem/or policy programme". The network approach negates the rational model as described by Kickert *et al.* (1997:7) as the 'mono-actor model'. This sees policy implementation as a process controlled by a single actor and, in most cases, the government. The network approach argues that no single actor has sufficient resources to determine the policy process and this is why actors interact with each other to pursue their diverse goals (Kickert *et al.*, 1997:9). This lack of resources is what drives the actors to interact. The relationship has been referred to as a 'dependency relationship' by Kickert *et al.* (1997:31).

Kickert *et al.* (1997:4) point out that "central government is unable, unilaterally, to control the complexities and pluralistic diversity which are fundamental characteristics of modern societies". They state that the network approach to governance as a theory is more realistic in coping with the complex nature of policy implementation (Kickert *et al.*, 1997:9). Policy implementation and policy execution involves various actors who share diverse goals and interest; these differences make policy process and implementation complex and pluralistic. Network is characterized by interaction of diverse actors. These actors must assemble to exchange resources, as no single actor has the power to control the policy process (Kickert *et al.*, 1997:31-32). The relationship of actors in a network is characterized by co-operation and collaboration (Kickert *et al.*, 2007:9). In other words, though these actors have diverse goals,

they must interact. This is because network actors need the resources of others to reach a compromise.

According to Kickert et al. (1997:43), "network management is a form of steering aimed at joint problem solving or policy development". Actors in a network exchange resources and skills and, to some extent, trade off goals in order to reach an agreement (Kickert et al., 1999). In a network, there is no single central authority that controls the policy process or a strict chain of command which is guided by a single organizational goal (Agranoff and McGuire 1996:12).

Policy implementation is characterized by diverse actors with different goals and interests, who are drawn together to collaborate because of their inability to solely pursue an interest on their own, due to resource constraints (Kickert et al., 1997: 29-31).

2.4.6 Conclusion

Public policy analysis is important in the study of public policy as it provides a framework for policy evaluation and thus contributes to effective policy implementation. Indeed, in the course of public policy analysis, policies are evaluated with a view to determining their effectiveness or otherwise and to reformulate them accordingly.

Public policy analysis involves the use of diverse models and theories to explain and resolve policy issues. Chapter Two outlined models on policy implementation, civil society organizations and policy networks which will be employed to explain the implementation of social regulatory policy such as FGM legislation. The next chapter applies the literature to the actual implementation of FGM legislation in eight states in Nigeria in which FGM laws exist.

CHAPTER THREE
ANALYSIS OF FINDINGS ON THE IMPLEMENTATION OF
FEMALE GENITAL MUTILATION LEGISLATION IN NIGERIA

3.1 Introduction

Having conceptualized public policy and types of public policies, as well as set the theoretical framework of the study in Chapter Two, this chapter presents the findings of this study, which emerged from a critical analysis of the implementation of FGM legislation in Nigeria. These findings are analyzed within the theoretical framework of policy implementation, civil society and networks.

FGM legislation is a type of social regulatory policy, as it seeks to change the values and beliefs of those that practise FGM with a view to eradicating its practice. According to Rasmussen (2006:2), FGM legislation are laws or restrictions that are formulated by the government to eradicate the practice of FGM. What is the political context of policy-making in Nigeria and, flowing from this, what is the origin and nature of female genital mutilation legislation in Nigeria? What, specifically, are the aims and objectives of FGM legislation in states where it has been enacted? How has FGM legislation been implemented in these states? Were the policy processes participatory in nature or were they a resonance of government's usual top-bottom approach to policy-making? This chapter attempts to answer these and many more related questions pertaining to the challenges of implementing FGM legislation in Nigeria.

3.2 Political Context of Policy-making in Nigeria

Nigeria is a multi-ethnic (over 250 ethnic groups and languages) and secular country of about 140 million people, with a total land area of 923, 768 sq km (Edge, 2006: 240). Geographically, the country is divided into six geo-political regions; the North-East, North-West, North Central (predominantly Muslim), the South-East, South-West and South-South (predominantly Christian). This geo-political configuration of the country has not helped to blur the north/south dichotomy, which is a colonial legacy and which is the bane of the

national question in Nigeria (Nnoli, 1978:4-11). According to Osaghae (1991:12 - 14), the north/south dichotomy, which coincides with the Muslim/Christian dichotomy, has significantly contributed to why national integration has remained elusive to Nigeria since independence, with concomitant effects for good governance and even development of the country, given the high level of distrust and mutual suspicion between these two socio-culturally different sections of the country. The northern part of the country has been more resistant to social change than the south, as the response of the both parts of the country to the National Polio Immunization Programme showed in 2007[1].

In terms of the political system, Nigeria operates a federal system of government. Accordingly, the Nigerian Federation is composed of a federal (central) government and its federating units called states, with a third tier referred to as Local Government Councils (Obasi 2008:1). More specifically in terms of numbers, Nigeria has one Federal Capital Territory, Abuja, thirty-six states and seven hundred and seventy-four local government areas (Obazuaye 2006: 1). After 29 years of military rule, Nigeria, for the third time in its post-colonial history, reverted to democracy in 1999. The country's nascent democracy has remained stable since 1999 and, for the first time since independence, the country successfully effected political change through the ballot box (civilian to civilian transition of power) in 2007, which saw former president Olusegun Obasanjo handing over power to a new president, Umar Yar Adua.

As provided for by the 1999 Constitution, which came into effect on 29 May 1999, Nigeria operates a presidential system, with the President as head of the executive arm of government and commander-in-chief of the armed forces. The legislature is bicameral, consisting of an upper house; the Senate, and a lower house; the House of Representatives. While the Senate is headed by a senate president, the House of Representatives is headed by a Speaker. The judiciary is headed by the Chief Justice of the Federation. These structures are replicated at state and local government levels, except that the legislature at both the state and local

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[1] While the predominantly Christian south welcomed and participated in the polio immunization programme, the predominantly Muslim north resisted the programme, based on religious and cultural grounds. It took more than a year for them to finally allow their children to take the vaccines which were sourced from India by the United Nations Organization.

government levels are unicameral. The head of the different arms of government at these levels have different nomenclatures. For example, the head of the executive arm of government at the state level is referred to as Governor, the head of the House of Assembly (Legislature) is the Speaker and the Chief Judge heads the state judiciary. At local government level, the executive is headed by a Chairman, while the Legislative Council is headed by a Speaker. The judiciary at the local government level practises both the magistrate court and customary court systems. The magistrate court is headed by a Chief Magistrate while the customary court is headed by a Court President. In the northern part of the country, which is Muslim dominated, the sharia court takes the place of the customary courts prevalent in the south. The customary or sharia courts have jurisdiction on traditional socio-cultural and religious issues that affect the people at the community level and which are not directly covered by the Constitution.

