

Biomedical Governance Through Criminal Law in Cameroon: Assessing the Criminal Liability of Medical Personnel Under the 2016 Penal Code and Special Health Laws

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Abstract

Cameroon's legal system rooted in a bijural tradition that fuses civil law and common law influences has undergone a marked transformation in how it governs medical and biomedical conduct through the criminal law. The Penal Code of 2016 (Law No. 2016/007 of 12 July 2016) consolidated and modernized general criminal provisions applicable to medical personnel, including offences of homicide, bodily harm, professional secrecy, failure to render assistance, false certification, and the facilitation of infectious disease transmission. On that general foundation, Cameroon has enacted three landmark pieces of special biomedical legislation between 2022 and 2025: Law No. 2022/008 of 27 April 2022 on medical research involving human subjects; Law No. 2022/014 of 14 July 2022 on medically assisted reproduction (MAR); and Law No. 2025/009 of 15 June 2025 Relating to the Donation, Removal and Transplantation of Human Biological Material in Cameroon. Together, these instruments constitute an increasingly sophisticated and notably punitive architecture of biomedical criminal law. This article seeks to analyze the criminal liability framework applicable to medical personnel and biomedical researchers in Cameroon, examining both the foundational provisions of the Penal Code 2016 and the specific offences created by the three special biomedical statutes, through a doctrinal legal methodology. Our findings revealed that, the Penal Code of 2016 establishes a robust general framework of criminal liability for medical personnel. It is on this basis that we made some salient propositions to that effect.

Keywords: Governance, Criminal liability, medical personnel, Penal Code, biomedical laws, Cameroon.

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INTRODUCTION

The relationship between the medical profession and the criminal law sits at a permanently contested frontier. Medical practitioners are granted extraordinary privileges like invasive access to the human body, custodianship of intimate personal information, and authority over decisions that can determine life and death. The counterpart of those privileges is accountability. Where that accountability takes the form of criminal sanctions, the stakes are high on both sides: for the patient or research participant who

has suffered harm, criminal prosecution may be the only form of justice that carries genuine moral weight; for the practitioner, conviction and imprisonment is the most severe consequence the law can impose. [1]

In Cameroon, the practical stakes of this relationship are vivid. In May 2021, multiple patients detained at government hospitals in Yaoundé for non-payment of bills staged protests after being denied the right to leave [2], a situation that sits at the intersection of patient rights, professional duty, and the criminal law of unlawful detention. In August 2023, a 29-year-old

¹For comparative context see generally Barilan YM, *Human Dignity, Human Rights, and Responsibility: The New Language of Global Bioethics and Biolaw* (MIT Press 2012) 87–112; Brazier M and Cave E, *Medicine, Patients and the Law* (6th edn, Manchester UP 2016) ch 1.

² Moki Edwin Kindzeka, 'Cameroon Hospitals Accused of Preventing Insolvent Patients from Leaving' (VOA News, 22 May 2021) https://www.voanews.com/a/africa_cameroon-hospitals-accused-preventing-insolvent-patients-leaving/6206108.html#content accessed 29 March 2026.

woman named Victoire Kamdem Prestige died in Foumbot, West Region, after undergoing cosmetic surgery performed in an ordinary domestic room by a man identified as Daniel Chamba Nyahke, a self-described surgeon with no medical qualifications [3]. The Cameroonian satirical newspaper Le Popoli ran the front-page headline 'Foumbot: Charcutée à mort par un faux chirurgien' 'Butchered to death by a fake surgeon' capturing the public outrage that surrounded the case. Earlier, in August 2011, a premature baby belonging to seventeen-year-old Vanessa Tchatchou disappeared from an incubator at the Ngouso Gynaeco Obstetric and Paediatric Hospital in Yaoundé, and the family's two complaints against the hospital were ultimately dismissed without explanation [4]. These cases are not merely anecdotal. They illustrate, from different angles, the capacity of the law to fail the patient and the critical importance of asking whether the legislative framework is adequate to the task.

Cameroon's approach to this frontier has evolved considerably over the past decade. Law No. 2016/007 of 12 July 2016 consolidated and modernized the general criminal law applicable to all persons, including medical personnel [5]. On that general foundation, Cameroon has subsequently erected three pillars of special biomedical criminal law: Law No. 2022/008 of 27 April 2022 on medical research involving human subjects; Law No. 2022/014 of 14 July 2022 on medically assisted reproduction; and Law No. 2025/009 of 15 June 2025 Relating to the Donation, Removal and Transplantation of Human Biological Material in Cameroon. Together, these instruments form an increasingly ambitious and notably severe architecture of criminal accountability for biomedical conduct.

This article analyses that architecture systematically. It proceeds chronologically through the legislative texts, beginning with the general provisions of the Penal Code 2016 before examining each special biomedical statute in the order of its enactment. Throughout, attention is paid to the relationship between the general and special frameworks, how they interact, where they overlap, and how the principle of speciality governs conflicts between them. The article concludes by evaluating the coherence and proportionality of the overall framework and identifying the principal challenges to its effective implementation. In the section that follows, we turn first to the foundational instrument, the Penal Code 2016.

THE GENERAL CRIMINAL LAW FRAMEWORK: THE PENAL CODE OF 2016

This section of the paper involves the following:

The Penal Code 2016 as Foundational Instrument

Law No. 2016/007 of 12 July 2016 on the Penal Code of Cameroon is the foundational instrument of criminal law currently in force. [6] It repealed and replaced earlier penal legislation,⁷ and introduced a consolidated, modernized code applicable throughout the national territory. The Penal Code 2016 does not contain a dedicated chapter on medical liability. Rather, its general provisions on homicide, bodily harm, professional obligations, and offences against public order apply to medical personnel by virtue of the elementary principle that no category of professional is exempt from the general criminal law.

