



## **Criminalizing Female Genital Mutilation Under The Cameroonian Criminal Law**

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### **Abstract**

*This paper succinctly brings out the development, justifications and ramifications of FGM. Provisions of the Cameroon Penal Code (CPC) proscribing FGM are short of complications and essential elements of FGM despite the inherent violation of human rights by the practice. The Code has not specifically condemned FGM but criminalizes genital mutilation in general. This creates ambiguity as to whether male and female circumcisions are prohibited. The article however evince that FGM is a core issue contemplated in the Penal Code. However, to what extent does the Code enhance the rights of victims through the punishment of FGM? The examination of legal documents suggests that there is deficiency in the law on FGM. This article advance recommendations that can ameliorate the right of victims through systematic punishment of criminals.*

**Keywords:** Criminalizing, Female Genital Mutilation, Criminal Law, Cameroon, Criminal Justice

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### **Introduction**

The central location of Cameroon between countries like Chad, Central Africa,<sup>4</sup>Nigeria (prevalence rate of 35.8 %) and Equatorial Guinea (prevalence rate 96. 9%)<sup>5</sup> with escalating rates

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of FGM and the presence of over 250 ethnic groups in Cameroon with differing cultures exasperate the conduct of FGM in the country. The National Commission on Human Rights and Freedoms on the 6<sup>th</sup> February 2021 during the occasion of the celebration of the International Day of Zero Tolerance of FGM tagged “No Excuse for Inaction even in the Covid-9 Context, Unite Fund and Act to End FGM” revealed the prevalence rate of more than 20% in all the 10 regions of Cameroon.<sup>6</sup>

Different types of FGM like Clitoridectomy, Excision, Infibulation and the unclassified are perpetrated.<sup>7</sup> FGM is the complete or partial removal or alteration of the external genitalia for non- medical reasons.<sup>8</sup> It is an offence which involves the act of mutilating the genitals of a woman and has proven to be deleterious.<sup>9</sup> The World Health Organization (WHO) reported that it is a deeply rooted historical, cultural and religious tradition that has been the subject of considerable debate.<sup>10</sup> The origin of FGM is traceable to Egypt where it was practiced 5000 years ago. Its global nature is due to the migration to other parts of the world.<sup>11</sup>

Over 100 million females of all ages in Africa are victims of FGM.<sup>12</sup> FGM is common in isolated parts of Europe, America, Middle East and Asia.<sup>13</sup> Approximately 100-140 million women are living with the effects of FGM worldwide with Africa hosting about 92 million.<sup>14</sup> It is performed

<sup>5</sup>M.E. Kindzeka, “Cameroon says Female Genital Mutilation Resurfacing because of Covid-19, Other Crisis”, CRTV, 10:00 AM News, 07/02/2021.

<sup>6</sup>J.M. Kabila, “Statement by the National Commission on Human Rights and Freedoms to Mark the International Day of Zero Tolerance to Female Genital Mutilation”, *National Commission on Human Rights and Freedoms*, (The Commission, 2021), pp.1-3.

<sup>7</sup>Clitoridectomy refers to the partial or total removal of the clitoris with the body of the clitoris remaining intact. Excision constitutes the partial or total removal of the clitoris and the labia minora (the inner and outer lips). Infibulation is the removal of part or all of the external genitalia followed by the narrowing of the vaginal opening about the size of a matchstick for the flow of urine and menstrual blood. Unclassified refers to any form of harm perpetrated against the female genitalia for nonmedical purposes like pricking, piercing, scraping and burning of the genital organ.

<sup>8</sup>WHO, *Eliminating Female Genital Mutilation: An Interagency Statement*, (Geneva: World Health Organization, 2008), pp.60.

<sup>9</sup>A.S. Hornby, *Oxford Advanced Learner’s Dictionary*, 6<sup>th</sup> Ed., (Oxford University Press, 2001), pp.773.

<sup>10</sup>WHO, *Care of Girls and Women Living with Female Genital Mutilation: A Clinical Handbook*, Geneva (@World Health Organization, 2018), pp.15.

<sup>11</sup>U. Elchalal, B. Ben-Ami, Gillis, R.A. Brzezinski, “Ritualistic female genital mutilation: Current Status and Future Outlook”, *ObstetGynecolSurv*, 52 (10), (1997), (1997), pp. 643–651.

<sup>12</sup>H. Lightfoot-Klern, “Prisoners of Ritual: An Odyssey into Female Genital Circumcision in AFRIC”, (1989), pp. 27-31.

<sup>13</sup>WHO, *WHO Guidelines on the Health Complications from Female Genital Mutilation*, (accessed 15<sup>th</sup> July 2018).

<sup>14</sup><https://www.who.int/en/news-room/fact-sheets/detail/>(accessed February 15, 2019).

at times before the 5<sup>th</sup> anniversary of the girl child, between 5 and 14 years, before marriage,<sup>15</sup> immediately after the death and before burial for her to be accepted by ancestors.<sup>16</sup> More than 2-3 million girls are at risk of being mutilated in the next decade as Covid-19 pandemic lockdowns disrupts human right programs to eradicate FGM.<sup>17</sup>

Justifications like the respect of tradition, protection of cultural heritage, passage into adulthood, fertility, avoidance of ostracism and social stigma, cleanliness, chastity, fidelity, virginity, religious loyalty, sexual pleasure, family honour, pressure to marry, economic and social security are advanced for its practice.<sup>18</sup> The United Nations and African Union conventions postulate that FGM breeds gender inequality, threatens life and endangers the health and reproduction rights of victims.<sup>19</sup>

Complications like bleeding, divorce, painful sexual intercourse, shock, haemorrhage, death, genital scarring, infertility, psychological trauma, HIV/AIDS and hepatitis B infection, chlamydia, gonorrhoea and syphilis, perinatal complications, neonatal death, prolonged labour and a host of other short and long term complications arise from the practice.<sup>20</sup>

<sup>15</sup>M.A. Ako, P. Akweongo, "The Limited Effectiveness of Legislation against Female Genital Mutilation and the Role of Community Beliefs in the Upper East Region, Ghana", *Reproductive Health Matters*, 17(34), 2009, pp.47-54.

<sup>16</sup>E.A. Gifford, "The Courage to Blaspheme: Confronting Barriers to Resisting Female Genital Mutilation", 4 *UCLA Women's L.J.* 329, 332 (1994), pp. 332-33.

<sup>17</sup>N. Kanem (UNFPA Executive Director), H. Fore (UNICEF Executive Director), *2 Million Additional Cases of Female Genital Mutilation likely to Occur Over Next Decade Due To COVID-19*, (Statement on the International Day of Zero Tolerance for Female Genital Mutilation, 2021), pp.1.

<sup>18</sup>V.P. Ngambouk, "Gendered Identity and Anti-Female Genital Cutting (FGC) Activism among the Ejaghams, Cameroon", *Arts and Social Science Journal*, Vol, 2010: ASSJ-14, (2010), pp.1-16.

