

# Democracy in Cameroon: A Socio-Legal Appraisal<sup>1</sup>

By *Dr Michael A. Yanou*<sup>2</sup>

**Abstract:** *The paper reviews Cameroons major electoral laws and the political structures created by them from the perspective of how these have impacted on the country's democratic performance. To deal with the subject adequately, the author broke the article into three parts viz (a) participation in elections (b) electoral institutions and (c) resolution of electoral disputes. Each part of the paper is connected to the central theme which is the democratic performance of the country in the last twenty years. The author concludes that the country's laws are incapable of leading to a culture of respect for the rights of the Cameroonian people to freely elect their leaders. This is so although it would from a casual analysis of the country's laws seem that the laws facilitate popular participation by the people in the political life of the country.*

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## A. Introduction

The democratic performance of Cameroon 50 years after independence came again under focus during the October 2011 presidential polls just as it will do in the forthcoming twin parliamentary and municipal elections scheduled for 2013. The paper reviews the effects of the country's laws on the democratic process of the country particularly the people's capacity to elect and replace their political leaders. It examines the political will of the country's government to allow popular participation by citizens in selecting their leaders through elections. The article discusses the contention by some that the government is made up by political elites who use laws to create a state apparatus that perpetuates them in power.

A casual analysis of the country's laws will appear to show that the country has enacted an array of legislations which are capable of facilitating popular participation by the people in the political life of the country. Yet, apart from the deceptive tenor of the laws, the actual application of the laws on the ground is a far cry from the impression one gets from a superficial evaluation of the laws and institutions in Cameroon. This conclusion is apparent from the international condemnation of the government's electoral records over the years.

- 1 This is a revised version of a paper presented in a conference in Washington jointly organized by the American University and PICAM.
- 2 PhD (Rhodes), Fellow, Wolfson College, Cambridge, Advocate of the Supreme Courts of Cameroon & Nigeria. Associate Professor, Department of Law, University of Buea. Email: yanounm@yahoo.com.

The fact that liberal democracy has failed in Cameroon because the notion “is much too parochial for Africa’s sociality, negotiability, conviviality and dynamic sense of community” has been acknowledged.<sup>3</sup> This failure has been attributed to a deep feeling of ethnicity amongst Cameroonians which is engendered by the country’s laws that are inconsistent with the liberal democratic rhetoric that focuses on individual rights including the right to vote.

While criticizing this failure, Nyamnjoh<sup>4</sup> curiously argues at the same time that the stress on individual rights which is a feature of liberal democracy does not reflect the complex rhetoric of personhood in Africa. This paper has for the purpose of convenience been broken into three parts with each connected to the central theme of the democratic performance of the country in the last twenty years. These parts are (a) participation in elections (b) electoral institutions and (c) resolution of electoral disputes.

## B. Participation in elections

### I. Introduction

Section 2(2) of the 1996 Constitution of Cameroon as amended allows for a governance system where those managing the institutions of state like the president and members of the houses of assembly are voted through elections. These elections are under this system considered as the source of the power of the managers of these institutions. The elections should ideally be based on a free and fair competition by registered political parties. This section of the paper which reviews how this political system plays out in practice in the country begins with a contextual definition of democracy.

There is no consensus about “a precise or even an appropriate working definition of what Africa perceives as democracy”.<sup>5</sup> The notion is capable of multiple definitions, yet it is here limited to the practice of the people participating in the process of governance (for the public good) through the election of their own representatives in the executive and legislative arms of government. The paper does not deal with democracy in all its forms and possibilities. It limits its analysis to the variant of democracy that intrinsically denotes “rule by the demos”, or the people.<sup>6</sup> The discourse is situated in a context of governance in Cameroon which assumes that democracy is desired by the people and attained through some form of elections that leads to the Cameroonian people having ultimate authority<sup>7</sup>.

3 Francis B. Nyamnjoh, *Africa’s Media. Democracy & the Politics of Belonging*, Pretoria 2005, p. 36.

4 *Ibid.*

5 Rachel Murray, *Human Rights in Africa. From the OAU to the African Union*, Cambridge 2004, p. 75.

6 Neil MacCormick, *Questioning Sovereignty. Law, State and Practical Reason*, Oxford 2001, p. 144.

7 John W. Forje, *Political Leadership, State-Civil Society Relations and the Search for Development Alternatives*, in: Emmanuel Y. Vebu, *Civil Society and the Search for Development Alternatives in Cameroon*, Dakar 2008, p. 199.

