

## CAMEROON\*

### Introductory Notes

**Prof. Charles Manga Fombad, University of Pretoria**

#### **1. Origins and Historical Development of the Constitution**

The Constitution which operates today in Cameroon is a paradox that in many respects reflects the history of the country. Although Cameroon is a German creation, it is however the Portuguese who are considered to be the first Europeans who arrived on the country's coast in the 1500s. Malaria prevented them from making any significant settlement and conquest of the interior until the late 1870s. The name of the country is derived from the Portuguese word '*cameroes*'.<sup>1</sup>

Prior to the Congress of Berlin in 1884–1885, the dominant presence in Cameroon was that of the British. But whilst the British were undecided on what to do, the German trading community in Douala began to negotiate treaties with local chiefs. Eventually, the German authorities overcame their initial reluctance to acquire colonial possessions, outmanoeuvred the British, and established a colony in Cameroon in July 1884.<sup>2</sup>

Generally speaking, Cameroon's constitutional history can be said to have gone through three main periods. The first period is that of the German protectorate that lasted from 1884 until 1916, when the German forces in Cameroon were finally defeated during the First World War by a combined British and French expeditionary force. The second period is marked by the French and British rule that lasted until independence in 1961. The third period covers all developments that have taken place since independence and the reunification of the British and French administered portions of the country to form what is now known as the Republic of Cameroon. A brief overview of these three periods will provide an important background to understanding Cameroon's Constitution.

The Germans were initially reluctant to enter into the colonial adventure: the high costs involved and the complex administration that went with it made them apprehensive.

---

\* Prof. Charles Manga Fombad, Lic-en-Dt (University of Yaounde), LLM, PhD (University of London), Dipl Conflict Resolution (University of Uppsala), Head, Comparative African Constitutional Law Unit, Institute for International and Comparative law in Africa, Faculty of Law, University of Pretoria, South Africa.

'This work is based upon research supported by the South African National Research Foundation.' This also draws from my previous work, *International Encycopaedia of Laws, Constitutional Law: Cameroon* (Kluwer Law International, The Hague, 2011).

<sup>1</sup> The Portuguese sailor, Fernando Poo, came to the island that today bears his name in 1472. His caravels anchored in the River Wouri. The large number of shrimps in the waters of this river so astonished the sailors that they decided to name the river '*Rio dos Cameroes*': that is, Shrimp River. This was later changed into '*Camerones*' by the Spanish, '*Kamerun*' by the Germans, '*Cameroun*' by the French and '*Cameroons*' by the British. Initially, the name was also given to the Douala town and it became the name of the whole country when the Germans signed a protectorate agreement with the local chiefs.

<sup>2</sup> See generally, HR Rudin, *Germans in the Cameroons 1884–1914: A Case Study in Modern Imperialism* (New Haven, Yale University Press, 1938) and SG Ardener, *Eye-Witnesses to the Annexation of Cameroon, 1883–1887* (Buea, Government Press, 1968).

Nevertheless, they did so to protect and promote German trade as well as to keep out their British rivals. They were actually the first to unite the coastal and inland ethnic groups in the country into a single cohesive modern polity. They expanded and consolidated their hold on the territory through raids against recalcitrant ethnic groups, co-optation of traditional chiefs through friendship pacts, and military expeditions.<sup>3</sup> It was actually during the German colonial period that Cameroon's international boundaries were fixed and the foundation for a modern economic structure was laid down with the establishment of a network of roads and railways.

German rule in Cameroon was based on a law that was passed in the Reichstag in 1886, which conferred wide powers on the Kaiser to legislate by decree for order and good government in the protectorate. To facilitate administration, the country was divided into several administrative districts. The districts around the coast were placed under civil administrators whilst those in the interior were placed under military commanders. To maintain peace and tranquillity in the territory, two systems of courts were established—one for Europeans, and the other for Cameroonians. Two laws, the Consular Jurisdiction Law of 7 April 1900 and the Colonial Law of 10 September 1900, rendered German law applicable in the European courts. The other court system that was created for Cameroonians basically applied customary law. Many writers on the country share Le Vine's<sup>4</sup> conclusion that German rule, as well as its system of justice,<sup>5</sup> was strict, often harsh, but just.

Germany practically lost its control over Cameroon during the First World War when its last stronghold on the territory at Mora fell on 20 February 1916. On 4 March 1916, the two victors finally initialled an agreement that formally partitioned Cameroon into two unequal parts, with the French taking almost four-fifths of the territory. This partition was confirmed in an Anglo-French Declaration, signed in Paris on 10 July 1919 by Viscount Milner (for the British) and M. Simon (for the French), which legally confirmed the borders as delineated on 4 March 1916. The British appeared to have settled for the smaller portion of the territory because they were afraid of incurring the financial responsibilities involved in taking on another colonial territory and were only interested in such part of Cameroonian territory as would enable them to consolidate and better protect their vast Nigerian colony.<sup>6</sup> This was confirmed in Article 119 of the Treaty of Versailles and under Articles 22 and 23 of the League of Nations Covenant, in which the Anglo-French arrangements in former German Cameroon were formally recognised. This conferred a trust to the two mandatory powers, which were exhorted 'to promote to the

---

<sup>3</sup> See VJ Ngoh, *Constitutional Developments in Southern Cameroons, 1946–1961: From Trusteeship to Independence* (Yaounde, CEPER, 1990) 1–3.

<sup>4</sup> In *The Cameroons from Mandate to Independence* (Westport, Greenwood Press, 1964) 37 and also N Rudin, *Cameroon: An African Federation* (London, Pall Mall Press, 1971) 41.

<sup>5</sup> See generally C Anyangwe, *The Cameroonian Judicial System* (Yaounde, CEPER, 1987) 29–43.

<sup>6</sup> Viscount Milner explained this in a memorandum of 29 May 1919 thus: 'We shall not, indeed have added much to our possessions in West Africa ... But the additional territory we have gained, though not large in extent, has a certain value in giving us better boundaries and bringing completely within our borders native Tribes which have hitherto been partly within British territory and partly outside it.' This is cited in VJ Ngoh (n2) 8.

utmost the material and moral well-being and social progress of the inhabitants of the territories', and make regular reports to the League of Nations.

The division of Cameroon between Britain and France provided the basis for the establishment of two distinct and often conflicting cultural, political, and legal traditions that have had and continue to have a profound effect on the country today, particularly its constitutional law. To fully appreciate and understand its constitutional law today it will be useful to briefly look at the different constitutional developments that took place in the two portions of the country when they were under separate British and French administration from 1916 to 1961. Both countries were required to administer their respective spheres of Cameroon as class B mandates. Article 2 of the Mandate Agreements gave them responsibility for the maintenance of 'peace, order and good government of the territory and moral well-being and the social progress of its inhabitants.' Article 9 explicitly made it clear that the mandatory powers would have

full powers of administration and legislation in the area subject to the mandate. This area shall be administered in accordance with the laws of the mandatory as an integral part of his territory... The mandatory shall therefore be at liberty to apply his laws to the territory under the mandate subject to the modifications required by local conditions, and to constitute the territory into a customs, fiscal, or administrative unions or federation with the adjacent territories under his sovereignty or control, provided always that the measures adopted to that end do not infringe the provisions of this mandate.

Because of its class B status, Britain and France were not obliged to prepare the inhabitants of the territory for eventual self-government or independence and therefore did not make any commitments to achieve these goals.

The British sector consisted of two narrow non-contiguous strips of territory. Because of difficulties that the British anticipated in administering the territory separately from Nigeria, due to the absence of adequate transportation and a communication network, and relying on Article 9 of the Mandate Agreement, Britain decided to administer its portion of the territory as an integral part of its Nigerian colony. On 26 June 1923, the British Cameroons Order-in-Council was made, which provided that the northern part of the territory was to be administered as part of the Northern Provinces of Nigeria and the southern portion administered as part of the Southern Provinces of Nigeria. The former came to be known as Northern Cameroons and the latter as Southern Cameroons. Later, in 1939, when the southern provinces of Nigeria were divided into Southern and Eastern Nigeria, Southern Cameroons was joined to the Eastern provinces. Although the British Cameroons was administered as an integral part of Nigeria, this did not imply either fusion or incorporation. Nevertheless, the territory was for all practical purposes administered as if it had been fused or incorporated into Nigeria.

The Clifford Constitution, which became operational in Nigeria in 1923 and applied to Cameroon, provided for an Executive Council, which acted as an advisory body to the Governor of Nigeria. Until March 1942, when a Cameroonian, Chief Williams, was nominated, there was no Cameroonian representative at the centre of power in Lagos or

in the Executive Council. The 1947 Richards Constitution deprived Southern Cameroons of its representative, although it provided for two Cameroonians to be elected into the Eastern Regional Assembly. No representation was specifically provided for Northern Cameroons apart from the Emir of Dikwa, who by virtue of his position as a first-class chief became a member of the House of Chiefs in the Northern House of Assembly. In 1951, the Macpherson Constitution replaced the Richards Constitution, which had generally been regarded by the Cameroonians as a retrograde arrangement. Although, under it, Southern Cameroons remained a part of the Eastern Region of Nigeria, they now had representation at both the central and regional levels of the administration and legislature.

In 1948, the Southern Cameroons representatives in the Eastern House of Assembly decided to boycott meetings of the Eastern legislature and called on the British Government to establish their own legislature wholly based in Cameroon. During constitutional conferences that were held in London in July 1953 and later in Lagos in January and February 1954, an agreement on a new governmental structure for Southern Cameroons was agreed upon.<sup>7</sup> Under the new constitutional arrangement, Southern Cameroons ceased to be part of the Eastern Region of Nigeria but remained part of the federation as a 'quasi-federal territory'. Both the federal legislature and the federal executive retained jurisdiction over the territory with respect to matters within their competence, but Southern Cameroons now had its own House of Assembly, an Executive Council, and a Commissioner. In 1957, a conference for the revision of the Nigerian Constitution was held. Under a new Constitution that took effect in 1958, Southern Cameroons was also given a constitution like that of the other regions of Nigeria. Following a resolution by the Southern Cameroons House of Assembly requesting the grant of full regional status, there was a constitutional conference on the issue in London. After the wishes of the people had been ascertained in elections held in 1959, the request was granted. This was implemented by the Southern Cameroons (Constitution) Order-in-Council, which became effective from 1 October 1960. Meanwhile, Northern Cameroons became only a self-governing region within the Federation of Nigeria. The new Constitution introduced in Southern Cameroons institutions that were similar to those in Britain: namely, a parliamentary system with a bicameral legislature consisting of the House of Assembly and the House of Chiefs, an Executive Council with ministers and a premier, and a British Commissioner who represented the Queen.