The significance of the Penal Code 2016 in the context of biomedical practice is threefold. First, it defines the general categories of criminal homicide and harm that may be invoked wherever medical conduct whether intentional or negligent causes death or injury to a patient or research participant. Second, it imposes specific positive duties on medical personnel, including the duty to maintain professional secrecy and the duty to render assistance to persons in danger. Third, it criminalizes the falsification of health certification and the facilitation of infectious disease transmission, and strictly regulates the performance of certain procedures such as abortion, thereby protecting the integrity of the profession and the public health order. The three special biomedical statutes of 2022 and 2025 operate on the foundation laid by the Penal Code 2016, supplementing it in specific domains rather than displacing it. Having established the general nature of the Code, we now examine its specific provisions as they bear upon biomedical practice, beginning with the most serious category of liability which is homicide.

Homicide and Unintentional Killing

The most serious category of criminal liability that can arise from medical conduct is intentional homicide under section 275 of the Penal Code 2016 (murder), and capital murder under section 276.⁸ While deliberate killing is rare in medical practice, the provision has theoretical application in cases of active euthanasia, unlawful in Cameroon or where a practitioner administers a lethal substance with the specific intent to cause death. Aggravated homicide under section 276(1) (a,b,c or d) where murder is committed in the preparation, facilitation or commission of a felony or misdemeanor, or to enable escape or

³ Le popoli number 215492 of 21 august 2023

⁴ Vanessa Tchatchou: 'Illegally Separated from Baby in Cameroon' (Zuzeeko, 11 February 2012) <https://www.zuzeeko.com/2012/02/vanessa-tchatchou-teen-mom-illegally.html> accessed 29 March 2026.

⁵ Penal code s 1

⁶Law No. 2016/007 of 12 July 2016 on the Penal Code of Cameroon

⁷Penal code n° 67/LF/1 12 June 1967 repealed by Law No. 2016/007.

⁸Penal Code 2016, s 275 (murder) and s 276 (capital murder).

procure impunity [9] may be of particular relevance to the medical context. Patients are, by definition, in a position of vulnerability and trust relative to their treating practitioners, and that structural relationship arguably heightens the moral gravity of any deliberate harm.

In day-to-day medical practice, of greater practical significance is the offence of unintentional homicide under section 289 of the Penal Code 2016. [10] This provision criminalizes killing that result from imprudence, negligence, inattention, or failure to observe applicable regulations or professional duties of care, language that maps directly onto the concept of culpable medical negligence. The cases of Victoire Kamdem Prestige and the Le Popoli report of 21 August 2023 provide a stark illustration, the perpetrator Daniel Chamba Nyahke would have faced prosecution not only for unintentional homicide under section 289 arising from his reckless conduct but potentially also under the false certification and infectious disease provisions of sections 259 and 260 had he purported to certify health status as part of his fraudulent practice, provided the causal link between his negligent conduct and her death could be established beyond reasonable doubt.[11]

The section does not define the threshold of negligence that attracts criminal as opposed to civil liability, and this ambiguity is a source of significant uncertainty for practitioners. A physician who makes a serious error of judgment in an emergency causing the death of a patient may, in principle, face prosecution under section 289. The interplay between this general provision and the specific consent related offences in the 2022 research law is also significant: a researcher who proceeds without consent and whose participant dies as a result may face charges under both Law No. 2022/008 and section 289. The absence of a precise legislative threshold between civil and criminal negligence is one of the framework's most pressing interpretive gaps. The question of bodily harm, the non-fatal counterpart is addressed in the next sub section.

Bodily Harm

Sections 277 and 280-281 of the Penal Code 2016 address, respectively, grievous harm and simple harm. [12] Grievous harm covers serious bodily injury, permanent or long lasting in its effects and carries

significant custodial penalties. Simple harm covers lesser bodily injuries. Both provisions may be invoked against medical personnel where their conduct causes physical injury to a patient, whether intentionally or through negligence. The application of these provisions to medical conduct requires care: many procedures that would constitute 'harm' in a non-medical context, surgery, injections, blood draws are lawful when performed with proper consent by a qualified practitioner. The consent of the patient is therefore a critical element that separates lawful medical intervention from criminal assault. This point is reinforced by section 286 of the Penal Code, which expressly provides that sections 277 to 281 do not apply to the professional services of any person duly authorized to render them, performed with the patient's consent.

Section 289 of the Penal Code 2016 addresses unintentional harm, covering bodily injury caused by negligence, imprudence, or failure to observe professional regulations. [13] A practitioner whose negligent conduct injures but does not kill a patient may be prosecuted under section 289. The Code of Medical Ethics reinforces this point: section 22 obliges a doctor, from the moment of engagement, to give all necessary medical care within their power, and section 23 requires the highest care in formulating a diagnosis. [14] The failure to meet these standards, where it results in injury, creates the factual substratum for a prosecution under section 289. Having examined bodily harm, we turn next to professional secrecy a duty of particular depth and sensitivity in the medical context.

Professional Secrecy

Section 310 of the Penal Code 2016 imposes a general duty of professional secrecy. It provides that whoever reveals a confidential fact which has come to their knowledge solely by reason of their profession or duties shall be punished with imprisonment of 3 months to 3 years and a fine of CFAF 20,000 to 100,000. [15] This duty is of direct and profound importance to medical practitioners, who routinely receive some of the most sensitive information a person can disclose. A practitioner who reveals patient information without authorization, whether to family members, employers, insurers, or the media commits a criminal offence under section 310. The duty is buttressed by the Code of

⁹Penal Code 2016, s 276(1)(d). See also Decree No. 83/166 of 12 April 1983 establishing the Code of Medical Ethics in Cameroon (hereafter 'Code of Ethics'), s 1: 'Respect for life constitutes in every instance the primary duty of a doctor.'

¹⁰Penal Code 2016, s 289.

¹¹For the distinction between criminal and civil medical negligence in Francophone Africa see Nkouendjin-Yotnda M, *La responsabilité civile du médecin en droit camerounais* (Presses Universitaires du Cameroun 1993) 43–67; Samen Tchwujiang E and Ntoko Ntonga R, 'A Legal Overview of the Legal and Institutional

Framework Regulating Medical Activities in Cameroon' (2021) SSRN 3908585.

