

# Criminalization of “Genital Mutilation” in Cameroon: The Inadequacy of the Criminal Law

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doi:10.63593/LE.2788-7049.2025.08.005

## Abstract

This paper addresses the inadequacies of the criminal law in eradicating FGM in Cameroon. It adopts a qualitative methodology grounded in doctrinal studies and based on the interpretation of primary and secondary data. FGM is entrenched in some regions of Cameroon and has met with a variety of responses from the state ranging from sensitization campaigns to outright criminalization. “Genital mutilation” was explicitly penalized under section 277-1 following the amendment of the Penal Code in 2019. The euphoria that greeted this initiative is questionable as the implementation of the provision has largely been ineffective. The complexity of the practice, the absence of political will on the part of the state, and the non-proactive approach of the criminal law are among the factors that have rendered ineffective the criminal law. Consequently, incidences of the practice increased during the era of the COVID-19 pandemic with devastating effects on victims. The eradication of the practice requires an approach that goes beyond the purview of the criminal law, which in its current form, remains a weak link in the fight against the scourge.

**Keywords:** Cameroon, criminal law, custom, female genital mutilation, and penal code

## 1. Introduction

Female Genital Mutilation (FGM) was explicitly criminalized in Cameroon following the amendment of the Penal Code in 2019.<sup>1</sup> This amendment was provoked by pressure from women rights groups. The argument that informed, and eventually won, the debate was that although FGM was among conducts implicitly outlawed under several general-worded provisions of the code, an explicit provision was imperative if the practice is to be effectively eradicated. The novelty of section 277-1 gives credence to this argument.

The criminalization of FGM poses tensions between tradition on the one hand and human rights and the law on the other. Custom is entrenched in Cameroonian law, playing an important role in its conceptualization. The Constitution, 1996,<sup>2</sup> complemented by subsequent laws in force, recognizes custom as a form of law. Customs such as polygamy, primogeniture, witchcraft beliefs, levirate, and restorative justice, etc. have found expressions in the law; some have been incorporated into the corpus of municipal law whereas others, including FGM, are outlawed for being non-justiciability.

FGM deals with various traditional practices that involve the cutting and removal of all or part of the female genitalia. Its prevalence rate in the Southwest, East, and Far North regions is difficult to ascertain. It is believed

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<sup>1</sup> The Penal Code, 1966, was amended in 2019 by Law No. 2019/020 of 24 December 2019 to amend and supplement some provisions of Law No. 2016/9 of 12 July 2016 relating to the Penal Code.

<sup>2</sup> Law No. 96-6 of 18 January 1996 to amend the Constitution of 2 June 1972.

that approximately 20% of women in those regions have undergone the practice.<sup>1</sup> Numerous reasons have been advanced to justify the practice. Nonetheless, in as much as it violates the human rights of victims it is also inconsistent with the law.

Numerous attempts have been made to eradicate FGM with minimal success. Most of these involve public sensitization campaigns by government agencies and local NGO's, supported by their Western allies. To this end, a National Action Plan was adopted by the government to combat FGM in 2011. Similarly, local committees in areas where the practice was most prevalent were established by the Ministries of Social Affairs and of Women's Empowerment and the Family to address it through sensitization and education programmes.<sup>2</sup> A collaboration agreement was also signed in June 2013 with the Council of Imams and Muslim Dignitaries of Cameroon (CIDIMUC) to fight against FGM, forced or early marriages and other forms of violence.<sup>3</sup>

These initiatives are complemented by legislation. Hitherto, FGM was among conducts sanctioned implicitly under several general-worded provisions of the Penal Code, including section 277. The ineffectiveness of these provisions in eradicating FGM was partly blamed on their non-specificity, an argument that prevailed with the amendment of the Penal Code culminating in the enactment of section 277-1, a novel provision that explicitly criminalizes the practice. Although lauded by women's rights groups, evidence suggests that section 277-1 is also unlikely to have far-reaching effects. The strong belief-system underpinning the practice, amid its complexity, are among the factors that have rendered its criminalization ineffective.

This paper appraises the effectiveness of the criminal law in eradicating FGM in Cameroon. It unravels the tensions the custom evokes with human rights and the law, revealing some of the challenges inherent in its criminalization. It appeals to an alternative approach that goes beyond the purview of the criminal law. The paper adopts a qualitative methodology based on doctrinal research and the interpretation of primary and secondary data. Primary data consulted included legislative and human rights texts whereas textbooks, journal articles, newspaper reports etc. were consulted as secondary data. The paper is divided into three sections. Section 1 provides an overview of FGM, highlighting the rationales and effects on women. Section 2 documents the conflict FGM evokes with the law and human rights, and Section 3 discusses the challenges in the criminalization of FGM, proposing measures aimed at combatting the scourge beyond the scope of the criminal law.

## 2. Section 1: Overview and Effects of FGM

FGM is notorious in some regions of Cameroon, performed in various ways by practitioners, often elderly women, on women of various ages, producing far reaching consequences on the victims.

### 2.1 Overview of the Practice of FGM

According to the WHO, UNICEF and UNFPA "FGM involves the partial or total removal of the external female genitalia or other injury to the female genital organs for non-medical reasons."<sup>4</sup> The practice is termed variously: Female Circumcision or Female Genital Cutting, propositions that denounce the use of the objectionable term "mutilation" as practitioners deny mutilating their victims in the performance of the practice. Four main types of FGM are recognized: excision of the clitoral hood with or without removal of parts or the entire clitoris (clitoridectomy); excision of the clitoris together with parts or all of the labia minora; excision of parts or the whole of the clitoris, labia minora, and labia majora and stitching or narrowing of the introitus (infibulation); and other harmful procedures to the female genitalia for non-medical purposes including pricking, piercing, incising, scraping and cauterization and even hymenectomy.<sup>5</sup>

Women, and mostly female children, are reportedly subjected to the ordeal in isolated areas of Cameroon. In the

<sup>1</sup> Trent R. Nelson, Female Genital Mutilation in Cameroon, *The Borgen Report* (17 of June 2021), available at: Female Genital Mutilation in Cameroon - The Borgen Project (Accessed on 28<sup>th</sup> of August, 2022).