## II. Elections in Cameroon

It is necessary to examine the electoral system to ascertain whether the country has met the standards that should constitute it a democratic state. How does Cameroonian law deal with the basic obligation requiring periodic elections in which citizens freely elect their leaders which have been recognized by the Organization of African Union as imperative for economic development and political stability?<sup>8</sup> The country has six different elections although this paper has broadly classified them into three broad categories viz presidential elections, legislative elections and municipal elections. The presidential election which is the most important of them is organized and regulated by Law No 92/10/17/9/92 as amended by Law No 97/020/9/9/97 and takes place after every seven years.

Elections for municipal council mayors/councilors and the national assembly are organized under entirely different legal regimes. The former is organized under Law No 92/002/14/8/92 while the latter is held pursuant to Law No 91/020/10/12/91. The elections for senate prescribed by Law No 2006/005/14/7/06 only took place in April 2013 some 17 years after the senate was technically created in the 1996 constitution. The inordinate delay in creating it was part of a deliberate strategy by an executive that abhors effective legislative power structures that can limit the executive's unilateral powers<sup>9</sup> such as that used to amend the constitution in 2008 to remove the presidential term limit to allow the incumbent to run the 2011 presidential elections.

Article 2(2) and (3) of the 1996 Constitution provides an idea of the attitude of the government to the right to vote. These provisions confer on all Cameroonians aged 20 years and above the right to vote in all elections. Indeed, by insisting in section 2(2) of the Constitution that "the authorities responsible for the management of the state shall derive their powers from the people through elections", the constitution delegitimizes a government or any part of it which is not the result of a democratic outcome. Elections are by the tenor of section 2(2) of the constitution very sensitive matters of paramount significance to the stability and development of the nation which ought to be treated with concern.<sup>10</sup>

Although this constitutional provision has not been judicially construed, the country's experience shows that elections are mired in corruption and generalized lack of transparency as illustrated in *Ebako Mutanga v Sheme Francis Esemé*<sup>11</sup>. Here, the court of appeal accepted the appellant's evidence that he signed an undertaking to pay bribe to the senior divisional officer to get the latter use his administrative powers to manipulate the election process and

8 Murray, note 5, p. 75.

9 See generally *James A. Turner*, The Post-Medellin Case For Legislative Standing, *American University Law Review* 59 (2010), p. 731.

10 Article 45 of the constitution makes the treaty provisions in ICCPR 1966, ACHPR 1986, and UDHR 1948 granting to citizens the right to participate in the government of their country parts of Cameroonian law with the result that these foundational human rights principles are superior to any local provision inconsistent with them.

11 Suit No CASWP/11/2007, unreported.

make the respondent the mayor of a rural council in Mbonge in the South West region. This was on the understanding that the mayor will pay the money after his 'election'.

However, after the 'election' the mayor refused to pay the money arguing that "he was democratically elected by the other councilors". The written undertaking to pay 10,000.000 frs cfa to the SDO (senior divisional officer) through the plaintiff respondent was according to the mayor without effect". Although the court of appeal did not comment on the illegality of the transaction, it insisted that the money be paid. The case shows that elections are often determined by administrative officials through corrupt practices.

Specific legislations regulating particular elections define the qualification for contesting the election as a candidate. While all these statutes without exception require the candidate to be a national, section 54 of Law No 92/10/17/9/92 as amended insist that a candidate for president must be a national by birth. Section 17<sup>12</sup> of Law No 91/020/16/91 appears to define the general criteria for standing as candidates in all elections. Apart from putting the age for standing for elections into parliament and the municipality at 35 and 23 years respectively, section 17 of this legislation also requires that the candidate must be able to read and write English or French without setting a minimum qualification for the position.

Eligibility criteria to run elections including for the presidency in the country are too liberal. It is striking that given the immense demands of governance at the highest level, the legislator did not consider it necessary to introduce a minimum educational requirement to run for the office. This is a deliberate design to ensure that the contest is flooded by many contestants, thus making it more likely for the incumbent to remain in power.