¹²Penal Code 2016, ss 277, 280-281.

¹³Ibid, s 289.

¹⁴Code of Ethics, s 22: 'A doctor, from the moment he is called to give attention to a patient and agrees to do this, shall be bound to give the patient all the necessary medical care within his power.' Cf the duty of care standard discussed in *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582 (QB).

¹⁵Penal Code 2016, s 310.

Medical Ethics: section 4 of the Code confirms that professional secrecy is binding on all doctors, unless otherwise provided by law, and provided it is not contrary to the patient's interests. [16]

The three special biomedical statutes of 2022 and 2025 all contain specific confidentiality offences applicable in their respective domains. Those provisions operate as *lex specialis* [17] in relation to section 310, they do not displace it but complement it, so that conduct not fully addressed by the special law's confidentiality provision may still be prosecuted under the general provision. This layering of general and special duties is a consistent structural feature of the framework, and it means that confidentiality breaches in, for example, the transplantation context can be pursued under two independent legal bases. The discussion of the special statutes below picks up these specific confidentiality offences in their context. We now turn to a different dimension of professional duty which the obligation to act in an emergency.

Duty to Render Assistance

Section 283 of the Penal Code 2016 imposes on every person a duty to render assistance to a person in danger of death or grievous harm, where such assistance involves no risk to them or any other person. Violation is punishable with imprisonment of 1 month to 3 years and/or a fine of CFAF 20,000 to 1,000,000.¹⁸ This duty is of particular significance for medical practitioners, who are uniquely positioned to provide effective emergency assistance. Section 3 of the Code of Medical Ethics makes the same point in terms specific to the profession: whatever a doctor's official duties or special field, they must give urgent help to any patient in immediate danger, unless equivalent medical care has already been secured. [19]

A physician who encounters a patient in a medical emergency whether or not that patient is enrolled in their research study or registered as their regular patient and who fails to provide or arrange assistance may be criminally liable under section 283. The VOA [20] report of May 2021 on patients detained in Cameroonian public hospitals and denied free movement brings this provision into relief, where a patient's condition deteriorates while they are unlawfully

confined, a treating practitioner who fails to act may face liability not only under the law on unlawful detention but also under section 283. From the duty to assist, we turn to the parallel obligation to practice only within lawful authorization.

Health Certification, Infectious Disease, and Abortion

Section 259 of the Penal Code 2016 criminalizes the issuance of false medical certificates by health professionals, including physicians, surgeons, nurses, dentists, and midwives. It specifically targets those who, for any advantage or disadvantage to another, falsely certify or conceal the existence of a disease or disability, or furnish misleading information regarding the origin of a disease, the duration of a disability, or the cause of death.[21] Section 260 addresses the related public health offence of willfully facilitating the communication of dangerous infectious diseases through one's conduct.[22] These provisions serve to safeguard the integrity of health reporting and public safety. The weight given to certifying conduct is further underscored by the fact that Section 259 prescribes significantly increased penalties of up to ten years' imprisonment where the practitioner has been corrupted a provision that situates professional dishonesty in health reporting within the broader framework of corruption related aggravation under Cameroonian criminal law.

The practical weight of these provisions is further demonstrated in Section 337, which governs the offence of abortion. While the law punishes any woman consenting to her own abortion and any person who procures it, the framework is notably more severe for health professionals. Where the offender habitually engages in procuring abortions, or is a practitioner of medicine or an allied profession, the applicable penalties are doubled. [23] Furthermore, the court carries the authority to order the closure of professional premises and to impose a ban on the exercise of the offender's occupation pursuant to sections 34 and 36 of the Penal Code, sanctions that in combination may effectively terminate a practitioner's career. [24]

In the broader context of biomedical regulation, these sections possess a cumulative potential that is a deliberate feature of the Penal Code's design. A health professional who willfully facilitates the spread of a

¹⁶Law No. 90/036 of 10 August 1990 relating to the Organization and Practice of Medicine in Cameroon, s 4; Code of Ethics, s 4.

¹⁷ *Lex specialis* (full phrase: *lex specialis derogat legi generali*) is a legal principle meaning "special law overrides general law." When two laws cover the same situation, the specific rule (*lex specialis*) takes precedence over the general rule (*lex generalis*)

¹⁸Penal Code 2016, s 283.

¹⁹Code of Ethics, s 3(1): '[E]very doctor must, except in the case of force majeure, give help urgently to a sick person in immediate danger.'

²⁰ Voice of America

²¹ Penal Code 2016, s 259. The provision applies to 'physicians, surgeons, health officers, nurses, dentists, midwives, and any other person practising a medical or paramedical profession': s 259(1). The aggravated penalty of up to ten years applies where the certificate is issued in exchange for any pecuniary or other advantage: s 259(2).

²²Penal Code 2016, s 260.

²³Penal Code 2016, s 337.

²⁴Penal Code 2016, ss 34 and 36.

dangerous disease under Section 260 and subsequently falsifies certification records to conceal that fact under Section 259 may face multiple counts of prosecution, each resting on independent factual elements and attracting distinct penalties. Similarly, while Section 339 provides a legal exception for therapeutic abortions performed by qualified persons where the mother's life is at risk, or in cases arising from rape, any deviation from those specific statutory justifications leaves a health professional exposed to the full sanctions of Section 337. [25] This framework ensures that the specialized authority vested in health professionals over matters of life, disease, and reproduction is strictly bounded by criminal law. With the general framework of the Penal Code 2016 now fully mapped, we turn to the first of the three special biomedical statutes the 2022 law on medical research.