After the British Government announced in 1958 that Nigeria would become independent on 1 October 1960 and the French Government also announced that French Cameroun would become independent on 1 January 1960, it became necessary to determine the future of Southern Cameroons. The UN General Assembly, in Resolution 1350 (XIII), adopted on 13 March 1959, recommended *inter alia* that the British Government should

---

<sup>7</sup> It is worth pointing out that during these conferences, whilst the leaders of Southern Cameroons were pressing the British for a new arrangement under which both Southern and Northern Cameroons could be brought together to form one separate unit within the Nigerian federation, the Northern Cameroons representatives made it clear that they would be happy to continue their association with the Northern Region of Nigeria.

take steps to organise, under the supervision of the United Nations, separate plebiscites in Northern and Southern Cameroons in order to ascertain the wishes of the inhabitants of the territory concerning their future. Meanwhile, in a separate plebiscite held on 7 November 1959, the people of Northern Cameroons, who were required to decide whether they preferred to be part of the Northern Region of Nigeria when Nigeria became independent or to decide their future at a later date, voted in favour of the latter option. Later, in 1959, the UN General Assembly in two Resolutions agreed upon the two plebiscites to be held in Northern and Southern Cameroons to enable the inhabitants to determine their future. While Northern Cameroons voted to join the Federation of Nigeria, Southern Cameroons voted to rejoin the Republic of Cameroon, which had already become independent on 1 January 1960.<sup>8</sup> On 21 April 1961, the UN General Assembly adopted Resolution 1608 (XV) that terminated the trusteeship agreement with Britain with respect to Northern Cameroons, on 1 October 1961, when it joined Nigeria as a separate province of the Northern Region, and with respect to Southern Cameroons, on 1 October 1961, when it joined the Republic of Cameroon.

As regards French Cameroun, the terms of the mandatory agreement and the later trusteeship agreement between France and the League of Nations and its successor, the UN, with respect to Cameroon, were similar to those entered into with Britain. The French appointed a Commissioner for Cameroon with powers equivalent to those of other French colonial governors. However, at no stage did the French attempt to incorporate the territory into its existing colonies; it always maintained a formal distinction between the status of Cameroon and that of the rest of French Africa and provided it with a separate administrative structure outside the two large complexes of French West Africa and French Equatorial Africa. The French Constitution of the Fourth Republic promulgated on 27 October 1946 made Cameroon an 'Associated Territory' of the French Union. Under it, Cameroon elected four deputies, three of them Cameroonians, and five senators, three of them Cameroonians, to the Assembly of the French Union.

At the local level, French Cameroun had a Representative Assembly composed of both Frenchmen and Cameroonians. Criticism of its limited powers and its composition led to the Assembly being enlarged and more powers being conferred to it. However, the enactment of French Law No 56-619 of 23 June 1956, the so-called *Loi-cadre*, marked the beginning of serious institutional reforms. This led to the enactment of a new statute for Cameroon on 16 April 1957 that provided for a large measure of internal constitutional autonomy. The powers of the Legislative Assembly were considerably increased, although the French High Commissioner continued to possess wide discretionary powers and France remained responsible for matters such as defence, external affairs, currency, and civil liberties, as well as education, the courts, and security forces. The High Commissioner also had the powers to designate the Prime Minister,

---

<sup>8</sup> The two plebiscites were held in February 1961 and the results were as follows. The population of Southern Cameroons voted thus:

For joining the Republic of Cameroon: 233,571  
For joining the Federation of Nigeria: 97,741

The population of Northern Cameroons voted thus:

For joining the Republic of Cameroon: 97,659  
For joining the Federation of Nigeria: 146,296

subject to confirmation by the Legislative Assembly. It was on the basis of this that André Marie Mbida was appointed Prime Minister in May 1957. He, however, lost a vote of confidence in the Legislative Assembly in 1958 and was replaced by Ahmadou Ahidjo on 19 February 1958. In May 1958, a Government-sponsored resolution in the Legislative Assembly called for the termination of the trusteeship agreement and the reunification of the two portions of Cameroon. A new statute, conferring more powers than hitherto on the Legislative Assembly and the Cabinet, was approved and given effect in a French Ordinance of 30 December 1958. Law No 59–56 of 31 October 1959 authorised the Government to legislate by Ordinance and to draft a new constitution, to be submitted to the country for approval. The draft Constitution that was produced was essentially a replica of the French Fifth Republic Constitution and provided for a very strong executive and a highly centralised system of government. This Constitution was narrowly approved in a nationwide referendum of 20 February 1960, in which the opposition parties had vigorously campaigned for its rejection. This was the Constitution that was in place when the British and French territories were reunified on 1 October 1961.

After the plebiscite in Southern Cameroons, its leaders, led by the then Prime Minister, Dr John Ngu Foncha, had tried to negotiate a new constitutional arrangement with the then President of the Republic of Cameroon, Ahmadou Ahidjo, based on a relatively loose and decentralised federation. However, since they were now fully committed to reunification with an already independent Republic of Cameroon, the negotiating position of the Southern Cameroons representatives was quite weak. Ahidjo was under no pressure to make anything more than token concessions and only felt obliged to amend the 1960 Constitution by an annexure called ‘transitional and special dispositions’. What became the Federal Constitution of the Federal Republic of Cameroon was nothing more than a law revising the Republic of Cameroon’s Constitution of 4 March 1960. This Constitution brought within the same borders, for the first time, the two people who had lived apart since 1916 and who had gone through two separate colonial experiences, with marked contrasts not only in language, law, administration, and education, but also in political culture and attitudes.

The Federal Constitution of 1961, as it came to be known, provided for a two-state federation consisting of West Cameroon, made up of the former British Cameroons, and East Cameroon, corresponding with the former French Cameroun. Although this Constitution reflected an uneasy compromise between the centralising policies of President Ahidjo and the desire of Dr Foncha and other Southern Cameroons politicians to retain as much political identity as possible, the federation turned out to be more symbolic than real. The unitary and highly centralised features of the 1960 French Cameroun Constitution were carried over wholesale into the new federation. On the crucial issue of the distribution of powers between the federal government and the two federated states of West and East Cameroon, the former was totally dominant. In the final analysis, the federated states were only allowed to act in matters upon which the federal government did not wish to act. Although Article 4 of the Constitution defined the federal authority as inhering in the President and the Federal National Assembly, as the President

was given wide-ranging powers that enabled him to control and dominate all national institutions, this effectively made the federal structure a sham *ab initio*.

On 6 May 1972, Ahidjo announced plans to hold a referendum to replace the federal state with a unitary state and on 2 June 1972, the Federal Republic of Cameroon was replaced by what was officially known as the 'United Republic of Cameroon'. This marked the end of a highly centralised unitary system of government that bore a resemblance to a federation only in name. The new Constitution formally eliminated the already largely nominal positions of prime ministers in the two federated states as well as the state legislatures. The powers of the President under the new Constitution were considerably enhanced. When, in 1984, the President by Law No 84/001 abolished the appellation 'United Republic of Cameroon' and replaced it with 'Republic of Cameroon', this was seen by many as removing one of the last symbolic vestiges of the 1961 reunification.

What is currently in force today in Cameroon is supposedly only an amendment to the Constitution of 2 June 1972 and is officially referred to as 'Law No 06 of 18 January 1996 to amend the Constitution of 2 June 1972'.<sup>9</sup> The background to this constitutional amendment is important, because it may help to explain the content of the Constitution as well as its underlying philosophy. The immediate process that led to the amendment started in November 1991 and ended with the promulgation of the law amending the Constitution on 18 January 1996. It started with the convening of what became known as the Tripartite Conference in October–November 1991, as a compromise by the government to calls by the opposition parties, backed by nationwide strikes and demonstrations, for the convening of a sovereign national conference. In its final declarations, the Conference on 17 November 1991 established a Technical Committee on Constitutional Matters (TCCM), composed of 7 Francophones and 4 Anglophones, with a mandate to formulate the outlines of a 'new' constitution. This ultimately led to what is now labelled an 'amendment to the 1972 Constitution'.<sup>10</sup>

## II. Fundamental Principles of the Constitution

Cameroon followed the post-1990 wave of constitutional renewals on the African continent by revising its 1972 Constitution. The expectation was that it would provide a solid foundation for promoting constitutionalism by enhancing democracy, good governance, and respect for human rights. Most comparative studies that have tried to analyse and compare the Cameroon Constitution to other recently adopted new or revised constitutions clearly indicate that it has done nothing more than reinforce many of the

<sup>9</sup> In this work, any references to the 'Constitution', unless the context clearly indicates otherwise, should be taken to refer to the 1972 Constitution as amended in 1996.

<sup>10</sup> Although the very nature of the process and the content of the new text, which contains 69 Articles as compared to the 39 Articles in the original 1972 text, raises doubts as to whether it was a new constitution inspired by the old one or just a revision of the old one, the practical reality is that the philosophical orientation of the two texts are very similar. The surreptitious change in the terms of reference from a committee drafting a new constitution to one merely revising or amending the old constitution was not accidental, and accurately reflects the real intentions of the regime. Behind the mask of revision or amendment, the regime wanted to and succeeded in reinforcing the *status quo ante* in many respects. Although, technically, this may be a 'revision' or 'amendment', it is in reality a new constitution.

underlying principles and the philosophy of the original 1972 Constitution.<sup>11</sup> There are a number of factors that attest to this.

First, the pre-1996 highly centralised autocratic state system, with the President having extensive powers, was reinforced, whilst the normally limited powers of the legislature were further curtailed. The dominance of the President has been strengthened, with extensive powers that enable him to appoint and dismiss at his pleasure the Prime Minister and cabinet members, judges, generals, provincial governors, prefects, and the heads of parastatals. He can also approve or veto newly enacted laws, declare a state of emergency, and authorise public expenditure. Although there are many innovations, these are largely ineffective. Thus the introduction of bicameralism, with a Senate to act as a second chamber to the National Assembly, is significantly compromised by the fact that these bodies are largely subservient to the executive and have little power to initiate or influence the content of legislation.