The 1999 Constitution stipulates that the three tiers of government (Federal, State and Local Government) derive their powers from two different lists. These are the exclusive and concurrent lists. The Federal government at the centre derives its powers mainly from the exclusive list, which covers defence, police, immigration and emigration, external affairs, international trade, custom and excise duties, currency, aviation, arms and explosives, citizenship and internal issues such as education, agriculture, cinematography and local government, which it shares with the states (Nigerian Constitution, 1999: 12). The states derive their powers from the concurrent list, which cover issues that both the federal and state governments can legislate on, such as taxation, education, technology, safety and health, agriculture, electricity, local government funding, including others not covered in the exclusive list such local government regulation and administration, levies and fees, chieftaincy and customary practices (Nigerian Constitution, 1999: 14) In other words, the states legislate on issues outside the exclusive list, issues that are specific to the states, as well as those that are common to both the state and federal governments, as the Constitution clearly states that "Nothing in the foregoing paragraphs of this item shall be construed so as to limit the powers of a House of Assembly to make laws for the State with respect to issues that pertain to the State" (Nigerian Constitution, 1999:15), even though the constitution is clear about whose law supersedes (the federal) in cases of clash. The states are empowered by the constitution to legislate and implement policies on customary practices, under which female

genital mutilation falls, and do not have to wait for a federal law to regulate that. Such laws, as passed by the state House of Assembly, are binding on all citizens of the particular states and are meant to be implemented by state structures and institutions at both state and local government levels.

In Nigeria, in theory, the principle of federalism means that the federating units shall have autonomous governments, at least on issues in the concurrent list. Unfortunately, in practice, there is over-concentration of power at the centre (federal government), a phenomenon that has led those who have studied Nigerian federalism to conclude that Nigeria practices a lop-sided or quasi-federal system, with concomitant effects for effective governance and policy administration (Osaghae, 1991; Suberu 1996). A relevant example of this centralization of power is the Nigerian Police Force (NPF). The 1999 constitution of the Federal Republic of Nigeria did not provide for state police and rather vested the NPF in the presidency, making it more difficult for the NPF to effectively police the entire country. It is for this reason that this study agrees with Onwudiwe (2000)'s view that organizations such as the customary and sharia courts are local in nature and localized police networks will serve the communities better. While decentralization might not be a panacea for a perfect police force, it will improve their effectiveness in the communities they serve.

3.3 Female Genital Mutilation Legislation in Nigeria

Although there is at present no federal law banning FGM in Nigeria[2], a number of states have taken advantage of the nascent democratic dispensation to initiate, formulate and implement state laws banning the practice of FGM. According to Jimoh (2005), so far, out of the 36 states in Nigeria, only eight states have passed laws prohibiting the practice of FGM. These states are Abia, Bayelsa, Cross River, Delta, Edo, Ogun, Osun and Rivers (Jimoh 2005: 3-4). While it is beyond the scope of this study to investigate why other states have not enacted anti-FGM laws, the author puts it down to the absence of anti-FGM lobbying and advocacy by civil society groups in these states. This is because in all eight states where laws

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[2] The House of Representatives (lower house) passed the HB22 Bill in 2007 aimed at banning the practice in Nigeria (Deen 2008:1). However, it is yet to be passed by the Senate. Even then it has to be forwarded to the Executive for assent.

prohibiting FGM exist, civil society groups played a significant role in lobbying law-makers and sensitizing the public to problematize the issue, thus pressurizing the state governments to add it to the policy agenda. In states such as Delta and Edo, civil society organizations like Girls' Power Initiative (GPI) and Inter-African Committee (IAC) Nigeria worked with law-makers to prepare and sponsor the bills on the floor of their state legislatures (IAC, Nigeria 2001).

It is not clear from the available literature why these civil society groups choose to pursue anti-FGM legislations in these particular states and not others, especially in the northern part of the country, where prevalence rates are higher than in a good number of the eight states in question. These groups, such as the Nigerian Center for Gender, Health and Human Rights (NCGHHR) and the Inter-African Committee (IAC) Nigeria, which were active in anti-FGM advocacy in these eight states, and both of which have done extensive studies on female genital mutilation in different parts of the country, have not indicated why they chose to start their campaigns in these eight states. The IAC Nigeria, for instance, which articulated a state-by-state strategy to criminalize the practice in all 36 states by 2006[3] did not indicate why it started its campaign in these states and not the others in which prevalence levels are higher. If it was based on prevalence levels, then states such as Kebbi (100%), Katsina (95%) and Kano (90%) would have been first priorities over others such as Ogun (35%), Edo (40%) and Cross River (60%), with relatively lower prevalence rates. A plausible factor is geography, as Kebbi, Katsina and Kano are all in the northern part of the country while Ogun, Edo and Cross River are in the South as well as the other five states Abia, Bayelsa, Delta, Osun and Rivers, where FGM has been outlawed. Even then, one can still question why none of these groups started their advocacy in the north, where FGM is more prevalent. Given the stated limitation of the study with regards to carrying out empirical research in Nigeria, it can only be assumed that these civil society groups were perhaps cognisant of encountering greater resistance in the northern, rather than in the southern section of the country. In this case, starting in the south and progressing gradually to the north, backed with a profile of 'successes' in the south, is a probable strategy.

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[3] See IAC, Nigeria (2001).

Encouraged by the conducive international policy environment provided by conventions such as the Universal Declarations of Human Rights (UDHR), the Declaration on the Elimination of Violence Against Women (DEVAW), the Convention on the Elimination of All forms of Violence Against Women (CEDAW), civil society groups such as Women Advocates Research and Documentation Centre (WARDC) and the Girls Power Initiative (GPI) played a significant role in emplacing FGM legislation in these states (Ojior, 2000; Brisibe, 2001; Omoruyi, 2004). Others such as the IAC, Nigeria, focused energies on the state and local government levels in the absence of a Federal anti-FGM law, but relying on Section (34)(a) of the 1999 Constitution, which states "no person shall be subjected to torture or inhuman or degrading treatment," as the legal basis for banning the practice nationwide (IAC Nigeria 2001: 3). These civil society groups were taking advantage of the liberalized political atmosphere which the new democracy engendered, as opposed to the repressive atmosphere that characterized the long years (1966 – 1979 and 1983 – 1999) of military dictatorship in Nigeria.

According to the IAC, the advocacy process first starts with the local government Area Chairman concerning the harmful health effects of the practice. The Chairman is relied on to make contact with Council members, traditional rulers, and other opinion leaders, to discuss the problems associated with this practice and to work on alternative rites to satisfy cultural concerns. It is only after consensus has been reached at this level that all stakeholders are engaged in the state-wide campaign to ban the practice (IAC Nigeria 2001).