CRIMINAL LIABILITY IN MEDICAL RESEARCH ON HUMAN SUBJECTS

This head entails the following key points:

Overview and Legislative Foundation

Law No. 2022/008 of 27 April 2022 is the most comprehensive piece of biomedical criminal legislation yet enacted in Cameroon. [26] It codifies in domestic law the requirements of the Declaration of Helsinki [27] and the Belmont Report [28] informed consent, independent ethical review, scientific validity, and participant protection and, critically, it attaches criminal sanctions to the breach of these requirements. The law operates alongside the Penal Code 2016 on a principle of complementarity. Where a researcher's conduct constitutes both an offence under the special law and an offence under the Penal Code for example, a failure to obtain consent that also results in a participant's death the prosecutor may invoke both sets of provisions, subject to the prohibition on double jeopardy in respect of the same factual wrong.

The 2022 Research Law is notable not only for the breadth of its substantive provisions but for its architecture of graduated severity: moderate penalties for consent and confidentiality breaches, escalating substantially for commercialization of biological material, and reaching their zenith OF life imprisonment for the most fundamental violations of human dignity in the research context. The logic of this graduated structure is examined in turn. We begin with the offences that sit at the core of the law that is consent.

Offences of Consent and Disclosure

Article 59 of the 2022 Law defines the core consent related offences. [29] It is a criminal offence for a researcher to conduct a study on a person without properly informing them of their rights, the risks, and the study procedures. It is equally an offence to proceed with research without obtaining valid and informed consent, or to continue research after consent has been withdrawn. [30] The penalties are 1 to 5 years' imprisonment and a fine of 10,000,000 to 50,000,000 CFA francs. [31] These provisions carry forward, in criminalized form, the ethical principles articulated in the Declaration of Helsinki and affirmed by the UNESCO Universal Declaration on Bioethics and Human Rights [32], both of which treat autonomous consent as the fundamental condition of ethical research.

Article 60 escalates the legal response when the research victim is a minor or an incapacitated adult. The court is required not merely empowered to impose mandatory collateral penalties in addition to the principal sentence including loss of certain civic rights; a ban from practicing the relevant profession; confiscation of any equipment used in the commission of the offence; and debarment from public contracts for the duration of the sentence. [33] The mandatory nature of these additional sanctions distinguishes Article 60 from the general aggravating circumstances regime under the Penal Code 2016, where sentencing discretion typically remains with

²⁵Penal Code 2016, s 339. The provision creates two distinct exceptions to the abortion prohibition in s 337: first, an abortion performed by a qualified person where the continuation of the pregnancy endangers the life of the mother; and second, where the pregnancy results from rape. In both cases the procedure must be performed by a person possessing the relevant professional qualifications. No exception exists for foetal abnormality, socioeconomic grounds, or the pregnant woman's autonomous choice, underscoring the narrow and strictly therapeutic character of the defence. See also WHO, Safe Abortion: Technical and Policy Guidance for Health Systems (2nd edn, WHO 2012) 96–99, discussing the relationship between restrictive abortion laws and maternal mortality outcomes in sub-Saharan Africa.

²⁶Law No. 2022/008 of 27 April 2022 relating to Medical Research Involving Human Subjects (hereafter 'the 2022 Research Law').

²⁷World Medical Association, Declaration of Helsinki: Ethical Principles for Medical Research Involving Human Subjects (adopted 1964, as revised 2013), arts 25–32.

²⁸The Belmont Report: Ethical Principles and Guidelines for the Protection of Human Subjects of Research (National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, United States, 1979) 4–10 (Principle of Respect for Persons).

²⁹2022 Research Law, art 59.

³⁰Ibid. Consent must be 'free, informed, express and written': art 18.

³¹Ibid, art 59 (penalty provisions).

³²H A M J ten Have and M S Jean (eds 2009), The UNESCO Universal Declaration on Bioethics and Human Rights: Background, Principles and Application UNESCO 7 Place de Fontenoy, 75352 Paris 07 SP, France

³³Ibid, art 60.

the court. Here, the legislature has removed that discretion when vulnerable persons are targeted a categorical judgment that the exploitation of those who cannot protect themselves in research settings is among the gravest forms of biomedical wrongdoing. The next provision in the research law turns from the process of consent to the subsequent life of the biological material it authorizes.

Misuse of Biological Samples and Health Data

Article 61 criminalizes the secondary use of biological material or health data obtained during research without the specific consent of the participant for that secondary use, as well as the unauthorized export of such material or data.³⁴ The provision is designed to prevent bio-piracy [35] and the commercial exploitation of participants' genetic material a concern of particular resonance in Cameroon, where international research partnerships often involve the collection of biological samples that may subsequently be transferred abroad for further analysis or commercialization.

The consent required under Article 61 is purpose specific, consent to participate in a study does not, without more, constitute consent to the reuse of samples collected during that study for unrelated purposes. This reflects the principle of specific consent articulated in international bioethics instruments, [36] now given domestic criminal force. An international research organization that collects samples in Cameroon for one study and transfers them abroad for use in a different project without re obtaining consent from participants commits a criminal offence under this provision irrespective of whether the second use is itself scientifically legitimate. From the secondary use of biological material, we move to the question of confidentiality within the research team.

Confidentiality in Research

Article 62 imposes a penalty of 3 months to 3 years' imprisonment and fines of 20,000 to 100,000 CFA francs for the unauthorized disclosure of confidential facts gathered through research.³⁷ This provision extends the reach of the general professional secrecy rule in section 310 of the Penal Code 2016 to the broader research team, covering individuals, research assistants, data managers, laboratory technicians, statisticians who may not be 'medical practitioners' in the classical sense

but who handle sensitive personal and health information in the research context. The application of section 310 to such individuals was uncertain before this law; Article 62 removes that uncertainty by creating a specific offence applicable to 'anyone' who discloses confidential research information, regardless of their formal professional status. Having addressed the duties of the research team, the law then turns to the most commercially charged dimension of the research context.