<sup>2</sup> US Department of State, (2015). Cameroon 2015 Human Rights Report, p. 30, available at <https://www.state.gov/documents/organization/252873.pdf> (accessed 25<sup>th</sup> of August 2022).

<sup>3</sup> Committee on the Rights of the Child, (2015). Consideration of reports submitted by States parties under article 44 of the Convention: Combined third to fifth periodic reports of States parties due in 2015, Cameroon, p. 25, available at [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/CMR/3-5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC/C/CMR/3-5&Lang=en) (accessed 25<sup>th</sup> of August 2022)

<sup>4</sup> WHO, UNICEF, UNFPA, Female Genital Mutilation. A Joint WHO/UNICEF/UNFPA Statement. Geneva: WHO (1997). Also see World Health Organization, Female Genital Mutilation, 21 January 2022, available at: Female genital mutilation (who.int). (Accessed on 28<sup>th</sup> of May, 2022).

<sup>5</sup> World Health Organization, Female Genital Mutilation (21 January 2022), available at Female genital mutilation (who.int) (accessed on 28 of May, 2022).

Southwest region, it is prevalent in Manyu Division among the Ejagham tribe<sup>1</sup> whereas in the Far North it is prevalent in the Logone, and Chari divisions, where it is notorious with the Haoussas, and Arapshouas tribes.<sup>2</sup> Incidences have also been reported in urban centers, including Yaoundé and Douala where the prevalence rate is below 1%.<sup>3</sup>

FGM is embraced by practitioners of all the major faiths in the country including Christianity, Islam, and traditional worshippers. It is performed at varying age groups, from the first week of life, during infancy, before puberty, before the first childbirth and other periods in the woman's life dependent on the location and reason underlying the practice.<sup>4</sup> Rudimentary and unhygienic instruments are often used in performing it such as razor blades, unsterilized sharpened kitchen knives, scissors, glass, sharpened rocks, and fingernails,<sup>5</sup> often without the use of anesthesia. Rarely do health professionals perform the procedures. Four main rationales have been advanced for the practice: psychosexual, sociologic, religious, and hygienic reasons.<sup>6</sup>

## 2.2 Effects of FGM on Victims

FGM has serious negative social and medical effects on victims including ostracization, absence of sexual satisfaction, urinary and vaginal infections, chronic pains, infertility, among others. The practice aims, among others, at reducing promiscuity and ensuring virginity before marriage, an objective fulfilled through reduction in sexual satisfaction of victims.<sup>7</sup> Circumcised women have reported low sexual desires and the level of sexual dissatisfaction among them depend on the types of circumcision performed.<sup>8</sup> With infibulation, the husbands' inability to penetrate the vagina can result to anal intercourse or even using the urethral meatus as an opening.<sup>9</sup>

FGM produces psychological consequences such as post-traumatic stress disorder, anxiety disorders, panic disorders, inhibition, depression, and suppression of feeling and thinking and sometimes attempted suicide.<sup>10</sup> These effects are due to psychological trauma of the painful procedure, sense of humiliation and betrayal by parents, use of physical force by those performing the procedure, negative genital image, lack of sense of ownership of their bodies, devastating sexual life, infertility and vesicovaginal fistulae. Infibulation causes more distressing psychosocial complications in relation to sexual problems and infertility with a documented infertility rate of 30%. These, among others, account for 16.3% of divorce and marital discord in a study among circumcised women.<sup>11</sup>

FGM also produces adverse effects on the reproductive health of victims. Infertility may result from the

<sup>1</sup> Sianga Mutula, Ngambouk Vitalis Pemuta, *et al.*, (2021). The Fight Against Female Genital Mutilation/Cutting among the Ejaghams of Cameroon: Kinks in the Legal Approach and Implications for Public Health Practice. *International Journal of Sexual Health*, 34(1), 160.

<sup>2</sup> Trent R. Nelson, Female Genital Mutilation in Cameroon, *The Borgen Report* (17 of June 2021), available at: Female Genital Mutilation in Cameroon — The Borgen Project (Accessed on 28<sup>th</sup> of August, 2022).

<sup>3</sup> CEDAW — NGO Background Information, (February 2014), available at [http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CMR/INT\\_CEDAW\\_NGO\\_CM\\_16206\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/CMR/INT_CEDAW_NGO_CM_16206_E.pdf). (Accessed on 3 April, 2021).

<sup>4</sup> United Nations Children's Fund, Female genital mutilation/cutting: A global concern. (2016), available at: [https://www.unicef.org/media/files/FGMC\\_2016\\_brochure\\_final\\_UNICEF\\_SPREAD.pdf](https://www.unicef.org/media/files/FGMC_2016_brochure_final_UNICEF_SPREAD.pdf) (accessed on 28th of August, 2022).

<sup>5</sup> Michael Miller M, Moneti F, Lewnes A, *et al.*, (2005). *Changing a harmful social convention: female genital mutilation/cutting*. UNICEF Innocent Research Centre, Florence, Italy.

<sup>6</sup> Dokenoo Efua, (1996). *Cutting the Rose: Female Genital Mutilation: The Practice and Its Prevention*. University of California: Minority Rights Publications.

<sup>7</sup> Abdel-Azim S., (2013). Psychosocial and sexual aspects of female circumcision. *African Journal of Urology*, 19(3), 141-142.

<sup>8</sup> Hassan I MA, Helmy YA, Fathalla MM, *et al.*, (2010). Prevalence and characteristics of female sexual dysfunction in a sample of women from Upper Egypt. *International Journal of Gynecology & Obstetrics*, 108(3), 219.