<sup>19</sup>Arts 2(a), (e) & (f) of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), adopted December 18, 1979, 1249 U.N.T.S. 14 (entry into force September 3, 1981), CEDAW General Recommendations No. 14: Female Circumcision, A/45/38 (ninth session, 1990), No. 19, "Violence against Women", Eleventh Session, 1992 (A/47/38), No. 24: Women and Health, A/54/38/Rev.1, 1999. Article 2 of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), adopted and opened for signature, ratification and accession by the General Assembly Resolution 39/46 of 10<sup>th</sup> December 1984 (entry into force 26<sup>th</sup> June 1987). Articles 2 & 6 of the Convention on the Rights of the Child, adopted November 20, 1989, G.A. Res. 44/25, U.N. GAOR, 44<sup>th</sup> session, Supp. No. 49, U.N. Doc. A/44/49 reprinted in 30 I.L.M. 1448, (entry into force September 2, 1990). Articles 2(1), 5 & 6 of the Protocol to the African Charter on Human and People's Right of Women in African (Maputo Protocol), Adopted by the 2<sup>nd</sup> Ordinary Session of the Assembly of the African Union on the 11<sup>th</sup> July 2003. Articles 1, 5(3) & 16 of the African Charter on Rights and Welfare of the Child 1990 (the African's Children Charter), OAU Doc. CAB/LEG/24.9/49 (1990).

<sup>20</sup>M.M. Amin, S. Rasheed, E. Salem, "Lower Urinary Tract Symptoms Following Female Genital Mutilation", *International Journal Gynaecol Obstet*, 123, (2013), pp. 21-23.

### **Examining the Concept of Female Genital Mutilation as a Crime**

FGM is criminalized because of human rights violation.<sup>21</sup> The CPC does not define a crime but a crime is an act or omission which renders the person doing the act or making the omission liable to punishment by the law.<sup>22</sup> Any act amounts to a crime provided it is recognized and punished by the criminal law of the state.<sup>23</sup> The principle of legality of crimes Latinized as “*nullum crimen sine poena sine lege*” is adumbrated by section 17 of Law No 2016/007 of 12<sup>th</sup> July 2016 relating to the Penal Code of Cameroon “no penalty or measure may be imposed unless provided by law, and except in respect of an offence lawfully defined”.

The law thus conveys the right and duty to provide legal texts disallowing crimes and sanctions to the legislator.<sup>24</sup> The CPC is applicable in time since it warns criminals before harm. The principle of non-retrospection in the punishment of FGM is also enunciated in Section 3 of the CPC<sup>25</sup> and in the preamble of the Constitution.<sup>26</sup> The law governs only future offenses<sup>27</sup> but retrospection is permitted where the new law provides for more severe sanctions or where the old law provides for less severe sanctions.<sup>28</sup>

Section 1(1) of the CPC stipulates that all persons are subject to the criminal law. According to Section 21 of the CPC, crimes are classified based on their gravity and nature. Regarding the gravity of crimes, they are categorized into felonies, misdemeanors and simple offenses. A felony is a crime punishable with a death penalty or an imprisonment or loss of liberty for a maximum duration of more than ten (10) years.

A misdemeanor on the other hand denotes a crime punishable with imprisonment or loss of liberty and or with a fine, where the loss of liberty may be more than 10 days and less than 10

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<sup>21</sup> K. Hughes, “The Criminalization of Female Genital Mutilation in the United States, *Journal of Law and Policy*, vol. 4, issue 1 (1995), pp.321-370.

<sup>22</sup>Section 2 of the Nigerian Criminal Code 1916.

<sup>23</sup>J.N. Ebi, *The Law and Practice of Sale of Land in Cameroon*, (The University of Bamenda Press, 2020), pp.219.

<sup>24</sup>Article 26 of Law No.96-06 of 18<sup>th</sup> January 1996 to amend the Constitution of 2<sup>nd</sup> June 1972.

<sup>25</sup> No criminal law shall apply to acts or omissions committed before its coming into force or in respect of which judgment has not been delivered before its repeal or expiry.

<sup>26</sup>See the preamble of the 1996 Cameroon Constitution.

<sup>27</sup>Section 6 is to the effect that any penalty or preventive measure shall cease to be enforceable: (a) from the moment when the act or omission in respect of which it was imposed is no longer an offense, (b) on the abolition of the penalty or measure generally.

<sup>28</sup>Section 4 (1) of the CPC.

years and or a fine of more than 25000frs and a simple offense is acrimie punishable with imprisonment for up to 10 days or with a fine of up to 25000frs. It is obvious that sanctions are used as a measuring rod to decipher the types of crimes.

### **The Need of Assessing the various Elements of Female Genital Mutilation in Aspect of a Crime**

Crimes generally have two ingredients namely the material and mental elements summed up by the Latin maxim “actus non facitreum, nisi mens sit rea”.<sup>29</sup>FGM is not an offense unless it is accompanied by a requisite guilty mind.<sup>30</sup>Section 74 (2) of the CPC provides “criminal responsibility shall lie on the person who intentionally commits each of the ingredient acts or omissions of an offense with the intention of causing the result which completes it”. Mensrea is ascribed against parties to FGM since they intentionally commit it disregarding the consequences.

Complications and crimes emanating from FGM are not voiced under provisions of the law. This is not consistent with human right instruments requiring states parties to enact legislation criminalizing FGM with exactitude.<sup>31</sup> It becomes cumbersome to decipher the state of the CPC when dealing with FGM. However, a close study of the Penal Code unveils legal grounds for holding perpetrators responsible.

### **The Situation of Grievous Harm**

The mutilation of genital organs inflicts grievous injuries on victims. This can result to partial or total destruction of genitals and sexual morphology thus undermining the importance of female reproductive organs. Section 277 of the CPC is to the effect that “whoever permanently deprives another of the use of the whole or of any part of any member; organ or sense shall be punished with imprisonment for from 10 to 20 years.

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<sup>29</sup> Parliament of New South Wales Legislation Review Committee, “Strict and Absolute Liability”, *Discussion Paper No. 2, (2006)*, pp.1-23.

<sup>30</sup> P.P. Sahoo, “Principle of Strict Liability in Criminal Law: An Indian Perspective”, *Indian Journal of Applied Research, volume 8, issue 8, (2018)*, pp.46-57.

<sup>31</sup> Thomson Reuters Foundation, *Cameroon: The Law and FGM*, (28 Toomany FGM, Let’s end it, 2018, pp.1-7.

The sanctions demonstrate that this crime is a felony. The Code does not exhibit any material element. It therefore suffices that any act performed on the organ involving the application of force is sufficient to constitute the material element. The intentional use of force and interference against victims of FGM proves mensrea.

### **Assault Occasioning Death**

Assault occasioning death known as manslaughter may arise if the victim dies because of FGM. Section 278 (1) of the CPC provides “whoever by force or interference unintentionally causes another's death shall be punished with imprisonment for from 6 to 20years.”It further provides under Sub- Section 2 that punishment will be aggravated to life imprisonment if the use of force is followed by any act of witchcraft, divination or magic leading to death of the victim. This crime can be treated as a misdemeanor and a felony. The material element is the death of the victim while the mental element is the use of force.