Apart from the above-mentioned civil society groups, professional associations that are involved in efforts to outlaw FGM practice in various parts of Nigeria include the National Association of Nigerian Nurses and Midwives, the Nigerian Medical Women's Association and the Nigerian Medical Association. These three groups have been very active in campaigning against the practice of FGM and are particularly against the legitimization of this practice as a medical necessity for females. They are working to inform all Nigerian health practitioners about the harmful effects of the practice (IAC Nigeria, 2001: 2). For example, the National Association of Nigerian Nurses and Midwives created a national information package concerning the harmful effects of the various types of FGM which are prevalently practised in Nigeria. These groups engaged in extensive community outreach to

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men, women, school children and health workers using films and posters as media of communication to reach out to people in rural and urban areas (IAC Nigeria 2001).

While many of these efforts were concentrated on enlightening the people on the harmful effects of female genital mutilation to women and society as a whole, not much effort, if any, went into actually creating forums for the people, especially women, to participate in the eventual policy processes that led to the formulation of legislation outlawing the practice. According to Ojior (2000), in Edo state, the lack of consultation and participation of stakeholders at grass root level hampered the successful implementation of the FGM legislation, helped in large measure by the social and cultural rejection of the policy.

Though the anti-FGM legislation of these states differ in terms of context and content, they all have a common goal and objective, which is the eradication of the practice of female genital mutilation. Their main agency of implementation is also similar; the police force and magistrate courts. In order to access these policies, cases must first be reported to the police, who then transfer them to the judicial courts for prosecution (as stated in the various sections of the legislation). The stipulations of this legislation are summarized below.

i. Abia State

The legislation banning the practice in Abia is called the Female Genital Mutilation Act (2001). The legislation stipulates that those who engage in the practice of female genital mutilation must be charged in court and, if convicted, must pay a fine of one thousand naira (N1, 000), or be imprisoned for one year (Female Genital Mutilation Act 2001).

ii. Bayelsa State

Two Bills were passed in 2000 and 2002 to deal with female genital mutilation in this state. These include the Bayelsa State Female Genital Mutilation Prohibition Law (2000), and the Revised Bayelsa State Female Genital Mutilation Prohibition Law (2002). The revised edition of the law made it easier for victims to access it and also stipulated tougher punitive measures for offenders. The 2002 legislation stipulates that those that propagate or engage in the practice of FGM are offenders and must be

charged in a court of law (Section 2 of FGM prohibition law 2002). It states that those found guilty should be imprisoned and monetarily fined (Jimoh 2005: 7). Section Three stipulates that any person who commits a breach of Section Two of this law shall be liable, upon conviction, to a term of five years imprisonment or a fine of ten thousand naira (N10, 000) only, or both (FGM Prohibition Act 2002).

iii. Cross River State

The legislation banning female genital mutilation in Cross River State is called, the Law Prohibiting Female Genital Mutilation (no.2 of 2000). This legislation was passed in July 2000, with the aim of making it illegal to perform female genital mutilation, whether consent is granted or not (Jimoh 2005: 7). The legislation stipulates that offenders (who include those that carry out female genital mutilation, the practitioners or guardians who encourage the practice) who are guilty upon conviction will be liable to a fine of not less than ten thousand naira (N10, 000), or to imprisonment not exceeding two years for a first offender and to imprisonment not exceeding three years, without the option of a fine, for each subsequent offence (Section 4 no.2 of 2000).

iv. Delta State

The legislation prohibiting the practice of female genital mutilation in Delta State is called the Female Circumcision and Genital Mutilation (Prohibition) Act (2000).The legislation was passed in April 2000. Section 2 of the Act identifies offenders as those who engage or encourage FGM. Offenders that are found guilty face three months imprisonment and/or a fine of two thousand naira (N2000) (Section 5 Female Circumcision and Genital Mutilation (Prohibition) Bill of 2000).

v. Edo State

The legislation prohibiting the practice of female genital mutilation in Edo State is called the Female Genital Mutilation Act (no.4 of 1999). It was passed in October 1999 and stipulates that consent and tradition is not a defence for engaging in the practice (Section 4 FGM Act no.4 of 1999). The principal offenders include those that offer

themselves for circumcision, anyone who forces, entices or causes any person to undergo the act, any parent or guardian who permits or presents their daughter for the act and the performer of female genital mutilation (Section 4 FGM Act no.4 of 1999). Offenders, upon conviction, are subject to a fine of N3, 000 or a minimum of three years imprisonment, or both (Section 7, FGM Act, 1999, no 4).

vi. Ogun State

In Ogun State, the law prohibiting the practice of female genital mutilation is called the Female Circumcision and Genital Mutilation (Prohibition) Law (2000). The law states that "no person shall circumcise any female child and no person shall prick any part of the female genital organ for the purpose of circumcision." It stipulates that convicted offenders be fined or face six years imprisonment, or both.

vii. Osun State

The legislation banning female genital mutilation in Osun State is called the Female Genital Mutilation Act (1999). It stipulates that any removal of the sexual organ of a woman or a girl is an offence, except if it is done for medical reasons (Bureau of Democracy, Human Rights, and Labor Report 2007: 22). Offenders include females who offer themselves for female genital mutilation, any person who coerces, entices, or induces anyone to undergo the practice and practitioners, other than medical professionals, who perform the operation removing part of a woman or girl's sexual organs (Bureau of Democracy, Human Rights, and Labor Report 2007: 22). The law makes provision for a fine of N50, 000, one year's imprisonment, or both, for a first offence, and doubled penalties for a second conviction (Bureau of Democracy, Human Rights, and Labor Report 2007: 22).

viii. Rivers State

The legislation banning female genital mutilation in Rivers State is known as the Female Circumcision (Abolition) Law (2000). It was signed into law on 17 August

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2001. The law states that "any person who circumcises or allows the circumcision of a female is guilty of an offence and shall, on conviction, be liable to a fine of N50, 000 or to imprisonment for a term of ten years, or to both fine and imprisonment" (Female Circumcision (Abolition) Law (2000).

In summary, although the FGM legislation differ in the eight states in terms of sanctions such as fines and imprisonment, they have similarities as well. Apart from the broad goal of completely eradicating the practice, the similarities include the employment of regulatory instruments for the implementation of the policy, as well as in the agents responsible for the implementation of the legislation, which include the police and the judiciary.