The critical question still remains that which seeks to ascertain whether this legal regime has in practice resulted in the country becoming a true democracy where the foundational right to vote is respected. This question assumes greater importance in the face of the common practice of government officials to point at Article 2 of the constitution and the ratified human rights treaties as evidence that the country has a sound legal foundation for proper elections.<sup>13</sup> Proponents of this view are quick to attribute the democratic deficit in the country to the difficulties associated with the implementation of these laws which they comically attribute to all Cameroonians.

### *III. Legal Reforms and Democratic Performance in Cameroon*

Cameroon ran a single party electoral political system from the 1970s to 1990. Following pressure through street protests for political change, the government launched significant legal reforms to introduce a liberal multi-party electoral system in 1990. The reform which began

- 12 There are identical provisions in all the other laws regulating elections in Cameroon with similar criteria.
- 13 There is in fact a dominant tendency in the country to characterize Cameroon as a country with excellent laws.

with the enactment of the liberty laws<sup>14</sup> introducing political plurality in 1990 was consolidated in 1996 by the introduction of a new constitution with a pluralistic political system.

Abangma<sup>15</sup> argues that the 1990s was a period in which the “the autocratic new deal regime faced pressure for political change on a scale unprecedented since colonial rule”. Article 2 of the 1996 constitution combined with the liberty laws were according to him “significant reform efforts to permit greater pluralism and competition within the polity”.<sup>16</sup> This conclusion is misleading since J Abangma<sup>17</sup> himself cautioned that these reforms represented mere cracks in the edifice of autocracy and should not be mistaken for full fledged transition to democracy or a desire to be more responsive to the respect of human rights.

The reason for the failure of Cameroon’s democratic experience according to this author is the fact that the constitutional reforms were subverted by an incumbent political elite unwilling to commit to opening up the political space to genuine competition.<sup>18</sup> J W Forje attributes the undemocratic situation in the country to the complex hierarchical nature of governance structures and institutions which are “further hijacked by ethnic hegemonic forces, patronage and nepotism”<sup>19</sup>. The author<sup>20</sup> equally notes how rather than creating harmony and democracy the government has used its laws to create a centralized authoritarian and militaristic rule before concluding that “Cameroon has a constitution without constitutionalism and elections without democracy”.<sup>21</sup>

A striking feature of the reform of the democratic process is the fact that what article 2 of the 1996 constitution gives, other legal instruments circumscribe. Although there was a change in methods, the substance remained the same as legal instruments or the lack of it continued to be used to stifle democratic elections. An excellent example is the case of the liberal provisions of section 2 of the constitution which was undermined by section 15 of law № 91/020 of 16<sup>th</sup> December, 1991 governing the elections of members of parliaments. Section 15 of the latter legislation which was still applicable disqualified from voting those who:

- (a) Has been convicted of a felony, even by default
- (b) Has been sentenced to a term of imprisonment without suspension for more than three months.

The damning effect of this law on the right to vote is the fact that under the section persons against whom a warrant of arrest has been issued are disqualified from voting regardless of

14 These were a series of legislation granting basic freedoms to the Cameroonian peoples particularly freedom of association and freedom to form and belong to political parties. See Law No 055 of 19<sup>th</sup> December 1990.

15 *J. A. Abangma*, Governance and Politics in Cameroon: Popular Protests and Reforms, *Journal of Applied Social Science* 4 (2004), p. 134.

16 *Ibid.*

17 *Ibid.*

18 *Abangma*, note 15, p. 136.

19 *Forje*, note 7, p. 201.

20 *Forje*, note 7, p. 192.

21 *Forje*, note 7, p. 193.

the triviality of the complaint from which the warrant was issued. This provision which invariably results in the indiscriminate arrests of perceived opponents must be criticized for violating the universally recognized presumption of innocence of persons facing criminal charges in the preamble of the 1996 constitution.

A similar disqualification which was re-enacted in section 6 of Law No 92/10 of 17/9/92 for the presidential election was used in the 2011 presidential election<sup>22</sup> and resulted in the massive disqualification of potential voters. Both provisions also exclude persons declared undischarged bankrupts from participating in the election. The undemocratic quality of this law lies in the fact that under its dispensation those who may not vote cannot be voted for either.<sup>23</sup>

Besides, there are other legislations which district officers use to frustrate the democratic process in the country. Even laws enacted and styled as liberty laws which ought to facilitate democratic freedoms are used by district officers to frustrate opponents of the ruling party.<sup>24</sup> Section 8(3) of Law No 055 of 19<sup>th</sup> December, 1990<sup>25</sup> gives the Sub Divisional Officer the right to prohibit a public meeting, rally or procession which in his opinion would disturb the public peace. This law which is an affront to freedom of association does not define disturbance of the public peace for the purpose of this prohibition or at all leaving the issue to the subjective interpretation of the district officer himself.