### **Assault on Children**

Sections 277, 278, 279 and 338 have a nexus with section 350 of the CPC dealing with assault on children. Section 350 (1) provides “the penalties prescribed by section 275<sup>32</sup> on the one hand and by Sections 277 and 278 on the other shall become death and imprisonment for life respectively where the offences are committed against a person under 15years of age, and the penalties prescribed by Sections 279(1), 280 and 281 shall be doubled. (2) Upon conviction for misdemeanor under this section, the Court may order the forfeitures described in Section 30 of this Code.

Implying that anybody who murder, causes grievous harm or assault occasioning death on a girl less than 15years because of FGM shall be imprisoned for life or sentence to death. Also, anybody who causes simple harm on a girl less than 15 years due to FGM shall be imprisoned

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<sup>32</sup> According to Section 275 of the CPC, anybody who causes another's death shall be punished with life imprisonment.

from 1 year 2 months to 10 years or with a fine of CFAF 10 000 to 400 000 instead of 6 months to 5 years or fine of CFAF 5 000 to 200 000.

More so, anybody who causes slight harm to a girl less than 15 years due to FGM shall be imprisoned from 12 days to 4 years or with a fine of CFAF 10 000 to 100 000 or with both such imprisonment and fine instead of 6 days to 2 years imprisonment and CFAF 5000 to 50 000. The crime is a misdemeanor and a felony. The act of the offender that tends to create physical impact on the body of the victim forms the material element and the application of force if intentional is sufficient to establish mensrea.

### **Assault Occasioning Grievous Harm**

FGM may result to irreversible damage called assault occasioning grievous harm. Section 279 (1) of the CPC prescribes that any deployment of force or interference on anybody that deprives another of the use of the whole or part of the organ or sense is punishable with imprisonment of 5 to 10 years and if need be with a fine of CFAF 5000 to 500 000. Section 279(2) of the CPC further spells out that if the deprivation is done through the use of explosive, toxic, weapons, magic or witchcraft, divination, the imprisonment shall be 5 to 15 years. The offense can be treated as a misdemeanor or a felony. The material element is the deprivation of a whole or part of the organ or sense while mensrea is demonstrated when force is applied.

### **Assault on Woman with Child**

FGM performed on a woman with child or pregnant woman to avert the birth of a stubborn child is criminal.<sup>33</sup> According to Section 338 of the CPC, “whoever by force used against a woman with child or against a child being born causes, intentionally or unintentionally the death or permanent incapacity of the child shall be punished with imprisonment for form 5 to 10 years and with fine of from CFAF 100 000 to 2 000 000.

The offense is a misdemeanor. The material element is the death of the child, incapacity of the child and incapacity of the mother. The mental element arises from the application of force. The

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<sup>33</sup>M.A. Ako, P. Akweongo, “The Limited Effectiveness of Legislation against Female Genital Mutilation and the Role of Community Beliefs in the Upper East Region, Ghana”, *opt. cit*, pp.47-54.

mutilation of an uncircumcised mother and the long awaited girl child creates “double tragedy for victims”. The dilemma rests on whether sanctions can be doubled by the judge when the mother and the newborn girl are mutilated.

### **The Presence of Infanticide, a Common Plague affecting Children in Cameroon**

Infanticide is different from ordinary murder because prove that a child actually lived is required. A child is born alive if it can be proven that the child breathed.<sup>34</sup> The death of infants resulting from FGM is common.<sup>35</sup> Section 340 of the CPC provides “the punishment for murder within the meaning of Sections 275 or 276 or for abetment of such murder, by a mother of her child one month of birth shall be reduced to imprisonment for from 5 to 10 years provided that nothing in this section shall reduce the penalty as against any other offender or accessory.” From the sanctions, the crime is a misdemeanor. The material element is death of the victim while the mental element is the act of preparation and premeditation.

### **Simple and Slight Harms**

Simple and slight harms erupt from FGM and affect victims and their working lives. Section 280 of the CPC addressing simple harm reads “whoever by force or interference causes intentionally or unintentionally to another any sickness or inability to work lasting more than 30 days shall be punished with imprisonment for from 6 months to 5 years or with fine of from CFAF 5000 to 200 000 or with both such imprisonment and fine.”

Section 281 of the CPC concerning slight harm provides “whoever by force or interference causes intentionally or unintentionally to another any sickness or inability to work lasting for more than 8 days and up to 30 days shall be punished with imprisonment for from 6 days to 2 years or with fine of from CFAF 5000 to 50 000, or with both such imprisonment and fine.” Both crimes are misdemeanors. The material element is the harm or inability while the use of force and interference constitute the mental element.

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<sup>34</sup>B.C Umerah, *Medical Practice and Law in Nigeria*, 1<sup>st</sup> ed., (Longman Nigeria Limited, 1989), pp.67.

<sup>35</sup>V.P. Ngambouk, “Gendered Identity and Anti-Female Genital Cutting (FGC) Activism among the Ejaghams, Cameroon”, *opt. cit*, pp.1-16.

**False Arrest**

It depicts detention carried out and executed by unauthorized officers or quakes through unlawful means. The crime of false arrest also called malicious detention is vital in the study of FGM because the victim is immobilized and left on the same spot until the injury is healed. The right to movement is denied during the procedure. Section 291(1) of the CPC provides “whoever in any manner deprives another of his liberty shall be punished with imprisonment for from 5 to 10 years and with fine of from CFAF 20 000 to 1 000 000”.

The crime is a misdemeanor. The material element of this offense is deduced from the arrest. Deprivation of liberty validates mensrea. Circumstances that aggravate this offense are: the loss of liberty exceeding a period of more than thirty days, detention accompanied by physical and mental torture and the arrest is done with forge documents from public authority or of a uniform unlawfully worn, or pretending an appointment not held. The sanctions for aggravated circumstances are imprisonment for from 10 to 20 years.<sup>36</sup>The presence of aggravated circumstances makes it a felony.

**The Notion and Complexities of Torture**

The preamble of the 1996 Cameroonian Constitution safeguards women and girls from torture. It provides that everyone has the right to life, to physical and moral integrity and to humane treatment in all circumstances. It further reiterates that “no person shall be harassed on grounds of his origin, religious, philosophical opinions or beliefs, subject to respect for public policy.”<sup>37</sup> This imputes the responsibility to protect individuals from unlawful encroachment of protected right and the obligation not to torture women or girls under the auspices of customs.

Section 277(3) of the CPC define torture as “ any act by which acute pain or suffering, either physical, mental or psychological, is intentionally inflicted to a person by a public servant, a traditional leader or any other person acting in the course of duties either at his own instigation

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<sup>36</sup>Section 291 (2) (a), (b) and (c) of the CPC.