<sup>9</sup> Rushwan H., (2013). Female genital mutilation: A tragedy for women's reproductive health. *African Journal of Urology*, 19(3), 130; EL-Defrawi MH, Lotfy G, Dandash KF, *et al.*, (2001). Female genital mutilation and its psychosexual impact. *J Sex Marital Ther*, 27(5), 465-73.

<sup>10</sup> World Health Organization (WHO), Health risks of female genital mutilation (FGM), available at [www.who.int/reproductivehealth/topics/fgm/health\\_consequences\\_fgm/en/](http://www.who.int/reproductivehealth/topics/fgm/health_consequences_fgm/en/) (Accessed on 13th April, 2021).

<sup>11</sup> Sharfi AR, Elmegbou MA, Abdella AA., (2013). The continuing challenge of female genital mutilation in Sudan. *African Journal of Urology*, 19, 136-140.

practices and during pregnancy victims have higher risks of obstetric complications.<sup>1</sup> Circumcised women have increased risks of adverse events during labour and delivery with negative effects on their newborn babies. These risks include postpartum hemorrhage, episiotomies, perineal lacerations, prolonged second stage of labour, operative vaginal delivery, caesarean deliveries, prolonged maternal hospital stay, infant resuscitation, stillbirth, or neonatal death.<sup>2</sup> Neonatal death rate increases for women who have undergone the practices with an estimate of additional one to two babies per 100 deliveries dying because of it.<sup>3</sup>

The immediate complications associated with FGM include excruciating pain (when anesthetic agents are not used), hemorrhage, shock, acute urinary retention, injury to adjacent tissues and even death.<sup>4</sup> For those who survive, medium term complications are infections of the reproductive tract following use of unsterilized or poorly sterilized instruments, and raw wound surfaces. This may cause tetanus infection, hepatitis and human immune deficiency viruses and abscess formation.<sup>5</sup>

### 3. Section 2: FGM and the Law in Cameroon

FGM is often justified by practitioners on traditional beliefs that reinforce gender stereotypes and bias against women. Practitioners assume it is beneficial to victims, an assumption validated by unconscionable prejudices against women. FGM is inconsistent with the law, and it is an affront to human rights.

#### 3.1 FGM in Cameroon: A Clash Between Tradition, Human Rights, and the Law

By virtue of article 45 of the Constitution, duly ratified international treaties have direct effect and applicability in Cameroon. Most of these conventions, supplemented by municipal legislation, frown on FGM. The Constitution and the Penal Code are the main municipal legislative instruments aimed at eradicating FGM.

FGM cannot be isolated from the traditional beliefs that underpin the practices. In some communities, the status of womanhood is achieved upon undergoing the practice, an important rite of passage, making it highly desirable for them.<sup>6</sup> It also leads to the elimination of sexual ambiguity and improves genital esthetics, which some communities, perceived to be dirty, ugly,<sup>7</sup> and a source of enthralling temptation. The female child feels satisfied despite the pain, of being made clean and marriageable like every other female in the community rather than becoming despised and made the target of ridicule with no one in the community to marry her.

Studies reveal that the Ejaghams of the Southwest region believe that the clitoris was responsible for sexual immorality among women and that its removal helped women to have self-control over their sexual desires. Victims were therefore expected to live a dignified sexual life devoid of promiscuity, and FGM played a pivotal role in ensuring this. According to the Ejaghams, FGM is a feminist symbol of cultural identity which distinguish Ejagham women from all others and it is therefore practiced imbuing tribal pride and dignity among women.<sup>8</sup> Traditionalists hold that, against the background of the HIV/Aids pandemic, non-circumcision of women has given rise to a free fall in moral values as epitomized by multiple sexual encounters. FGM is

<sup>1</sup> Agugua, N., and Egwuatu, V., (1982). Female circumcision: Management of urinary complications. *Journal of Tropical Paediatrics*, 28(5), 248-252.

<sup>2</sup> Johnson EB, Reed SD, Hitti J, et al., (2005). Increased risk of adverse pregnancy outcome among Somali immigrants in Washington state. *American Journal of Obstetrics & Gynecology*, 193, 475, 481.

<sup>3</sup> Johnson EB, Reed SD, Hitti J, et al., (2005). Increased risk of adverse pregnancy outcome among Somali immigrants in Washington state. *American Journal of Obstetrics & Gynecology*, 193, 475, 481

<sup>4</sup> Marian A. H., (2014). Services for Women with Female Genital Mutilation in Christchurch: Perspectives of Women and Their Health Providers. Master's Dissertation, University of Canterbury, at page 11; Berg RC, Underland V, Odgaard-Jensen J, et al., (2014). Effects of female genital cutting on physical health outcomes: a systematic review and meta-analysis. *BMJ Open*, 4, 1-12.

<sup>5</sup> Marian A. H., (2014). Services for Women with Female Genital Mutilation in Christchurch: Perspectives of Women and Their Health Providers. Master's Dissertation, University of Canterbury, at page 11; Adekunle AO, Fakokunde FA, Odukogbe AA, et al., (1999). Female genital mutilation–post circumcision vulval complications in Nigerians. *J Obstet Gynaecol*, 19, 632-635.

<sup>6</sup> Anne M. Gibeau, (1998). Female Genital Mutilation: When a Cultural Practice generates Clinical and ethical Dilemmas. *JOGNN Clinical Issues*, 27(1), 85-91.

<sup>7</sup> Sianga Mutula, Ngambouk Vitalis Pemuta, et al, (2021). The Fight Against Female Genital Mutilation/Cutting among the Ejaghams of Cameroon: Kinks in the Legal Approach and Implications for Public Health Practice. *International Journal of Sexual Health*, 34(1), 160-168.