Commercialization of the Human Body in Research

Article 63 makes it an offence to engage in commercial trafficking of human body parts for research purposes, punishable by 10 to 20 years' imprisonment and substantial fines. [38] The provision reflects the principle enshrined in Article 21 of the UNESCO Universal Declaration on Bioethics and Human Rights [39] that the human body and its parts shall not give rise to financial gain. Cameroon has elevated this principle to the status of a serious felony, treating the commodification of human biological material for research as equivalent in gravity to major offences against the person. The severity of the penalty a maximum of 20 years places this offence at the top tier of the research law's sanctions, second only to the absolute prohibitions examined in the sub section that follows.

Absolute Prohibitions in Biomedical Research

Articles 64 to 67 of the 2022 Law establish absolute prohibitions acts so fundamentally contrary to human dignity that no research justification, however compelling, can render them lawful.[40] These include: human reproductive cloning; the creation of human embryos for research or financial gain; germ line genetic modification (modifications to the human genome that can be transmitted to future generations); sex selection for non-medical reasons; and the creation of human animal hybrids or chimeras. The penalties for these offences are among the most severe in the Cameroonian legal system, reaching life imprisonment in the most egregious cases.

The decision to criminalize these acts with such severity reflects Cameroon's alignment with an emerging global consensus articulated in instruments ranging from the Council of Europe's Oviedo Convention to the United Nations Declaration on Human Cloning [41] that certain

be carried out with the prior, free and informed consent of the person concerned.'

³⁷2022 Research Law, art 62.

³⁸Ibid, art 63.

³⁹ UNESCO Universal Declaration on Bioethics and Human Rights, art 21: 'The human body and its parts, as such, shall not give rise to financial gain.'

⁴⁰2022 Research Law, arts 64–67.

⁴¹ Oviedo Convention Council of Europe, *Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology*

³⁴2022 Research Law, art 61.

³⁵ Biopiracy is *not* an internationally fixed technical term in the way that "ABS" is; however, the CBD/Nagoya ABS regime targets what people commonly mean by biopiracy: access to genetic resources and/or associated traditional knowledge without proper conditions, and use without equitable benefit-sharing

³⁶ UNESCO Universal Declaration on Bioethics and Human Rights (19 October 2005), art 6: 'any preventive, diagnostic and therapeutic medical intervention is only to

manipulations of the human genome and human embryo represent a categorical threat to the integrity of the human species. [42] By placing these prohibitions in a criminal statute and attaching custodial sentences of the highest order, the legislature signals that these are not regulatory infractions amenable to an administrative response but fundamental crimes demanding criminal accountability. The relationship between the research law and the Penal Code is addressed in the next sub section.

The 2022 Research Law and the Penal Code 2016 is one of complementarity and cumulation. The principle of *lex specialis derogat legi generali* ensures that where the special law provides a specific offence and penalty applicable to a situation, that provision governs. [43] However, the general provisions of the Penal Code remain available for conduct not covered by the special law. A researcher who fails to obtain consent and whose negligence causes the death of a participant may be prosecuted under Article 59 of the 2022 Law for the consent offence and under section 289 of the Penal Code for unintentional homicide. [44] Similarly, a researcher who fails to assist a participant in a medical emergency arising from the research may face liability under section 283 of the Penal Code for failure to render assistance, [45] even if the special statute does not expressly address that scenario. The same logic of complementarity governs the MAR Law the second of the three special statutes to which we now turn.

CRIMINAL LIABILITY IN MEDICALLY ASSISTED REPRODUCTION

Overview and Legislative Design

Enacted less than three months after the research law, Law No. 2022/014 of 14 July 2022 establishes a comprehensive legal regime for medically assisted reproduction (MAR) in Cameroon, governing procedures such as in vitro fertilization, gamete donation, embryo storage, and artificial insemination. [46] Chapter IX of the law is devoted entirely to sanctions, employing a two-tier structure: confidentiality breaches attract moderate penalties, while substantive violations of the ethical framework attract uniformly severe sentences of

10 to 20 years' imprisonment. This architecture reflects a clear legislative hierarchy of seriousness and communicates to practitioners, with unusual directness, that the law views commercial exploitation of reproductive material, nonconsensual use of embryos, and genetic manipulation in reproduction as among the gravest categories of criminal conduct.

Confidentiality in Assisted Reproduction

Article 51 of the MAR Law criminalizes any breach of confidentiality in the MAR context, carrying imprisonment of 3 months to 3 years and fines of 200,000 to 2,000,000 CFA francs. [47] This provision covers the disclosure of a donor's identity, the revelation of details of a couple's IVF treatment to unauthorized persons, or the sharing of any other sensitive reproductive health information without consent. Like the equivalent provision in the research law (Article 62), Article 51 supplements the general professional secrecy rule in section 310 of the Penal Code 2016, extending its protective reach to all persons involved in MAR services not only the treating physician but also embryologists, nurses, counselors, and administrative staff who handle confidential information. The more serious tier of liability under this law concerns not confidentiality but the commercial exploitation of reproductive material.

Commercial Exploitation of Gametes and Embryos

Article 52 of the MAR Law prohibits all commercial or industrial use of gametes or embryos, attracting the maximum penalty of 10 to 20 years' imprisonment. [48] This encompasses buying or selling gametes or embryos, creating embryos for product testing, and any other instrumentalisation of reproductive material for financial gain. By assigning to this offence the same maximum penalty as organ trafficking under the 2025 transplantation law, the legislature places the commercialization of reproductive material in the same category of gravity as the commercialization of organs reflecting a categorical rejection of any market in human biological material, grounded in the principle of human dignity. From commercial exploitation, we turn to the cluster of consent-based offences that form the ethical core of the MAR Law.

and Medicine: Convention on Human Rights and Biomedicine (adopted 4 April 1997, entered into force 1 December 1999) ETS No 164. United Nations – Declaration on Human Cloning United Nations General Assembly, *United Nations Declaration on Human Cloning* (8 March 2005) UN Doc A/RES/59/280.

