RETHINKING THE DOCTRINE OF PATERNALISM IN MEDICAL RESEARCH INVOLVING HUMAN SUBJECTS UNDER CAMEROONIAN LAW

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ABSTRACT

The doctrine of paternalism involving human subjects has been an undisputable practice in medical research. For several decades since the Nuremburg trials, and the development of the Nuremburg Code and Helsinki Declaration, it has been the topic of a huge debate by legal writers on the basis that, the doctrine infringes on patient's autonomy. The main proponent of this doctrine is Immanuel Kant who argues that, all persons have an intrinsic and unconditional worth and therefore, should be allowed to exercise his or her capacity of self-determination.

Due to the inexistence of sanctions against this, one could observe medical experiments conducted and drug tested by medical practitioners on prisoners without their consent. In spite the rational of conducting this medical activity, it has had practical consequences, ranging from victims maimed and in extreme cases, leading to death. It was equally recorded that some lives became worthless as children lost their bread winners on one hand and wives lost their husbands on the other hand.

In this regard, this paper argues that it is crucial for victims of unconsented clinical research to have rights to redress in cases where the effective standard of medicine is not met. In order to address this research investigation, deductive and logical research techniques were used to analyze relevant records and documents. Primarily, discussions were made on the current situation, in which we analysed the paternalistic practice in context with the medical research. With the available materials, we investigated whether the doctrine of paternalism is still useful in the Cameroonian medical law. This paper reveals that the law of 17 April 2022 on Medical

ISSN 2581 3382

research involving human subjects provide legal remedies ranging from the award of damages to penalty against defaulters of medical experiment on human bodies without their consent.

***Keywords*:** Rethinking, Paternalism, Medical Research, Self-determination and human subjects.

INTRODUCTION

Clinical research involving human tissues for medical research is an ongoing subject of dispute. Some advocates assert that patients have a right to determine what happens to their bodies. Researchers argue that the medical practitioner has the right to make decisions in the interest of the patient. This philosophy is called the theory of paternalism[i] and it leaves no room for the patient to decide. Which of these views is correct: does the medical practitioner have a right to interfere with a patient's organs and tissues without his consent? Or does the patient have the freedom to decide? Legal writers, case law authorities as well as the provision of the law of 17 April 2022[ii] are to the effect that, patients have a right over what must be done on their bodies. Hence the need to rethink the doctrine of paternalism as this paper argues that, it is crucial for victims of unconsented clinical research on their bodies to have a right to redress in cases where the effective standard of medicine is not met. It further argues that, information about an intended medical procedure or clinical research involving humans needs to be comprehensively transmitted so that the patient can make a rational decision to consent.[iii]

The term "paternalism" comes from the Latin root word "*pater*" meaning father or from old French "*Paternel*" meaning the feeling of a father for his children. The etymology of paternalism reflects the social hierarchies of patriarchal culture in which fathers, as head of families, were understood to be authority figures responsible for the welfare of dependants. Its action limits a person's liberty or autonomy and is intended to promote their own good. Regardless of the ideological strata one belongs to, the definition of paternalism will always invoke a connotation of a set of practices and attitude in medicine in which a physician determines what happens to a patient and the latter's wishes are not been honoured. [iv] Hence it occurs when a physician or other healthcare professional makes decisions for a patient without the explicit consent of the latter.

ISSN 2581 3382

Paternalists usually refer to this rule to support their belief that the healthcare provider can treat a patient without his/her consent. For example, Mill[v] wrote about what is known as the "harm principle" that, "an expression of the idea that the right to self-determination is not unlimited".[vi] Legal writers such as Manson and Oneil concluded that: "Individual autonomy cannot be the sole principle of medical or research ethics, and consent requirements that protects individual autonomy cannot be the sole criterion of ethically acceptable action."[vii] Thus, an action which results in doing harm to another is not only wrong but wrong enough that the state can intervene to prevent that harm from occurring. From a broader perspective, the underpinning beliefs of a strong paternalist is that, people may have mistaken, confused or be irrational in their decisions and it is legitimate to force them to undergo a medical procedure.[viii] Besides, Mill[ix] proposes a single standard for which a person's liberty may be restricted. That, the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. This narrow paternalistic view is concerned with the state of coercion. That is, the use of legal coercion or hospital policy to restrict an individual's liberty. If Medical doctors have the right to decide on the treatment to give without the patient's autonomy, why do we have decisions like that of *Chester v Afshar* [x] that sanction non-disclosure? Or that of *Schleondorff v New York Hospital*[xi] that sanctions treatment without a patient's consent as a trespass against a human body? Why do we have local laws that proscribe medical research on human tissues without consent? Why do we have legal writers who are against clinical trials without consent?[xii] Why do we have the Nuremburg Code[xiii] and the Declarations of Helsinki[xiv] that outlaw clinical research without consent? All these are pointers to one thing – the autonomy of patient and the oddity of paternalism.

The autonomy-of-a-patient rule states that, the relationship between a doctor and a patient is contractual in nature and as such the patient must consent for any clinical research to be done on his/her body. Can a person participate in a medical research project without his/her consent? Can a medical research be conducted on the tissues of vulnerable persons such as a minor or incapacitated adult without his/her consent? Can a medical research be conducted on an embryo or a foetus resulting from therapeutic or spontaneous abortion or still birth without the consent of the parents? Or can a medical research involving *in vitro* embryo be done without the consent of the parties?

ISSN 2581 3382

The answer to these questions is found in the-autonomy-of-the-patient doctrine. The word autonomy is derived from the Greek word "*autos*" meaning 'self" and "*nomos*" meaning "governance" or rule. It is on this notion that informed consent in healthcare services are premised. The desire that a person should act voluntarily from a position of knowledge and understanding to give their volition to any medical intervention and be supported in their capacity to exercise free will without coercion. Little wonder Cardozo J, a leading authority of this doctrine, describes it in the case of *Schleondorff v New York Hospital*,[xv] as the ability of every human being of adult years and sound mind to determine what should be done with his own body.

In the rest of the paper is organized as follows; in section 2, we define what medical research is all about. Section 3, provides evidence for autonomy as the basis for any medical intervention on human bodies. Further, Section 4, provides justification for autonomy as a ground for medical treatment. Lastly, the paper ends with a conclusion and some recommendations.

WHAT IS MEDICAL RESEARCH INVOLVING HUMAN TISSUES?

The use of human tissues in scientific research has improved health care by leading to discoveries in disease progression, drug development and medical procedure. Human tissues are currently being used in many areas of research including cancer development and treatment, kidney and liver diseases. Human tissue is biological material that comes from a human body and consist of human cells. It includes whole human parts or internal organs, large pieces of tissue surgically removed such as tumours, skin, teeth, bones or body fluids such as blood. The tissue used in research can be obtained from healthy, living donors or during post-mortems or those who have recently passed away or donated their tissue after death. The tissue can also be obtained as part of disease diagnosis, treatment or surgery.