<sup>37</sup>Preamble of the 1996 Cameroon Constitution.

or with his express or implied consent, in order to obtain information or confessions from that person or from another, to punish her for an act that she or any other person has committed, or is presumed to have committed, to intimidate or overawe her or any other person, or for any other motive based on any discrimination”.<sup>38</sup>

The word "torture" so defined does not apply to pain or suffering resulting from legitimate punishments,<sup>39</sup> inherent to or caused by them.<sup>40</sup> The material element of the crime can be verbal insults or injuries. The mental element is exacted from the application of force on victims. The CPC provides that whoever causes death of another person through torture, shall be punished with life imprisonment,<sup>41</sup> where torture leads to deprivation of the use of all part of the limb, organ or sense, the punishment shall be 10 to 20 years imprisonment.<sup>42</sup> If torture results to illness and incapacity to work for more than 30 days, the punishment shall be 5 to 10 years imprisonment and a fine of CFAF 1 000 000.

More still, if illness, incapacity, pain or mental or psychological injury develop because of torture and last for a period less than thirty days, the punishment shall be 2 to 5 years and a fine of CFAF 50 000 to 200 000.<sup>43</sup> Torture is a felony and a misdemeanor. The material element can be verbal insults or injuries sustained because of torture while the mental element is exacted from the application of force or intimidation of the victims. Torture is allowed provided the intent is to enable obedience to the commands of a public authority provided reasonable force is used.<sup>44</sup>

It occurs due to mutilation of the clitoris, removal of the labia minora or majora, stitching and tightening. Section 277 (2) of the CPC provides “whoever, in any manner whatsoever, interferes with an organ in order to inhibit its normal growth shall be punished with imprisonment for from 6 months to 5 years and with fine of from CFAF 100 000 to 1 000 000 or with both such

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<sup>38</sup>See also article 1 of CAT opt. cit.

<sup>39</sup>D.G. Cracknell, *Contract, Tort and Remedies*, 2<sup>nd</sup> ed., (Old Bailey Press, 2001), p. 66. See Section 60 of the Police and Criminal Evidence Act 1984.

<sup>40</sup>Section 277 (3) of the CPC.

<sup>41</sup>Section 277 (1) of the CPC.

<sup>42</sup>Section 277 (3) of the CPC.

<sup>43</sup>Section 277 (4) of the CPC.

<sup>44</sup>Section 58 of the Criminal Law 1967 of England.

imprisonment and fine.” This crime is a misdemeanor. The material element involves changes on the organ and the mental element is interference with the organ.

### **The Presence of Conditional Threat**

Conditional threats are meted on recalcitrant victims by parents and parents are also threaten by community secret cults. Cultural practices are full of mysterious evil threats and seclusion. Threats prevent victims from engaging legal action against violence.<sup>45</sup> Section 302 (1) of the CPC provides “whoever threatens another, expressly or by implication with force or other interference in case of his failure to comply with any order or condition shall be punished with imprisonment for from 10 days to 6 months and with fine of from CFAF 5000 to 25 000.

It is a misdemeanor whose material element is verbal or written threats and mensrea is the use of force. A critical examination of these crimes reveals the possibilities of attributing criminal liability on perpetrators on several counts. If thus followed, the punishment will be unbearable for criminals. The legislator to this effect spells out in Section 51 of the CPC that where an accused is charge on multiple counts; they shall be served sanctions for the most grievous offense and with the highest quantum of punishment.<sup>46</sup>

### **Assessing the Necessity and Affection of Partiesin aspect of Female Genital Mutilation**

Criminals likely to answer the charges whether in respect of a simple offense, misdemeanor or a felony must appear in court and the court must give reasons for their guilt.<sup>47</sup> Once found guilty,

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<sup>45</sup>A report to the Committee against Torture, *Violence against Women in Cameroon*, (10 Reports, 2003), pp.131.

<sup>46</sup> Section 51 dealing with concurrent sentences lays down that: (1) where any person is convicted on several charges of felony or misdemeanour tried jointly, or of simple offence tried with either, only one sentence may be passed, not exceeding the maximum prescribed for the most severely punished offence. (2) Where any person is convicted on several such charges tried separately, any sentence later passed may be ordered to run concurrently with, or in the case of fines to be merged in, any earlier sentence; and where it is not so ordered, the aggregate of the sentences may not exceed the maximum prescribed for the most severely punished offence. (3) In the calculation of such aggregate an earlier sentence reduced by remission shall be counted at its reduced and not at its original length. (4) No sentence may be ordered to run concurrently with, or to be merged in, a sentence which had already become final before the act or omission in respect of which the second sentence is passed. (5) In respect of simple offences sentences shall not be concurrent or merged unless the court shall so order. (6) Subject to any contrary order of the court, several sentences other than to principal penalties shall be consecutive as between themselves.

<sup>47</sup>Section 9 (3) of the Cameroon Criminal Procedure Code.

they are compelled to pay the price for violating protected rights.<sup>48</sup> FGM is practice by moral people seeking the best for themselves or victims in the name of love.<sup>49</sup>

### Circumcisers

They are primary offenders in FGM. The Red Cross organization in Cameroon noted in 2012 that, FGM is carried out in a barbarous manner by traditional midwives with no medical training.<sup>50</sup> Without the use of anesthesia,<sup>51</sup> traditional midwives mutilate women and girls.<sup>52</sup> The United States Embassy in Yaounde in February 2012 noted that FGM is performed by untrained practitioners employing instruments like broken glass, tin lids, scissors, or unsterilized razors.<sup>53</sup> These instruments are potential ways of transmitting STDs and HIV-AIDS to others in the society.<sup>54</sup> In urban areas the act is conducted in hospitals or clinics by health officers.<sup>55</sup> In 2018, about 4% of FGM in Cameroon was performed by health officers.<sup>56</sup> Medically perpetuated FGM is a precaution to harmful effects.<sup>57</sup>

Medical practitioners earn money from the services rendered. According to the United States National Library of Medicine, more than 1.3% of FGM in Cameroon are performed in hospitals.<sup>58</sup> Medicalization of the practice is common in Egypt.<sup>59</sup> The WHO strongly cautions health professionals to desist from carrying out all manner of procedures of FGM.<sup>60</sup> Many organizations of the UN endorse the statement of the WHO that FGM is an unjustifiable harmful

<sup>48</sup> P.P. Sahoo, "Principle of Strict Liability in Criminal Law: An Indian Perspective", *Indian Journal of Applied Research*, volume 8, issue 8, (2018), pp.46-57.

<sup>49</sup> G. Mackie, *Female Genital Cutting: The Beginning of the End*, in B. Shell-Duncan and Y. Hernlund (eds) *Female Circumcision in Africa: Culture, Controversy and Change*, (Colorado, Lynne Rienner Publishers, 2000), pp.280.

<sup>50</sup> International Federation of Red Cross and Red Crescent Societies-The Cameroon Red Cross establishes a strategy for the fight against female genital mutilation, 16 August 2006 <http://www.ifrc.org/en/news-and-media/news-stories/africa/cameroon/the-cameroon-red-cross-establishes-a-strategy-for-the-fight-against-female-genital-mutilation/> (accessed: 6 January 2018).