3.4 Analysis of Secondary Studies on the Implementation of Female Genital Mutilation Legislation in Nigeria

While legislation banning FGM in parts of Nigeria exist, there remains, however, a problem with compliance to legislation. This hinders the realization of the policy objectives of female genital mutilation legislation. This problem of lack of effective implementation is not peculiar to Nigeria as, "while many African countries have passed laws against female genital mutilation, the World Health Organization (WHO) says they are not being properly enforced" (*Nigerian Tribune* 8 June 2006). Effective implementation is therefore critical to the attainment of anti-female genital mutilation policy objectives which, amongst others, are essentially to eradicate the practice and its harmful health and psychological effects on women and society generally. Studies have already been done on the evaluation of the implementation process of FGM legislation in Nigeria (Ojior 2000; Brisibe 2001; Omoruyi 2004). However, this study analyses the challenges of successful implementation of FGM legislation in Nigeria, within the context of two theoretical approaches to policy implementation; *the role of civil society in ensuring public participation in the policy process* and the place of networks in policy implementation. It critically analyses the effectiveness of implementing FGM legislation using a number of factors that influence effective policy implementation, as explained by Gunn (1978) and Ikelegbe (2006). These, apart from those that concern issues of citizens' participation in the policy process and their ownership or acceptability of the policy, include adequate resources, clear communication from top to

bottom and *vice-versa*, emplacing of proper structures of implementation and the right combination of policy measures and instruments.

3.5 Civil Society and Public Participation in the Public Policy Process in Nigeria

In a study conducted by Ojior (2000) in Edo State, which investigated the formulation process of the FGM legislation (FGM Act no. 4 of 1999), the findings showed that "the government had a wrong conceptualization of the problem due to lack of consultation with the local community before formulating the legislation" (Ojior 2000: 78-79). According to him, civil society engagement with the public *a priori* the passing of the legislation in Edo state mostly concerned drawing awareness to the problem and not necessarily on consulting with the actual targets of the policy (women) in its planning, as "the main propagandists of female genital mutilation are not the men but the women, therefore, their opinion matters greatly as it was established by women for women" (Ojior 2000:82). The argument is that consulting men who largely dominate the political scene as Local Government Chairmen, traditional rulers and opinion leaders, and who are social beneficiaries of the practice, and excluding the women who are actually the main custodian or bearers of such cultural practices, may hamper the implementation of the legislation. According to Ojior (2000:68-78), grassroots consultation is important for the effectiveness of the legislation, because FGM, from the cultural perspective of the people, has its utility and purpose and tradition and culture is very important to Nigerians; therefore, policy implementers must understand and define the problem (in this case the behaviour). Ojior (2000) concluded that the legislation in Edo State (FGM Act no.4 of 1999) did not give proper consideration to the people's cultural perceptions and that insufficient consultation was carried out before the enactment of the legislation: "the traditional symbols of the people, which include the chiefs and elders, and the people were excluded from the policy process and the policy does not include the interest of the people" (Ojior 2000: 78-79).

In another study carried out by Brisibe (2001: 19), in Niger Delta region of Nigeria, on the challenges of female genital mutilation, she emphasises that one of the problems experienced by implementers in eradicating FGM is lack of grassroots support for the policies. This is traceable to the lack of public participation and awareness of the various laws. According to her, "policy-makers tend to campaign at the top, to ensure the legitimization of the policy

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during the formulation stage, without considering those below, who are the major players and stakeholders" (Brisibe 2001: 19). In addition "activists campaigning for the eradication of female circumcision have not spent enough time pushing for policies that will not only be enforced but must trickle down to the awareness of the major players who are the elders, especially the men, at the local communities" (Brisibe 2001: 19). This shows that the support and acceptance of the FGM legislation (policy legitimization) does not depend on those at the top, who formulate the policy. Those at grass root level must be involved in the policy process, thereby giving them a sense of ownership, which will make them comply with the policy rules. The lack of consultation and co-operation with the stakeholders at the lowest level (which include traditional leaders and elderly women in the community), when formulating FGM legislation, account for the basic reasons the implementors experienced difficulties in implementing the policy (Brisibe 2001: 19). Policy implementers must be able to identify stakeholders and incorporate their interests in the policy. Policy-makers should ensure that the interests of the stakeholders are taken into cognizance when formulating the policy and incorporate the greatest possible values from their different situations or interests (Bardarch 1998: 238-239).

Similar findings on challenges to the implementation of social regulatory policy in Nigeria were found in a study conducted by Omoruyi (2004) on FGM legislation in the country. Data was collected from different cultural groups and non-governmental groups (Omoruyi 2004:9). According to the study, "the reason why implementors of female genital mutilation legislation experience resistance and problems is rooted in the formulation of the legislation" (Omoruyi 2004: 11-13). She pointed out that the "lack of consultation and co-operation with the stakeholders when formulating female genital mutilation legislation accounted for the basic reasons the implementors experienced difficulties in implementing the policy" (Omoruyi 2004: 14). Practitioners had their own interest, which was the preservation of their culture; conversely, the goal of the policy is to eradicate that very cultural practice thus fuelling grounds for a conflict of interests. "The practitioners oppose the legislation because they feel that they were not consulted and therefore feel they were disregarded in the policy process" (Omoruyi 2004: 14). The study concluded that implementors will have fewer challenges and problems with implementing the FGM legislation if they collaborated and co-operated (in terms of its formulation and the conceptualization of FGM legislation itself) with the target, whose cultural behaviour they seek to change, and involve them in the policy

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process, as this will not only enlist the support of the target but also ensure compliance (Omoruyi 2004: 17).

In conclusion, public participation is central to policy formulation and it is an integral process of an effective implementation process (Brinkerhoff and Crosby 2002: 31). Public participation is "a process through which stakeholders influence and share control over development initiatives and the decisions and resources which affect them" (World Bank 1996: 3, cited in Brinkerhoff and Crosby 2002: 53). Encouraging public participation is aimed at ensuring the people have a sense of ownership of the policy; this ensures policy legitimization and constituency building. Policy legitimization involves encouraging support from those at the top while constituency building involves developing support for the policy by the constituent, who is the beneficiary of the policy (Brinkerhoff and Crosby 2002: 26).

A critical analysis of the implementation of FGM legislation in the eight states in Nigeria where these laws have been enacted show that the absence of consultation with the citizens, especially young girls and women, often negatively affected the policy objective of eradicating the practice. While the various civil society groups involved in the anti-FGM policy process engaged in lobbying and advocacy for the banning of FGM in these states, they did not create forums for the people, especially women, to participate in the eventual policy processes that led to the formulation of legislation outlawing the practice. According to Ojior (2000), in Edo state, the lack of consultation and participation of stakeholders negatively hampered the successful implementation of the FGM legislation, helped in large measure by the social and cultural rejection of the policy.