Although scientific inventions have greatly improved human health, there still remain a substantial amount of work to be done in many areas such as the recent Covid-19 pandemic in which virtually all efforts were geared at looking for a solution to remedy the global health crisis. The salient issue remains: What is the rationale for conducting clinical trial with human tissues? The answer to this question can be summarized around one main consideration which explains the analytical arguments in favour of clinical trial on human subjects. The major

ISSN 2581 3382

reason a clinical trial is conducted to generate new knowledge or to produce reliable and robust data in order to contribute to medical advances.[xvi]

In this light, Principle 7 of the Declaration of Helsinki provides that the primary purpose of medical research involving human subjects should be to understand the causes, development and effects of diseases and improve preventive, diagnostic and therapeutic interventions (methods, procure and treatment). Besides, in terms of Principle 6 of the Declaration of Helsinki, for any medical research involving human subjects to be conducted, the physician must be satisfied that the well-being of the individual research subject takes precedence over all other interests.

There are restrictions as a clinical trial may be conducted only after a practical phase has been successfully completed, in accordance with recognized scientific standards [xvii]

More so, the rule in law is that several clinical trials should not be conducted simultaneously on the same person.[xviii] To this end, the research protocol for each clinical trial should specify an exclusion period during which the person participating in the research may not be involved in another clinical trial. This period as a rule in law, varies according to the nature of the research and may not be less than the minimum duration provided for in the research protocol.[xix]

However, consent is legally needed to remove, store, use and reuse human tissue. [xx] Different consent requirements apply to tissue obtained from the living and deceased. The 2022 law sets out the types of human biological material recognized by law and the approval process required. For example, a medical practitioner cannot remove an old person's kidney to save a younger person's life on the pretext that the latter still has his life to live or that there is no hope of recovery for him. If one believes that sometimes paternalism is justifiable, one may do so for various kinds of theoretical reasons. The broadest is simply consequentialist, that is, better than harm is produced.

A strong case against this view can however be made that the human body is inviolate. In the landmark case of *Chatterson v Gerson*[xxi] in 1981, Bristow J ruled that the appropriate action against a doctor treating without a patient's consent would be trespass. Based on the facts of

ISSN 2581 3382

this case, a boy in Safford in the 1940s was admitted for a tonsillectomy. Owing to an administrative error, he was circumcised instead. All the foregoing point to the fact that the human body is inviolate. Putting all these together would give the impression that paternalism is out-of-date in medical research involving human tissues as the patient's consent must be given due consideration before any invasion of his/her body can be permitted. What then is the evidence of the doctrine of autonomy in medical research? It is to this that the paper now turns.

EVIDENCE OF THE DOCTRINE OF AUTONOMY IN MEDICAL RESEARCH INVOLVING HUMAN ISSUES

Broadly speaking, there are six medical researches involving human tissues under the Law of 27 April 2022 relating to medical research involving human subjects (herein after referred to the law of 2022) and in each, we see the evidence of patient's autonomy as a guiding rule and it is more reasonable to adhere to it than advocate for paternalism.

Autonomy as a guiding principle of clinical trails

Paternalism is the philosophy that says "the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number is self-protection".[xxii]A common justification for hard paternalism is to promote the good of society as well as the good of the individual. Mill was the champion of this theory. His book, On Liberty, has done more to promote this theory**.** Mill said that "the right to self-determination is not limited". [xxiii] In other words, according to Mill, medical practitioners have a right to decide on what should be done on a patient's body. To illustrate his theory of paternalism, Mill drew his famous harm principle. This principle widely adopted in bioethics, limits liberty to those instances where the person poses a significant risk to harm others. They justify their views on the basis that such experiments yield results for the good of the society and are unprocurable by other methods or other means of study.

During the past century, medical practitioners and healthcare givers were influenced by his theory. It was considered an absolute medical necessity as there was little or no understanding of medical procedures or practices. In the 18th century, it was believed that only doctors could

ISSN 2581 3382

properly understand symptoms and draw useful conclusions. Thus, it was deemed necessary that physicians make decisions for patients.

But let's ask the question: Does this concept of paternalism exist in Cameroon? As we shall see, the situation is different in this country. In spite of the fact that our legal history has been influenced by the Common and civil law legal systems, as a consequence, given the lack of legal provision in Cameroon, it became imperative in 2022 that a robust regulatory regime be put in place to regulate medical research involving human tissues. One of the guiding principles of medical research is encapsulated under paragraph 1 of section 5 of the 2022 law against unconsented medical research which provides that: "The principle governing medical research shall be participant's free and informed consent, given in writing on a dedicated form." The importance of this point cannot be overemphasized. Based on the information thus far, it can be said that, the genius of medical consent defines the notion of freedom to contract and the rights to one's body which no doubt shaped many initiatives through which medical practitioners exercise their functions.

This constraints medical practitioners in two ways. First, no intervention can be done on a person's body without their consent. This argument draws upon the assumption that patients should be able to make decisions freely, unencumbered by the needs, desires or prospective of others. For the decision to be a participant in a medical experiment to be considered free, the provision of article 1 of the Nuremburg Code requires that they should have the legal capacity to give consent that is exercised free of choice, without the intervention of any element of force, fraud, deceit, duress, overreaching, or other ulterior form of constraint or coercion and should have sufficient knowledge of comprehension of the elements of the subject matter involved as to enable them make an understanding and enlightened decision.

Additional argument for autonomy is that, the consent must be expressed in writing. One of the ways healthcare organizations have operationalized respect for these principles is through the administrative process of garnering the "informed consent" from a patient prior to any medical intervention. This is done through the completion of an appropriately signed informed consent form or document offered as an assurance that any decisions or interventions undertaken or rejected are understood, in alignment with the patient's wishes and are effectively sound. This is known in law as the doctrine of patient "autonomy". Gillon defines

ISSN 2581 3382

autonomy as: "the capacity to think, decide and act on the basis of such thought and decision freely and independently."[xxiv] These beliefs have their origin in the work of Immanuel Kant who argued that respect for autonomy flows from "the recognition that, all persons have unconditional worth and the capacity to determine their own moral dignity."[xxv]

Which of these two views is correct? Should medical practitioners deal with human tissue or body without the consent of the patient? The above provision presents a serious challenge to Mill's theory of paternalism. If paternalism was authorized, then healthcare givers would have been permitted to use the body of a dead person at will. But, this seems far from the reality. As the provision of section 27 of the 2022 law requires that research should only be conducted on the body of a deceased person where the person consented to the use of their body for research purposes prior to their death. The important point here is that section 5 provides evidence that a person's autonomy or consent is required for a medical practitioner to be authorized to carry out and conduct a clinical trial on their bodies.