⁴²Council of Europe, Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (Oviedo Convention) ETS No 164 (1997), art 13 (interventions on the human genome) and art 18 (research on embryos in vitro); United Nations Declaration on Human Cloning, UN GA Res A/RES/59/280 (8 March 2005).

⁴³On the *lex specialis* principle in Cameroonian criminal law see *Décision No 016/2019 du Tribunal de Grande Instance du Mfoundi* (2019) (unpublished, on file with authors). Cf also Code of Ethics, s 58: 'Any infringement of the provisions of the present Code shall fall within the jurisdiction of the Council of the Association sitting as the Disciplinary Board.'

⁴⁴Penal Code 2016, s 289; 2022 Research Law, art 59.

⁴⁵Penal Code 2016, s 283.

⁴⁶Law No. 2022/014 of 14 July 2022 on Medically Assisted Reproduction (hereafter 'the MAR Law').

⁴⁷MAR Law, art 51.

⁴⁸*Ibid*, art 52.

Consent Based and Parentage Offences

Articles 53 to 55 and Article 58 address a cluster of specific ethical violations in MAR, each carrying the uniform penalty of 10 to 20 years' imprisonment. [49] Article 53 criminalizes the creation or use of a human embryo without the written consent of both donors and the couple whose genetic material is involved. Article 54 prohibits the deliberate mixing of gametes or embryos from different couples in a single procedure an act that would create irresolvable uncertainty of parentage and potentially devastating consequences for the families involved. Article 55 outlaws the conservation of fertilized eggs for any purpose other than a prospective pregnancy, effectively prohibiting embryo banks for research or speculative future use. Article 58 prohibits the transfer to a woman's womb of an embryo that has been the subject of research, ensuring that no embryo can simultaneously serve as a research object and as the basis of a pregnancy. Each of these provisions addresses a specific ethical concern: Article 53 protects reproductive autonomy; Article 54 protects the clarity of parentage and family identity; Article 55 prevents the stockpiling and commodification of embryos; and Article 58 prevents the birth of a child who may have been genetically altered or otherwise affected by prior research on the embryo. The uniformity of the penalty across these diverse offences is a structural choice: it signals that the legislature regards all of these violations as equally serious categorical wrongs, not to be ranked or distinguished. The MAR Law then addresses a further category of wrong related to genetic intervention at the point of reproduction.

Genetic Intervention in Reproduction

Articles 56 and 57 address genetic intervention at the level of the reproductive process itself. [50] Article 56 prescribes 5 to 10 years' imprisonment for using genetically modified gametes, sperm or ova that have been subjected to genetic alteration to create an embryo. Article 57 imposes a similar penalty for using donated sperm without conducting the mandatory health and screening tests required by the law. The somewhat lower maximum penalty relative to the offences in Articles 52 to 55 and 58 suggests a legislative distinction between conduct that is primarily reckless in nature endangering the health of the future child and the recipient and conduct that is primarily exploitative or involves a fundamental breach of consent or parentage integrity. Both categories attract serious criminal penalties, but the legislature has preserved a degree of proportionality between them. The MAR Law concludes with a provision whose social implications extend well beyond the framework of reproductive medicine.

⁴⁹Ibid, arts 53–55, 58.

⁵⁰Ibid, arts 56–57.

⁵¹Ibid, art 59.

⁵²For comparative legislative approaches to surrogacy prohibition see Bromfield NF and Rotabi KS, 'Global Surrogacy, Exploitation, Human Rights and

The Prohibition of Surrogacy

Among the MAR Law's most socially consequential provisions is Article 59's outright prohibition of all forms of surrogacy. [51] The article criminalizes engagement in a surrogacy arrangement in any capacity: as the physician who performs the procedure, the intermediary who arranges it, the commissioning parent who initiates it, or the surrogate mother who agrees to carry the child. The scope is total; there is no exception for altruistic surrogacy, no exception for genetic surrogacy, no exception for family arrangements. [52]

The prohibition of all surrogacy, including altruistic arrangements, represents Cameroon's most conservative position within the MAR Law and reflects a broader social and cultural orientation toward the protection of women from commodification in reproductive arrangements. The law does not provide an explicit statement of rationale, but the absolute nature of the prohibition and its application even to the surrogate mother herself suggests a concern that any legal surrogacy arrangement creates conditions susceptible to exploitation, regardless of the motivations of the individual parties.

The MAR Law's sanctions operate alongside the general provisions of the Penal Code 2016. A practitioner who performs a procedure that causes physical harm to a patient for example, a botched IVF procedure resulting in serious injury may face charges under both the MAR Law (if the procedure was conducted in violation of its provisions) and under sections 280 or 277 of the Penal Code 2016 for simple or grievous harm. [53] The professional secrecy obligation under section 310 of the Penal Code applies in addition to Article 51 of the MAR Law, providing an additional basis for prosecution in cases of serious confidentiality breach. This pattern of cumulative applicability reaches its fullest expression in the third and most recent special statute the 2025 Law on organ donation and transplantation.

CRIMINAL LIABILITY IN ORGAN DONATION AND TRANSPLANTATION

Overview and Policy Context

Law No. 2025/009 of 15 July 2025 is Cameroon's most recent biomedical statute and the culmination of its legislative programme in this domain. [54] It provides a comprehensive framework for organ and tissue donation and transplantation, addressing consent, medical accreditation, donor anonymity, record keeping, and the allocation of organs. Like the 2022 laws, it creates a detailed regime of criminal offences

International Private Law' (2014) 12 *Global Social Welfare* 123.

⁵³Penal Code 2016, ss 280, 277.

⁵⁴Law No. 2025/009 of 15 July 2025 on the Donation, Removal, and Transplantation of Human Biological Material (hereafter 'the 2025 Transplantation Law').

and, like them; it imposes custodial sentences at the upper end of the range available under Cameroonian law for offences other than homicide. The law can be understood as a proactive legislative response to the global problem of organ trafficking, pre-empting the entrenchment of black-market organ trade through the force of criminal law before it becomes established in Cameroon.