What clearly emerges from this discourse on public participation is that the will of the Nigerian people is not expressed or reflected in policy-making and this according to Ake (1996), is a fundamental problem of development thinking in Africa. According to him, until African leaders and bureaucrats start to see development as "a process by which people create and recreate themselves and their life circumstances to realize higher levels of civilization in accordance with their own choices and values" (Ake, 1996: 12), development planning will continue to grasp at straws. This is because development planning that is not rooted in the cultural and historical specificities of a people is not likely to elicit the needed support of the people to make them work (Ake, 1996). Therefore development planning and implementation

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must be participatory by nature; a 'bottom-up' exercise, which the mass of the ordinary people understand, take part in and exercise some measure of control over.

This is where civil society groups become relevant to public participation in the policy-making/legislative process. As the present study shows, civil society can play a role in not only educating people on abhorring FGM, but also in politically socializing them to take part in the actual policy-making process. That way, obstacles to implementation arising from people's lack of support based on lack of ownership of the policy will be greatly reduced, if not eliminated. Unlike in South Africa, where the culture of civil society actively engaging with government in policy-making is deeply entrenched, civil society in this regard is still budding in Nigeria. According to Ikelegbe (2001), this is not unconnected to the nature of Nigeria's political evolution from the post-independence era in 1960, through the military era, which stifled the culture of a vibrant civil society, to the 1999 post–military era, which is characterized by a civil society that is only just waking up to its responsibility in terms of fostering public participation in governance, especially in policy-making (Ikelegbe, 2001: 12-20). Before 1999 the history of civil society and the state in Nigeria was characterized by contradictions between opposition to, and collaboration with, the various military regimes that account for 29 years of Nigeria's 48 years of political existence.[4] All through the military era, most civil society groups were focused on peaceful and sometimes violent demonstrations or protests opposing military rule and less so on public participation in policy-making. Those that collaborated with the military to perpetuate its repressive rule did not engage in public participation advocacy, as they were co-opted into the state systems as instruments of tyranny and repression[5]. The point here is that in Nigeria, the culture of civil society as an instrument of public participation in policy making and implementation is still budding. This is largely due to the militarization of the public space by the different military regimes that dominated Nigeria's political history from the post-independence era (1960 – 1999). Indeed, as Akintola (2002) espouses, civil society in Nigeria can do more to sustain the nascent democracy in the country. There is need for mechanisms and processes of transparency and accountability to be put in place in all spheres of public life, in order to facilitate easier access to, and equal opportunity for, political and economic empowerment as, according to Akintola, it is essential for Nigeria's peoples to participate as full partners in the

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[4] See Akintola (2002) Civil Society and opposition politics in Nigeria (1985 – 1999), unpublished PhD thesis
[5] See Akintola (2002: 116)

governance and development activities of the country because "such involvement conveys the notion of collective ownership and ensures that the country's resources are not wasted because of bickering, rivalry-driven graft or internecine conflicts" (Akintola, 2002: 256).

3.6 Networks and the Implementation of Female Genital Mutilation Legislation in Nigeria

Brisibe (2001) examined the challenges experienced by implementers in eradicating FGM in Nigeria and showed that "efforts by the Nigerian government are fragmented and lack focus and this is as a result of government's inability to form a coalition or build a network with other non-governmental agencies and private institutions in order to exchange resources for successful policy implementation" (Brisibe 2001: 20). These findings show that it is imperative for implementing agencies involved in the eradication of FGM to build networks to exchange knowledge and resources.

Another challenge experienced by implementers is the difficulty of stakeholders reaching a clear-cut agreement in terms of desirability of policy goals and objectives. According to Williams (2003:31), "implementing female genital mutilation legislation in Nigeria is challenging, as government agents lack the capability to eradicate the practice due to the difference in meaning between targets and implementers". Mandell (1990:23) labels such problems as 'wicked problems', because they have no definite agreement on the appropriate solution to the problem. Wicked problems are better resolved when handled collectively by those affected by, or identified with, the problem, in order to reach a compromise (Mandell 1990: 22). According to Briggs (2003: 4) "wicked problems involve changing behaviours". Changing cultural behaviour such as the practice of FGM is a wicked problem because of the differences in beliefs of those engaged in it and those against it.

Implementing agencies such as the police and the judiciary are burdened with the implementation process of FGM legislation, with little effort from non-governmental organizations. According to Omoruyi (2004: 13), "though civil societies and non-governmental organizations pushed for the formulation of FGM laws in most states in Nigeria, they have not followed the process through. Most of these organizations have

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withdrawn from the next step, which is the implementation of these laws". Omoruyi (2004: 17) states that this is "due to lack of co-operation between government agents and civil societies". This makes it difficult to effectively implement FGM legislation and this is due to the inability of government as a single agency to control the implementation process. Kickert *et al.* (1997:31-32) reiterate the point that actors involved in the implementation of a policy must come together to exchange resources, because no single actor has the power to control the policy process. "Network management is a form of steering aimed at joint problem-solving or policy development" (Kickert et *al.,* 1997:43). Omoruyi (2004: 23-24) adds that state governments in Nigeria lack the capacity as a single body to eradicate FGM due to the wide range of issues they have to contend with. In order words, because the Nigerian states are responsible for their constituents and have to deal with other policy issues, it is cumbersome for the states to handle the policy process, alone.

Williams (2003: 54) blames lack of networking in the implementation of FGM legislation on the government rather than on civil societies. According to Williams (2003:56), the lack of support and encouragement from the government to civil societies makes it difficult for civil societies to operate. This is because the government views them as a threat when they play their role as a watchdog in the policy process. He contends that "civil societies and non-governmental organizations are alienated from the implementation of female genital mutilation legislation in Nigeria and this is due to the un-conducive environment in which they exist" (Williams 2003: 56). Williams (2003: 54) states "the Nigerian environment is hostile to civil societies because the operations of the government is not transparent, information on the practice of female genital mutilation are hardly overt and the government lack efficient data storage for evaluation by civil societies".