Following current concepts, there are three justifications for patient's autonomy in clinical trial and research. The first rationale for medical autonomy according to Manson[xxvi] is that the autonomy form acts as a proof of compliance by the medical practitioner to ethical practice. In some interventions, there is an administrative requirement that consent forms should sign. Thus, ethical legitimization is conferred to existing medical practice. Secondly, inform consent provides a defensive legal document lending protection to medical practitioners against legal process. That is, the main purpose of informed consent is to provide a defensive legal document or form of insurance against malpractice suits. Lastly, distancing medical care from the widely criticised paternalistic practices of the past by positioning the decisional capacity as resting solely with the patient.

To be valid, the communication must be done in a language that the patient understands, failure to which, any consent given by the latter will be considered null and void.[xxvii] To consent means one has understood the information provided. To this end, patients should hear the practitioners in their own languages. This rule was made mandatory by the Prime Ministerial Circular of 1991[xxviii] that decrees as follows:

ISSN 2581 3382

(1). Any Cameroonian in general and particular, any user of a public or para-statal service has the basic right to deal with any such service in English or French and is entitled to a reply in the language of his choice.

The upshot of this view is that in the doctor-patient relationship, the patient should consent to a treatment simply because the advantages and disadvantages of that treatment have been explained to him or her by the medical practitioner in a language which he or she understands. [xxix] The rule that it is for the patient to decide which medical treatment he or she will and will not accept was recognized by the Common Law in the early years of the twentieth century. In 1914, the United States' case of *Schleondorff v New York Hospital,*[xxx] Cardozo J famously declared that:

Every human being of adult years and sound mind has a right to determine what shall be done with his own body and a surgeon who performs an operation without his patient's consent, commits an assault.[xxxi]

This reveals a change of the attitude of the law according to which the doctor had a right to lie to a patient.[xxxii] In medical law, clinical research is based on the patient's informed decision making. This change can be linked to the appearance of a more individualistic, less deferential culture in Western societies. In 1956, Szasz and Hollender introduced the three models of paternalism of medical communication namely: the activity model (doctors treat the patient as one who cannot make decisions); guidance model (the doctor provides instructions to the patient to which the patient is expected to comply); the mutual or cooperation model (the physician makes it clear that he is not infallible and does not always know).[xxxiii]

Another factor has undoubtedly been the advances in medical sciences producing the conditions for the patient to have a choice between different therapies. In legal terms, the autonomy principle has been recognized through the rule of requiring consent to medical treatment, and this is what constitutes the starting point in relation to actions based on a medical practitioner's failure to disclose treatment risks. This rule has supplanted the traditional ethics of "paternalism" according to which it was for the doctor to decide in the light of his view of the patient's "best interest" which treatment to employ and what to tell the patient.

ISSN 2581 3382

Autonomy as a precondition for clinical trials to be done on a minor

Family members arguably have duties to their ill-relatives. However, a relative cannot dictate, demand or impress how these presumed duties are met. The patient's question of whether their family members can consent on their behalf begs consideration. The usual justification for paternalism refers to the interests of the person being interfered with. These interests are defined in terms of the things that make a person's life go better such as their health condition. It deals with things like misery or painful emotional state. Thus, advocates of paternalist intervention seek to protect the moral welfare of the patient. If one believes, as Mill thinks, that paternalism should be appropriate toward children because: "It is perhaps, hardly necessary to say that this doctrine is made to apply only to human beings in the maturity of their faculties"[xxxiv] then it will be possible to invoke moral paternalism to interfere with a patient's decisions or conduct such as allowing research to be done on their bodies. However, there is no evidence that patients should be treated without such consent.

From a legal view point, the emphasis here is regarding the unequivocal wordings of section 16(1) of the 2022 law which stipulates explicitly that: "The consent of a minor should be given by his/her legal representative. Such consent will be valid only if the said minor, based on his/her understanding capacity, has given his/her consent after receiving the requisite information from a pedagogically competent staff member." It is imperative to understand that one important underlying constraint here is that, in spite of the consent of the minor, such research must relate directly to a clinical condition that the minor is suffering from or must be designed such that it can be conducted only on minors.[xxxv]

Again, the minor's freedom of choice is decided by his/her level of information and understanding[xxxvi] they must have received from the practitioner. How can a practitioner prove that he has fully discharged this duty? The underlying principle is that, in order for consent to be a defence to the charge of trespass to the person made against the doctor performing an operation, the consent must be real. In order words, the patient or the patient's parent or guardian must genuinely agree to or permit the treatment in question. In the case of *Hill v Potter*,[xxxvii] a patient sued a surgeon for battery alleging that, although she had signed the consent form her consent was not genuine. It was not genuine she alleged because, she had not been fully informed of the risks, which had been explained to her only in the most general terms, no mention having been made of the risk of paralysis.

ISSN 2581 3382

Similarly, the rule in law is that an adult is one who is 16 years of age or over and can give oral or written, express or implied consent and the practitioner will be bound to acquiesce to those wishes. The question for the purpose of this paper is: can a patient under the age of 16 consent to health research and clinical trials? It is asserted that, since the case of *Gillick v West Norfolk and Wisbech Health Authority*[xxxviii] permits a person under 16 years of age to consent to medical treatment without parental permission, then such a person should rightly be able to consent for clinical trial and no court will uphold the argument, if submitted, that in the medical practitioner's view, the consent is not in the patient's best interest as this will be conceived as taking paternalism too far.

It should come as no surprise therefore that, the provision of section 16(1) requires that the consent of the legal representative of the minor should be valid only if approved by the latter based on the information, he must have received concerning the said clinical research. If paternalism was the rule, medical care givers would have taken advantage of the vulnerability of the minor and act without their consent. However, they cannot, because the rule under section 16 of the 2022 law is that, the consent of the minor must be given by his legal representative. Also relevant is Principle 27 of the Helsinki Declaration that requires that: "For a potential research subject who is incompetent, the physician must seek informed consent from a legally authorized representative." Furthermore, Principle 11 of the Declaration affirms that: "the duty of physicians who participate in medical research is to protect the life, health, dignity, integrity, right to self-determination, privacy, confidentiality or personal information of research subjects." The main point here is that, the autonomy of the patient must be taken into consideration for any treatment involving his tissues.

Autonomy as the requirement for medical research on incapacitated adults

An incapacitated person is any adult who is impaired by reason of mental illness, intellectual disability, physical illness or disability, advanced age, or other causes to the extent that the adult lacks sufficient understanding or capacity to make decisions concerning his/her wellbeing. While it is generally acknowledged that effective communication lies at the ethical core of clinical research, there is no gainsaying the fact that the state of the patient's mind greatly influences their level of understanding. However, it should be said that even in cases of incapacity, the incapacitated adult's consent must be respected.