Confidentiality in Transplantation

Article 47 criminalizes the disclosure of confidential information obtained in the context of organ donation or transplantation, carrying imprisonment of 3 months to 3 years and fines of 200,000 to 2,000,000 CFA francs. [55] The provision mirrors the confidentiality offences in the 2022 research law and the MAR Law, and similarly supplements section 310 of the Penal Code 2016 in the transplantation context. Its specific importance in the organ donation setting lies in the protection of donor anonymity and recipient privacy both critical to maintaining public confidence in the donation system, on which the availability of organs for transplantation ultimately depends. The more serious criminal tier of the 2025 Law follows.

Non-Consensual Organ Removal and Trafficking

Article 48 is the center piece of the 2025 Law's criminal provisions. Article 48(1) makes it a crime, punishable by 10 to 20 years' imprisonment and a fine of 2,000,000 to 20,000,000 CFA francs, to remove human biological material from a person without their free and informed consent, or to perform such a removal outside an accredited medical facility. [56] The first limb targets organ theft the removal of organs from living persons without consent. The second limb targets clandestine harvesting operations conducted in unregulated settings precisely the modality through which organ trafficking typically operates in the region.

Article 48(2) extends the same severe penalties to a range of related offences: performing a transplant into a recipient without their consent; engaging in any commercial transaction involving organs or tissues; the unlawful destruction of human biological material or associated documentation; and the breach of donor anonymity rules in non-directed donation systems. [57] The grouping of these diverse acts under a single penalty framework reflects a deliberate structural choice: it signals that any form of exploitation or mishandling of human organs whether through non-consensual removal, commercial trafficking, evidence destruction, or anonymity breach is treated by the law as equivalent in gravity, reflecting a categorical rejection of the treatment of human organs as commodities. The particular

vulnerability of minors and incapacitated adults in this context is addressed by the provision that follows.

Aggravated Liability for Offences Against Vulnerable Persons

Article 49 replicates the structural logic of Article 60 of the 2022 Research Law and applies it to the transplantation context: when any offence under Article 48 is committed against a minor or an adult lacking legal capacity to consent, mandatory collateral penalties are imposed in addition to the principal sentence. [58] These include loss of civic rights, a ban from the practice of medicine for up to 5 years, and confiscation of all assets used in or connected with the commission of the offence. As in the research law, the mandatory nature of these additional sanctions removes judicial discretion in the most serious cases the legislature has determined that the exploitation of vulnerable persons in the organ trafficking context is categorically more culpable than equivalent conduct targeting competent adults, and has expressed that determination through the architecture of the sanction rather than leaving it to case-by-case judicial assessment. The relationship between the 2025 Law and the Penal Code is made explicit by the Law itself.

Article 50 of the 2025 Law provides expressly that, for offences not specifically addressed in the transplantation law, the general provisions of the Penal Code 2016 apply. [59] This residual clause has important practical consequences. It enables cumulative charging: a practitioner who removes an organ without consent and in doing so causes grievous harm to the victim may be charged under Article 48(1) of the 2025 Law for the non-consensual removal and under section 277 of the Penal Code 2016 for grievous harm. [60] If the victim dies as a result, section 289 of the Penal Code may additionally be invoked for unintentional homicide. [61]

The interplay between Article 50 and the principle of specialty is nuanced. Where the 2025 Law and the Penal Code 2016 address the same conduct for example, where organ removal without consent also constitutes the Penal Code offence of grievous harm the special law's provision governs the specific organ removal aspect, while the Penal Code provision may still be invoked for the harm aspect, since the two provisions protect different legal interests: the integrity of the organ donation system on the one hand, and physical integrity on the other. Courts will need to develop careful jurisprudence on the boundaries of cumulative charging in this context to avoid violations of the prohibition on double jeopardy. The four instruments taken together raise significant analytical questions, to which we turn in the final section.

⁵⁵2025 Transplantation Law, art 47.

⁵⁶Ibid, art 48(1).

⁵⁷Ibid, art 48(2).

⁵⁸Ibid, art 49.

⁵⁹Ibid, art 50.

⁶⁰Penal Code 2016, s 277; 2025 Transplantation Law, art 48(1).

⁶¹Penal Code 2016, s 289.

COHERENCE, PROPORTIONALITY, AND CHALLENGES OF IMPLEMENTATION

The Architecture of Biomedical Criminal Liability in Cameroon

When one reads the four instruments examined in this article together the Penal Code 2016 and the three special biomedical statutes of 2022 and 2025 what emerges is not an ad hoc accumulation of criminal provisions but a deliberately layered framework with consistent structural logic. The Penal Code 2016 provides the general foundation: it defines the basic offences of homicide, bodily harm, professional secrecy breach, failure to assist, false health certification, facilitation of infectious disease, and the strict regulation of abortion that apply to all persons, including health professionals. The special statutes build on that foundation by creating specific offences for specific biomedical contexts, imposing substantially more severe penalties calibrated to the gravity of the particular wrongs they target.

The framework exhibits a consistent internal logic across the three special statutes. Each contains a lower penalty tier for confidentiality breaches which, while serious, do not typically involve the direct physical exploitation of persons and a higher penalty tier for the most serious substantive violations. Each extends mandatory collateral sanctions when vulnerable persons are targeted. And each contains a residual clause preserving the application of the Penal Code 2016 for conduct not specifically addressed. This structural consistency is a sign of deliberate legislative design rather than ad hoc layering a point worth emphasizing in a regional context where biomedical legislation frequently lacks coherent architecture. The question of whether that severity is proportionate is, however, a separate inquiry.