<sup>8</sup> Sianga Mutula, Ngambouk Vitalis Pemuta, et al, (2021). The Fight Against Female Genital Mutilation/Cutting among the Ejaghams of Cameroon: Kinks in the Legal Approach and Implications for Public Health Practice. *International Journal of Sexual Health*, 34(1), 160.

perceived as a useful native response to the ravages of the pandemic.<sup>1</sup>

FGM is inconsistent with the law and human rights. The preamble to the constitution alludes to several human rights principles. Article 45 incorporates ratified conventions into national law. The preamble alludes to the principles of equality and non-discrimination, the right to life, physical and moral integrity, and to humane treatment in all circumstances. It prohibits torture, cruel, and inhumane or degrading treatment, and protects the physical integrity of the person, provisions that implicitly denounced FGM. Some human rights treaties signed by Cameroon frown against FGM. The Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (the Maputo Protocol) calls on State Parties to prohibit all forms of harmful practices against women, including FGM, through legislative methods backed by sanctions.<sup>2</sup> It requires African states to play a proactive role to eliminate harmful traditions and other practices based on the ideal of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women.<sup>3</sup>

The General Recommendation No. 14 of the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW) calls on State Parties to "take appropriate and effective measures with a view of eradicating the practice of female circumcision."<sup>4</sup> In 2012, the United Nations General Assembly adopted resolution 67/146 on "intensifying global efforts for the elimination of FGMs" urging States to condemn all harmful practices that affect women and girls, in particular female genital mutilations, including enacting and enforcing legislation, to prohibit female genital mutilations and to protect women and girls from this form of violence.<sup>5</sup> This is reinforced by subsequent General Assembly resolutions 69/150 of 2014 and 71/168 of 2016 that emphasized that FGM is a human rights violation requiring stronger global efforts to end the practice. In 2012 the General Assembly dedicated February 6 as the International Day for Zero Tolerance for FGM with the aim to amplify and direct the efforts on the elimination of the practice.<sup>6</sup>

In 2014, the Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child adopted a Joint General Recommendation on Harmful Practices.<sup>7</sup> Both committees clarified the obligations of State Parties to the CEDAW and Convention on the Rights of the Child to adopt legislative, policy and other appropriate measures to ensure full compliance with their obligations under the conventions to eliminate harmful practices.

The Sustainable Development Goal 5 calls for the elimination of all harmful practices, such as FGM and forced marriage amongst others.<sup>8</sup> In March 2015, the Office of the United Nations High Commissioner for Human Rights issued the "report on good practices and major challenges in preventing and eliminating FGM" which emphasized that "states have an obligation to respect, protect and fulfil the right of women and girls to live free from female genital mutilation."<sup>9</sup> In July 2016, the United Nations Human Rights Council adopted a resolution on the elimination of FGM,<sup>10</sup> recognized as an act of violence against women and girls, and urged States to adopt national legislation prohibiting the practice.

In July 2017, the Committee on the Elimination of Discrimination Against Women adopted General

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<sup>1</sup> Vitalis Pemunta Ngambouk, (2010). Gendered Identity and Anti-Female Genital Cutting (FGC) Activism among the Ejaghams, Cameroon. *Arts and Social Sciences Journal*, 15(1), 6.

<sup>2</sup> Article 5(b) of the Protocol.

<sup>3</sup> Article 2(2) of the Protocol.

<sup>4</sup> Recommendation (a) of CEDAW General Recommendation No. 14: Female Circumcision

<sup>5</sup> Recommendation 1 of UN General Assembly Resolution 67/146 of 5 March 2013. Available online at: Refworld | Intensifying global efforts for the elimination of female genital mutilations: resolution / adopted by the General Assembly (accessed on 29<sup>th</sup> of August, 2022).

<sup>6</sup> WHO, The International Day of Zero Tolerance for Female Genital Mutilation (FGM), available at: The International Day of Zero Tolerance for Female Genital Mutilation (FGM) (who.int) (accessed on 29<sup>th</sup> of August, 2022).

<sup>7</sup> Committee on the Elimination of Discrimination Against Women and the Committee on the Rights of the Child, Joint general Recommendation No. 31 of the Committee on the Elimination of Discrimination Against Women/General Comment No. 18 of the Committee on the Rights of the Child on Harmful Practices, CEDAW/C/GC/31-CRC/C/GC/18, 14 November 2014, para. 2.

<sup>8</sup> Target 5.3 of the Sustainable Development Goals.

<sup>9</sup> United Nations Human Rights Council. Report of the Office of the United Nations High Commissioner for Human Rights, good practices, and major challenges in preventing and eliminating female genital mutilation, A/HRC/29/20, 27 March 2015. Available online at: OHCHR | Report on good practices and major challenges in preventing and eliminating female genital mutilation (Accessed on 29<sup>th</sup> of August, 2022).

<sup>10</sup> Resolution 32/21 on the Elimination of Female Genital Mutilation, A/HRC/RES/32/21, 19 July 2016. Available online at: Refworld | Elimination of female genital mutilation: resolution / adopted by the Human Rights Council (accessed on 29<sup>th</sup> of August, 2022).

Recommendation No. 35 on Gender-Based Violence Against Women, updating General Recommendation No. 19 of 1992. In this general recommendation, the Committee noted that the prohibition of gender-based violence against women has become a norm of customary international law. The Committee recommended that State Parties ensure that all forms of gender-based violence against women are criminalized, and to introduce or strengthen legal sanctions and civil remedies.<sup>1</sup>

Supplementing the Constitution, and read alongside international law and declarations, the Penal Code is the main municipal instrument expressly prohibiting FGM. Criminalizing FGM is not a new phenomenon. According to the World Bank's Compendium of International and National Legal Frameworks on FGM, 2018, about 60 countries have adopted laws that criminalize the practice, including 24 African countries.<sup>2</sup>

### 3.2 The Criminalization of FGM by the Penal Code

The Penal Code is the substantive law regulating criminal conducts in Cameroon. Prior to its amendment in 2019, several provisions of the code were interpreted as penalizing FGM, among which, is section 277. This provision, entitled "Grievous Harm," punishes "whoever permanently deprives another of the use of the whole or of any part of any member, organ, or sense... with imprisonment for from 10 (ten) to 20 (twenty) years." In the case of death of the victim, section 278(1) on "assault occasioning death" may be applicable. Where the victim is under the age of 15, section 350 on "Assault on Children," may become applicable and the punishments prescribed under sections 277 and 278(1) shall become death and imprisonment for life, respectively. These provisions, not specifically addressed to FGM, apply to all conducts, FGM inclusive, violating the physical integrity of the person leading to the deprivation of any bodily organ. Depending on the consequences of the conduct to the victim, any of these provisions could potentially be invoked against FGM.