ISSN 2581 3382

This rule is encapsulated in the provision of section 17 of the 2022 law that ordains that a research project may involve an incapacitated adult only where, "it is consented to by the person concerned, while in a state of capacity and such consent being attested by a document." Besides, the informed consent must have been given in writing by the legal representative where no documented consent is available. Furthermore, for the consent to be valid, the person concerned must not, in an identifiable manner, express opposition to the research invention either verbally or by his or her behaviour. This provision approves of only one kind of consent namely, the express consent of the adult who personally agrees to the named medical procedure while he was in a state of capacity and not implied consent that can be deduced from his conduct.

The odds that medical practitioners should decide on this, all by themselves, as alleged by the nudges[xxxix] are virtually zero. The nudges are a new and influential strand of thought about paternalistic interferences. It has been referred to as New Paternalism or Libertarian Paternalism. It is influenced by research in the behavioural sciences on the many ways in which our capacities are flawed and limited. They argued that since people were such bad decision makers, we should nudge them in the direction of their own desired goals by orchestrating their choices so that they are more likely to do what achieves their ends. Unlike traditional paternalism which rules out our choices by compulsion or coercion, nudges simply change the presentation of the choices in such a way that people were more likely to choose options that are best for them.

Autonomy as the basis for the collection of tissues from dead human bodies

There are currently two known interventions that can be done on a person's corpse.[xl] First the organ may be collected to be used for a post-mortem examination to discover the cause of death. This is known as "autopsy" and it is mostly done by pathologist. The second reason is the donation of the organ by a deceased for transplantation. It may involve the transplantation of the heart, two lungs, pancreas, intestines, liver or the two kidneys. The conflict between the autonomy of the donor and the paternalist decision of the medical practitioner who may want to minimize the risk of living kidneys undertake surgery on a dying human body to collect and use them to save another's live is minimized because, the law has made each element of transplantation to be guided by the consent of the donor.

ISSN 2581 3382

People who have studied medicine know that the collection and use of tissue from the dead is governed by laws. These laws are ethical in nature and in terms of section 27 of the 2022 law, the collection of issues from a dead body for medical purposes can only be practised if the person consented to it while s/he was alive to the fact that, the said research should be carried on his/her body. The law also created an offence of exploitation of the human body without their consent. Thus, it is unlawful to have human tissue with the intention of medical analysis to be done without the consent of the person from whom the tissue came. Everything that happens to a human body is the result of their consent. What conclusion can we draw from this? Obviously, we can conclude that, the autonomy of the donor is vital in organ transplantation.

Evidence of autonomy on medical dealings with pregnant woman

The 2022 law recognizes 3 types of medical research involving the body of a pregnant woman: *in vivo embryo*, *in vitro* embryo and, medical research based on foetuses and embryos each of which deserves an independent examination.

- **Evidence of autonomy from *in vivo* embryo**

Some critics of autonomy claim there is absolutely no legitimate evidence in law that medical practitioners should not conduct medical research on pregnant women without their consent. Is this true? Is there any evidence case law and statute restraining unconsented medical intervention on pregnant women? In this section, we will examine this point in more detail. The desire that a person should act voluntarily from a position of knowledge and understanding to give their volition or "informed consent' to any medical research and be supported in their capacity to exercise free will without coercion is evidenced in in vivo medical dealings with pregnant woman. The etymological origin of in vivo production (IVP) come from the Latin *in vivo* and it describes something "within a living organism" unlike *in vitro* that describes something "in glass" such as a test tube or petri dish. It permits the production of embryos from oocytes collected both from abattoir materials and from live donors by follicle aspiration. The main thing gotten here is that, the term *vivo* means in the living body of a plant or animal. The purpose of *in vivo* testing is to verify the efficacy or toxicity of a drug that is expected to be launched in the pharmaceutical market. IVF is also done to help a woman become pregnant. It is used to treat many causes of infertility including advanced age of the woman, damaged or blocked fallopian tubes. It requires the presence of an incubator with controlled temperature

ISSN 2581 3382

and gas atmosphere and of laboratory equipment. During in vivo fertilization, eggs are removed from mature follicle within an ovary (A). The egg is fertilized by injecting a single sperm into the egg or mixing the egg with sperm in a petri (B). The fertilized egg (embryo) is transferred into the uterus (C). This greatly differs form in vitro fertilization (IVF) which is a type of assistive reproduction technology (ART) that involves retrieving eggs from a woman's ovaries and fertilizing them with sperm.

In order for a research project involving a pregnant woman to be conducted, certain formalities and conditions must be fulfilled by the investigator.[xli] Section 19 of the 2022 law contains a blueprint of requirement for clinical research on pregnant women, embryo and *in vivo* fertilization when it stipulates that**: "**A research project involving a pregnant woman, *in vivo* embryo foetus may be conducted only where: the proportion of foreseeable risks to constraints for a pregnant woman vivo embryo or foetus, on the one hand, and the expected benefit, on the other, is not deemed disproportionate by the body in charge of ethics."

There are a number of issues which need to be considered in order to fully absorb these requirements. First, the most important condition is that, no research should be conducted under section 19 of the 2022 law, unless it complies with the law of proportionality that requires that the "foreseeable risk" must be proportionate to the expected "benefits" of the research project. That is, a balance between the "foreseeable risks" to constraints for a pregnant woman vivo embryo or foetus, on the one hand, and the expected benefit. This implies that, if the benefits of the research are not more than the risk the medical team intends to curtail namely the modification of the characteristics of the embryo or foetus in relation to a disease[xlii] the parties have a right to challenge it. This is the idea upon which the notion of autonomy is based.

Secondly, article 19 must be read in conjunction with article 5 on the general principles governing medical research that warrants that an *in vivo* must be done with the free and informed consent of the participant given in writing on a dedicated form. Furthermore, medical research on a pregnant woman may not be conducted on condition that the project entails minimal risks and constraints for an *in vivo* embryo or foetus.[xliii]

More so, only research projects expected to yield important findings that could, in the long run, be beneficial to other pregnant women or other *in vivo* embryo or foetuses should be conducted.[xliv] Finally, in terms of section 20 of the 2022 law, only research projects aimed at

ISSN 2581 3382

modifying the characteristics of the embryo or foetus in relation to a disease should be permitted.

- **Evidence of autonomy on *in vitro* embryo**

One other clinical research that is irreducibly dependent on autonomy is embryo transfer to women. In vitro or artificial insemination is a kind of medical research involving human subjects. *In vitro* simply means outside the womb. This is due to the fact that the uterus of a woman may be having some abnormalities that prevents her from carrying the foetus or the baby thus requiring an artificial insemination. It is conducted to remedy female infertility which, according to World Health Organization,[xlv] is the inability of a woman to conceive after one year of regular unprotected sexual intercourse. Once this is done, the child will develop in the artificially created womb.

