

## STRATEGIC LITIGATION: CASE OF FGM IN CAMEROON



Gladys Mbuyah Luku

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# Presentation overview

- ❖ Parties to the suit
- ❖ Facts of the case
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- ❖ The court's obligation to provide a remedy.
- ❖ Relief sought.



**PARTIES**

**LIBRA ASSOCIATION FOR WIDOWS**

**AND**

**THE STATE OF CAMEROON**

- 
- Facts of the case
  - Evidence

# Reasons why FGM is practiced

- ❖ Patriarchal society
- ❖ Customary beliefs
- ❖ Controlling a women's sexuality
- ❖ Human rights treaties are not taken seriously
- ❖ Failure to accord proper attention to the protection and promotion of human rights
- ❖ Perpetrators are never tried before the law courts for the society to be deterred.
- ❖ International laws are not domesticated to give seriousness to the issue
- ❖ There is no specific law that expressly forbid FGM.
- ❖ There is no specific law criminalizing FGM in Cameroon

# Repercussions of FGM/rights affected

- ❖ Poor health/HIV/AIDS
- ❖ Maternal/infant mortality
- ❖ Difficulty in Sexual interactions and child bearing
- ❖ Depression /Anxiety
- ❖ Right to life: FGM is some cruel and degrading traditional practice that in some cases leads to over bleeding and death. People need to be alive to be able to enjoy all their human rights. Going by the above, when the right to life is violated right to employment, economic rights and all other rights are equally violated.
- ❖ Reproductive health right.
- ❖ Right not to be subjected to cruel and degrading treatment.
- ❖ Right not to be subjected to physical, emotional or psychological violence
- ❖ Right to be free from all forms of discrimination, “ Cutting a girls genitals when men do not experience the same treatment is definitely discriminatory.

# Right to Health?

The right to health is a fundamental human right. Internationally, it was first articulated in the 1946 Constitution of the World Health Organization (WHO), whose preamble defines health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity”.



# Domestic Laws on FGM

- ❖ Constitution of the Republic of Cameroon
- ❖ Penal Code of the Republic of Cameroon
- ❖ Customary Laws



# Domestic laws contravened A

❖ Preamble of the Constitution of the Republic of Cameroon,

*“We, the people of Cameroon,*

*Affirm* our attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations and The African Charter on Human and Peoples' Rights, and all duly ratified international conventions relating thereto, in particular, to the following principles:

every person has a right to life, to physical and moral integrity and to humane treatment in all circumstances. Under no circumstances shall any person be subjected to torture, to cruel, inhumane or degrading treatment”.

❖ Article 45 of the Constitution:

Duly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implements the said treaty or agreement.

# Domestic Laws Contravened B

❖ penal code of the republic of Cameroon ?  
Section 277?

Section 277      Grievous Harm:

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 ten to twenty years.

# International laws contravened A

African Charter on the Rights and Welfare of the Child  
(African Charter on Children)

- ❖ Article 14(1): “Every child shall have the right to enjoy the best attainable state of physical, mental and spiritual health”.
- ❖ Article 21(1) “States Parties to the present Charter shall take all appropriate measures to eliminate harmful social and cultural practices affecting the welfare, dignity, normal growth and development of the child and in particular:
  - ❖ (a) those customs and practices prejudicial to the health or life of the child; and
  - ❖ (b) those customs and practices discriminatory to the child on the grounds of sex or other status.

# International laws contravened B

Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (African Charter on Women)

- ❖ Articles 5: States Parties shall prohibit and condemn all forms of harmful practices which negatively affect the human rights of women and which are contrary to recognized international standards. States Parties shall take all necessary legislative and other measures to eliminate such practices, including:
  - a) creation of public awareness in all sectors of society regarding harmful practices through information, formal and informal education and outreach programs;
  - b) prohibition, through legislative measures backed by sanctions, of all forms of female genital mutilation, scarification, medicalization and Para-medicalization of female genital mutilation and all other practices in order to eradicate them;
  - d) protection of women who are at risk of being subjected to harmful practices or all other forms of violence, abuse and intolerance.
- ❖ Article 14(1) :States Parties shall ensure that the right to health of women, including sexual and reproductive health is respected and promoted

# International laws contravened C

Convention on the Rights of the Child (CRC),

❖ Article 6

(1). States Parties recognize that every child has the inherent right to life.