With the amendment of the Penal Code,<sup>3</sup> FGM was specifically criminalized under section 277-1 which reads:

*(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 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. (5) Torture may not be justified by command of a superior or public authority. (6) The requirements provided in section 10(1) of this Code shall not be applicable to torture.*

Section 277-1 does not define genital mutilation *per se* but mentions only the material element of the offence, being the "mutilation of the genital organ of a person" performed by a non-qualified practitioner using all conceivable means. Therefore, any act of genital mutilation performed by a non-qualified person not predicated on saving the life of the victim is punishable under the provision. The use of the phrase "genital organ of a person" implies a gender-neutral victim, an inference reinforced by the title of the provision which reads "Genital Mutilation", leading to the logical conclusion that the provision punishes genital mutilation performed on both men and women. It is therefore as offensive to section 277-1 to mutilate the female genitalia as it is to circumcise the male genitalia by an unqualified practitioner. Nonetheless, it is often assumed that section 277-1 is more of a response against female genital mutilation which is more objectionable. Section 277-1 does not outlaw all forms of genital mutilation; indeed, genital mutilation performed by a "qualified person" for health reasons does not fall within the ambit of the provision. Certified medical practitioners may therefore perform FGM only on the purpose of saving the life of the victim, otherwise their action may offend against section

<sup>1</sup> Committee on the Elimination of Discrimination Against Women. General Recommendation No. 35 on Gender-Based Violence Against Women, updating General Recommendation No. 19, CEDAW/C/GC/35, 26 July 2017, available at: CEDAW/C/GC/35 (ohchr.org) (Accessed on 29<sup>th</sup> of August, 2022).

<sup>2</sup> Among the African countries that have criminalized the practice are Ghana (1994), Burkina Faso (1996), Ivory Coast (1998), Senegal (1999), Djibouti (1995), and Togo (1998). Zimbabwe, Uganda, South Sudan, Kenya, Guinea Bissau, Mozambique, The Gambia, and Cameroon have enacted laws that punish the practice of FGM/C, by either introducing new laws or amending existing ones. See Satang Nabanehl & Adamson S. Muula, (2019). Female genital mutilation/cutting in Africa: A complex legal and ethical landscape. *International Journal of Gynecology & Obstetrics*, 145(2), 139-257 at 254-255.

<sup>3</sup> Law No 2016/007 of 12 July 2016 and Decree No 2016/319 of 12 July 2016.

277-1.

The punishment for genital mutilation is provided under section 277 as “imprisonment for from 10 (ten) to 20 (twenty) years”. Section 277-1 cannot be read in isolation of section 277 which punishes “grievous harm”. Section 277-1(2) (a) & (b) provides for life imprisonment where the practitioner habitually performs the practice, does so for commercial reasons or it leads to the death of the victim. By imposing one of the severest of punishments in life imprisonment for practitioners who habitually performs FGM, and for those who engaged in it for commercial reasons, the criminal law adopts an uncompromising approach to curtailing the practice.

In addition to the pain of incarceration, practitioners may be subjected to forfeitures under sections 19 and 30 including removal and exclusion from any public service; incapacity to be a juror, assessor, expert referee or sworn expert; incapacity to be guardian, curator, etc.; 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 and care of children.

Subsection (5) identifies “genital mutilation” as a form of torture, which cannot be justified even where it is approved by a superior authority. The ‘superior order’ defense is inadmissible as justification for performing FGM. Subsection (6) alludes to section 10(1) that ascribes universal jurisdiction to the state to try felonies or misdemeanors committed abroad by Cameroonian nationals provided the conduct qualifies as a crime in the foreign jurisdiction where it was committed.

The prohibition against torture has attained *jus cogens* status under international law. Article 53 of the Vienna Convention on the Law of Treaties 1969 defines *jus cogens* as “a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.” Such norms qualify as obligation *erga omnes* owed by a state to itself and to the international community at large. Among these obligations are the prohibition of the use of force, of genocide, slavery, of gross violations of the right of people to self-determination, of racial discrimination, of crimes against humanity, and equally prohibition on torture.<sup>1</sup> As a peremptory norm, violations on the prohibition on the use of torture warrants the exercise by states of universal jurisdiction to arrest the conduct irrespective of jurisdiction. By qualifying FGM as torture, the criminal law also recognizes the conduct as an infringement of general international law, justifying the harshest of punishments.

Section 277-1 should be seen for what it is - an authoritative and coercive provision aimed at arresting “genital mutilation” through deterrence and retribution. Nonetheless, the reality on the ground suggests that the provision is yet to produce far-reaching consequences.

#### 4. Section 3: The Inadequacy of the Criminal Law to Combating FGM

The use of the criminal law providing for the severest of punishments, not excluding life imprisonment, remains the most draconian measure adopted to date to arresting FGM in Cameroon. One would have thought that deterrence and retribution would deter practitioners from further engaging in the conduct. Evidence on the ground suggests otherwise, making the criminal law an inadequate tool in the fight against the scourge. The ritualistic foundations that underpin the practice, the absence of a “victim” of the offence, and the lack of political will on the part of the state, are among factors that undermine the effective application of the criminal law, almost rendering section 277-1 a dead letter.