Second, a constitution is only as good as the mechanism provided for ensuring that it is respected by all citizens and that its violations are promptly sanctioned. Although the amended Constitution professes to institute, for the first time, what it terms 'judicial power', this is largely ineffective because of the President's unlimited powers to appoint and dismiss judges. The contemplated Constitutional Council, which will have powers to control the constitutionality of laws, can hardly operate effectively, because it will be composed essentially of government nominees and can only entertain matters referred to it by the government.

Third, on the very critical issue of decentralisation, the Constitution, whilst retaining the centralised system, makes provision for some sort of de-concentration of powers through the creation of regional and local authorities, but the obscure language used leaves the implementation of these provisions entirely at the discretion of the President of the Republic. Not only does he have the right to decide when, if at all, the regional and local authorities will be created, he also has the power to determine their powers and can dissolve them and dismiss their officials when he deems it proper.

On the whole, the amended Constitution remains a controversial document, not only because of the perception that it was imposed, but also because it is technically an inferior document to the one it purports to amend, and is less liberal and progressive. The lack of adequate consultation, especially of the Anglophone community, is manifested by numerous mistranslations and grammatical errors in the official English text. For example, it is difficult to understand certain provisions, such as Articles 2(3), 6(1), 15(3),

---

<sup>11</sup> See, for example, Charles Manga Fombad, 'Post 1990 Constitutional Reforms in Africa: A Preliminary Assessment of the Prospects for Constitutional Governance and Constitutionalism', in AG Nhema and PT Zeleza, *The Resolution of African Conflicts* (OSSREA & James Currey, Oxford, 2008) 179–199 and Charles Manga Fombad, 'Cameroon's Constitutional Conundrum: Reconciling Unity with Diversity', in Kenyan Section of the International Commission of Jurists and Konrad Adenauer Stiftung, *Ethnicity, Human Rights and Constitutionalism in Africa* (Kenyan Section of the International Commission of Jurists, Nairobi, 2008) 121–156.



and 39, to cite just a few examples. It is also no surprise that most of the main innovations, such as the provisions on a Senate as a second chamber and the Constitutional Council, are yet to see the light of day, and only in the last few years have there been attempts to implement other provisions. Even if the provisions of this Constitution were implemented, which looks increasingly unlikely, it can be argued that the amendment has resulted in a 'new' constitutional dispensation that is essentially negative, defensive, and a mere protective obfuscation of *the status quo ante* and to this extent is really at odds with modern constitutional trends in Africa and the world, which have tried to promote more participatory, accountable, and transparent constitutional governance.

### III. Fundamental Rights Protection

The approach to the issue of fundamental rights in Cameroon has changed with the different constitutions. Article 1(2) of the Federal Constitution of 1961 stated that the 'Federal Republic of Cameroon ... affirms its adherence to the fundamental freedoms set out in the Universal Declarations of Human Rights ...'. The effect of this was that this Declaration became an integral part of the Constitution. The original 1972 Constitution, on the other hand, relegated the fundamental freedoms embodied in the Universal Declaration of Human Rights and the United Nations Charter and a number of associated fundamental rights to the Preamble. There has been a prolonged debate, especially amongst civil jurists, as to whether such stipulations in a preamble create legally enforceable rights. The dominant view appears to be that they do not.<sup>12</sup>

The 1996 Constitution is at its weakest when it comes to fundamental rights protection. Cameroon's human rights record, by most modern indicators,<sup>13</sup> is probably amongst the worst in Africa. In fact, it is one of the few African countries that have, since the Freedom House survey 'Freedom in the World Country Ratings' started in 1972, been consistently classified as 'not free'.<sup>14</sup> This is due not only to the limited nature and scope of fundamental rights covered by the 1996 Constitution, but also to the limitations in their application and enforcement.

#### A. Spectrum of Rights

The Preamble to the amended Constitution states that the people of Cameroon 'affirm their attachment to the fundamental freedoms enshrined in the Universal Declaration of Human Rights, the Charter of the United Nations and the African Charter on Human and Peoples' Rights, and all duly ratified international conventions relating thereto ...'. To apparently avoid any ambiguity, Article 65 declares that the 'preamble shall be part and parcel' of the Constitution. The question here is whether this automatically renders the rights and obligations stipulated in the Preamble, and the various international

<sup>12</sup> See Charles Manga Fombad, 'Cameroon', in R Martin (ed), *Speaking Freely: Expression and the Law in the Commonwealth* (Toronto, Irwin Law, 1999) 101–102.

<sup>13</sup> See indicators such as US Department of State Human Rights Reports, Freedom House Surveys on freedom in the world, freedom of the press and global media independence, and Reporters Without Borders Survey.

<sup>14</sup> See generally [<http://www.freedomhouse.org/template.cfm?page=1>].

conventions thereby incorporated into the Constitution, as legally enforceable substantive rights and obligations. A strict interpretation of Article 65 necessarily leads to that conclusion. However, it is submitted that the Constitution fails to confer on the ordinary citizens any concrete fundamental rights guarantees. This is so, not only because the exact scope of these fundamental rights is not defined in details, as is the case in most post-1990 African constitutions, but also because there is no effective mechanism for checking against any abuses of the fundamental rights contained in the various international conventions purportedly incorporated into the Constitution.

One of the few studies on the scope of rights covered by African Bills of Rights suggests that the highest numbers of rights are recognised by the Constitutions of the Democratic Republic of Congo and of Uganda, which recognise twenty-five rights each.<sup>15</sup> In recognising seventeen rights, the Cameroon Constitution therefore compares favourably with that of other African countries. However, the effectiveness of human rights protection is more than just a question of the number of rights apparently recognised in the constitution. It has to do with the scope of their application, the limitations under which they operate, and their justiciability.

## **B. Scope of Application**

From the perspective of the scope of application, it is generally recognised that human rights are classified into the so-called three generations of rights: namely, civil and political rights (first generation rights), social and economic rights (second generation rights), and the solidarity or collective rights (third generation rights). The Cameroon Constitution, unlike most post-1990 constitutions, deals almost exclusively with the first generation rights, although it mentions a few second generation rights.

As noted earlier, almost all the fundamental rights recognised and protected in the Constitution are only mentioned in the Preamble. The rights that are recognised are:

- the right to equality and non-discrimination (this includes the rights of the aged, the rights of persons with disabilities, and the rights of women);
- freedom of opinion and expression (including freedom of the press);
- freedom of movement (including freedom of choice of residence);
- the right to privacy;
- rights relating to property;
- the right to a fair trial (including the right of access to justice);
- rights related to liberty and security of the person;
- freedom of association (including the right to form unions);
- freedom of thought, conscience, and religion;
- freedom from torture and cruel, inhuman and degrading treatment or punishment;
- freedom of assembly;
- the right to work (including the right to strike);
- the right to education;
- the right to participation in government and to vote, in Articles 2 and 3;

---

<sup>15</sup> See Heyns and Kaguongo, 'Constitutional Human Rights Law in Africa' (2006) *South African Journal on Human Rights* 673–717.

- the right to protection of the family (including the rights of children);
- rights to the environment; and
- rights of minorities.

### C. Limitations

Human rights have never, in no place nor at any time, been absolute rights. Some limitations and restrictions are therefore necessary and inevitable. The scope of these limitations and restrictions effectively determines the quantum of human rights protection enjoyed by citizens. The limitations and restrictions to the fundamental rights that appear to be recognised and protected in the Cameroon Constitution take diverse forms.

First, the fundamental rights in the Constitution are based on the outdated notion that the state, as the primary actor responsible for creating an environment in which citizens can enjoy human rights, is also the only actor that could possibly violate those rights—a vertical system of responsibility. There has been extensive debate amongst comparative constitutional lawyers about the need to ensure a horizontal application of human rights to cover other actors, such as non-governmental organizations (NGOs) and multinationals, whose activities can also violate the human rights of individuals. Unlike some constitutions, such as those of Angola, South Africa, and Kenya, which now provide for a horizontal application of human rights provisions, the Cameroonian Constitution is limited because it only allows for vertical responsibility.<sup>16</sup>

Second, the effectiveness of the human rights provisions also depends on the language in which they are couched. Perhaps the most remarkable feature of the Cameroonian human rights provisions is the extent to which the so-called rights are couched in obscure language. The fact that these rights are expressed in the language of hope, aspiration, and exhortation, which is typical of preambles, negates the attempt by Article 65 of the Constitution to make the Preamble, in substantive terms, ‘part and parcel of the Constitution’.<sup>17</sup>

Third, the so-called rights are not expressed in a manner that imposes any obligation on the state. For example, ‘freedom of religion and worship shall be guaranteed’—by whom, when, and how? Again, ‘no person *may* be compelled to do what the law does not prescribe’. And more troubling is the use of extensive claw-back clauses which clearly indicate that the nature and extent to which citizens will effectively enjoy any of the promised human rights will depend on the goodwill of the legislature, and there is no obligation on it to enact a law that will promote rather than undermine human rights.

---

<sup>16</sup> See further Charles Manga Fombad, ‘African Bills of Rights in a Comparative Perspective’ (2011) 17(1) *Fundamina* 33–64.

<sup>17</sup> This is no more than a declaration, which is supported by Barthélemy’s 1899 thesis that such ‘declarations of rights are no more than solemn proclamations of principles, rules for the conduct of the state, pure maxims of political morality, promises whose force lies solely in public opinion and whose solemn inscription alone is made by the Constitution, without the possibility for individuals to enforce their observance or their practical realization.’ See John Bell, *French Constitutional Law* (Clarendon Press, Oxford, 1992) 138.

Fourth, it is generally recognised, even under international human rights instruments, that there might be periods of national emergency which threaten the very existence of the state and which may justify not merely restrictions, but certain extraordinary measures entailing the temporary suspension of certain human rights. The challenge is to provide for such exceptional circumstances without leaving too much discretion on the part of the government to use it as a pretext for restricting people's rights. The 1996 Constitution takes the extreme position, which gives the government a *carte blanche* to act once it determines that there is a state of emergency. Thus, Article 9 of the Constitution states that the President, 'where the circumstances so warrant', may declare a state of emergency or state of siege by decree and 'take any measures that he may deem necessary'. The only apparent check on the use of this power is that he should 'inform the nation of his decisions by message'.<sup>18</sup> This provision merely repeats the approach adopted in previous constitutions and it is therefore no surprise that from the 1960s until the 1990s, there were areas in Cameroon that had been continuously under the state of emergency, with all the consequences that go with this.