(2). States Parties shall ensure to the maximum extent possible the survival and development of the child.

❖ Article 19

(1). States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

❖ Article 24

(1). States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

(3). States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

# International laws contravened D

- ❖ Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)

- ❖ **Article 2**

States Parties condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women and, to this end, undertake:

- (b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women;
- (c) To establish legal protection of the rights of women on an equal basis with men and to ensure through competent national tribunals and other public institutions the effective protection of women against any act of discrimination;
- (e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise;
- (f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women

# International laws contravened E

CEDAW),

## ❖ **Article 5**

States Parties shall take all appropriate measures:

To modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women;

# International laws contravened F

## African Charter On Human And Peoples' (The Charter)

### ❖ Article 4:

Human beings are inviolable. Every human being shall be entitled to respect for his life and the integrity of his person. No one may be arbitrarily deprived of this right.

### ❖ Article 5:

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of

man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

### ❖ Article 16(1): “Every individual shall have the right to enjoy the best attainable state of physical and mental health”.



# International laws contravened G

International Covenant on Economic, Social and Cultural Rights,

- ❖ Article 12(1): “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”.
- ❖ International Covenant on Civil and Political Rights (ICCPR)

# Interview

## ❖ **What does your life look like 23 years later?**

23 years later, the cutting still has a disastrous effect on my life. I got married 2 years ago and I always have to fight with myself when it comes to sex with my husband. Since that day, I never let anyone touch me down there and that was one of the reasons that I was still a virgin when I got married at 26 years old. I am a good looking woman but my whole life I just pushed back all the guys that wanted to go out with me.

I always try to find excuses for not having sex with my husband because of the pain I still have since the cutting. I don't know how long my marriage is going to last if I keep on avoiding my husband. The question is: although I love my husband more than anything else, should I keep on suffering while having sex or shall I just avoid him? I don't know the answer to this question but there is one thing that I am sure about, my life will never be the same again. They destroyed my life without asking and without knowing the consequences of their acts. I may end up without a husband and without children because of what they did to me.

***"Will I have a normal life again, the answer is NO. By cutting that part of me, they remove something that I will never be able to get back again"***

# The court's obligation to provide a Remedy.

- ❖ International human rights instruments ratified by Cameroon are binding under national and international law and must be respected by the Court under Article 45 of the Cameroonian Constitution as well as Article 26 of the Vienna Convention on the Law of Treaties. Therefore, the Court should call in aid these treaties and oblige Cameroon to enact specific legislation criminalizing FGM.
- ❖ Under Article 2(1) of the Constitution, Article I of the African Charter, Article 2 (c) of CEDAW, Article 2(2) of the CRC, Article 8 of the African Charter on Women, and Article 2(3)(b) of the ICCPR, the state of Cameroon is obliged to give effect to all conventions it has ratified.

# RELIEFS SOUGHT

- ❖ That the Court should order the state of Cameroon to enact specific law, criminalizing FGM
- ❖ Order Cameroon to domesticate international laws.
- ❖ The court should make specific order restraining any body who intends to mutilate the genitals of any girl from doing so and punish people who are involved in cutting women's genitals.
- ❖ Damages for personal injury giving rise to pain and suffering

# What a case like this can achieve

- ❖ Create awareness
- ❖ It gives victims a sense that the violation they have suffered have not gone unnoticed
- ❖ Provide justice for a victim
- ❖ Provide encouragement for other civil society organizations to engage in the fight against FGM and public interest litigation.
- ❖ Act as deterrence

Progress for women is progress for all.



THANK YOU.