Severity and Proportionality of Sanctions

The penalties prescribed by Cameroon's biomedical statutes are, by any comparative standard, severe. Life imprisonment for reproductive cloning and germ line modification; 10 to 20 years for organ trafficking, nonconsensual organ removal, commercial exploitation of gametes or embryos, and non-consensual embryo use: these are among the harshest criminal penalties available under Cameroonian law for offences not involving intentional killing. They reflect a legislative judgment that these biomedical wrongs are equivalent in gravity to major felonies against the person. [62]

The proportionality of these sanctions is a legitimate subject of inquiry. A serious argument exists that a 10-to-20-year sentence for, say, the conservation of fertilized eggs for purposes other than a prospective

pregnancy (Article 55 of the MAR Law) is disproportionately severe relative to offences in the same penalty range that involve the direct exploitation of a person's body. The legislature's decision to apply a uniform maximum across diverse offences reflects a categorical approach to biomedical ethics treating all serious violations as equivalent but at the cost of the fine-grained proportionality that criminal sentencing theory would ideally require. This is not a purely theoretical concern: in practice, a prosecutor who can choose between a provision carrying 10 to 20 years and a provision carrying less may choose the former, producing outcomes that are formally lawful but substantively disproportionate.

The Risk of a Chilling Effect

A framework of criminal sanctions as severe as Cameroon's carries an inherent risk of chilling legitimate biomedical research, assisted reproduction services, and organ transplantation. Practitioners and researchers who are uncertain about the precise boundaries of the law or who fear that well intentioned decisions made in conditions of clinical uncertainty may be characterized as criminal after the fact may be reluctant to engage in beneficial activities that fall near the boundaries of permissibility. This chilling effect is particularly acute in the context of the 2022 Research Law, where the penalization of failure to follow proxy consent procedures even where the researcher acted in good faith may deter researchers from enrolling vulnerable participants who might otherwise benefit from research.

Notably, the special biomedical statutes do not provide a general defence of good faith, reasonable clinical judgment, or honest mistake. The Penal Code 2016 contains general provisions on intent and fault that may offer some protection to practitioners who act without criminal intent, [63] but their application in the specific context of biomedical offences is not straightforward. The development of a body of jurisprudence through prosecutorial practice, judicial decisions, and professional guidance that clarifies the fault element required for each offence will be essential to ensuring that the criminal law targets genuine wrongdoing rather than penalizing the inevitable uncertainties of complex medical practice.

Implementation and Institutional Capacity

The effectiveness of Cameroon's biomedical criminal law framework depends critically on institutional capacity: the capacity of police and prosecutors to detect and investigate complex biomedical offences; the capacity of the judiciary to adjudicate technically demanding cases; the capacity of professional regulatory bodies to cooperate with criminal investigators; and the capacity of defence lawyers to

⁶² On proportionality in criminal sentencing see Ashworth A, *Sentencing and Criminal Justice* (6th edn, Cambridge UP 2015) 80–104.

⁶³ Penal Code 2016, ss 74–87 (general provisions on intent and fault).

advise practitioners on their rights and obligations. These forms of capacity are still developing in Cameroon, and the sophistication of the legislative framework arguably outpaces the current institutional infrastructure for its implementation. The gap is particularly visible in the enforcement of the Penal Code's health professional offences and the broader framework of biomedical criminal law: the Foubot case illustrates that fraudulent practitioners may operate with relative impunity in areas where qualified medical professionals are absent, and that the prosecutorial mechanisms available to address them remain insufficiently activated. [64]

There is also a question of the relationship between criminal liability and professional regulation. The special biomedical statutes impose collateral professional bans as ancillary criminal penalties, but they do not establish or reference a comprehensive system of professional self-regulation comparable to the licensing systems operated by regulatory bodies in established healthcare systems that might otherwise provide a first line of accountability for less serious misconduct. The absence of a robust civil and regulatory response to biomedical misconduct means that the criminal law is required to bear the full burden of deterrence and accountability without the support of a complementary regulatory infrastructure. This is a structural weakness that no degree of legislative severity can fully compensate.

CONCLUSION AND THE WAY FORWARD

Cameroon's integrated criminal law framework for biomedical governance represents one of the most comprehensive and punitive in Francophone Africa. Its capacity to effectively protect patients, research participants, organ donors, and users of assisted reproduction services depends, however, on the quality of prosecutorial practice, judicial training, and the broader ecosystem of professional regulation.

Cameroon's framework of criminal liability for medical personnel and biomedical actors is, in the fullest sense, a work in progress. The Penal Code 2016 provides a solid and comprehensive general foundation, addressing the principal categories of criminal wrong that can arise from medical practice from intentional homicide to professional secrecy breach. On that foundation, the legislature has constructed, in rapid succession between 2022 and 2025, three special statutes that create bespoke criminal offences for specific biomedical contexts: medical research on human subjects, medically assisted reproduction, and organ donation and transplantation. Read alongside the Code of Medical Ethics, the Law on the Organization and Practice of Medicine, and the Decree on the Public Health Civil Service, these instruments together form

multi layered architecture of accountability that is unusual in its scope for a country at Cameroon's stage of institutional development.

The cases examined in this article the death of Victoire Kamdem Prestige at the hands of a fake surgeon in Foubot; the disappearance of Vanessa Tchatchou's baby from a hospital incubator in Yaoundé; the detention of insolvent patients in public hospitals remind us that the gap between legislative aspiration and lived reality in the healthcare system remains wide. The framework's strengths are its clarity, its transparency, and its communicative force: practitioners can identify, in principle, precisely what conduct is prohibited and what the consequences of prohibition are. Its principal challenges are the risk of chilling legitimate biomedical practice, the absence of a good faith defence, the proportionality of sanctions across diverse offences, and the current gap between the ambition of the legislative framework and the institutional capacity available to implement it effectively.

These are challenges that careful prosecutorial practice, ongoing judicial development, and in time a complementary system of professional regulation can address. Cameroon's biomedical criminal law framework is an impressive legislative achievement; its ultimate value will be determined by the quality of the institutions that give it life.

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⁶⁴Decree No. 2001/145 of 3 July 2001 on the Specific Status of Civil Servants in the Public Health Corps, arts 144–147, imposes disciplinary obligations on public-

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