The network approach negates the rational model described by Kickert *et al.* (1997:7) as the 'mono-actor model'. This sees policy implementation as a process controlled by a single actor, and in most cases, the government. The network approach argues that no single actor has sufficient resources to determine the policy process and this is why actors interact with each other to pursue their diverse goals (Kickert et *al.,* 1997:9). This lack of resources is what drives the actors to interact. The relationship has been referred to as a 'dependency relationship' by Kickert *et al.* (1997:31). In the Nigerian situation, with regards to the implementation of FGM legislation, the state governments concerned have proved ineffective

because of their adoption of a largely mono-actor approach to implementing the legislation. Apart from not having the required capacity or resources to deal with all cases of contravention of the policy[6], government needs to collaborate or network with civil society groups in the area of information-sharing and especially in conveying the socio-cultural concerns of the people. This is more apt, given that in Nigeria, people are not very trusting of government or its enforcement agencies, especially the Nigerian Police Force (NPF). According to Okereke (1995), many Nigerian communities have negative perceptions of the NPF and do not have much confidence in their ability to maintain and enforce law and order. The many problems bedevilling the NPF are further compounded by the lopsided federal constitutional arrangement that does not provide for autonomous state police, as is the practice in other federal states such as in the United States (Okereke, 1995; Onyeozili 2005). In Nigeria, under the 1999 Constitution, the NPF is run from the centre, under the presidency. The implication is that police officers are posted to serve in different states, including those whose cultures are different from theirs. This has helped to fuel distrust amongst communities who feel the police are enforcing their own cultural agendas when they enforce social regulatory policies such as FGM legislation. It is to solve these kinds of dilemmas that Onyeozili (2005) recommends a three-tier police structure; the federal police, the state police and local government police. According to him:

> While the federal and state police departments deal with
> federal and state law enforcement matters, the local
> government police will be organized along the model of a
> vigilante force in touch with the community they serve, and
> solely deployed to deal with law enforcement and order
> maintenance functions in the local communities. This will not
> only bring people closer to their police, but will also prevent
> the hijacking of the police command by corrupt and tainted
> absentee politicians in Abuja. Local (not detached federal and
> military style) policing is the key to community policing
> (Onyeozili, 2005: 50 – 51)

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[6] Onyeozili (2005) did a longitudinal study on the obstacles of effective policing in Nigeria discovered a number of factors which militate against the ability of the Nigerian Police Force to effectively administer justice and efficiently enforce law and order. According to the study, apart from structural issues of corruption, ethnicity and the wrong notion of policing inherited from colonialism, other factors include institutional constraints such as inadequate manpower (both in strength and expertise), insufficient education and training, inadequate equipment and poor conditions of service of the average policeman (Onyeozili, 2005: 39 – 40). Indeed, with a total size of 371,800 officers, the NPF is still reportedly under-staffed and is faced with shortages in other resources and equipment required to function effectively (SAS Dec. 2007).

Civil society has a significant role to play in community policing, especially in the context of implementing female genital mutilation legislation in Nigeria. For instance, they can be very useful in fostering better relations between the people and the police, as the people would relate better to groups within their societies, especially if these groups are grassroots based.

3.7 Policy Implementation and Female Genital Mutilation Legislation in Nigeria

There exists conflict in goal definition between policy-makers and policy implementers of female genital mutilation legislation in Nigeria. According to Ikelegbe (2006: 202), the implementers must ensure that there is clear communication from the top to the bottom and *vice-versa* in order to ensure effective policy implementation. Gunn (1978: 179) adds that the implementers must have a common understanding of the policy goals and objectives and there must be perfect communication and co-ordination between various implementers.

In most cases, the implementers (police officers and court magistrates) of FGM legislation in Nigeria cases have conflicting ideas and definitions of the policy need, which is the eradication of FGM, and this hinders the successful implementation of legislation. Their concept of the problem conflicts with those of policy-makers at the top. According to the Operational Guide (OPG) Report (2007: 2), "most cases are not reported to the relevant authority due to their 'traditional attitude', which influences their concern and intervention. The traditional attitude is based on their (the implementers) cultural belief that FGM is not harmful but is part of their way of life" (OPG 2007: 2). According to the report, in states where FGM legislation are implemented, women hardly make complaints to the implementing agencies and therefore do not access the policy, due to the entrenched cultural beliefs of the implementers and instead seek asylum elsewhere (OPG 2007: 2). According to the report, "cultural attitudes would still be prevalent and some victims would probably never have the courage to take their case to court. It has been reported that most women therefore resort to relocating to another location if they do not wish to undergo female genital mutilation" (OPG 2007: 2). The conflict between implementers at the top and implementers at the bottom due to differences in values and goals of FGM has made the policy ineffective, as the targeted beneficiaries of the policy are not protected by legislation (OPG 2007: 2-3).

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Whereas resource availability is imperative for the successful implementation of FGM, Ikelegbe (2006: 208) states that "a major problem in policy implementation in Nigeria is the inadequacy of resources to effectively effectuate programmes". The inadequacy of resources resonates in the lack of skilled and/or limited staff, limited resources or finances and a poor working environment.

In a study carried out by Williams (2003:29) in Delta State, Nigeria, to evaluate the FGM Act (2000), he opined that

> ...the success of implementing female genital mutilation legislation lies in the ability of the government to create appropriate structures and mechanisms to implement the policy for the eradication of female genital mutilation. This would include a special budget for the implementation of the Act, special units and agencies charged with the responsibility of dealing with only issues of female genital mutilation, in order to reduce the cumbersome nature of the workload of the implementers, as they are usually saddled with other statutory responsibilities (Williams 2003: 31)

Williams concluded that "the implementers experience challenges due to resource constraints and a cumbersome workload and also most implementers are poorly skilled and lack the capacity to carry out their functions"(Williams 2003: 41), arguing further that more often than not, implementing agents give priority to other cultural issues, such as widow rights and inheritance, over FGM. The study recommended that, in order to ensure that the policy attains its objectives, proper structures and adequate resources must be made available by the government to the policy implementors (Williams 2003:41).

Brisibe (2001: 20), in her study on the challenges of female genital mutilation in the Niger Delta region of Nigeria, adds that "lack of resources hinders the successful policy implementation of female genital mutilation legislation in Nigeria". Similarly, Igbinovia (2000: 4) buttresses the point that most agencies charged with implementation of FGM legislation are poorly staffed and are crippled with high work loads. This hinders their ability to effectively implement the policies. In order words, though the policy exists in these various states, the implementation process is crippled due to lack of resources and skills needed at the streetlevel bureaucrat stratum.

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Resources are important in the implementation of social regulatory policy. These resources are needed to employ effective and skilled implementers and provide the appropriate structures needed for implementation. Behrendt (2006:35) stresses that because implementers are seen as role models in the community, they must be committed to the goals and objectives of the legislation, be skilled, knowledgeable and successful. In order to attain this, adequate resources, both capital and human, must be invested in employing and training implementing agents. In Burkina Faso, members of the police force and army have been trained to ensure effective implementation of the legislation (IRIN 2005). Williams (2003) suggested that the creation of a separate body and resource pool aimed at dealing with cases of FGM may reduce the high work-load of street-level bureaucrats.