<sup>51</sup> J. Wellerstein "In the Name of Tradition: Eradicating the Harmful Traditional Practice of Female Genital Mutilation", *22 Loyola of Los Angeles International and Comparative Law Review* 9, (1999), pp.121-125.

<sup>52</sup> [www.ghanaweb.com/GhanaHomepage/NewsArchives\\_\(Accessed on 1<sup>st</sup> December 2020\)](http://www.ghanaweb.com/GhanaHomepage/NewsArchives_(Accessed%20on%201st%20December%202020).).

<sup>53</sup> UNICEF, *legislative reform to support the abandonment of female genital mutilation/cutting*, opt. cit, pp.29.

<sup>54</sup> U.S Embassy Yaounde Cameroon - Former DCM Lisa Peterson Op-Ed on Female Genital Mutilation, February 2012 <https://yaounde.usembassy.gov/fgmdcm.html>. (accessed 6 January 2021)

<sup>55</sup> J.A. Platti, "Female Circumcision: Religious Practice V. Human Rights Violation", *Rutgers Journal of Law and Religion*, (2002), pp.1-30.

<sup>56</sup> Thomson Reuters Foundation, *Cameroon: The Law and FGM*, opt. cit, 2018, pp.1-7.

<sup>57</sup> <https://www.ncbi.nlm.nih.gov/pubmed/12157971>. (Accessed 6 January 2017).

<sup>58</sup> A. Gomes, "Female Genital Mutilation: Human Rights, Prevention and the Nursing Role", *Forensic Nurse Examiner-albinomanuelgomes@gmail.com*, pp.2-16.

<sup>59</sup> F. El-Zanaty, A.Way and O.R.C Macro Calverton "Egypt Demographic Health Survey 2005", *Final Report. Maryland, USA: Measure DHS*, (2006).

<sup>60</sup> WHO, "Female Genital Mutilation", *Evidence brief*, (2019), pp.1-3.

practice which must be eliminated.<sup>61</sup> It has risen as most parents continue to allow medical professionals to circumcise their children to reduce the harm. But obtaining reliable data is always difficult due to fear of punishment.<sup>62</sup>

### **The Position and Role of the Accomplice**

Accomplice liability reflects a situation whereby someone other than the primary perpetrator is held liable for an offense.<sup>63</sup> When the law addresses crimes committed by people acting in concerted action, value is given to justice in the society. Parents, relatives and states parties can be prosecuted as accomplices. An accomplice is considered as one who aids or abets the commission of FGM.

Section 97 of the CPC provides (1) an accessory shall mean a person who abets the commission of a felony or misdemeanour: (a) who orders or in any manner causes the commission of an act or omission so defined, or (b) who aids or facilitates the preparation or the commission of such an offence. Attempts to abet FGM are punishable as abetment.<sup>64</sup> To be convicted, accomplices must embrace the crime by knowingly doing something towards its realization, associate themselves with the crime, seek by action the accomplishment of FGM and the act must have succeeded.<sup>65</sup>

### **Examining Parents and Family Members as Accomplices**

Parents and relatives hardly conduct the procedure themselves but they implore the services of circumcisers. They act as accomplices to the crime because of the joint intention to mutilate and committing the actions that facilitate FGM. Good and rigid laws take into consideration the participation of parents in FGM.<sup>66</sup> Though the penalization of parents may result to additional

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<sup>61</sup> ORCRH, UNAIDS, UNDP, UNECA, UNESCO, UNFPA, UNHCR, UNICEF, UNIFEM, and WHO, “*Eliminating Female Genital Mutilation: An Interagency Statement*”, (World Health Organization: Geneva, 2008).

<sup>62</sup> United Nations, General Assembly, *Good Practices and Major Challenges in Preventing and Eliminating Female Genital Mutilation*, Report of the Office of the United Nations High Commissioner for Human Rights, Agenda items 2 and 3, (2015), pp.1-17.

<sup>63</sup> N. Almendares, D. Landa, *Joint Intention and Accomplice Liability*, (2017), pp.3.

<sup>64</sup>Section 97 (2) of the CPC.

<sup>65</sup> C. Doyle, “Accomplices, Aiding and Abetting, and the Like: An Overview of 18 U.S.C. & 2”, *Congressional Research Service*, 2020, pp.1-11.

<sup>66</sup>Equality now and no Peace without Justice, *Study of Female Genital Mutilation-related Laws in Selected African Union Member States*, (Report Submitted to UNICEF, 2009).

undeserved hardship for girls who have been victimized, the society fears the crimes of several people more than the crimes of individuals.

The CPC does not punish accomplices differently, Section 98 provides: (1) subject to any special provision of law, a co-offender and an accessory shall be punished in like manner as a sole or principal offender. The law however previews distinct sanctions in cases where there are circumstances validating criminal irresponsibility, diminishing irresponsibility and aggravated sanctions of offenders or accomplices.<sup>67</sup>

### **The state and Agents of the State as Accomplices**

Questions like why and how a sovereign state laden with administrative and judicial machineries to protect citizens, can act as an accomplice exists? Under the CPC, there exists no penal provision ascribing criminal responsibility of the state. Failure of the state to criminalize, investigate and punish cases of alleged FGM is a breach of social contract she has with citizens.

Recommendation No. 2 of the UN Human Rights Committee on Torture provides:

The Committee has made it clear that where state authorities or others acting in official capacity or under colour of law, know or have reasonable grounds to believe that acts of torture or ill-treatment are being committed by non-state officials or private actors and they fail to exercise due diligence to prevent, investigate, prosecute and punish such non-state officials or private actors consistently with the Convention, the state bears responsibility and its officials should be considered as authors, accomplices or otherwise responsible under the Convention for consenting to or acquiescing in such impermissible acts...<sup>68</sup>

### **The Cameroon Penal Code and it's Punishment for Female Genital Mutilation**

Section 277 (1) of the CPC provides (1) whoever mutilates the genital organ of a person, by any means whatsoever, shall be punished with the penalties provided for in Section 277 above: (2) The penalty shall be imprisonment for life where: (a) the offender habitually carries out such practice or does so for commercial purposes; (b) It leads to the death of the victim, (3) the Court

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<sup>67</sup>Section 98 reads: (2) Circumstances resulting in the irresponsibility of any person, or in his exemption from punishment or reduction or increase of his punishment, shall, where personal, affect only the person concerned. (3) Circumstances other than personal shall affect any co-offender or accessory who could have foreseen them.

<sup>68</sup>Paragraph 18 of UN General Recommendation No.2: Implementation of article 2 by state parties. CAT/C/GC/2, January 24<sup>th</sup> 2008.

may also impose the forfeitures provided for in Sections 19 and 30 of this Code, (4) the provisions of sub-sections 1 and 2 above shall not apply where the acts were performed by a qualified person and in order to save life.