According to Longla and Sama-lang, [xlvi] the causes of infertility are numerous and varied ranging from social to biological factors. They alleged that biologically, tubal and uterus factors are amongst the leading medical causes of infertility in a good percentage of cases. They equally hold that others include corpus luteum defects, low sperm counts, weak or inactive sperms, spermicidal secretion as well as faulty awareness resulting to improper sexual intercourse and hence infertility. One major way of remedying this condition is through artificial insemination, which is simply a medical procedure in which a sperm cell is collected from the man while an egg cell is gotten from the woman and the two are placed in the artificial womb to be fertilized. To do this, these authors argue that semen will be placed into the woman's vaginal, cervix or uterus, that is, the womb other than sexual intercourse. The semen used could belong to the woman's husband in which case, it is known as artificial insemination by husband (AIH) and if someone else's sperm is used it is known as artificial insemination by donor or AID and everything being equal, the sperm is expected to meet the ovum resulting in fertilization.[xlvii]

Basically, this is done in specialized health facilities such as the National Training and Research Centre in Reproductive Health "NTRCRH" created by a Ministerial Order of 30th July 2010.[xlviii] The centre is based in Yaoundé. [xlix] Broadly speaking, the reasons for its creation can be classified into three. First, the centre was prompted by the desire to have a hospital that will facilitate the training and the conduct of research in reproductive health.[l] Second, it was

ISSN 2581 3382

created by the political will to put in place a centre that will: "improve the quality of care offered by health facilities and the capacity of health personnel in the services and research in the field of reproductive health."[li]

Finally, the main objective of the NTRCRH was to promote the setting up a modular training programme in the field of reproductive health; ensuring continuous training on reproductive health; operating in collaboration with the Yaounde Gyneco-Obstetric and Paediatric Hospital (YGOPH), a pedagogical support for the training of technical staff in reproductive health particularly within the framework of the training of family planning service providers, prevention of STI/AIDS, screening and treatment of female cancers; promoting research in the field of reproductive health sciences; contributing to the development and strengthening of IEC in Reproductive Health, possibly providing initial training in Reproductive Health."[lii]

Back in the days of Plato, people believed that medical practitioners had the power to decide on the happenings in a human body. Legal writers now hold that medical care is "irreducibly complex" that is, it depends on the autonomy of the patients as the medical practitioner must work together with the patient's autonomy for clinical research to occur. Strong evidence of autonomy is found in the domain of vitro fertilization. A good illustration of this view can be seen in the provision of section 20 of the 2022 law that requires that clinical research on human embryo can only be performed with the consent of the couple or the surviving partner of the couple from whom the embryo was taken. Again, section 21 requires that they should be informed of the nature of the research to enable her to give a free and valid consent. Premised on this, paternalists would have a difficult time trying to explain their theory. Hence the need to rethink the existence of this theory in the domain of medical research involving human subjects.

- **Evidence of autonomy in medical research on embryos and foetuses**

Another clinical research that depends on the patient's consent is medical research on embryos and foetuses. There are generally three categories of medical research on embryos and foetuses namely: therapeutic, spontaneous abortion and stillbirths. We shall now proceed to examine each form progressively. First, the consent of the parties is needed for any therapeutic abortion to be conducted. It should be stated that there has been a controversy on the issue of abortion between two opposing camps notably, the fundamentalist and the liberals. On the issue of

ISSN 2581 3382

abortion between these two opposing camps, the fundamentalist equate abortion to murder that is infanticide, while the liberals argue that the foetus not being a human being cannot be murder.[liii]

Generally, abortion may be sub-divided into two groups namely: the spontaneous and the provoked. A spontaneous abortion is the interruption of a pregnancy by forces beyond the woman's control that is, it is involuntary. The law does not concern itself with spontaneous abortion. The criminal law relating to abortion is concerned with provoked abortion. [liv] According to Zama, a criminal abortion refers to "the intentional destruction of a foetus in its mother's womb with the intent to cause its death."[lv] Provoked abortion can be sub-divided into two categories, illegal abortion otherwise known as criminal abortion and legal abortion generally known as a therapeutic abortion. There are two exceptional circumstances under which abortion can be lawfully performed, namely, where the life of the mother is in danger and where pregnancy has resulted from rape.[lvi] On its part, stillbirth refers to the death or loss of a baby before or during delivery. It is further classified as either early, late or term stillbirth. An early stillbirth is a fatal death occurring between 20 and 27 complete weeks of pregnancy. A late stillbirth occurs between 28 and 36 completed pregnancy weeks while a term stillbirth occurs between 37 or more completed pregnancy week.

Once any of these events occurs, the provision of section 23(1) of the 2022 law, ordains that the "pregnant woman may be asked if she wants to donate her embryo or foetus for research". However, there are a number of requirements that must be met for the foetus or embryo to be used in any clinical research. First, in Cameroon, under the provision of Section 24 of the law relating to medical research involving human subject embryo and foetuses from spontaneous abortions, including stillbirths, may be used for research only with the consent of the couple or person involved. This gives evidence to consent as a precondition for medical intervention. Thus, the odds that medical practitioners should decide on this all by themselves to prevent a greater harm as Mill suggested is virtually zero. This process is irreducibly complex and dependent on the patient's consent. Remove consent from the process and you face the rigours of Section 59 of the 2022 law that sanctions any clinical trial performed on anyone without their prior consent with an imprisonment from 1 to 5 years and a fine for from 10 million to 50 million.

ISSN 2581 3382

Besides, an embryo or a foetus from spontaneous abortions maybe used in research projects only where the death has been determined by an authorized health care professional. So, nurses and midwives are excluded from the list of those entitled to ascertain the death of the foetus or embryo for the purpose of medical research because they are not capable of carrying out the operation with maximum efficiency and minimum risk to the life of the foetus.

Finally, a joint reading of the provision of section 23(2) and section 24(2) will reveal that the embryos and foetuses from a pregnancy termination or from a spontaneous abortion or stillbirth may be used in a research project only if the death has been certified by an authorized health care professional. There is a myriad of reasons for the death to first of all be certified before any research is conducted on the foetus. The first reason is that the law protects the foetus by incriminating any destruction of a child capable of being born alive. This view can be canvassed by the provision of Section 1(1) of the Infant Life (Preservation) Act 1929 that provides as follows: "Any person who, with intent to destroy the life of a child capable of being born alive, by any wilful act causes a child to die before it has an existence independent of its mother, shall be guilty of child destruction."