In the *Social Democratic Front v The Sub Divisional Officer, Limbe*<sup>26</sup> the sub divisional officer of Limbe used this law to stop the Social Democratic Front (SDF) the frontline opposition party from holding its national executive meeting and political rally in October 2006. This was in spite of the fact that the meeting was scheduled to take place in a hotel and not open to the public. The action by the party challenging the actions of the district officer lapsed when the defendant refused to appear in court.

Neither the liberty law's reforms nor the constitution affected a culture of the personalization of political office cutting across the entire political spectrum in the country. The situation in the leading opposition party of the SDF where its leader John Fru Ndi has created his own brand of party rules (which he has changed at will) to perpetuate himself in power is a good example.

Every party official that has challenged Mr Fru Ndi has invariably become demonized and thrown out of the party.<sup>27</sup> In fact, the party unashamedly argued in *Social Democratic*

22 *Cameroonian Ministry of Territorial Administration and Decentralisation*, 2011 Presidential Election. Legal Framework Applicable, Yaounde 2011, p. 11.

23 See penultimate part of section 15 of law № 91/020 of 16<sup>th</sup> December 1991.

24 See Justice Vera Ngassa in *Social Democratic Front v Sub District Officer, Limbe* Suit No HCF/005/OM/06-07, unreported decision of the High Court Buea.

25 One of the legislations referred to in Cameroon as the liberty laws.

26 Suit No HCF/005/OM/06-07, unreported decision of the High Court Buea.

27 Mr Akonteh, Prof Asongayi, Ben Muna, Jua and a host of other SDF senior officials have either been dismissed or completely sidelined for expressing contrary opinion or contesting for the position of party chairman.

*Front v Hon Prof Clement Nforti Ngwasiri*<sup>28</sup> that its party rules allows for the auto self exclusion of those who in the opinion of the party are involved in anti party activities. The party showed its intolerance through its contention that the actions of the defendant in challenging the leadership of the SDF party for failing to convene the National Executive Committee was sufficient justification for such auto self exclusion of the defendant and his fellow dissidents.

The party's success in this case further emboldened it with the result that it thereafter casually changed its rules giving the chairman the powers to appoint the principal officers of the party who were hitherto democratically elected. The end result of all these was the transformation of the party into a vehicle for the articulation of the interest of its leader Mr John Fru Ndi.<sup>29</sup>

### C. Electoral Institutions

#### I. Introduction

Bad organs for the administration of elections have been identified as one of the institutional weakness in the practice of liberal democracy in Africa.<sup>30</sup> The organs for the administration of elections have been a major obstacle that has dogged electoral politics in Cameroon. Fombad and Ewang<sup>31</sup> have in the context of Cameroon argued that limiting the evaluation of the electoral process only to the outcome of the election leads to a wrong picture. These authors contend that attention has to be paid on who organizes the elections “and the structures and processes put in place for doing this”.

After arguing that “institutions shape the choices available to political actors” these scholars concluded that “to craft democracy is to craft institutions”.<sup>32</sup> Examples elsewhere in Africa have proven the decisive impact an efficient and neutral electoral body or the absence of it have on the democratization process in a country. It is necessary to examine the organs that have been used to administer elections in the country.

The country's electoral machinery has evolved through three principal phases the Joint Electoral Commissions, National Electoral Observation (NEO) and Elections Cameroon (ELECAM). In reviewing the impact of elections on the democratic process in the country, it is worth observing that before ELECAM elections in Cameroon were organized and managed by the Ministry of Territorial Administration (MINTAD) through the Senior Divisional Of-

28 Suit No HCB/31/05-06, unreported decision of High Court Bamanda.

29 John Fru Ndi used these new despotic powers to appoint Dr Elizabeth Tamanjong from her native division of Mezam in the North West Province to the position of the secretary of the party which previously was held by Prof Asonganyi from the South West province.

30 *Tunji Olagunju et al*, *Transition to Democracy in Nigeria (1985-1993)*, Ibadan 1993, p. 37.