Sections 277 and 277(1) of the CPC applies “mutatis mutandis”. The former reads “whoever permanently deprives another of the use of the whole or of any part of any member; organ or sense shall be punished with imprisonment for from 10 (ten) to 20 (twenty) years”. The predetermination of punishment affirms the cliché “to before warn is to before harm”.<sup>69</sup> The legal provisions illustrates the general nature of the law<sup>70</sup> for instance “whoever mutilates the genital organ of a person...” it affirms section 1(1) of the CPC which stipulates that all persons are subject to the criminal law.

The notion of equality of all before the law is enunciated.<sup>71</sup> It thus prevents offenders from raising their personality in issue. The denomination “genital mutilation” implies that both male and female circumcisions are punishable. This is plausible because male circumcision is not compulsory and individuals should be given allowance whether to perform. However, male circumcision takes place every day but nobody complains. The lawmaker is conversant with the persistence and performance of FGM in various ways.

The consequences of a criminal trial like seizure of liberty and wealth of the accused, and damage of reputation are not too favourable and unwelcomed the accused and their relatives. But punishment is important because it protects human rights, deters FGM<sup>72</sup> as was stated in *R v. Radich*,<sup>73</sup> reforms the behaviour of convicted criminals<sup>74</sup> via the stimulation of the mental and emotional development<sup>75</sup> and protects vulnerable members of the society.<sup>76</sup>

<sup>69</sup> P.P. Sahoo, “Principle of Strict Liability in Criminal Law: An Indian Perspective”, *opt. cit.*, pp.46-57.

<sup>70</sup> Glanville, *The Definition of Crime*, *opt. cit.*, pp.130

<sup>71</sup> O.M., Agbor, *Good Faith in Life Assurance Contracts in Cameroon*, (Doctorate Thesis, University of Douala, 2018), pp. 245.

<sup>72</sup> E. Sowe, P. Akintunde, et al, “Justification for Punishment in Criminal Law”, *Nigerian Law School in Abuja* pp.1-6.

<sup>73</sup> (1954) NZLR 86.

<sup>74</sup> Article 1 and 2 of Decree No. 2018/719 of 20<sup>th</sup> November 2018 to Establish the National Disarmament, Demobilization and Reintegration Committee in Cameroon.

<sup>75</sup> Peace and Security Report, “Cameroon Conflict Insight”, *Institute for Peace and Security Studies, vol.1, (2020)*, pp.1-18.

### **The Presence of Imprisonment**

Imprisonment according to section 24 of the CPC is loss of liberty during which the offender can be subjected to hard labour except there is contrary provision in the judgment. Hard labour is a way of making the offender pay back for the wrong as well as diminishing his strength. It is temporal or permanent both for natural and legal persons who are involved in circumcision. Imprisonment as principal punishment against hospitals or clinics entails the closure of establishment.<sup>77</sup>

Section 25 (3) of the CPC promotes temporary shutdown of legal entities for a given period which cannot be suspended and may not exceed the duration of 5 years. The term imprisonment ipso facto signifies that the offender is forfeited the right of movement. However, there are certain moments criminals are led out of the prison to attend court sessions, discuss with visitors or legal representatives and carry out laborious tasks. There is no liberty per se because inmates are perpetually under the supervision of judicial police officers.

Offenders however retain this capacity only in their own families.<sup>78</sup> Courts are reluctant to deprive children of parental care via imprisonment. Because of the notion of the best interest of children.<sup>79</sup> This is not favourable for the elimination of FGM. Custody of victims can be taken by governmental institutions responsible for the care of vulnerable people.

### **Death Sentence**

Death sentence is the act of depriving natural persons the right to life either by firing scoots, hanging, electrocution or stoning. Section 22 (1), (2), (3) and (4) of the CPC requires that death penalty be executed only after due submission to the president of the Republic for his decision on presidential pardon. No death sentence may be executed until the president has signed his

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<sup>76</sup>J. P. Mallor, A. J. Barnes, T. Bowers, M. J. Phillips, A. W. Langvardt, *Business Law and the Regulatory Environment: Concepts and Cases*, (Irwin/McGraw-Hill, 1998), pp.80.

<sup>77</sup>Section 18 (b) of the CPC.

<sup>78</sup>Section 30 (3) of the CPC.

<sup>79</sup> UNFPA Regional Office for West and Central Africa, *Analysis of Legal Frameworks on Female Genital Mutilation in Selected Countries in West Africa*, United Nations Population Fund, pp.58.

decision not to pardon, no woman with child may be executed until after she has delivered the baby and no execution may take place on Sundays or public holidays.<sup>80</sup>

Death sentence for legal entities denotes the dissolution of the corporation. Liquidation brings the entity to an end and its property administered for the benefit of its members and creditors. There are many ways of winding up a corporation like compulsory and voluntary liquidations.<sup>81</sup> The CPC envisage the cessation of an establishment under section 25 (2).<sup>82</sup> The decision to dissolve a legal entity is subject to scrutiny from the competent court for winding up at the behest of the legal department.<sup>83</sup> Compulsory liquidation is executed by the court on account of corporate criminal activities.<sup>84</sup>

### **The Position of Fines**

Fines according to section 25 (1) of the CPC are financial sanctions whereby the offender whether a natural or legal personality is compelled to pay a fixed sum of money to the public treasury as specified by the law. The money paid is to cover up for stamp duties and other court processes. This section provides that fines meted against corporations are five times greater than those levied against individuals who mutilate. This means that guilty corporations are fined CFAF 1 000 000 to CFAF 500 000 000. The reason lies on the high level of respect, the public image of the state, the likelihood of corporations charging substantial sums to clients and disregard for public order.

### **Forfeitures of Custody Rights by Parents**

Forfeitures are accessory sanctions and involves the loss of rights over somebody or property and any other without compensation as a result of a wrongful act or failure to perform obligations. Section 277 (1[3]) provides “the court may also impose the forfeitures provided in sections 19 and 30 of this Code”. Forfeitures are discretionary because they are left to the whims and caprices of the judge depending on the facts of each case. The use of accessory sanctions in addition to principal sanctions is effectual in the punishment of serious offenses.

<sup>80</sup> E. Mallorquí-Ruscalleda, “The Elements of a Crime: A Brief Study on Actus Reus and Mens Rea”, *Revista Internacional d’Humanitats*, 49, (2020), pp.69-76.

<sup>81</sup> P.K. Fogam, *Cameroon Commercial Law*, (Shaneson C.I. Limited, 1989), pp.206.

<sup>82</sup> Section 25 (2[2]) of the CPC.

<sup>83</sup> Section 25 (2[3]) of the CPC.

<sup>84</sup> N. Bourne, *Principles of Company Law*, 3<sup>rd</sup> ed., (Cavendish Publishing Limited, London-Sydney), pp.275.