Another reason for the certification of the death of the foetus before any clinical research can be allowed to be conducted is that the foetus is protected from abortions that are not lawful under the Abortion Act of 1967.[lvii]

Similarly, under Section 58 of the Offences against the Person Act 1861: "Every woman, being with child, who, with intent to procure her own miscarriage, shall unlawfully administer to herself any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, and whosoever, with intent to procure the miscarriage of any woman, whether she be or be not with child, shall unlawfully administer to her or cause to be taken by her any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of a felony, and being convicted thereof shall be liable to be kept in penal servitude for life."

Evidence of autonomy in emergency situation

There is another well-known restriction of paternalism under section 25 of the 2022 law that supports patient consent. It is the restriction against any medical intervention without a

ISSN 2581 3382

patient's consent even in emergency situations. This provision states that in emergency cases, clinical research should not be performed provided the legal requirements have been fulfilled namely, the manifestation of the consent of the person on whom it is to be practiced.[lviii] It may be stated that, even in emergency situations, the patient's will must be respected.

JUSTIFICATION FOR AUTONOMY IN CLINICAL RESEARCH

There are generally three reasons why medical research should not be conducted on a patient without their consent. First, the invasion of another's body is known in law as battery. Second, treatment without consent is unethical, and finally, it can attract a number of disciplinary and criminal sanctions against the law violator. Let's now examine each of these reasons in turn.

Medical research without consent is a battery

If paternalism doctrine was applicable in cases in which a patient does not consent for the invasion on their bodies, then no cause of action for redress will have been available to the victim. However, in practice, a prosecution for battery will be brought against medical practitioner. This allows the patient to bring an action in the tort of battery also known as "trespass to person." This tort confers protection from intentional, non-consensual touching that goes beyond what is acceptable in the conduct of ordinary life. As Lord Goff noted in *Re F (A Mental Patient Sterilization),*[lix] the ordinary conduct exception concerns such matters as jostling in public places. In this context, neither the doctor's hostile motive, nor the beneficial character of his intervention will be relevant. It is enough that he acted in the knowledge that the patient did not sanction the procedure.

The rule in law is that battery liability is most likely in cases where the doctor makes no attempt to inform the patient of his intentions, thereby wholly failing to involve him in the treatment decision. Thus, in two recent cases[lx] the Illinois Appellate court reiterated that defendants may be liable for battery in the medical context, even without any intent to cause harm as patients have absolute rights to refuse treatment. Similarly, there will be sure liability where a medical practitioner misleads the patient in bad faith. This was the case in *Appleton v Garrett*[lxi] where a dentist was found to have carried out unnecessary dental treatment on a number of patients for financial gain.

ISSN 2581 3382

Medical research without consent is unethical

Medical ethics describes the moral principles by which a doctor must conduct themselves. Medical deontologist tends to argue that, the correct course of action is dependent on compliance by the physician to experimental research conducts and standards. It means that, the morality of the action is based on whether it followed the rules. Thus, in terms of section 56(1) which stipulates that:

Without prejudice to criminal proceedings, sponsors and investigators who fails to fulfil their obligations shall incur the following penalties: suspension or withdrawal of ethical clearance; suspension or withdrawal of the administrative research authorization; confiscation or destruction of biomedical material and data at the offender's expense; suspension of the right to receive research funding; suspension of authorization to conduct experiments; suspension of the authorization to practice medicine or any other profession related to the purpose of the research; temporary or permanent closure of the accused research institute; prohibition of the publication of the result of the offending research; prohibition of putting in the national market products resulting from experimental research conducted in violation of ethical and administrative standards.

There are specific aspects of this provision that merit some discussion. First, ethical sanction may comprise withdrawal or the suspension of ethical clearance; administrative research authorization and authorization to practice medicine. That is, it may either lead to the permanent or temporal removal from the professional practice of the registrant. Second, ethical sanctions may be ordered for the destruction and confiscation of biomedical material or data. The aim here is to deter the commission by the accused of the same offence in the future. Furthermore, note that this provision excludes imprisonment as one of the ethical sanctions. This can be gotten from the phrase "without prejudice to criminal proceedings". The reason, according to Collins J[lxii] is that sanctions against a medical practitioner on grounds of medical misconducts are not a punishment. Fourth, under this provision, ethical sanctions are imposed in response to the misconduct of sponsors and investigators who fails to fulfil their obligations of resorting with the patient's consent. Finally, this provision presented here makes no reference to the objective sought by legal sanction or the mechanism by which they are expected to work.

ISSN 2581 3382

Medical research without consent is punishable by law

These sanctions can be classed into two group: Administrative and criminal sanctions. Both of which shall be examined in the paragraphs below.

- **Administrative sanctions**

The main administrative sanction applicable in Cameroon against unconsented medical research involving human tissues are fines. That is financial compensation for any illegal medical research. According to Section 57 of the 2022 law, "whoever conducts a research project without obtaining ethical clearance and administrative research authorization shall be liable to a fine of from one million (1000, 000) to one hundred million (100,000,000) francs. Besides, section 57(2), requires that: the above sanction should also apply to anyone who deviates from the authorized protocol after having obtained the required authorization or who knowingly conducts a clinical trial on a person already involved in another trial or who conducts or causes the conduct of medical research on a person that has been prohibited or suspended by the competent authority. Also, in terms of section 58 of the above law, a sponsor who initiates medical research without taking out an insurance policy to cover any risks that may occur in the course of the research shall be liable to a fine of from fifty million to two hundred million CFA francs. These sanctions provide strong evidence of legality as the basis for medical research on human body.

- **Criminal sanctions**

Turning to the criminal sanctions, it should be noted that there are three major types of imprisonment to which an offender may be subjected. First, there exists a less severe imprisonment that ranges for from 1 to 5 years. In Section 59 we find a glaring example of this sanction against unconsented medical research levied on anyone who carries out a medical research project without having informed participants of their rights, research methods and risk. Again, it sanctions anyone who carries out a medical research project without prior consent of the person concerned, or those who carries research on a minor or incapacitated adult without his/her assent and the consent of his/her representative. Lastly, it punishes those who carry medical research when the consent granted initially has been withdrawn with an imprisonment of from 1 to 5 years and a fine of from ten million to fifty million francs CFA.

Furthermore, section 60 sanctions anyone who carries out medical research project either without the assent of a minor or an incapacitated adult on the one hand or the consent of his/her legal representative on the other hand with the following penalties: loss of civic and civil rights;

ISSN 2581 3382

prohibition for a period of up to five years from engaging in a professional or social activity in the course of exercise of which the offence was committed; confiscation as provided for in section 35 of the penal code and permanent exclusion from contracts or for a maximum period of 5 years. This takes the form of an accessory penalty and preventive measures imposed jointly and cumulatively with principal penalty that is, loss of liberty, fines and life imprisonment. The upshot of this view is that, in the doctor-patient relationship, the patient should consent to any medical research involving their tissues failure to which, both the research and the sponsors of the project will be sanctioned.