31 *Charles M. Fombad / A. S. Ewang*, *Election Management Bodies and Peace Building in Africa: Cameroon's Move From National Elections Observatory (NEO) to Elections Cameroon (Elecam)*, *Revue Africaine De Sciences Juridiques* 8 (2008), p. 2.

32 *Ibid.*

ficers (SDOs) and Sub Divisional Officers (DOs).<sup>33</sup> The presidential<sup>34</sup> elections, legislative and municipal elections were prior to ELECAM all organized and supervised by electoral commissions created by section 26 of Law No 91 of 1991.

## II. Joint Electoral Commissions

Joint Electoral commissions were created by section 26 of law № 91/020 of 1991 and charged with “preparing electoral activities, organization and supervising of polling and returning operations”. It is obvious that the essential functions of this commission were the preparation and revision of the register of electors or voters. There was agreement across the political spectrum that these commissions failed to conduct credible elections<sup>35</sup> because the commissions were designed to fail. Section 29 of this law prescribes that the commissions shall be set up by senior divisional officer well known for their subservience to the ruling party.

Subsection 4 of the same provision curiously permits the work of the commission to be “carried out by a single member provided that the others are informed of this”. It was these provisions that made it possible for district officers, village heads habitually aligned to the ruling party to consistently draw up electoral registrars that left out all those suspected of having sympathy for the opposition.<sup>36</sup> The joint commission’s elections were roundly condemned as neither free nor fair.

## III. The National Elections Observatory

After tacitly acknowledging that the commissions were obstacles to democratic elections, the government created the National Elections Observatory (NEO) under law № 2000/016 of 19<sup>th</sup> December, 2000.<sup>37</sup> Designed as a response to the discredited commissions, it was no surprise that section 3(3) of this law sought to inspire confidence in the organization by reiterating the principle that NEO shall not be subject to the direction or control of any person or authority.<sup>38</sup> NEO, according to some, succeeded in diffusing electoral tension during its tenure but failed to on the electoral performance in the country.

NEO was deliberately designed to fail. Firstly, by section 2 of the law creating NEO the body was only meant “to contribute to the observance of the electoral Law”. It was practically impossible for NEO to improve on the country’s democratic performance under its section 2

33 The Senior Divisional Officer is the administrative head of a division while the DO is the administrative head of a subdivision.

34 See Law No 92/10/17/9/92 as amended by Law No 97/020/9/9/97.

35 See Human Rights Commission Cameroon Publication (2008):1.

36 It was under this dispensation common to find crowds of disenfranchised people camp out in the offices of DOs and SDOs appealing in vain to be registered to vote.

37 This law was later amended by law № 2003/015/of 22 December, 2003. See *Fombad / Ewang*, note 31, p. 3.

38 *Fombad / Ewang*, note 31, p. 7.

mandate that limits it to a peripheral role in elections conducted by the Ministry of Territorial Administration headed by a minister who consistently declared his loyalty to the ruling party. NEO supervised the council and parliamentary elections of June 2002, the presidential elections of October 2004 and the council and parliamentary elections of 2007 all of which have been condemned for falling well below acceptable standards. Indeed, apart from regarding NEO as retarding the country's democracy, the organization was described as endorsing the "abusive elections of MINATD" through becoming "its willing accomplice".<sup>39</sup>

#### *IV. Elections Cameroon*

The predictable failure of NEO and pressures from the West led to the enactment of Law No 2006/011 of 29/12/2006 which established Elections Cameroon (ELECAM). Like NEO, ELECAM made claims to being an independent body. Unlike NEO however, ELECAM was vested with the mandate to organize, manage and supervise all elections operations in the country.<sup>40</sup> By giving the body extensive powers and functions including the power to publish election trends, section 8 of this law was clearly intended to make ELECAM an improvement over NEO. Even before the body organized any elections, it had become apparent that Cameroonians have scant confidence in its capacity to conduct free and fair elections.