##### 4.1 The Ritualistic Foundations Underpinning the Practice

Although FGM is inconsistent with the law, it has shown resilience as its foundation is rooted in deep spiritual and ritualistic observances that have been handed down from generations to generations, reflecting the heartbeat of the community’s identity. Its eradication is liable to deprive the community of its cultural symbol thereby transforming it into something other than itself. In an ethnographical study of the Ejaghams of the Southwest region, Cameroon, FGM is perceived as a traditional symbol reflecting a specific cultural identity.<sup>2</sup> The standard Ejagham woman is the one without a clitoris and that keeping one’s clitoris intact was considered as belonging to a “third gender” that did not exist in the Ejagham imagination. Circumcision therefore becomes a form of body construction to restore cultural identity. FGM is also reinforced by cultural taboos, which threaten members of the community with mystical repercussions for non-compliance with the obligation to perform it. It is also a status symbol for women who are practitioners of the ritual who gain respect and reverence in their communities.

<sup>1</sup> Malanczuk Peter, (1997). *Akehursts Modern Introduction to International Law*, 7<sup>th</sup> revised edition. London & New York: Routledge, 57-59; Aust Anthony, (2010). *Handbook of International Law*, Second Edition. Cambridge: Cambridge University Press, 9-10.

<sup>2</sup> Vitalis Pemunta Ngambouk, (2010). Gendered Identity and Anti-Female Genital Cutting (FGC) Activism among the Ejaghams, Cameroon. *Arts and Social Sciences Journal*, 15(1), 4.

In Gambia only women of the Blacksmith's caste perform the practice whereas in Sierra Leone, practitioners may be leaders of secret societies such as the Bondo.<sup>1</sup>

Essentialism accounts for the resilience of FGM. Although custom is described as unbounded, shifting, evolving, contested, and constructed based on prevailing social climate, descriptions which indicate the indeterminateness of the concept,<sup>2</sup> contrarily, traditional societies view custom in an essentialist manner as a cultural package from which no deviation is permitted. As a cultural package, custom is handed down in its pristine form to the present generation, derogations from which are sanctioned by the spirits of the ancestors that continue to hover and direct the actions of the living. Therefore, attempts at reforming custom, not least eradicating it, are often resisted by conservatist forces as this may entail a departure from the ways of the past, provoking the wrath of the ancestors.<sup>3</sup> Under these circumstances, FGM has thrived over laws in conflict with it and this trend has not been altered even with the explicit criminalization of the practice. An approach that addresses the essentialist undertones of custom is more liable to alter the current trend in the practice.

#### 4.2 The Absence of a "Victim" of the Offence

Arguably, there is rarely a "victim" of the offence, at least in the mindset of practitioners and elderly women subjected to it. Unlike offences such as theft, murder, false pretense, etc., where victims avail themselves of the right to initiate prosecutions under Section 60 of the Criminal Procedure Code,<sup>4</sup> this rarely occurs with FGM. Contrarily, FGM is perceived as a "victimless" crime, where those deemed to be victims, except for children, are voluntary participants in the criminal enterprise. The notion of a victim is a creation of the criminal law. Most adult participants, as the situation in Ejagham reveals, voluntarily consent to the procedures, or feel obliged to participate. Being an offense often committed based on mutual consent between practitioners and adult "victims", it is inconceivable that any of the parties involved could subsequently avail themselves of the protection afforded by the criminal law.

In communities that practice FGM people often accept it as a normal part of growing up as a woman.<sup>5</sup> In such communities, denial of women to be subjected to it victimizes them. In the Ejagham community, non-circumcised women are considered as outlaws, being neither men nor women, and are not eligible for marriage, a stigma that extends to their families. Overcoming this label for these women is to undergo an inevitable circumcision which, according to the criminal law, further makes them victims. The criminal law has therefore produced victims who do not see themselves as such, making them apprehensive of engaging with the law. The exceptions are children subjected to the ordeal deserving of protection. The potency of the criminal law in affording protection to these victims is undermined by the lack of political will amidst the complexity of the practice.

#### 4.3 The Complexity of FGM in a Duty-Bound Society

The unique complexity of FGM has rendered the application of the criminal law fraught with difficulties. FGM is usually performed within family circles amid approval from the community. It is shrouded in secrecy, sanctioned by taboos in case of violations. Where family members are not the practitioners, relatives of victims are usually aware of it, and often make the necessary arrangements for the performance of the rite. Parents,

<sup>1</sup> Anne M. Gibeau, (1998). Female Genital Mutilation: When a Cultural Practice generates Clinical and ethical Dilemmas. *JOGNN Clinical Issues*, 27(1), 87.

<sup>2</sup> Sally Engle Merry, (2001). Changing rights, changing culture, in *Culture and rights: Anthropological Perspectives*, eds. J. A. Cowan, M.-B. Dembour, & R.A., Wilson, Cambridge: Cambridge University Press, 31-35; Bonny Ibhawoh, (2001). Cultural tradition and national human rights standards in conflict, in *Legal cultures and human rights: The challenge of diversity*, ed. Kirsten Hastrup, Kluwer Law International, 85-102.

<sup>3</sup> Mikano Emmanuel Kiye, (2015). Conflict between Customary Law and Human Rights in Cameroon: The Role of the Courts in Fostering an Equitably Gendered Society. *African Study Monographs*, 36(2), 75, 78-79; Chukwemeka Ebo, (1979). Indigenous Law and Justice: Some Major Concepts and Practices, in *African Law and Legal Theory*, eds. Gordon R. Woodman & Obilade, A.O. (Aldershot: Dartmouth Publishing Company Ltd.).

<sup>4</sup> This prosecution may either be at the behest of the Legal Department, or any Government Department or the Injured Party himself under conditions laid down by law.

<sup>5</sup> Ronan Van Rossem, Dominique Meekers & Anatasia J Gage, (2015). Women's Position and Attitudes towards female genital mutilation in Egypt: A Secondary Analysis of the Egypt Demographic and Health Surveys, 1995 – 2014. *BMC Public Health*, 15, 2.



especially mothers, have often been implicated in the initiation of their daughters into the tradition.<sup>1</sup>

The duty-bound nature of Cameroonian society makes it even more difficult to invoke the provisions of the criminal law. Being the main care givers to their children, mothers share a special bond with their children and act as role models to them. The duty-bound obligation provides children with a reciprocal responsibility to carter for their parents at old age. Indeed, in communitarian societies, children act as a form of social security to their parents.