More so, section 61 punishes anyone who reuses biological material or personal health-related data without obtaining prior consent or providing the information required by the applicable law. It also, sanctions anyone who transmits biological material or personal health-related data without a legal basis or required consent. If Medical practitioners were allowed to decide on these without the patient's autonomy, then, no such restrictions would have been provided by the draftsmen of the law. The only logical explanation for proscribing this action is because it is tantamount of using a person's person data without their consent. And this is pointing to one thing, the autonomy of patient and the oddity of paternalism. Hence, the need to rethink the validity of medical paternalism on researches involving human tissues.

Similarly, section 62 of the law expressly recommend that anyone involved in a medical research project, who discloses information without the prior consent of its owner, will be punished with an imprisonment of for from 3 months to 3 years and a fine of for from twenty thousand to one hundred thousand francs. This seems to be a violation of autonomy in that, the person whose information are used did not approved of its used. The implication of this view is that, this reveals a change of the attitude of the law according to which the physician for the good of the patient had a right to the patient's medical records and can use them as they please.

Secondly, there exist severe penalty that ranges for from 10 to 20 years. This provides an argument in favour of autonomy in that, section 63 of the law sanctions anyone who transfers or acquires a human body or part thereof for consideration or in exchange for other material benefits with an imprisonment for from ten to twenty years and a fine for from fifty thousand to one million francs. The main rationale for this sanction is gotten from the doctrine of

ISSN 2581 3382

autonomy as the consent of the person in this case is vitiated by the induced consideration and not freely given.

Finally, there exist a more severe sanction of life imprisonment against infringement against human embryos. The sanctions against violations of the human embryo may take different flavors. First, section 64 sanctions anyone who clone a human embryo for research purposes with life imprisonment. On its part, section 65 sanctions anyone that carries out reproductive or therapeutic cloning while section 66(1) punishes anybody who genetically improves an embryo with life imprisonment. Again, section 66(2) sanctions whoever chooses the sex of an embryo or manipulates it in order to modify it with life imprisonment and lastly, section 67 punishes anyone who creates transgenic or chimeric embryo with life imprisonment.

CONCLUSION AND RECOMMENDATION

From the foregoing, it is clear that, the doctrine of patient autonomy is a fundamental ethical principle recognized explicitly and implicitly in many international and regional legal instruments. From the plethora of cases discussed in the foregone, it is clear that this ethical principle was affirmed in a court decision by Justice Cardozo in 1914 with the epigrammatic dictum "Every human being of adult years and sound mind has the right to determined what shall be done with his own body" [lxiii]

Unarguably medical research without consent is not just a trespass to person but also an unethical and criminal offence meted with administrative and criminal sanctions as has been seen in this paper. It is therefore proposed that the state and all stake holders should take reasonable steps towards curbing the problem of paternalistic intervention on human subjects. As Angell in response and in vigorous defence of informed consent, was of the opinion that, "There must be a core of human rights that we would wish to see honoured universally. The forces of local custom or local law cannot justify abuses of certain fundamental rights and the self-determination on which the doctrine of informed consent is based." [lxiv]

In Cameroon, the doctrine of autonomy of medical research involving human subjects is recognized in the law of 2022 that set out five areas in which patient's informed consent is needed before any medical intervention can be done. We heavily rely on this law and given

ISSN 2581 3382

that its implementation may meet a number of challenges, we therefore recommend that, to surmount the hurdles of lack of capacity and competence to act autonomously, given that the law is silent on who lacks such a capacity, it is suggested that, both hospitals and the courts should determine when it can rightfully be said that a person lack a decision-making capacity. More so, we suggest that, mandatory insurance be imposed on researchers. The aim of compulsory insurance is to make sure that adequate compensation is provided to participants when certain unforeseen accidents occur.

In addition, given the fact that, resistance to the principles of patient autonomy and its derivatives (informed consent) is not unexpected, we suggest that, a critical examination of paternalistic medical practice is needed. To add more, considering the need to sensitize the public, it is proposed that, the Ministry of Public Health can come out with a "Charter on Patient's Rights" and make available to all hospitals, to be put in a conspicuous place so that; patients are made aware of their rights.

Finally, we suggest from the foregoing that it is mandatory for physicians to disclose all facts relating to medical research involving human tissues in order to enable the patient to give a valid consent. Researchers, sponsors of medical research and the government of Cameroon should adopt the recommendations mentioned in this article. If this is done, we strongly believe that the fight against paternalistic medical experiment will be a success.

ENDNOTES

[i] See Mill J, S. (1859), *On Liberty*, Indianapolis: Bobbs-Merrill, p. 195.

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ii Law No 2022/008 of 27 April 2022 Relating to Medical Research Involving Human Subjects In Cameroon; see also article 1 of Law No. 2022/014 of 14 July 2022 On Assisted Medical Procreation.

[iii] See Sivalingam, N.F (2011). *"Medical Paternalism and Patient Autonomy; The Dualism Doctors Contend With*," Vol. 66 No. 5, The Medical Journal of Malaysia, p.1.

[iv] See Brennan, T (1991) *Just Doctoring Medical Ethics in Liberal State*, University of California Press, pp. 51-53.

[v] See Mill J, S. (1859), op. cit., p. 195.

[vi] Ibid.

[vii] As per Manson NC and O'Neil O (2007), *Rethinking Informed Consent in Bioethics*, Cambridge University press, p. 19.

[viii] See Brink, D. (2013), "*Paternalism and Our Rational Power*," Mind, Vol. 126(501), pp. 123-153.

[ix] See Mill J, S. (1859), op. cit, p. 195.

[x] (2004) UKHL 41.