#### **D. Enforcement**

The justiciability of the fundamental rights provisions is crucial to their effectiveness. The illusion of constitutionally protected human rights in Cameroon is laid bare by the absence of any effective mechanism for ensuring that these provisions are not violated. As will shortly be shown, the adoption in the 1996 Constitution of the discredited French Constitutional Council model of control of constitutionality of laws effectively deprives ordinary citizens, who are usually the main victims as well as the primary beneficiaries of human rights provisions, of any right to challenge a law that violates their human rights.

#### **IV. Separation of Powers**

It is now generally recognised that the strict doctrine of separation of powers as propounded by philosophers such as John Locke and Montesquieu does not exist, and is neither desirable nor practicable. Nevertheless, the three organs of state, namely the legislature, the executive, and the judiciary, should be so structured that none should dominate the other and they should be able to operate in such close cooperation that each should act as a check on the other.

The Cameroonian political system, although essentially presidentialist, is a hybrid of the French system of limited separation of powers and the US system of semi-rigid separation of powers.<sup>19</sup> In this respect, the Constitution recognises the principle of separation of powers. It deals with what it refers to as 'executive power' in Part II, with 'legislative power' in Part III, and with 'judicial power' in Part V. Three sections of the

---

<sup>18</sup> For a full discussion of this, see Charles Manga Fombad, 'Cameroon's Emergency Powers: A recipe for (Un)constitutional Dictatorship?' (2004) 48 *Journal of African Law* 62–81.

<sup>19</sup> For a comparative African perspective, see Charles Manga Fombad, 'The Separation of Powers and Constitutionalism in Africa: The Case of Botswana' (2005) 25 *Boston College Third World Law Journal* 301–342.

Cameroonian Penal Code, namely sections 125, 126, and 127, provide penal sanctions against any persons who violate the principle of separation of powers. These provisions state as follows:

Section 125:

Any public servant who –

- (a) Assumes the exercise of legislative power; or
  - (b) Refuses to enforce any provisions of law –
- shall be punished with detention for from six months to five years.

Section 126:

Whoever –

- (a) Being the representative of the executive authority, issues any order or prohibition to any court; or
  - (b) Being a legal or judicial officer, issues any order or prohibition to any executive or administrative authority –
- shall be punished with detention for from six months to five years.

Section 127:

Any judicial, legal or investigating police officer who contrary to any law conferring immunity prosecutes, arrests or tries a member of the federal or federated Government or of the federal or federated Assembly, shall be punished with detention for from one to five years.

These provisions, with certain modifications, try to introduce into the Cameroonian constitutional system the original French concept of separation of powers. The French Basic Laws of August 1790 proclaimed the separation of administrative and judicial functions. The Cameroonian Penal Code goes much further than the French law, which sanctions judges who violate the law with forfeiture, whereas the Cameroonian judge is liable to both forfeiture and detention.<sup>20</sup>

A close examination of the amended Constitution shows that although it is ostensibly a regime of separation of powers based on cooperation and collaboration between the three organs of power, the exorbitant powers conferred on the executive, especially on the President of the Republic, enable the latter to completely dominate the other two powers.

## A. The Executive

One of the remarkable features of the 1996 Constitution alluded to earlier is the extent to which it increases and consolidates the already extensive powers that were conferred on the President of the Republic under the original 1972 Constitution. This is manifested in various ways. For example, according to Article 5(1), he is to be regarded as a symbol of national unity—that is, a sort of regal figure. He is required to define the policy of the nation, to ensure respect for the Constitution, to ensure through arbitration the proper

---

<sup>20</sup> See further, HNA Enonchong, *Cameroon Constitutional Law: Federalism in a Mixed Common-Law and Civil-Law System* (Centre d'Édition et de Production de Manuels et L'Auxiliaires de L'Enseignement, Yaounde, 1967) 103–104.

functioning of public authorities, and to act as a guarantor of the nation, its territorial integrity, its permanency, and continuity, and the respect for international treaties and agreements. In short, the President of the Republic incarnates the Cameroonian state. On account of his dominant position *vis-à-vis* not only the legislative and judicial power, but also within the executive, it can be said that he has been given the powers to reign and rule.

The President appoints all ministers and senior officials in the public service, the diplomatic corp, state institutions, and general managers of para-public corporations. Although Article 12(1) of the Constitution describes the Prime Minister as the head of Government who 'shall direct its action', in reality he, like other members of Government, is appointed and can be dismissed at the pleasure of the President. The dominance of the President is again emphasised by Article 11, which makes it clear that 'the Government shall implement the policy of the nation as defined by the President'. In directing government action, the Prime Minister appears to do no more than act as a coordinator of the government team, especially since his exact duties depend on those delegated to him by the President.

The relationship between the President and Parliament may sometimes appear to suggest one of separation of powers, and sometimes one of close collaboration between the two. It is, however, ultimately one of domination of the latter by the former. For example, under Article 8(12) of the Constitution, where the President finds it 'necessary', 'after consultation with the Government, the Bureau of the National Assembly and the Senate' he may dissolve Parliament. He may also, under Article 15(4), in cases of 'serious crisis' request the National Assembly, by law, to extend or abridge its term of office. Not only are laws almost exclusively by the government or, more precisely, the President, but the Constitution confers on him some quasi-judicial powers in at least three ways. First, Article 8(8) grants him 'statutory authority'. It is on this basis that he issues presidential decrees. Second, Article 27 provides that matters not reserved to the legislative power shall come within the jurisdiction of the authority empowered to issue rules and regulations. This also enables him to issue presidential decrees. Finally, he may also exercise his regulatory power in the field normally reserved to the legislative power. The resulting regulations are known as ordinances, and must comply with the procedure laid down in Article 28.

The President of the Republic as the incarnation of the state has several powers *vis-à-vis* the judiciary. He must ensure respect for the Constitution as well as act as guarantor of the independence of the judiciary. The impact of this power on the judiciary will shortly be examined.

One of the most controversial provisions in the 1996 Constitution was Article 6(2), which introduced a new presidential term of seven years in place of five years. Misgivings at this unusually long term, which was copied from the French 1958 Constitution, was not sufficiently assuaged in providing that an incumbent is 'eligible for re-election once'. However, on 10 April 2008, the Cameroon National Assembly approved a revision of Article 6(2) which, whilst maintaining the seven-year tenure, removed the two-term limit.

Although the opposition parties walked out in protest, the ruling party, with its overwhelming parliamentary majority of 116 seats out of 180, readily approved the amendment. It is also worth noting that in the months preceding the vote, there had been widespread protest in the country against the constitutional amendments, but these had been violently suppressed, with heavy loss of life. This paved the way for President Biya to contest the 2011 elections, which he won easily, having successfully neutralised the opposition parties in the country. What also makes this development a serious setback for constitutionalism in Cameroon is not only the fact that it now opens the door for a life presidency, but a new Article 53 grants the President extensive immunity from criminal prosecution. Although there is the possibility of prosecution for high treason, the procedure for carrying this out renders a prosecution almost impossible.

## **B. Parliament**

One of the major innovations of the 1996 Constitution was the introduction of a bicameral parliamentary system. According to Article 14 of the Constitution, legislative power shall be exercised by Parliament, which comprises two Houses: the National Assembly and the Senate. The only other experience with bicameralism was during the colonial period in the former West Cameroon, just prior to reunification and until 1972, when there existed the West Cameroon House of Chiefs, operating as a second chamber to the West Cameroon House of Assembly.<sup>21</sup>

Although according to Article 14(2) both the National Assembly and the Senate, acting as Parliament, ‘shall legislate and control government action’, this is not on an egalitarian basis. Both Houses do not have equal powers. The National Assembly has more powers and influence than the Senate. This is understandable, since all the members of the National Assembly are elected by direct and secret universal suffrage and represent the entire nation,<sup>22</sup> whereas the senators represent the regional and local authorities and are either elected by indirect universal suffrage or appointed by the President of the Republic.<sup>23</sup>

Bills must go through both the National Assembly and the Senate before they are submitted to the President for enactment into law. Nevertheless, the role of the Senate, whilst quite important, is less than that of the National Assembly. Thus, the Senate can amend a Bill submitted to it by the National Assembly but the National Assembly is not bound to accept or adopt any amendments proposed by the Senate.<sup>24</sup> However, where the Senate rejects all or part of a Bill, this may only be disregarded if the Bill, as rejected in part or as a whole, is passed by an absolute majority of members of the National

---

<sup>21</sup> The West Cameroon House of Chiefs was provided for under section 236 of the Nigerian (Constitutional) Order in Council 1954. This was retained by Article 38(2) of the Constitution of the Federal Republic of Cameroon of 1961. Meanwhile, section 5 of the West Cameroon Constitution defined the West Cameroon Legislature as comprising of the President of the Republic, the House of Assembly, and the House of Chiefs.

<sup>22</sup> See art 15(1) and (2) of the Constitution.

<sup>23</sup> See art 20(1) and (2).

<sup>24</sup> See art 30(3)(b).

Assembly.<sup>25</sup> Where an absolute majority cannot be achieved, then the President of the Republic may convene a meeting of a joint commission of representatives from both Houses to find a compromise.<sup>26</sup> Another major difference between the powers of both Houses is that only the National Assembly, and not the Senate, can question the responsibility of government by way of a vote of confidence or a motion of censure. However, both Houses may still control governmental action, under Article 35, through oral or written questions and by setting up committees of inquiry.

It is not surprising that since the principle of bicameralism was introduced in 1996, the Senate that was contemplated has never been established. The Cameroonian Parliament has generally been regarded as an institution that merely rubber-stamps what the Government presents to it and is therefore of little relevance to the problems that the ordinary citizen faces daily. The advent of multi-partyism has hardly changed this perception, not only because many of the rules in operation in the National Assembly were laid down during the one-party era, but also because the divisions within the opposition parties and their insignificant numbers as compared to the comfortable majority enjoyed by the ruling party have prevented any meaningful changes to parliamentary procedure. Therefore, the prospects of having a Senate as a second House have not generated the interest that its creators had expected. Not only is it seen as an extra financial burden on the state in a period of severe economic crisis, with no countervailing benefits in sight, but the very mode of the selection or election of senators is considered as antithetical to the present democratic inkling.