It is an inconceivable proposition for a victim of FGM to ally with the state to initiate criminal proceedings against her own parents and the community, amounting to a serious abnegation of the duty she owes. Unsurprisingly, during this research there were no recorded instances of victims having initiated prosecutions against practitioners as that would drag their parents into the proceedings. This trend obtains in other countries in Africa where FGM is criminalized. Kenya and Gambia have recorded some prosecutions and Burkina Faso appears to have initiated more prosecutions for FGM, a success attributed to the strong political will of the leadership.<sup>2</sup> Aside from these few examples, in many other African countries FGM/C is performed without legal consequences for offenders, despite laws prohibiting the practice.<sup>3</sup>

#### 4.4 Lack of Sensitization and Absence of Political Will

It is barely four years since FGM was criminalized in Cameroon. Unfortunately, this legislative breakthrough is yet to receive much publicity. In communities where the practice obtains there is limited awareness of its criminal status, as people still engage in it with impunity. Due to illiteracy, knowledge of its criminalization is limited.

This is compounded by the absence of political will on the part of the state to aggressively employ the criminal law. Seemingly, the preferred approaches of the state are sensitization and advocacy campaigns with the apparent fear of a potential backlash from local communities. FGM, unlike other crimes, is committed with the involvement of the community at large. Any criminal action will extend beyond the so-called victim to involve as accessories or accomplices' members of the community, a development liable to pit the state against the local community. This may be a therapy for disaster, social unrest, and instability which the state is hesitant to provoke. Further, the state is embroiled in more pressing issues, including the fight against terrorism in the North and Anglophone regions and FGM is a lower priority.

The Far North region, where FGM is most prevalent, presents a unique problem. It is densely populated and has always been a source of political leverage for the regime in power. The fear is that an aggressive implementation of section 277-1 would not only be viewed as confrontational to the local communities but will also alienate the regime from the people which could be costly during multiparty elections. Without effective education of the masses and strong political will, the criminal law would remain impotent.

#### 4.5 Poverty, Insecurity, and the COVID-19 Pandemic

Poverty, insecurity, and the COVID-19 pandemic also account for the impotency of the criminal law. In some communities, providers of FGM are induced by financial gains arising from its performance. The practice constitutes a valuable source of income to their families which may dry up should it be eradicated. In the absence of alternative sources of income, providers are hesitant to lose their only source of livelihood by not engaging in

<sup>1</sup> This accounts for the fact that in the few recorded instances of criminal prosecutions, be they in jurisdictions in Africa or in the West, parents of the victims have often been subjected to criminal charges for the offence. For instance, in February 1993, Taky Traore and Oura Dacoure, both 31-year-old immigrants from the West African state of Mali, admitted paying another woman \$30 each to cut genital parts from their 3-year-old daughters in 1989 in a French Court. In two separate cases, the father of one girl and the mother of another were jailed by a French jury for allowing their daughters to be excised. See Rone Tempest 'Ancient Traditions vs. the Law: Prosecutions of two immigrants for 'female circumcision' in France highlight an increasingly common cultural clash. Customs in one part of the world are viewed as repulsive in another', Los Angeles Times, February 18, 1993. Available at: COLUMN ONE: Ancient Traditions vs. the Law: Prosecutions of two immigrants for 'female circumcision' in France highlight an increasingly common cultural clash. Customs in one part of the world are viewed as repulsive in another. - Los Angeles Times (latimes.com) (accessed September 2 2023). In Burkina Faso, where there have been numerous prosecutions against the practice, records reveal that those prosecuted included traditional cutters and accomplices including parents and family members. See Satang Nabaneh & Adamson S. Muula, (2019). "Female genital mutilation/cutting in Africa: A complex legal and ethical landscape." *International Journal of Gynecology & Obstetrics*, 145(2), 256.

<sup>2</sup> Satang Nabaneh & Adamson S. Muula, (2019). Female genital mutilation/cutting in Africa: A complex legal and ethical landscape. *International Journal of Gynecology & Obstetrics*, 145(2), 256.

<sup>3</sup> Satang Nabaneh & Adamson S. Muula, (2019). Female genital mutilation/cutting in Africa: A complex legal and ethical landscape. *International Journal of Gynecology & Obstetrics*, 145(2), 256.

it. Poverty is provided as a justification for the continuance of FGM among providers.<sup>1</sup>

The government's socio-economic neglect and marginalization of the Ejaghams have also prevented them from cooperating with efforts advanced by the state to eradicate the practice. The lack of trust by this community of the government which is only interested in eradicating its culture rather than advancing the development of the community has created a feeling of resistance to anti-circumcision initiatives advanced by the state.<sup>2</sup> The absence of alternative projects has consolidated reliance on cultural practices, including those opposed to by the state.

Insecurity in Northern Cameroon due to the fight against Boko Haram and the Anglophone separatists war have limited the activism of advocacy groups in these regions, contributing to the resurgence of FGM.<sup>3</sup> Coincidentally, FGM is most prevalent in these troubled regions. The COVID-19 pandemic is also blamed for this resurgence as the restriction of movement prevented advocacy groups from engaging with the concerned communities. The focus of the government was also shifted to addressing the pandemic which is perceived as a greater threat.

#### 4.6 The Nature of the Criminal Law

By its very nature, the criminal law is inadequately adapted to the fight against FGM. The law kicks into action when an alleged offence is reported to the competent authorities. In criminal matters, section 29(2) of the Law on Judicial Organization 2006,<sup>4</sup> authorizes the State Counsel, and without prejudice to the rights of the victim, to investigate and record offences, conduct judicial inquiries, institute proceedings and investigations, issue arrest and detention warrants, and refer cases to the competent courts. In accordance with section 30(2) a judicial police officer or any officer of the law may arrest a suspect. In accordance with sub section (3) any person who witnessed the commission of an offence *flagrante delicto* may arrest the suspect.