ISSN 2581 3382

[xi] (1914) 211 NY 125.
[xii] See Beauchamp et al (2001), *Principles of Biomedical Ethics*, 5th ed. New York, Oxford University Press, p. 5.
[xiii] The war crimes tribunal at Nuremberg laid down 10 standards to which physicians must conform when carrying out experiments on human subject. See most especially Principle 1 that requires that, for there to be any experiment on any human beings: "The voluntary consent of the human subject is absolutely essential".
[xiv] The Declaration of Helsinki is a formal statement of ethical principles Adopted by the 18th World Medical Association General Assembly in 1946 to guide the protection of human participants in medical research. See most especially its sixth and seventh revisions of 2008 and 2013 respectively. See Principle 24 requires that: "For medical research using identifiable human material or data, physicians must normally seek consent for the collection, analysis, storage and/or reuse."
[xv] (1914) 211 NY 125.
[xvi] As per Section 40 of the Law No. 2022/008 of 27 April 2022
[xvii] Ibid, Section 41.
xviii Ibid, Section 42(1).
[xix] As per, Section 42(1) of the 2022 law.
[xx] To this effect, the provision of section 29(1) of the 2022 law provides that: "Biological materials, genetic data, and non-genetic health related personal data, in coded or uncoded form, may be reuse in a research project if the person concerned or, where applicable, his/her legal representative has given free, informed and written consent." (My emphasis).
[xxi] (1981) 1 All ER 257.
[xxii] Stuart, M. J. (1909), "On Liberty," Vol. 25, Harvard Classics, p.11; Available at, http://www.csulb.edu/~jvancamp/free/excerpts.htm. (Last accessed August, 10th 2022).
[xxiii] Ibid, p. 11.
[xxiv] Gillon, R. (1985), *Philosophical Medical Ethics*, 1st ed., London: Willey, p. 60.
[xxv] See Beauchamp et al (2001), *Principles of Biomedical Ethics*, 5th ed. New York, Oxford University Press, p. 2.
[xxvi] As per Manson, N.C. and O'Neil O. op. cit. pp. 9, 115, 10-11
[xxvii] See Section 11(1) of Law No. 2022/008 of 14 April 2022 that provides that: "Any prospective participant in a medical research project be informed, in a language he/she understands, about the purpose, benefits, advantages of, and procedure for carrying out the research project, the duration of the research, expected constrains and risks, possible medical alternatives, as well as his or her right to refuse or withdraw from the research project without any disadvantage."
[xxviii] Circular No. 001/CAB/PM of 16th August 1991 on Bilingualism in Public and Para-Statal Service, Compendium op. cit., pp. 1454–1455.
[xxix] See Section 11(1) of Law No. 2022/008 of 14 April 2022 op. cit. p. 5.
[xxx] (1914) 211 NY 125.
[xxxi] Ibid, 126. See also *Wall J in Re JF (Adult: Refusal of Medical Treatment*) (1998) 1 FLR 48, p. 51, in which the learned judge was of the opinion that, "It is in general terms a criminal and tortious assaults to perform physical invasive treatment without a patient's consent."
[xxxii] See for example *Hatcher v Black* The Times 12th July 1954 discussed by Lord Denning (1979), The Discipline of Law, 1st ed., London: Butterworth, pp. 242–4.
[xxxiii] See Szasz, T.S. and Hollender, M.H. (1956), "*The Basic Model of the Doctor-Patient Relationship*," Archives of International Medicine, Vol. 97, pp. 585-592. See also, Keba, R. (2007). "*The Evolution of the Doctor-Patient Relationship*", International Journal of Surgery, Vol. 5(1), pp. 51-65.
xxxiv See Mill J.S. (1859). "*On Liberty*" published in Gray, John (ed) *John Stuart Mill: On Liberty and Other Essay*, Oxford University Press, p. 11.
[xxxv] Section 15 of the Law No. 2022/008 of 14 April 2022.
xxxvi Ibid, Section 16.
[xxxvii] (1983) 3 All ER 716; (1984) 1 WLR 641.
[xxxviii] 1986) AC 112.
[xxxix] See Sunstein, C.R. (2013), "*The Storrs Lectures: Behaviors Economics and Paternalism*", Yale Law Journal, Vol. 12, pp. 1826-1900.
[xl] Section 28 of the Law No. 2022/008 of 14 April 2022 op. cit.
[xli] See section 4 of the 2022 law that provides that: "For the purposes of this law, and its implementing instruments the following definitions shall apply: "Investigator: Any person responsible for the conduct of a human health research project."
[xlii] As per Section 20 of the Law No. 2022/008 of 14 April 2022.
[xliii] See section 19 (Paragraph 2) of the 2022 law.
[xliv] See section 19 (Paragraph 3) of the 2022 law.

ISSN 2581 3382

[xlv] World Health Organization (WHO) International Classification of Diseases 11th Revision (ICD-11) Geneva: WHO 2018.
[xlvi] Longla A.B and Sama, B. (2003), "*The Sociolegal Consequences of Human Assisted Reproduction (HAR) on the Cameroonian Woman and Child*," Vol. 55 Jurisdis Peroidique, p. 104.
[xlvii] Ibid, op. cit., p. 105.
xlviii Order No. 3051/A/MINSANTE/CAB/SG/DAJC of 30th July 2010 on the Setting up, Organization and Functioning of the National Centre for Training and Research in Reproductive Health.
[xlix] Ibid, Article 1.
[l] Ibid, Article 2.
[li] Ibid, Article 3.
[lii] Ibid.
[liii] See Keown, J, (1988), *Abortion, Doctors and the Law: Some Aspects of the Legal Regulation of Abortion in England from 1803–1982*, 1st ed., CUP, p 3.
[liv] See the provision of section 337(1) and (2) of Law No. 2016/007 of 12 July 2016 relating to the Penal Code.
[lv] Zama, I. (1993), "*The Medical Doctor, Abortion and the Law in Cameroon*," Juridis Périodique, No. 13, Janvier-Fevier-Mars, p. 59.
[lvi] See the provision of section 339(1) and (2) of Law No. 2016/007 op. cit.
[lvii] See the Infant Life (Preservation) Act 1929 that provided in it Section 1 that: "subject as hereinafter in this section provided, any person who, with the intent to destroy the life of a child of being born alive, by wilful act causes a child to die before it has an existence independent of its mother shall be guilty of a felony." See further Section 58(1) of the Offences Against the Person Act (OAPA) 1861that makes it an offence to procure or attempt to procure a miscarriage by a third party, self-induced, or using an instrument to do."
[lviii] Section 26 of the Law No. 2022/008 of 14 April 2022.
[lix] *Re F (A Mental Patient Sterilization)* (1990) 2 AC 1 (HL) 73
[lx] *Sekerez v Rush University Medical Center*, Case No. 1-09-0889 (IL Dist, 1 App., June 30th 2011 and *Bakes v St. Alexious Medical Center*, 2011 IL App (1st) 101646, where the patient who had not consented to blood admimistration was considered as battery.
[lxi] (1997) 8 Med. LR 75 (QBD).
[lxii] Collins J, in *S v The General Medical Council* (2007) EWHC 3257 (Admin), p. 13.
[lxiii] Cardozo B (1914) Basic right to consent to medical care-*Schlendorff v. The Society of the New York Hospital*, 211 NY 125 105 NE 92 Lexus, p. 1028.
[lxiv] Angell, M. (1988). "*Ethical Imperialism? Ethics in International Collaborative Clinical Research*" N. Engl. J. Med Vol. 319(16), pp. 1081-3.

ISSN 2581 3382