The 180 seats in Parliament are distributed through 58 constituencies using a complex mix of single and multiple number constituencies combined with a mix of 'winner takes all' and proportional representation. The mandate of members of the National Assembly and Senators is five years. Both the National Assembly and the Senate are required to hold, as of right, three ordinary sessions, each lasting not more than thirty days, each year, and such extraordinary sessions as the need for this arises.

What is perhaps one of the few positive aspects of the 1996 amendment to the Constitution is Article 66, which called for a disclosure of assets. For two successive years, 1998 and 1999, Cameroon was classified as the most corrupt country in the world by Transparency International's survey, forcing the Government to initiate some rather timid anti-corruption measures.<sup>27</sup> It was only on 25 April 2006 that Law No 003/2006, providing for the declaration of assets, was promulgated by the President. According to Article 2(1), all Members of Parliament are also required to declare their assets. In spite of the law being enacted ten years after the Constitution had provided for it, it remains

---

<sup>25</sup> See art 30(3)(c)(1).

<sup>26</sup> See art 30(3)(c)(2).

<sup>27</sup> For some studies on Cameroon's corruption dilemma, see Charles Manga Fombad, 'Endemic Corruption in Cameroon: Insights on Consequences and Control', in KR Hope and BC Chikulo (eds), *Corruption and Development in Africa: Lessons from Country Case-Studies* (Macmillan Press Ltd, Basingstoke, 2000) 234–260; Charles Manga Fombad, 'The Dynamics of Record Breaking Corruption and Political Opportunism in Cameroon', in JM Mbaku and J Takougang (eds), *The Leadership Challenge in Africa: Cameroon under Paul Biya* (Africa World Press, Trenton NJ) 357–394; and Gerddes-Cameroon and Friedrich Ebert Stiftung, *Corruption in Cameroon* (Friedrich Ebert Stiftung, Yaounde, 1999).



almost a dead letter, because none of the commissions and other measures needed to implement the law have been put into place. There is no evidence that any of the numerous state officials who are required to declare their assets have done so.

According to Article 14(1) of the Constitution, legislative power is to be exercised by the two Houses of Parliament, namely the National Assembly and the Senate. The legislative process is only finalised when the President of the Republic enacts laws passed by Parliament. In the absence of a Senate, and with the Parliament dominated by the ruling Cameroon People's Democratic Party (CPDM), the enactment of laws is virtually a ritual. Article 11 of the Constitution makes it clear that the Government shall 'be responsible to the National Assembly'. Parliamentary control over the executive is provided for in the Constitution and exercised through a vote of no confidence provided for in Article 34(2), a motion of censure in Article 34(3), oral or written questions in Article 35(1), committees of inquiry in Article 35(1), and annual approval of the budget in Article 16(2)(b).

The different methods provided for supervising and controlling the Government have not worked as well as they could have in a normal democracy. During the one-party era, this was clearly understandable, for no Member of Parliament, whose seat depended on loyalty to the party and the Government, could take the risk of criticising the Government. Despite the return to multi-partyism since 1992, the continuous dominance of the CPDM,<sup>28</sup> combined with the numerically weak, deeply divided and fragmented opposition parties, has made any meaningful and effective control and supervision of the Government and the executive as a whole difficult. Besides this, the very weak and convoluted nature of these controls and the technicalities of setting them in motion have contributed to them remaining largely ineffective.

### C. Judiciary

One of the important apparent innovations introduced by the 1996 amendment to the 1972 Constitution is the replacement of the expression 'the judiciary' with 'judicial power' in Article 37. There has been some debate as to whether the mere use of the expression 'judicial power' has added something new to the judiciary. The Cameroon Minister of Justice and Keeper of the Seal, in a speech to Procureur Generals on the new judicial powers shortly after the promulgation of the Constitution, said '*La justice vient donc de remporter une grande victoire avec la bonne complicité du Chef de l'Etat et de la nation toute entière. Elle est devenue pouvoir.*'<sup>29</sup> The proponents of this thesis argue that the Cameroonian legislator, in order to quieten doubts about the independence of the judiciary, has now adopted the US conception of separation of powers. This is why the Constitution now devotes the whole of Part II to 'executive power', Part III to 'legislative

<sup>28</sup> After the 2007 legislative elections, the ruling CPDM held 153 of the 180 seats; the main opposition party, the Social Democratic Party (SDF) held 16 seats; the National Union for Democracy and Progress 6 seats; the Democratic Union of Cameroon 4 seats; and the Progressive Movement 1 seat.

<sup>29</sup> Translated, this reads as follows: 'The Cameroonian justice system has just gained a major victory with the complicity of the Head of State and the entire nation as a whole. It has become a judicial power'. See « *Regard du Ministre de la Justice et Garde des Sceaux sur le nouveau pouvoir judiciaire* » (1996) 23 and 24 *Lex Lata* 15.

power’, and Part IV to ‘judicial power’. This interpretation must be doubted because, as we shall soon see, the judiciary is effectively dominated and controlled by the President of the Republic in many respects. The mere use of the expression ‘judicial power’ cannot, on its own, transform the judiciary into a separate branch of government in the US sense.

Be that as it may, judicial power reposes strictly in the courts, although the judges exercise it. The structure and organisation of the courts in any country usually reflects the position of the judiciary *vis-à-vis* the executive and legislature. At the apex of the Cameroonian judicial pyramid is the Supreme Court which, like in the US Constitution, is the only court specifically mentioned in any detail in the Cameroonian Constitution. The organisation, functioning, composition, and duties of all the other courts mentioned in Part V of the Constitution are left to be determined by subsequent legislation. In the absence of any recent texts, the structure and organisation of the courts continues to be determined by the Judicial Organisation Ordinance 1972 and its subsequent amendments. At present, the structure and organisation of courts is based on Law No 2006/015 of 29 December 2006 on Judicial Organisation. According to Section 3 of the 2006 Judicial Organisation Law, the organisation of courts comprises the following:

- the Supreme Court
- Courts of Appeal
- Lower Courts for administrative litigation
- Lower Audit Courts
- Military Courts
- High Courts
- Courts of First Instance, and
- Customary Law Courts.

From the above, it is clear that the Supreme Court is at the apex of the judicial pyramid in the Cameroonian legal system. However, since the entry into force of the OHADA (Organization for the Harmonization of Business Law in Africa (OHBLs)) Treaty, the Supreme Court now shares jurisdiction in commercial matters with the Common Court of Justice and Arbitration (CCJA) in Abidjan. In fact, since Article 15 of this treaty allows final appeals to be submitted directly by a party to the proceedings to the CCJA or on referral by the Supreme Court, the former is now the final court of appeal in such matters.<sup>30</sup> Nevertheless, it can be said that on the basis of the 2006 law and the Constitution, the courts in the country fall into the following three categories:<sup>31</sup> (i) courts of ordinary jurisdiction; (ii) administrative courts; and (iii) courts with special jurisdiction.

---

<sup>30</sup> The acronym ‘OHADA’ stands for the *Organisation pour L’Harmonisation en Afrique du Droit des Affaires*, which was created by treaty in Port-Louis, Mauritius, on 17 October 1993 and is made up of 16 African states, namely Benin, Burkina Faso, Cameroon, Central African Republic, Chad, the Comoros, the Republic of Congo, Cote d’Ivoire, Equatorial Guinea, Gabon, Guinea Bissau, Mali, Niger, Senegal, and Togo. The Cameroonian Parliament, by Law No 94/4 of 4 August 1994, authorized the President to ratify the treaty and the treaty was duly ratified two years later by Decree No 96/177 of 5 September 1996.

<sup>31</sup> For a detailed discussion of the court structure before the reforms of the 1990s, see C Anyangwe (n4) 164–184.

Courts of ordinary jurisdiction refer to courts that have jurisdiction to hear and determine actions of every kind, whether civil or criminal. These courts comprise Customary Law Courts, Courts of First Instance, High Courts, Courts of Appeals, and the Supreme Court. Except for the Supreme Court, which has jurisdiction throughout the country, the rest of the courts are highly decentralised. The 1996 constitutional amendment introduced two very significant innovations. The first relates to the decentralisation of administrative matters, which until then had been handled exclusively by the Supreme Court. The second deals with provisions providing for the establishment of decentralised ‘courts’ to handle audit matters.

Another important innovation brought about by the 1996 Constitution was the provision for a decentralised process of handling administrative disputes to replicate the French system of a separate system of administrative courts to handle such matters. The practice until then had been for administrative matters to be heard by the Supreme Court acting as both original and appellate jurisdiction. This reform was most welcome, since it saved litigants the tremendous cost and inconvenience of having to take small administrative disputes before the Supreme Court in Yaounde. However, for more than ten years, the administrative courts remained one of the numerous ghost institutions provided for in the amended Constitution. It was only in 2006 that the first tentative steps were taken to make these institutions a reality by the adoption of relevant laws to regulate their organisation and functioning. There are two main types of administrative courts in Cameroon: the ordinary administrative courts, and the specialised courts. Of the many possible specialised administrative courts, the only ones that are formally regulated are the Audit Courts. These administrative courts share two main features with the ordinary courts: first, they are decentralised and operate within a hierarchy; second, they all have the Supreme Court as the apex court.

In Cameroon, courts with special jurisdiction deal either with specific matters specially provided for by law or a particular class of persons. Another important feature of these courts is that apart from the Military Tribunals, they do not operate within a hierarchy, as do the ordinary and administrative courts. The main courts with special jurisdiction in the country are the Court of Impeachment, Military Tribunals, the State Security Court and, in some respects, the Constitutional Council.

Finally, as noted above, the Constitution for the first time appears to provide for judicial independence in Article 37(2), which states that ‘the judicial power shall be independent of the executive and legislative powers’. This provision goes further to state that ‘magistrates of the bench (sic) shall, in the discharge of their duties, be governed only by the law and their conscience.’ The question that this raises is whether there is indeed judicial independence in Cameroon. It is generally recognised by all civilised legal systems as sacrosanct that judges should be assured of an optimum degree of independence and freedom from extra-judicial pressures in order to perform their functions properly. However, complete and absolute judicial independence remains an ideal. The most that has been achieved in many advanced democracies, such as Britain and the United States, is a series of either constitutional provisions, in the case of the latter, or conventional practices, in the case of the former, with checks and balances, backed by a history, tradition, and culture of not interfering with judicial impartiality.

Although Article 37(2) does appear to provide for an independent judiciary, the extent of this independence is defined by Article 37(3), which states:

The President of the Republic shall guarantee the independence of the judicial power. He shall appoint members of the bench and of the legal department.