Most criminal actions commenced at the behest of the State Counsel after investigations of a complaint from an aggrieved party. Since most adult victims of FGM do not see themselves as victims, it is unlikely for them to avail themselves of this option. The situation is compounded by the fact that the practice is shrouded in secrecy rendering abortive the likelihood of a practitioner being caught performing it in *flagrante delicto*. In principle, anyone who witnesses the commission of an offence could initiate the commencement of action by arresting the suspect. Although a feasible option, it is yet to play out in the case of FGM which is often performed in rural areas with limited accessibility. It is not surprising that during this research, no action was found to have been listed before the state courts of the Southwest region despite the prevalence of the practice in Manyu Division of the region. Even where prosecutions maybe initiated, the outcome is not certain. For there to be a conviction under Cameroonian criminal law, the prosecution must prove beyond a reasonable doubt of the existence of both the material (*actus reus*) and mental (*mens rea*) elements of the offence, the latter requirement susceptible to contention.<sup>5</sup> *Mens rea* comprises the guilty or evil mind, which in the case of FGM, is the voluntary criminal intention of the practitioner to cause physical harm to the victim.

The argument that parents nursed the evil intent to deliberately cause harm to their own daughters is unsustainable despite the negative repercussions of the practice. Evidence may suggest otherwise: parents, based on belief-system and the love and affection they have for their children are motivated to subject them to the

<sup>1</sup> In his report for Voice of America online, Edwin Kindzeka observed that the lack of alternative sources of income, amid the insecurity that prevails in the Northern and English-speaking regions of Cameroon together with the ravaging COVID-19 virus, have increased incidences of the practice. Moki Edwin Kindzeka, Cameroon Says Female Circumcision Resurfacing Because of COVID-19, Other Crises, Voice of Africa Online, (February 7, 2021), available at: Cameroon Says Female Circumcision Resurfacing Because of COVID-19, Other Crises (voanews.com) (Accessed August 13, 2021).

<sup>2</sup> Sianga Mutula, Ngambouk Vitalis Pemuta, *et al.*, (2021). The Fight Against Female Genital Mutilation/Cutting among the Ejaghams of Cameroon: Kinks in the Legal Approach and Implications for Public Health Practice. *International Journal of Sexual Health*, 34(1), 165.

<sup>3</sup> The government of Cameroon is currently engaged in two separate armed conflicts in Northern and the Anglophone regions of the country. The fight against the Islamic group, Boko Haram, from across the Nigerian Border in the North and armed separatist groups in Anglophone Cameroon in the South West and North West have led to security concerns in these regions as scarce resources are now diverted to prosecuting these wars. See Human Rights Watch, (2021, April 5). Cameroon: Boko Haram Attacks Escalate in the Far North; Manu Lekunze, (2023). Insurgency and national security: a perspective from Cameroon's separatist conflict. *Third World Quarterly*, 44(6), 1155-1173.

<sup>4</sup> Law No. 2006/015 of 29 December 2006 on Judicial Organization.

<sup>5</sup> Section 74 (1) of the Cameroonian Penal Code provides for the *mens rea*: "No penalty may be imposed except upon a person criminally responsible" Subsection (2) provides that "Criminal responsibility shall lie on him who intentionally commits each of the ingredient acts or omissions of an offence with the intention of causing the result which completes it".

practice. Courts in Europe often grappled with these dilemmas in the prosecution of immigrant parents accused of performing FGM on their daughters. The defense of cultural relativism, coupled with the argument advancing the benefits of FGM to victims, have undermined the *mens rea* element leading, in some instances, to non-custodial sentences against practitioners.<sup>1</sup> Although convictions have been more successful in France, the arguments of the cultural background of the accused and error of law have often been invoked leading to lighter sentences to parents.<sup>2</sup> This is certainly not going to be any different in a Cameroonian court where the evil intent of the accused is more likely to be undermined in communities that believed in the benefits of the practice.

## 5. Conclusion

FGM has severe social and medical ramifications for women. Following the amendment of the Penal Code, it was criminalized under section 277-1, a provision that has remained a dead letter with virtually no attempts at enforcing it. The offence of “genital mutilation” is unique in various ways: unlike other offenses, it involves the participation of the community going beyond individual criminal responsibility; it is shrouded in secrecy; and involves collaboration between adult victims and accused persons. These are some of the reasons that have rendered impotent the criminal law. Recent statistics suggest that rather than declining, incidences of FGM have increased during the COVID-19 pandemic.<sup>3</sup>

Besides simply relying on the criminal law, the state should intensify its engagement with traditional authorities. To alter the mindset of conservatist elements, more reliance on education and sensitization is required. Teenage girls should be insulated from the practice which should only be available to adults provided their consent is sought. Where consent is voluntarily granted, only trained personnel should be authorized to perform the practice in conformity with the law. Whether this view is acceptable to conservative elements is questionable. The criminal law has been dismal so far, which is unlikely to change for a custom whose very nature makes the law unsuitable for its eradication.

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<sup>1</sup> Ruth M. Mestre I Mestre and Sara Johnsdotter, (2019). Court Cases, Cultural Expertise, and “Female Genital Mutilation” in Europe. *Cultural Expertise and Socio-Legal Studies. Studies in Law, Politics, and Society*, 78, 95-113.

<sup>2</sup> Renée Kool & Sohail Wahed, (2014). Criminal Enforcement in the Area of Female Genital Mutilation in France, England and the Netherlands: A Comparative Law Perspective. *International Law Research*, 3(1), 4-5.

<sup>3</sup> Moki Edwin Kindzeka, (2021, February 7). Cameroon Says Female Circumcision Resurfacing Because of COVID-19, Other Crises, Voice of Africa Online, available at: Cameroon Says Female Circumcision Resurfacing Because of COVID-19, Other Crises (voanews.com) (Accessed August 13, 2021).

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