Firstly, ELECAM's electoral officer with actual responsibility for conducting the elections is the Director General who is a civil servant appointed by the president without any consultation with political parties. Under the ELECAM dispensation, the MINTAD which has been the bane of the country's democratic performance is to maintain permanent cooperation between the government and ELECAM. ELECAM according some was designed to support the ruling CPDM government perpetuates itself in power. The fact that the electoral board of the body which is vested with the responsibility of supervising the elections has been crowded with members of the central committee and polit-bureau of the ruling CPDM is cited as evidence for this conclusion.<sup>41</sup>

How was it possible for ELECAM board to be filled with members of the ruling party? The answer is to be found in the deliberately created loopholes in Section 8 of Law No 2006/011/29/2006 under which ELECAM was created. Subsection 3 of this provision allows the president extensive discretionary powers of appointment of the chairpersons and members of the board. Although these appointees were by section 8(3) to be selected from personalities "reputed for their stature, moral uprightness, intellectual honesty, patriotism, neutrality and impartiality", the law did not provide safeguards to ensure that this was not subverted by the president.

39 *Fombad / Ewang*, note 31, p. 18.

40 See Sections 1(2) and (4) of Law No 2006/011 of 29/12/2006.

41 Dr Fonkam Asuh the chairman of the Board is a central committee member of the CPDM while Dr Mrs Dorothy Njuema is a polit-bureau member of the CPDM party well known for her political intolerance.

Section 8(3) no doubt requires that these appointments be made “upon consultation with political parties represented in the National Assembly and civil society”, this was nevertheless too weak and ineffective to accomplish the objective identified in section 8(3). The publicized consultations held by the Prime Minister with members of political parties, religious leaders and civil society allegedly for recommending candidates for appointment to the boards turned out to be mere publicity stunt. The consultation resulted in the designation of only members of the ruling party in spite of the express provisions of section 13 making membership of a party incompatible with membership of ELECAM board.<sup>42</sup>

ELECAM’s tendency to act illegally combined with its pro CPDM composition attracted immense criticism from major stakeholders in the electoral process in the country. The SDF the leading opposition party sued ELECAM and the government in the administrative Bench of the Supreme Court, Yaounde in *SDF v ELECAM*.<sup>43</sup> The suit challenged members of ELECAM of violating section 42(3) of the law requiring that the body only starts operating after a presidential Decree permitting it to do so had been signed. The party argued that by starting the registration exercise before the promulgation of the Decree, the body was operating in illegality<sup>44</sup>.

Curiously, both ELECAM and government admitted in their submissions in court that the operations were done before the enabling Decree was signed but trivialized this as a minor irregularity which should not justify the cancellation of the registration that had been done. ELECAM’s admission shows that election issues are not regarded as being in a class of their own and demanding that their laws be treated as sacrosanct and scrupulously respected.<sup>45</sup> However, following the events in the Ivory Coast and the Arab spring uprising the government quickly enacted the Decree expressly authorizing the body to function before the court could rule. This was quickly followed with a further revision of the 2006 Electoral law introducing a revised Law No 2011/002 of May 2011 with two major changes. Section 8 of this new law increased the board members from 12 to 18 while section 31(3) vests the responsibility for the proclamation of results exclusively on the constitutional council.

The increase of members from 12 to 18 was saluted by an Episcopal report of catholic bishops because the six new members appointed into the body were apparently drawn from civil society organizations, religious authorities and other political parties<sup>46</sup> unlike the first 12 who were all members of the ruling CPDM parties and their cronies. However, the taking

42 It may however be contended that what is important is not the members previous membership of the ruling party but the fact that all members on appointment take the oath prescribed under section 8(6) of the same law committing them to discharge their duties without fear or favour. This view assumes that no one can be politically neutral in the context of Cameroon with over 200 political parties.

43 *Affair Requete Aux fins d’ annulations des Inscriptions Sur les listes Electorales Initiees Par Elecam* filed at the administrative Bench by Maitre Sama Francis and 3 others.

44 It was also contended that the Director General of Elecam started working before the Decree was signed.

45 See *Azudibia v I.NEC* (2010) ALL FWLR 1684.

46 Edén Newspaper of Wednesday 27<sup>th</sup> July 2011.

away of the powers of divisional units of ELECAM dispersed across the country from announcing election results and vesting of everything on the constitutional court has been condemned. The vesting of the power exclusively on the constitutional court a nonexistent body that acts through the Supreme Court which sits only in Younde has been criticized as a ploy to block ELECAM from performing its role. This criticism is instructive because the previous law that permitted ELECAM units across the divisions in the country to announce results in their divisions was clearly a more transparent and credible approach to election management for the simple reason that these dispersed units would be more difficult to manipulate by the government.