He shall be assisted in this task by the Higher Judicial Council which shall give him its opinion on all nominations for the bench and on disciplinary action against judicial and legal officers. The organization and functioning of the Higher Judicial Council shall be defined by law.

The enormous powers given to the President under the above provision therefore limits in a fairly significant way not only the independence of the judiciary, but also the separation of powers.

## **V. Decentralisation**

Since 1972 there has been in place a highly centralised system of administration in which the main centre of power in the country is located in Yaounde and more specifically, at the Presidency of the Republic. There has been some degree of decentralisation because decisions taken at the centre are carried out at local level by agents appointed from the centre. This can more accurately be referred to as deconcentration of power, or administrative decentralisation, because the central government does not thereby give up any authority.<sup>32</sup>

Pressure for more effective decentralisation was an integral part and perhaps one of the driving forces behind the pro-democracy campaigns in the early 1990s. In fact, the main opposition party today, the SDF, was founded by disgruntled Anglophones determined to ensure a return to the federal system of government. In response not only to local pressure but also to pressure from aid agencies for greater decentralisation that would facilitate transparency, accountability, equitable distribution of wealth, and greater grassroots participation in the political process, the Government in the 1996 constitutional amendment appears to have provided for greater decentralisation. Article 1(2) declares that 'the Republic of Cameroon shall be a decentralised unitary State'. The challenge has been to make this so-called decentralisation a reality.

In spite of strong opposition to the excessively centralised system, the 1996 constitutional amendment only maintained the pre-existing system of deconcentration of powers through the granting of limited powers by the central authorities to subordinate regional and local authorities. Under the present arrangements, apart from the municipal councils, none of the other territorial units have any regulatory power. To this extent, we can therefore distinguish between two clear levels of deconcentration of power. The first level is strictly at the administrative level and involves the territorial administration of the country, where we find the partition of the country into regions, divisions, and sub-divisions. The second level deals with the elected municipal councillors, based on the

---

<sup>32</sup> See J Manor, *The Political Economy of Democratic Decentralisation* (The World Bank, Washington DC, 1999) 5.

principle of representative democracy, and therefore corresponds more closely to the ideal of decentralisation but for the fact that the powers of the authorities are quite limited.

Although the 1996 Constitution provided for this limited degree of decentralisation, until 2004 nothing was really done about this. It was only in 2008 that some steps were taken to begin implementing the decentralisation process. The attempts to decentralise local administration appears to have been hampered by conflicting political pressures and the long-established vested institutional interest in retaining a tightly controlled centralised system. Therefore, although formally devolved, the structure of deconcentration of powers reflects a determination to maintain effective control at the centre. This contradiction is particularly manifest under the new institutions provided for under the amended Constitution, which are now gradually being put into place.

Part X of the Constitution provides for the creation of regional and local authorities (RLAs), comprising regions and councils.<sup>33</sup> The first steps to implement this started with the enactment of three decentralisation laws in 2004: Law No 2004/17 of 22 July 2004, on the Orientation of Decentralisation; Law No 2004/18 of 22 July 2004, to lay down rules applicable to Councils; and Law No 2004/19 of 22 July 2004, to lay down rules applicable to regions.

This was followed in 2006 with Law No 2006/004 of 14 July 2006, to lay down conditions governing the election of regional councillors. A number of other laws and decrees have also been made. These include:

- Law No 2009/011 of 10 July 2009, to lay down the financial regime of regional and local authorities;
- Decree No 2008/377 of 12 November 2008, to lay down the powers of heads of administrative units and the organization and functioning of their services;
- Decree No 2009/054 of 6 February 2009, to appoint government delegates to city councils;
- Decree No 2008/248 of 5 August 2008, to lay down the methods of evaluation and distribution of the Common Decentralisation Fund; and
- Order No 00136/A/MINATD/DCTD of 24 August 2009, to implement the standard lists of council jobs.

The central body that is responsible for designing the decentralisation policy, as well as regulating the process to guarantee its proper functioning, is the Ministry of Territorial Administration and Decentralisation (MINATD). It is responsible for drafting and monitoring the implementation of the law on the organization and the functioning of Regional and Local Authorities (RLAs), exercising supervisory authority over the RLAs under the authority of the President of the Republic, and strengthening the financial autonomy of the Councils. MINATD exercises supervisory authority over the Special Council Fund for Mutual Assistance (FEICOM) and the Local Government Training

---

<sup>33</sup> See art 55(1) of the Constitution, which also makes it clear that ‘any other authority’ may be created by law.

Centre (CEFAM). There is also the Union of Cities and Councils of Cameroon (UCCC), which is a framework for dialogue and consultation and represents the councils in the decentralisation structures put in place by the government.

The first serious and concrete step towards implementing Part X of the Constitution came when the President of the Republic issued Decree No 2008/376 of 12 November 2008. It brought about two main changes. First, with effect from that date, the institution of 'region' as an administrative unit replaced the former 'province'. Second, the administrative unit of 'districts' was dropped, resulting in three, and no longer four, levels of administration, namely the region, the division, and the sub-division.

The implementation of the decentralisation programme is on-going and riddled not only with conceptual contradictions, but also with numerous difficulties, most of them probably due to its defective design. It will suffice to point out that the transfer of authority from the state to the RLAs is underpinned by three principles that are spelt out in section 9(2) of Law No 2004/17 of 22 July 2004 on the Orientation of Decentralisation. It states that 'the devolution of power and sharing of powers [between regional and local authorities] ... shall be consistent with the principles of subsidiarity, progressiveness and complementarity.' The subsidiarity principle means that authority is transferred and exercised at the territorial level most appropriate and closest to the population concerned. The progressiveness principle means that the transfer of competence from the state to the RLAs will be spread over time. The principle of complementarity points to the fact that the transfer of competence by the state does not preclude the latter from exercising some of these powers. It reflects the fact that authority is exercised concurrently by the state, the regions, and the councils.

## **VI. Constitutional Adjudication**

No matter how comprehensive a constitution may be, the litmus test for its efficiency, and a core element of constitutionalism, is the effectiveness of the mechanism provided within it for ensuring that its provisions are properly implemented and that any violations of it are promptly sanctioned. In the absence of this, the constitution is not worth the paper on which it is written and is probably as good as being non-existent.<sup>34</sup> It is this absence of a credible system of control of constitutionality in the Cameroonian Constitution that makes it one of the most ineffective of modern constitutions. This is because the only possibility of constitutional review is by bringing proceedings before the Constitutional Council, which is potentially one of the most controversial institutions provided for under this Constitution.

Like almost every other element in this Constitution, this system of constitutional adjudication was copied from the Constitution of the Fifth French Republic. Again, like many of the new institutions provided for under this 1996 Constitution, the Constitutional Council has never been established, but its role is presently being performed by the

---

<sup>34</sup> See Charles Manga Fombad, 'Challenges to Constitutionalism and Constitutional Rights in Africa and the Enabling Role of Political Parties: Lessons Perspectives from Southern Africa' (2007) 55 *American Journal of Comparative Law* 18.

Supreme Court. Nevertheless, for no obvious reason, in 2004 two laws were enacted with respect to it. One was Law No 2004/004 of 21 April 2004, laying down the organisation and functioning of the Constitutional Council, and the other was Law No 2004/005 of 21 April, laying down the rules and regulations governing membership of the Constitutional Council. Since then, nothing has been done to render it functional, and the Supreme Court continues to play the role that the Constitutional Council is supposed to play, however odd this might be.

One of the peculiarities of the Cameroonian Constitutional Council, like its French counterpart, is that it is not a court of law at all and operates outside the judicial system. It is composed of two types of members. First, eleven members are appointed for a renewable term of six years from ‘among personalities of established professional renown’, and who are of ‘high moral integrity and proven competence’.<sup>35</sup> Secondly, all former Presidents of the Republic are *ex officio* members of the Council.<sup>36</sup> With respect to the appointment of members of the Council, Article 51(2) of the Constitution states that ‘members of the Constitutional Council shall be appointed by the President of the Republic.’ This provision then proceeds to suggest (rather redundantly it is submitted) that this so-called appointment is supposed to take place by a process of ‘designation’ of persons by the President of the National Assembly after consultation with the Bureau, the President of the Senate after consultation with the Bureau, and the Higher Judicial Council. The reality, however, is that membership of the Council depends entirely on the President. Perhaps the most unsatisfactory aspect of the procedure provided for the appointment of members of the Council is that no clear guide is provided other than the vague statements in Article 51(1) that they be ‘personalities of established professional renown’ and persons of ‘high moral integrity and proven competence’.

There are generally two main ways of seising a tribunal like the Constitutional Council. One way is to make it open and available to all; the other is to restrict it to specific categories of individuals. It is generally recognised that the most efficient system is that which allows private individuals to bring matters before the court. Cameroon opted for a system that restricts those who have the right to bring matters before the Council. Therefore, only the following can bring matters before the Council:

- i. the President of the Republic;
- ii. the President of the National Assembly;
- iii. the President of the Senate;
- iv. one-third of the members of the National Assembly;
- v. one-third of the Senators;
- vi. the presidents of regional executives; and

---

<sup>35</sup> See art 51(1) of the Constitution. It must be noted that art 51(1) was revised in 2008. Prior to then, it provided for members of this Council, other than the *ex officio* members, to serve a non-renewable term of 9 years.

<sup>36</sup> See art 51(2) of the Constitution.

- vii. any candidate or political party that participated in disputed presidential or parliamentary elections, or any person who acted as government agent in such elections.<sup>37</sup>

It is clear from this that the ordinary citizen, unless he or she is a candidate to disputed presidential or parliamentary elections, has no right to bring a matter before the Council. Citizens are therefore in no position to compel the Government to respect their constitutional rights, especially on important matters like human rights, freedom of speech, and freedom from arbitrary arrest.

An indisputable reality of the inherited French constitutional culture is that the President is effectively the leader of the legislature. He generally initiates almost all laws that go through Parliament and can therefore hardly be expected to challenge his own laws before the Council. It is also unlikely that others, such as the President of the National Assembly, will do so, for the impugned law would have passed through the National Assembly and he will obviously be reluctant to challenge laws to which he gave his imprimatur. Similarly, there is little chance of him acting independently and in a manner that is known to be contrary to the wishes of the President of the Republic: his position depends too much on the goodwill of the President who, for instance, could—under the pretext of a ‘serious crisis’—shorten the term of office of the National Assembly<sup>38</sup> or influence the annual elections of the President and members of the bureau.<sup>39</sup> In short, with the exception of election disputes, where the individuals concerned or their agents or parties may take the matter before the Constitutional Council, *locus standi* in all other matters in which the latter has jurisdiction is limited to the very people who have little or no reason to bring matters before the Council.