Section 19 (a) and 30 (1-6) of the Code, lists accessory penalties for natural persons thus: publication of judgment, closure of an establishment and confiscation, removal and exclusion from any public service and employment or office; incapacity to be a juror, assessor, expert referee or sworn expert; incapacity to be guardian, curator, deputy guardian or committee, save of the offender's own children, or member of a family council; prohibition on wearing any decoration; prohibition on serving in the armed forces and prohibition on keeping a school, on teaching in any educational establishment, and in general on holding any post connected with the education or care of children.<sup>85</sup>

For legal bodies they include: ban for a specified period of time on direct or indirect exercise of any or all of its activities, placement under judicial supervision for a specified period of time, closure of establishments or branches having served in the commission of offences for a specified period of time, publication or media broadcast of the judgment and any other accessory penalties provided for by special instruments. Section 121 of the CPC specifies that the duration of forfeitures may be reduced but not below certain limits depending on the case.

### **The Application of Alternative Penalties**

Alternative sanctions are prescribed by Section 19 of the CPC. The rationale underlying the applicability of alternative sanctions is evident under Sections 26(1) and 26 (1[1]) of the CPC stating that they are applicable in lieu of imprisonments not more than 2 years and offenses punishable with only fines. The rules governing alternative sentences are to be laid down by a separate legal text.<sup>86</sup>The first sanction is community service levied for the benefit of public corporations offering public services. Section 26 (2) of the CPC provides that the court may enter this judgment to substitute imprisonment and fines after a satisfactory conviction of the criminal. The sanctions are pronounce at the judge's discretion. Such services are free of charge and the period cannot be less than 200 hours or greater than 240 hours. It is possible to suspend the

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<sup>85</sup>Section 30 (1), (2), (3) (4), (5) (6) of the CPC.

<sup>86</sup>Section 26 (2) of the CPC.

sanctions.<sup>87</sup> The Code is not clear on whether community service applies against natural and legal person and whether private individuals can be required to offer these services the same way as corporations given that they differ in strength, and lastly, if the court can order a public corporation involved in crime to provide services for the benefit of another public corporation. The last is reparatory sanctions intended to indemnify victims.<sup>88</sup> Indemnity is the act of compensating the victim of the injury proportionate to the loss suffered.<sup>89</sup> Section 26 (1[1]) of the CPC emphasizes that criminals must be compelled to indemnify the damage caused to victims.<sup>90</sup> The amount is to be determined by the trial court upon entry of the charge of guilty, and the sentence may not be suspended.

The provision of reparatory sanctions is criticized because the margins of compensation are not defined. This can lead to discriminatory sanctions by different courts faced with similar cases. Another weakness is that Section 26 (3) excludes persons who violate the law on arms, who commit sexual offenses and those who cause bodily injuries from reparatory damages. Does it mean victims of FGM cannot be compensated? The response is in the negative because victims can seek redress under special instruments dealing with bodily injuries or fall back to civil law remedies.

### **Circumstances that Aggravates the Punishment of Parties**

Section 277 (1[2]) of the CPC spelled out that the punishment for FGM will be life imprisonment if there is proof of habitual practice, if FGM is being commercialized and if death ensues from it. Habitual practice means continuous and notorious performance of FGM or quest for the services of circumcisers in disregard of the law. Section 88 (1) and (2) of the CPC defines habitual circumcisers as recidivists. These are offenders convicted for the same or multiple criminal offenses, usually similar in nature. Commercialized FGM takes place when natural persons and legal entities perform FGM upon compensation or other benefits.<sup>91</sup>

<sup>87</sup>Section 26 (3) and (4) of the CPC.

<sup>88</sup> O. Yerokun, *Insurance Law in Nigeria*, 1<sup>st</sup> ed., (Princeton Publishing Company, 2013), pp.28.

<sup>89</sup>J.L.P. Rawlings, R. Merkin, *Insurance Law: Doctrines and Principles*, 3<sup>rd</sup> ed., (Oxford and Portland, Oregon, 2011), pp.349.

<sup>90</sup>J.O. Orukwu, *Insurance Law and Practice in Nigeria*, 3<sup>rd</sup> ed., (Heinemann Educational Books (Nigeria) PLC, 1978), pp.54-55.

<sup>91</sup>K.J. Kwame, *Commercial Manual*, revised ed., (Trans-African Publishers, P.O Box 1237, Limbe, 2004), pp.17.

Natural persons are human beings whereas legal entities like hospitals have existence, rights and duties at law.<sup>92</sup>When they exchange services for money or gifts, what they receive is considered the value of the service rendered.<sup>93</sup>The involvement of money, goods and services reflect business transactions that satisfies human needs and wants.<sup>94</sup>The trade of FGM remains an illegal business between parties because it is not lawfully founded.<sup>95</sup>

Illegality stems from the fact that authorization is not given for such businesses. In *Barrister Bonu Innocent v. Cameroon Printing and Publishing Company Private Company*<sup>96</sup> the Appeal Court decided that the registration of a business under the Organization for the Harmonization of Business Law in Africa (OHADA) grants it legal protection.<sup>97</sup>Since there is no registration for this kind of business, it is a crime to conduct it and derive financial gains.

Circumcisers argue that they are obliged to circumcise girls and women because they are no jobs and the money gotten from it is their salary compared to the salaries of civil servant.<sup>98</sup> Since the salaries of civil servant cannot be forfeited, circumcisers should not be denied their source of revenue. This argument does not justify the illegal nature of FGM.<sup>99</sup>At times death is the immediate complication of FGM.<sup>100</sup> Courts are irritated by the fact that the right to life is denied

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<sup>92</sup> K. Smith, D.J. Keenan, *Company Law*, 3<sup>rd</sup> ed., (Pitman Publishing Limited, 1976), pp.1.

<sup>93</sup>P.K. Fogam, *Cameroon Commercial Law*, opt. cit, pp.104.

<sup>94</sup>L.R. Bitel, R.S. Burke, C.P. Bilbrey, *Business in Action: An Introduction to Business*, 3<sup>rd</sup> ed., (GLENCOE, Macmillan /Mcgraw-Hill, 1996), pp.7.

<sup>95</sup>S.T. Tabe, *Understanding OHADA Company Law in Cameroon*, (ULTRANE, Bafoussam, 2018), pp. 127.

<sup>96</sup>Suit No. CASWP/73/2007.

<sup>97</sup> The French acronym is: Organization pour l'Harmonization en Afrique du Droit des Affaires. The OHADA treaty entered into force on the 19<sup>th</sup> September 1995 in countries that ratified it. The purpose of the treaty is encourage foreign investments and economic development in the 16 member states.

<sup>98</sup> Office on Women's Health, *Female Genital Mutilation or Cutting*, department of Health and Human Services, USA, (2018) pp.1-4.

<sup>99</sup> V.N Pemunta, "Resistance to the Eradication of Female Circumcision and the Political Economy of Underdevelopment in Cameroon", *Gender Technology and Development*, SAGE Publications, Los Angeles, London, New Delhi, Singapore, Washington DC 16(2), (2012), pp. 223-245.