The present study shows that the policy instruments (regulatory instruments which included penalties and fines) employed for the implementation of FGM legislation in parts of Nigeria was not appropriately combined with other policy instruments such as information transfer, which could have helped to attain the desired behavioural change. According to Harman (2004:1), there exist different policy instruments and measures and therefore government must choose the right combination of instruments that suits the intended policy outcome, as different policy instruments produce different effects.

3.8 Conclusion

Although FGM legislation exists in various states in Nigeria, the implementation process has not been successful due to lack of public participation during the formulation stage, poor networking and challenges experienced by implementers in the implementation process. It can be inferred from this that social regulatory policies are more difficult to implement if there is no provision for public participation during policy formulation, which in itself can give the government a better understanding of the socio-cultural issues at stake. This is more so where the behaviour targeted for change is deeply embedded in cultural beliefs and practices such as FGM amongst most Nigerian communities. Genuine consultation with the public and their participation in the policy formulation process can help to reduce the incidence of the target beneficiaries themselves resisting the policy during implementation.

In order to effectively implement female genital mutilation legislation in Nigeria, government must take the key issue of public participation into account.

The present study shows that weak state capacity to effectively implement legislation is a major challenge. Apart from the issue of inadequate resources, policy-makers are not able to properly communicate and co-ordinate the implementation of female genital mutilation by applying the appropriate policy instruments and measures to achieve compliance. Another area of weak state capacity is in terms of networking, where efforts by government are fragmented and lack focus. This is because state governments that enacted FGM legislation have not followed up their collaboration with civil society groups in the formulation stage by forming coalitions or building networks with other non-governmental agencies and private institutions in order to exchange resources for successful policy implementation (Brisibe 2001: 20). These findings show that it is imperative for implementing agencies involved in eradicating FGM to build networks in order to exchange knowledge and resources.

The complex political context of policymaking in Nigeria is a major impediment to the successful implementation of FGM legislation and social regulatory policies. Having recently emerged from years of authoritarian military rule, for the most part of its post-colonial history, the culture of democracy is still budding in Nigeria[7]. This is reflected in lack of public participation in the policy formulation process, weak state capacity in terms of collaborating and networking with relevant civil society groups as well as creating an enabling environment for civil society to thrive in the political socialization of the people. Centralization of power in the federal government, which was a defining characteristic of military rule in Nigeria, is still very much pronounced in the present democratic era. This negation of the practice of true federalism has also served to impede the successful implementation of social regulatory policies such as FGM legislation. For instance, the Nigerian Police Force tend to owe more allegiance to the federal government which employs them than to the states and local governments they are posted to work in. This has tended to fuel the local people's mistrust of the police, especially in matters that relate to cultural practices. Accordingly, democratic consolidation, which will allow public participation in the

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[7] Nigeria is experiencing uninterrupted democratic governance (nine years now) for the first time since its political independence from the British colonialists in 1960. Therefore participatory decision-making in governance is still a new phenomenon to the people, who are used to years of military dictatorship.

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policy-making and implementation processes, is a vital element of successful social regulatory policy implementation in Nigeria.

CHAPTER FOUR
SUMMARY OF FINDINGS AND CONCLUSION

Female genital mutilation legislation, a type of social regulatory policy, was implemented in eight out of the 36 states in Nigeria. The aim was to eradicate the practice of FGM in these states, and in the country at large, in spite of the lack of a federal law banning the practice. As aforementioned, "social regulatory policies seek to change behaviour that is linked to the normative debate concerning the morality of individual actions and the subsequent consequences of those actions to the rest of the society" (Haider- Markel 1998: 71). The normative argument put forward by advocates of the implementation of female genital mutilation legislation in Nigeria is that it impacts negatively on the health of the women involved (Koso-Thomas 1987:29) and that it violates the rights and dignity of the women involved (Imoukhuede, 2004:1). The main government departments and/or institutions responsible for the implementation of female genital mutilation laws in the various states include the police force and magistrate courts. The mechanisms employed to ensure compliance include fines and arrest. Evidently, the implementation process has faced challenges and limitations which make it difficult for government to eradicate the practice.

The present study has shown that implementing female genital mutilation legislation in Nigeria poses several challenges to the implementers of the policy. As Pressman and Wildavsky (1970) state, policy implementation is a complex process. In the preceding chapter, this study highlighted the complexity of social regulatory policy implementation through a discussion of the challenges experienced by implementers in the implementation of female genital mutilation legislation in Nigeria. Broadly, these challenges include:

- A lack of compliance with the policy due to the lack of public participation in the policy process;
- Inadequate networks and collaboration among stakeholders involved in the policy process
- Inappropriate combination of policy instruments and measures employed in the implementation of the policy;

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- Differences among implementers in terms of goal definition and problem structuring and

- Implementers' lack of institutional capacity (inadequate manpower/resources) to implement the policy

The findings concerning the implementation of FGM legislation in Nigeria show that public participation is critical for the effective implementation of social regulatory policies. The significance of encouraging public participation when formulating and implementing social regulatory policy is that it ensures that the people have a sense of ownership of the policy and this in turn motivates them to comply with the policy stipulations. The participatory approach, apart from encouraging public participation in policy-making, also has the utility of educating and enlightening the target groups on the disadvantages of carrying on with the particular behaviour, in this case, FGM, thus preparing them to make informed decisions. Although this did not take place during the inception of the policy in the eight states with female genital mutilation legislation in Nigeria, other states can make up for this by creating room for public participation at the early formative stage of female genital mutilation legislation. Indeed, policy-makers and implementers of social regulatory policies can learn from this participatory approach, which worked in Guinea, Ethiopia, Kenya and Sudan.

Secondly, building and fostering networks and collaboration with civil society are critical to the successful implementation of social regulatory policies, as has become evident in the study of FGM legislation in Nigeria. This study showed that the Nigerian state government did not create an enabling environment for civil society to thrive and this adversely influenced the policy (Brisibe, 2001, Williams 2003). Therefore government must try to build networks in order to exchange information and resources for effective policy implementation, as no single actor has sufficient resources and capacity to determine the policy process (Kickert *et al.*, 1997:9). The various state governments in Nigeria can liaise with different non-governmental organizations and other civil society groups to ensure effective implementation. These non-governmental organizations (NGOs) may be better able to communicate with the people and act as evaluators/watchdogs to ensure successful policy implementation. This view is supported by Rasmussen (2006:39), who contends that it is imperative for government to work with NGOs in the eradication of FGM. This implies that, in order to ensure that social regulatory policy achieved its objectives, government agencies

must create networks with civil society and enable them operate without interference from the government. Government can do this by providing technical and financial support. It can also liaise with foreign governments to exchange information, especially those that have successfully implemented female genital mutilation legislation.