The competence of the Council is laid down in Articles 47(4) and 48 of the Constitution, as well as the 2004 law regulating the organisation of the Council. An analysis of Article 46 of the Constitution and the provisions of the 2004 law shows that the Council is supposed to play two main roles: a sort of ‘quasi-judicial’ role, by way of the preventive control of the constitutionality of essentially non-promulgated legislation; and a regulatory role, by way of control over the functioning of certain state institutions. These two roles are not necessarily mutually exclusive and, generally, this unnecessary amalgamation of functions has been much criticised in other countries because of the confusion that has often arisen.<sup>40</sup> In practical terms, since the control of constitutionality of laws is exercisable mainly prior to the enactment of legislation, the Council is reduced to an optional stage in the whole legislative process.

In the final analysis, one cannot avoid the conclusion, from the structure of the Constitutional Council and the fact that its composition and eventually the modalities for

---

<sup>37</sup> See art 47(2) of the Constitution and also art 7 of the 2004 Law regulating the organisation of the Constitutional Council.

<sup>38</sup> See art 15(4) of the Constitution.

<sup>39</sup> See art 16(2) of the Constitution.

<sup>40</sup> See generally G Conac (ed), *Les Cours Suprêmes en Afrique, Tome II, Organisation, Finalités, Procédures* (Paris, 1988) 3–43.



its operation will be defined by the President, that the latter is in reality the supreme judge of the constitutionality of laws in the country.

## **VII. International Law and Regional Integration**

### **A. International Law**

As a reflection of the strongly presidentialist orientation of the 1996 Constitution, the President, according to Article 5, defines ‘the policy of the nation’. Article 8 states that he represents the state in all acts of public life, and has the power to accredit ambassadors and envoys extraordinary to foreign powers.

Insofar as treaties and international agreements are concerned, this is dealt with in Part VI of the Constitution. Article 43 confers on the President of the Republic exclusive powers to negotiate and ratify treaties and international agreements. It states:

The President of the Republic shall negotiate and ratify treaties and international agreements. Treaties and international agreements falling within the area of competence of the Legislative power as defined in Article 26 above shall be submitted to Parliament for authorisation to ratify.

These apparently sweeping powers to negotiate and ratify treaties and international agreements are qualified by the second part of this provision, which states that treaties and international agreements that fall within the ‘reserved legislative power’ as defined in Article 26 of the Constitution must be submitted to Parliament for authorisation before they are ratified by the President of the Republic.

It is therefore clear that there are two categories of treaties and international agreements in Cameroon. The first category consists of treaties that the President alone can negotiate, sign, and ratify. These are treaties that fall within the domain of activities reserved for the President and which, under Article 27 of the Constitution, are not within the reserved legislative domain. The second category, on the other hand, deals with treaties covering matters which under Article 26 are within the reserved domain of the legislature, but which the latter can, under Article 28, empower the President to legislate on, for a limited period and for a given purpose. The effect of the second part of Article 43 is that the President can negotiate and sign treaties that come within this area, but must submit such treaties for parliamentary approval before ratification.

The first category of treaties usually involves what is sometimes referred to as ‘executive agreements’. These are treaties concluded informally through, for example, an exchange of notes or a joint declaration, which often come into effect immediately. There is a possibility that a treaty that has been negotiated and signed by the President may contain provisions that are inconsistent with either certain provisions of the Constitution or an existing law. All that the Constitution says on this matter, in Article 44, is that ‘where the Constitutional Council finds a provision of a treaty or of an international agreement unconstitutional, authorisation to ratify and ratification of the said treaty or agreement shall be deferred until the constitution is amended.’ This provision only deals with

treaties that require ratification: that is, the second category of treaties. It could only apply to the first category of treaties if the matter were brought to the attention of the Constitutional Council before the treaty is ratified. Once the treaty is ratified, it raises another matter: that is, whether or not the treaty will prevail over the Constitution or any law with which it is inconsistent. This raises the question of the hierarchy of treaties in the Cameroonian constitutional system. But before considering this issue, it is necessary to clarify the nature of the President's treaty-making powers.

Although Article 43 of the Constitution confers exclusive treaty-making powers on the President, it does not indicate how he is to exercise these powers. This, however, does not mean that the President himself has to personally negotiate and sign these treaties and international agreements. The formal process of negotiating and signing treaties is quite cumbersome. In practice, the real negotiations are carried out by the Ministry of External Relations, which might bring in, depending upon the subject matter, representatives from other ministries that have an interest in the treaty.<sup>41</sup> Nevertheless, whatever the nature of the treaty, the approval of the Presidency is always sought before it is signed. Others, such as the Prime Minister, ministers, and even ambassadors may from time to time also be authorised to negotiate and sign treaties.

As regards status, it is necessary to note that there have traditionally been two diametrically opposed schools of thought in international law on the question of whether or not a treaty provision will prevail over a provision in an existing national law that is inconsistent with it. The dualist school of thought holds that treaties must be transformed into the national legal system before they can become part of the national legal order. The monist school of thought, on the other hand, upholds the primacy of a treaty that has been signed and ratified over national law.

The Cameroonian position is stated in Article 45 of the Constitution thus:

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

This provision raises two questions.<sup>42</sup> First, why should the primacy of a treaty depend on whether or not 'the other party implements' it, when the controversy might well involve a multilateral rather than a bilateral treaty? The approach adopted by the Cameroonian legislator is very similar to that found in Article 55 of the French Constitution, although the latter actually talks of 'reciprocal application'. In the absence of any decision interpreting Article 45 by the Cameroonian courts, an indication of how this provision may be interpreted could be gleaned from the interpretation of the notion of 'reciprocal application' by the French courts.<sup>43</sup> The French Constitutional Council has not insisted on the fact that reciprocity is essential to the validity of a law ratifying a multilateral treaty,

---

<sup>41</sup> See J-P Tcheuwa, '*Quelsques Aspects du Droit International à travers la nouvelle Constitution Camerounaise du 18 Janvier 1996*' (Janvier-Avril 1999) 1 *Révue Juridique et Politique* 97.

<sup>42</sup> See Bell (n16) 75–76, who discusses two similar problems raised by the French Constitution.

<sup>43</sup> See Bell (n16).

although it has failed to endorse explicitly the view that the concept is unnecessary for priority to be given to treaty provisions over inconsistent laws.<sup>44</sup>

The second question, alluded to earlier, is that of determining which shall prevail when there is a conflict between a law and a treaty. Again, this issue has not arisen before the Cameroonian courts. If the issue were to arise, it is likely that the Cameroonian courts would be influenced by the numerous French decisions on the matter, although these decisions have not all been consistent. The French Constitutional Council, in its *Abortion Law decision* of 1975, and ever since then, decided that it could not review the constitutionality of a proposed law simply on grounds of its incompatibility with a treaty.<sup>45</sup> The *Cour de Cassation*, for its part, has taken the view that it should give priority to a treaty over an incompatible law.<sup>46</sup> The French Constitutional Council adopted a similar position when sitting as an election court.<sup>47</sup> In 1989, the *Conseil d'Etat* came to a similar conclusion.<sup>48</sup> Thus it can be concluded that the dominant view amongst the superior courts in France is that where there is a conflict between a law and a treaty, the latter will prevail. That is most likely to be the approach that a Cameroonian court will adopt when faced with a similar issue.

## **B. Regional Integration**

Although the Constitution does not deal with the issue of regional integration, the Government of Cameroon has over the years recognised the strategic role and complementary contribution of joining sub-regional, regional, and international organisations. Cameroon is a member of many international and regional organisations, such as the United Nations and many of its specialised agencies, such as UNESCO and WHO, and regional organisations such as the African Union. It is also a member of other international organisations, such as the Commonwealth and Francophonie.

At the regional level it is a member of the Economic and Monetary Community of Central Africa (CEMAC), a customs union (previously known as the Customs and Economic Union of Central African States (UDEAC)), which brings together mainly former French central African countries such as Central African Republic, Gabon, Chad, Republic of Congo (Brazzaville), and includes Equatorial Guinea. It is also a member of the Economic Community of Central African States (ECCAS) free trade agreement. The economic partnership agreement (EPA) that Cameroon has with the European Union (EU) provides for a dismantling of tariffs on 80 per cent of its imports from the EU over a period of 15 years. Other members of the CEMAC zone are likely to be left with no option but to either collect tariffs on intra-CEMAC trade or accept the application of the Cameroon–EU EPA to the whole of CEMAC. If the latter were to happen, then the Cameroon–EU EPA could act as a catalyst for more regional integration in central Africa.

---

<sup>44</sup> Bell (n16) 75 n55.

<sup>45</sup> CC decision No 74–54 DC of 15 January 1975, recently affirmed in *Civil Service Statute*, CC decision No 91–293 DC of 23 July 1991.

<sup>46</sup> *Société Cafés Jacques Vabre*, Ch Mixte, 24 May 1975, D. 1975, 497.

<sup>47</sup> *5e Circonscription du Val-d'Oise*, CC, 21 October 1988.

<sup>48</sup> *Nicolo*, CE Ass, 20 October 1989.

## VIII. Concluding Remarks

Although Cameroon since independence and the reunification of the former British and French trust territories was, until about 1990, considered one of the few stable islands of peace and prosperity on the African continent, the winds of change that blew over the continent in the 1990s almost tore the country apart. Until then, the country had largely escaped from the endemic cycle of political turmoil and economic chaos that had characterised many countries on the continent. This was by all standards extraordinary for a country of enormous complexity and diversity *par excellence*. In fact, Cameroon probably has more ethnic and language groups than can be found in any territory of comparable size. In addition to this, there is superimposed a potentially explosive division between a suspicious, restive, and assertive Anglophone minority and a domineering Francophone majority. The Cameroonian union, despite its numerous imperfections *ab initio*, has endured until now largely due to the harsh and numbing effects of a repressive and highly centralised and autocratic system of government that has been in place since independence.