#### V. *ELECAM a crisis of confidence?*

Obosso<sup>47</sup> a civil society organization committed to fighting for systematic change in the electoral structure of Cameroon has identified the dissolution of ELECAM as the most important of its eleven point demand for reform in the country. Arguing that this body is incapable of conducting democratic elections, Obosso threatened to resort to street marches in order to force its scrapping which however did not materialize. For *Nouveau Droit de l' Homme (NDH)* another civil society organization ELECAM "is a dangerous trap" with a director general who "is nothing but the re-enactment of the SDO/DO in the field".

That the electoral institutions in the country have enjoyed little confidence of the people is understandable. Jean Forchive the dreaded head of the secret service under presidents Ahidjo and Biya respectively had described Cameroon as a typical African kingdom where<sup>48</sup> "everything belongs to the king" noting that "the National Assembly, the army, the police, the public treasury, the judiciary etc.....are subservient to and are at the service of Royal Court and the least deviance attracts serious consequences". This view is consistent with that of R Murray<sup>49</sup> who observed that African states have such scant respect for human rights to the extent of conceiving "the African charter as standing for the protection of their heads of state."<sup>50</sup> The crowding of ELECAM with members of the ruling party and the perception of the Supreme Court as a court in the pocket of the president must be situated in the above context.

47 The Post Newspaper [A leading English language daily] of November 2009. This author interviewed the Director of Obosso, Mrs Kah.

48 See Article by *Charles Taku* in the Post of 5<sup>th</sup> October 2009.

49 *Murray*, note 5, p. 8.

50 It is difficult to see how the democratic climate can change without a major shift from this philosophy which is sometimes expressed as "*l'état, c'est moi*". It is in the face of this understandable why according to one of the legal advisers of the SDF, Hon. Joseph Mbah Ndam, even CDPM militants know that the ELECAM members cannot organize free and fair elections.

## D. The resolution of electoral disputes

### I. Weak Judiciary and political cases

In the face of the overwhelming political power of the executive and the latter's complete dependence on the ruling party, the country needed a strong judiciary capable of counterbalancing this influence by delivering justice in cases of disputes over the electoral process. However, on the contrary, the executive has over the years successfully used a weak judiciary and slanted procedure for the resolution of electoral disputes in the country to achieve the present democratic deficit that undermines the right to vote.

The case of *Fon Doh Gwanyin v The People*<sup>51</sup> is an excellent illustration of the challenge the courts face in cases involving gross rights violation where the political interest of the government is involved. The appellant was a senior member of the ruling CPDM party and Member of Parliament who in a blatant display of violence and political intolerance beat to death Mr Kohtem a rival leader of the leading opposition party in his constituency. His conviction and sentence for murder by the High Court sitting with three judges was hailed as signaling a movement away from the political impunity that had plagued the country for centuries.

However, the subsequent removal of all the three judges who convicted this party baron from their post as judges showed the extreme vulnerability of the Cameroonian judge when dealing with political matters in which the ruling CPDM party has interest.

*Social Democratic Front v The Sub Divisional Officer, Limbe*<sup>52</sup> presents another disturbing example of the impotence of the courts in the country. In this case, the judge held that the sub district officer for Limbe acted arbitrarily by banning an SDF rally and meeting in the town. The district officer had banned the rally and meeting for "the cloudy atmosphere surrounding the legitimacy over the Social Democratic Front". It was however apparent that he was acting in support of Mr Ben Muna whose dramatic attempt to usurp the position of the leader of the party was receiving tacit support from the government.

It is interesting that the ban was ordered by the sub district officer of Limbe at a time when the SDF was still a legally registered party with members in parliament. Besides, the ban came in spite of the decision in *Social Democratic Front v Hon Prof Clement Nforti Ngwasiri*<sup>53</sup> that the SDF was a legally recognized party under the leadership of Mr John Fru Ndi. *Social Democratic Front v The Sub Divisional Officer, Limbe*<sup>54</sup> and *Fon Doh Gwanyin v The People*<sup>55</sup> have invariably to be interpreted as demonstrating the depth of the democratic deficit in the country.

51 Suit No BCA/53c/2006, unreported decision of the Court of Appeal Bamenda.

52 Suit No HCF/005/OM/06-07, unreported decision of the High Court Buea.

53 Suit No HCB/31/05-06, unreported decision of the High Court Bamenda.

54 *Supra*.