Thirdly, the study concludes that the wrong combination of policy instruments can mar the effectiveness of social regulatory policy. Social regulatory policy involves behavioural and value change. Therefore government must understand the social value or behaviour the policy seeks to change, as the policy may be rejected by the policy targets themselves. In this case, policy instruments such as information transfer can educate policy targets and influence their behaviour, in line with policy objectives, more than simply imposing fines and other forms of punishment.

Finally, the study shows that implementers play an important role in the implementation of FGM legislation and, to a larger extent, social regulatory policy. The analysis of FGM legislation in Nigeria showed that the implementer's interpretation of the policy goals and objectives actually influenced their effectiveness in policy implementation and the outcome. Other studies on FGM legislation in Nigeria showed that implementers had a different definition of the policy goals and this impacted negatively on the outcome of the policy (OPG, 2007, Brisibe, 2001). Implementers responsible for implementing social regulatory policy need to understand policy goals and be committed to its objectives. Issues of efficient resources and proper structures are critical to the successful implementation of social regulatory policies. According to Igbinovia (2000), Brisibe (2001) and Williams (2003), lack of resources (inadequate staffing, funding and poor skills) hindered the successful implementation of female genital mutilation legislation in Nigeria.

To contain the challenges of implementing FGM legislation in Nigeria, it is recommended that government adhere to a regime of efficient interface between *legal, regulatory* and *policy measures,* as espoused by Rahman and Toubia (2000). In their global study of female genital mutilation laws, Rahman and Toubia (2000: 13-19) identified and advocated legal, regulatory and policy measures as three complementary factors that are necessary for the eradication of FGM. Legal measures involve creating proper legal structures and legislation that will constrain and guide the behaviour of those targets involved in female genital mutilation. It

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involves implementing legislation and carrying out reforms that are aimed at eradicating FGM and ensures that the rights of women and children are protected (Rahman and Toubia 2000: 13). The steps that must be taken to ensure that these mechanisms are in place include ratifying and implementing international conventions that protect women's right, entrenching these laws in the constitution, adopting reforms that ensure gender equality and implementing other legislation that are closely related to female genital mutilation legislation (Rahman and Toubia 2000: 14-19).

Secondly, government must complement legal measures with regulatory measures. Ensuring that legal mechanisms are put in place is the first step to the eradication of FGM. Enforcing the legislation is the next step. According to Rahman and Toubia (2000: 17), regulatory measures must be put in place to enforce these laws. Althaus (1997:8) states that most FGM legislation that is implemented in various countries lack enforcement mechanisms and regulatory measures and this makes enforcement ineffective. The enforcement of regulatory measures means creating enforcement mechanisms that will act as a deterrent to those involved in FGM. These mechanisms include sanctions such as fines, or imprisonment of the practitioners. Rahman and Toubia (2000: 17) stated further that the implementation of regulatory measures should not be limited to practitioners, but incorporate health facilities and the government. This is imperative, because health facilities may encourage the practice based on the notion that they may provide a healthy environment with little risk involved, without taking into consideration the rights of the women involved (Rahman and Toubia 2000: 18). In addition, a system of evaluation should be encouraged to regulate the activities or actions of the implementers.

According Rahman and Toubia (2000: 17-18), government should create structures to monitor and evaluate their efforts to eradicate the practice of FGM. This can be done by creating a conducive environment for NGOs to operate without any interference from the government. This is imperative because civil society groups such as NGOs are crucial in their ability to hold government accountable for its actions, which is a way of checking the government's effectiveness in the eradication of female genital mutilation (Rahman and Toubia 2000: 19). In the case of Nigeria, which is emerging from a repressive military past, there remains a need for the state to create an enabling environment for civil society organizations to thrive, so that instead of a relation of adversary and confrontation, the

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relation between the state and civil society would be one of solidarity and co-operation to pursue and maintain common goals and values necessary for the common good of society.

Regulatory measures tend to be ineffective when implemented without ensuring that the target groups are involved in the policy process. According to Rahman and Toubia (2000: 19), policy measures must ensure that regulatory measures are complemented with participatory mechanisms. Althaus (1997:8) points out that legislation and regulations tend to succeed in areas where the practice is limited to a small number, but in places where the prevalence is high, enforcement measures alone may be ineffective. Toubia (1995: 45) states that "clear policy declarations by government and professional bodies are essential to send a strong message of disapproval, but if the majority of the society is still convinced that female genital mutilation serves the common good, legal sanctions that incriminate practitioners and families may be counterproductive." Rather, consultation and collaboration between implementers and target groups complemented with laws will be more effective (Toubia 1995:45). Therefore public participation is vital to ensure effective policies, that is, policies that reach their goals. The reason for incorporating participation in the policy process is that the implementation of regulations and enforcement of sanctions, without collaboration between implementers and practitioners, tends to drive the practice underground (Behrendt 2006: 30). Rasmussen (2006) investigated the conditions that ensure the successful implementation of FGM laws in Africa, The Middle East, Asia, South Pacific, Europe and the Americas, as well as the reasons for their failure. According to him, for FGM regulatory laws to succeed, the policy must comprise enforcement measures and collaboration with the community (Rasmussen 2006: 47). He recommended that the government creates structures that ensure enforcement. These structures must ensure that the perpetuators are prosecuted and this must be complemented with collaboration, which includes community awareness, collective decision-making and communication among different stakeholders (Rasmussen 2006: 47- 48).

To sum up, for FGM legislation to be effective it must comprise legal measures, regulatory measures and policy measures, which should be participatory (Rasmussen 2006). The findings of implementing female genital mutilation legislation in Nigeria show that effective implementation of social regulatory policies require a multidimensional approach, which

entails public participation, active networks and collaboration with relevant stakeholders in civil society and the right combination of policy measures and instruments. Also relevant in this regard is capacity-building and development. Nigeria can perhaps learn from Burkina Faso, in terms of developing institutional capacity (manpower) and providing needed resources to effectively implement FGM legislation. This can include training and retraining the police and magistrates and allocating adequate funds to meet the infrastructural challenges of implementing FGM legislation.

Finally, this study has argued that the challenges of FGM legislation in Nigeria are rooted in the complex political context of policy-making in Nigeria. It concludes that consolidating democracy to foster public participation in policy-making, governance and development planning is the key to successful implementation of social regulatory policy in Nigeria. Civil society has an important role to play in this equation. Also, to maximize the value of civil society operations in the policy process, it is necessary for the government to create an environment conducive for civil society to thrive.

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APPENDIX: MAP OF NIGERIA WITH STATES