Discontent with the harsh system of governance and the debilitating effects of the economic recession coalesced with the wave of pro-democracy demonstrations that swept through the African continent in the early 1990s and caused the authorities to introduce some form of multi-party democracy. Although these upheavals, which almost resulted in the disintegration of the country, appear to have been checked, the protracted and often violent nature of the campaign for multi-partyism, in which an Anglophone, Ni John Fru Ndi, and his Social Democratic Front (SDF) party was at the forefront, unleashed and reactivated certain deep-seated centrifugal forces of fragmentation which lay dormant during the long years of one-party dictatorship. However, the tentative democratic openings to date have not gone beyond the regular staging of elections at the end of which the incumbent and his ruling Cameroon People's Democratic Party (CPDM) have usually declared themselves winners, regardless of the actual outcome of the polls. Popular demands for fundamental constitutional reforms resulted in a 1996 amendment to the 1972 Constitution in which the incumbent legitimised his hold on power and reinforced the already highly centralised Gaullist system of government. The total rejection of the federalist system of administration and the castigation of its proponents as unpatriotic and advocates of separatism and secession, coming at a time of rising tension between the Anglophone and Francophone communities, combined with a general disillusionment with the usefulness of democracy as a means for peaceful change, has put serious question marks over Cameroon's unique African bilingual and bi-cultural experiment.

A careful comparative analysis of the Cameroonian 1996 Constitution shows that it is probably one of the most regressive constitutions in Africa today. Since its adoption, the prospects for constitutionalism have diminished and the former unique party that is now operating under a multi-party charade continues to dominate the political scene. The frequent elections that have become more and more expensive have progressively reinforced the autocratic nature of the state. Because some semblance of human rights protection is only provided for in the Preamble, the poor human rights record of the

country has hardly changed. With an executive controlled from the centre by the President, the legislature and judiciary have progressively grown weaker and more ineffective with the passage of time. For a fairly complex country, the 1996 Constitution tries to impose a false unity. The country's complex diversity is neither singular nor unique, as countries such as Mauritius and India also harbour and have accommodated disparate ethnic, racial, and other social groups. Cameroon's problems have been exacerbated by the blind refusal of the ruling elites to come to terms with the basic facts of the country's historical heritage and the need to think creatively and design institutions that will give all the different interest groups in the country the incentive to behave in ways that will enhance national unity, democracy, lawfulness, stability, mutual trust, and tolerance, rather than suspicion and hatred. Instead, the last forty years of independence have been spent running away from this basic reality through futile attempts to eliminate the country's rich diversity. Almost two decades after the democratic process started, there is little evidence that the regime has shed its deeply entrenched authoritarian instincts and practices, nor has it moved significantly towards a more participatory, transparent, and accountable system of governance. The prospects for a genuinely democratic Cameroon, built around the much-vaunted rhetoric of 'unity in diversity', 'bilingualism', and 'bi-culturalism', will require the deconstruction of certain myths, prejudices, and idiosyncrasies cultivated from the colonial past.<sup>49</sup> This is particularly so with respect to the much-hackneyed dogma that national unity and integration, the elusive political goal since independence, can only be attained through rigid centralisation and the demonisation of federalism.

Tom Paine remarked in the latter part of the 18<sup>th</sup> century that a constitution is not the act of government, but of a people constituting a government.<sup>50</sup> The courts have repeatedly pointed out that a constitution is not a lifeless museum piece but a living document that must be designed in such a way that it reflects as well as embodies the fears, hopes, aspirations, and desires of the people.<sup>51</sup> Judged by these standards, the process that led to the 1996 constitutional amendment was a veritable parody of a citizen-driven or influenced process. It is no surprise that for more than a decade after the Constitution came into force, 24 of its 69 articles, or 35 per cent of its provisions, were not implemented. This leaves the country with a constitution that is dysfunctional and a potent source of future problems.

---

<sup>49</sup> See Charles Manga Fombad, 'Cameroon's constitutional conundrum: Reconciling unity with diversity', in Kenyan Section of the International Commission of Jurists and Konrad Adenauer Stiftung, *Ethnicity, Human Rights and Constitutionalism in Africa* (Kenyan Section of the International Commission of Jurists, Nairobi, 2008) 121–156.

<sup>50</sup> C McIlwain, *Constitutionalism, Ancient and Modern* (1940) 234.

<sup>51</sup> See Aguda CJ in the famous Botswana case of *Attorney-General v Dow* [1992] BLR 119 at 166.

## Cameroon

### Select Bibliography

#### 1. Genesis of the Constitution

##### Books and Collections

- M. Azevedo (ed), *Cameroon and its National Character* (EUGA, Mississippi, 1984)
- H.NA Enonchong, *Cameroon Constitutional Law: Federalism in a Mixed Common-Law and Civil-Law System* (Centre d'Édition et de Production de Manuels et L'Auxiliaires de L'Enseignement, Yaounde, 1967)
- CM Fombad, 'Cameroon: Constitutional Law', in Blanpain (ed), *International Encyclopaedia of Laws – Constitutional Law* (Kluwer Law International, The Hague, 2003)
- W Johnson, *The Cameroon Federation: Political Integration in a Fragmentary Society* (Princeton University Press, Princeton, 1970)
- R Joseph (ed), *Gaullist Africa: Cameroon Under Ahmadu Ahidjo* (Fourth Dimensions Publishers, Enugu, 1978)
- N Kofele-Kale, *An Experiment in Nation Building: The Bilingual Cameroon Republic Since Reunification* (Westview Press, Boulder, 1980)
- Le Vine, *The Cameroons from Mandate to Independence* (University of California Press, Los Angeles, 1964)
- Le Vine, *The Cameroon Federal Republic* (Cornell University Press, Ithaca, 1971)
- JN Monie, *The Development of the Law and Constitution of Cameroon* (PhD Thesis, London University, 1970)
- JN Ngoh, *Constitutional Developments in Southern Cameroons, 1946–1961: From Trusteeship to Independence* (CEPER, Yaounde, 1990)
- M Prouzet, *Le Cameroun* (Librairie Générale de Droit et de Jurisprudence, Paris, 1974)
- N Rudin, *Cameroun: An African Federation* (Pall Mall Press, London, 1971)
- D Smock and Bentsi-Enchill (eds), *The Search for National Integration in Africa* (The Free Press, New York, 1976)
- NN Susungi, *The Crisis of Unity and Democracy in Cameroon: Can a Country that has pronounced itself dead be saved by democracy?* (1991)
- J Takougang and M Krieger, *African State and Society in the 1990s: Cameroon's Political Crossroads* (Westview Press, Boulder, Colorado, 1998)

##### Journals and Periodicals

- M. Kamto, 'Révision Constitutionnelles ou Ecriture d'une Nouvelle Constitution?' (1996) 23 and 24 *Lex Lata* 17

#### II. General and Comprehensive Works on the Cameroon Constitution

##### Books and Collections

- HNA Enonchong, *Cameroon Constitutional Law: Federalism in a Mixed Common-Law and Civil-Law System* (Centre d'Édition et de Production de Manuels et L'Auxiliaires de L'Enseignement, Yaounde, 1967)

CM Fombad, 'Cameroon: Constitutional Law', in Blanpain (ed), *International Encyclopaedia of Laws – Constitutional Law* (Kluwer Law International, The Hague, 2003)

S Melone, A Minkoa She, and L Sindjoun, *La Réforme Constitutionnelle du 18 Janvier 1996 au Cameroun. Aspects Juridiques et Politiques* (Fondation Friedrich Ebert/Association Africaine de Science Politique, Yaounde,)

AD Olinga, *La Constitution de la République du Cameroun* (Presses de l'UCAC, Yaounde, 2006)

### **Journals and Periodicals**

CM Fombad, 'Cameroon's Constitutional Conundrum: Reconciling Unity with Diversity', in Kenyan Section of the International Commission of Jurists and Konrad Adenauer Stiftung, *Ethnicity, Human Rights and Constitutionalism in Africa* (Kenyan Section of the International Commission of Jurists, Nairobi, 2008)121

## **III. Fundamental Rights**

### **Journals and Periodicals**

D Eyoh, 'Conflicting Narratives of Anglophone Protest and the Politics of Identity in Cameroon' (1998) 16(2) *Journal of Contemporary African Studies* 249

CM Fombad, 'Freedom of Speech in the Cameroonian Democratic Transition' (1995) 33 *Journal of Modern African Studies* 211

CM Fombad, 'Cameroon', in R Martin (ed), *Speaking Freely: Freedom and the Law in the Commonwealth* (Irwin Law, Toronto, 1999)

CM Fombad, 'Cameroon's Constitutional Conundrum: Reconciling Unity with Diversity', in Kenyan Section of the International Commission of Jurists and Konrad Adenauer Stiftung, *Ethnicity, Human Rights and Constitutionalism in Africa* (Kenyan Section of the International Commission of Jurists, Nairobi, 2008) 121

## **IV. Government**

### **Journals and Periodicals**

CM Fombad, 'Endemic Corruption in Cameroon: Insights on Consequences and Control', in Hope and Chikulo (eds), *Corruption and Development in Africa. Lessons from Country Case Studies* (Macmillan Press, Basingstoke, 2000)

CM Fombad, 'Cameroon's "National Elections Observatory": and the Prospects of Constitutional Change of Government', in Columbus (ed), *Politics & Economics of Africa*, Vol 3 (Nova Science Publishers Inc, New York, 2002)

## **V. Judiciary**

### **Books and Collections**

C Anyangwe, *The Cameroonian Judicial System* (CEPER, Yaounde, 1987)

### **Journals and Periodicals**

CM Fombad, 'The Scope for Uniform National Laws in Cameroon' (1991) 29(3) *Journal of Modern African Studies* 443.

CM Fombad, 'Judicial Power in Cameroon's Amended Constitution of 18 January 1996' (1996) 9(2) *Lesotho Law Journal* 1

CM Fombad, 'An Experiment in Legal Pluralism: The Cameroonian Bi-jural / Uni-jural Imbroglia' (1997) 16(2) *University of Tasmania Law Review* 209

CM Fombad, 'The New Cameroonian Constitutional Council in a Comparative Perspective: Progress or Retrogression?' (1998) 42(1) *Journal of African Law* 151

CM Fombad, 'Cameroonian Bi-juralism: Current Challenges and Future Prospects' (1999) 5 *Fundamina* 22

M Twengembo and S Souop, *La Justice Camerounaise et ses Nouvelles Institutions* (Presses Universitaires d'Afrique, Yaounde,)