<sup>100</sup>Office on Women's Health, *Female Genital Mutilation or Cutting*, department of Health and Human Services, USA, (2018) pp.1-4.

victims of FGM. In other countries like Guinea and Guinea-Bissau, sanctions are also aggravated when FGM leads to the disability of victims.<sup>101</sup>

### **Factors that Negates the Punishment of Parties**

No criminal responsibility will arise for FGM performed by a qualified person and in necessity to save life. The word “qualified person” refers to somebody having potentials that fit a person for some function, office or the like. A qualified person is the holder of a professional certificate, having extensive knowledge and experience in a particular field and is capable of design, analysis, evaluation and specifications in the subject, work, project or product.<sup>102</sup> In criminal law, a “qualified person” depicts a professional health expert duly certified to practice medicine who under the state of necessity is legally authorized to perform FGM. Anything short of these requirements is illegal.<sup>103</sup>

Necessity to save life delineates two defenses to a criminal allegation that is the choice of evils doctrine (whereby injurious behaviour proscribed by criminal law may be justified if its performance prevents greater harm to the actor, others or property) and the basis of compulsion. The Old Testament story of Jonah 1:4-5 illustrates a state of necessity where goods were jettisoned out of the ship to halt shipwreck.<sup>104</sup> Necessity knows no law and it makes what is unlawful to become lawful as was decided by Justice Hobart in *Moore v. Hussey*.<sup>105</sup> Section 86 of the CPC provides:

No criminal responsibility shall arise from an infringement of a right of property, not justified as lawful defense under Section 84, but inflicted in order to protect the person acting or any other person, or his or another's property, from a grave and imminent danger not otherwise avoidable. Provided that the means of protection is proportionate to the harm.

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<sup>101</sup> UNFPA Regional Office for West and Central Africa, *Analysis of Legal Frameworks on Female Genital Mutilation in Selected Countries in West Africa*, opt. cit, pp. 41.

<sup>102</sup> M. J. Johnston, “Who is Qualified”, *National Electrical Contractors Association*, (2015), pp.1-3.

<sup>103</sup> Section 2 of Law No.90-036 of 10<sup>th</sup> August 1990 relating to the Organization and Practice of Medicine in Cameroon.

<sup>104</sup> The Holy Bible, *King James Version*, opt. cit, pp.708.

<sup>105</sup> (1609) Hob. 96, 80 E.R. 246.

### Limitation of Criminal Action

Prosecuting FGM in Cameroon has territorial, time and status limitations. Section 640 (a) of the Cameroon Criminal Procedure Code (CCPC) defining territorial limit provides “an offense is committed in Cameroon if any of the ingredients of the offense was perpetuated in the territory”.<sup>106</sup> Cameroon’s territory includes the land surface, territorial waters and the airspace. Criminal action can take place within the territory of Cameroon if the offender is found in Cameroon and the offense was committed in the territory.<sup>107</sup> Section 11 of the CPC gives the judge of the place of arrest power to adjudicate on FGM.

Sections 636 of the CCPC and 10 of the CPC afford exceptional situations in which criminal action can take place in Cameroon despite the performance of FGM abroad. This is when the offender is a Cameroonian but resident abroad and FGM were partly committed in Cameroon. The principle of extraterritoriality applies in the prosecution of FGM in Cameroon.<sup>108</sup> Limitation by time refers to when the offense must be prosecuted. The Latin maxim “nemo tempus occurrit regis” meaning “time does not run against the Crown” is a general rule in English law.<sup>109</sup> Criminal action will not be time barred except provided by the law. Section 65 (2), (4) and (5) of the CCPC provides that felonies, misdemeanors and simple offenses must be prosecuted within 10 years, 3 years and 1 year respectively. Prescription for sentences on felonies is 20 years. Section 65 (6) of the CCPC provides that in case of prosecution of several and related offenses, the time limit shall be that of the crime with the most severe punishment. Time limits can be suspended by de jure or de facto bars.<sup>110</sup> Limitation by status absolves the head of state,<sup>111</sup> members of the parliament (not absolute immunity) diplomats and the judges from criminal prosecution.<sup>112</sup>

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<sup>106</sup> Law No. 2005 of 27<sup>th</sup> July 2005 on the Criminal Procedure Code of Cameroon.

<sup>107</sup> Section 7 (1) of the CPC.

<sup>108</sup> E. Leye, J. Deblonde, *A Comparative Analysis of the Different Legal Approaches towards Female Genital Mutilation in the 15 EU Member States, and the Respective Judicial Outcomes in Belgium, France, Spain, Sweden And the United Kingdom*, (ICRH Publications N° 8, Gent, Belgium, 2004), pp.12.

<sup>109</sup> E. Sone, N.T. Fuashi, “Lecture Notes on Criminal Procedure”, University of Dschang, 2011-2012, (unpublished).

<sup>110</sup> Section 68 (1) and (3) of the CCPC.

<sup>111</sup> Section 53 (3) of Law No. 2008/001 of 14<sup>th</sup> April 2008 amending and supplementing certain provisions of Law No. 96/06 of 18<sup>th</sup> January 1996

<sup>112</sup> Section 306 (3), (4) and (5) of the CPC.

**The Way Forward and Future Perspectives**

Lawmakers should tackle FGM with a specific statute delineating all facets of FGM. A comprehensive list of offenders and co-offenders should be outlined, modalities for compensating victims of FGM and amounts for personal injuries should be explicit and clarity on male circumcision should be given. Prosecution and the punishment of offenders should not be the same given that the procedure is performed in different degrees resulting to varying consequences. Investigative measures such as police patrols in rural areas should be adopted to detect cases of FGM, victims and threats of FGM.

Deeper dialogue on FGM between the government, Civil Society Organizations and the masses should be done. Custodians of customs should be empowered to sanction circumcisers. Screening should be conducted to facilitate the identification of victims and responsible circumcisers. Health care providers should conduct weekly or monthly seminars on the ethical and legal frameworks governing their profession in order to avert medicalized FGM. Free counseling in health services during prenatal and postnatal sessions can adequately inform women of the dangers of FGM. Modern technological developers should be encouraged to create a website and an application for FGM in equipments like computers and phones so that everyone may easily access information against FGM.

Awareness raising and campaigns that aim to eradicate FGM should have long term policies. A strict adherence to education of girls and women on their rights should be done at all levels. Enforcement of the rights of women and girls is indispensable for stamping out FGM. Cooperation with other countries should be fortified. The government should establish hotlines in all regions, divisions, sub divisions, districts and remote areas to pave victims' access to the forces of law and order. Enough funding should be allocated for gender policies and activities in order to attain the termination of FGM.

**Conclusion**

The institutionalization of criminal sanctions against FGM is beneficial to the society. The crime of FGM is not specifically outlined in the provisions of the CPC instead the word "genital mutilation" as used. The guilt of parties charge for committing FGM is established by basic

ingredients of an offense underscored in this paper. This article via statutorily provisions of the Penal Code, brainstormed on the typology of crimes occasioned by FGM. Various forms of sanctions meted against these parties are examined but care is taken to enumerate circumstances that negate the punishment of offenders. Emphasis is placed on the fact that criminal action against FGM takes into consideration certain limits. Recommendations for the rapid termination of the practice are concisely indicated.

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