55 *Supra*.

For the former, the conclusion is an obvious one for the additional reason that the convict murderer was easily released from prison allegedly on bail by the chief judge of the North West Court of appeal after less than a year in prison. It was similarly no surprise when the judge in *Social Democratic Front v The Sub Divisional Officer, Limbe*<sup>56</sup> was transferred and demoted to sit in a magistrate court which traditionally does not hear cases with political undertones.

Mbaku<sup>57</sup> has questioned the country's judicial system for being based on electoral laws that prevent local courts or tribunals dispersed across the country from hearing election related matters. He contends that the system has been put in place by the executive which recognizes that it is more difficult to control courts dispersed across the country. Mbaku also criticizes Cameroon's judicial system that insists that electoral challenges are determined in far away Yaounde for shielding the local people who voted in the elections from being a part of the process and knowing how their vote was ultimately determined for fear of a violent backlash.

## II. Determination of Election matters in the Supreme Court: A Critique

A careful and more specific review of the tenor of the country's current legislation on the resolution of election cases reveals a systemic weakness in the process for the determination of election matters in the Supreme Court. The ELECAM law<sup>58</sup> vests the responsibility for the release of the election results in the Constitutional Court whose functions are presently performed by the Supreme Court based in Yaounde.

The ELECAM law prohibits the divisional and provincial units of ELECAM from declaring the results although these local units are the ones that collate and compute them. This approach is a carryover from the discredited practice during the joint commission period under Law No 91 of 1991 and is maintained to give the minister of justice the capacity to manipulate the judges to ensure control of the process for the pronouncement of results and the determination of cases resulting therefrom.

The role of the Supreme Court is conceptually objectionable since it makes the court which computes and declares the final result of an election a judge in its own cause.<sup>59</sup> Apart from Mbaku<sup>60</sup> who has noted that the Supreme Court is under the control of the executive, The Post has observed that a free and fair election is not possible in Cameroon where "there is no independent judiciary to safeguard the sanctity of the free expression of popular sovereignty

56 *Supra*.

57 *Julius Amin*, Paul Biya's Foreign Policy: The Promise and Performance, in: John M. Mbaku / Joseph Takougang (eds.), *The Leadership challenge in Africa: Cameroon under Paul Biya*, Treton 2004, p. 183.

58 Section 22 of Law No 2006/011 of 2006 defining the duties of the body limiting it to the publication of election trends only.

59 Certainly, the court cannot be impartial in the resolution of a dispute over the results of an election which it produces on the principle of *nemo iudex in causa sua*.

60 *Amin*, note 57, p. 182.

through the polls”.<sup>61</sup> Arguing that “ELECAM itself is a spoke in the wheel of a gigantic institutional fraud mechanism that ends at the doorsteps of the Supreme Court”, it concludes that the Supreme Court was:

*“put in place to legitimize the rigging of the 2011 elections that has already occurred. It is not for nothing that shortly after establishing this structure, Biya, by decree, extended the term of office of two retiring judges at the head of the Supreme Court way after the 2011 elections, and who over the years have kept him in power despite admitting fraud but justifying it on the grounds that their hands were tied.”*

This damning conclusion is a fairly accurate interpretation of the politics of Cameroon as depicted by Jean Forchive’s who said the country was governed like a monarchy.<sup>62</sup> Article 3(3) of the Constitution which makes the president the guarantor of the judiciary with unlimited powers to appoint and discipline judges and members of the legal department is a constitutional affirmation of the absolutism which Forchive spoke about.

Government has contended that the Supreme Court must declare result because of the provisions of Art 3 of the 1996 Constitution which exclusively vests the power to declare results in the court, yet this contention remains unconvincing. The government had in April 2009 revised the same 1996 constitution to take away the term limit for the president in spite of stiff opposition from the people and of the fact that the term limit was a principal reform introduced in the early 1990s to calm popular uprising against the undemocratic governance of the country.

A major weakness of the Supreme Court is found in the procedure for hearing electoral disputes in that court. By section 94 of Law No 97/020 of 9<sup>th</sup> September 1997 claims challenging the presidential election must reach the Supreme Court “within a maximum period of 72 hours from the closure of the polls” while by section 120(2) of Law No 97/13 of 19<sup>th</sup> March 1997 disputes over parliamentary elections are to be filed within 4 days following “the end of polling operations”. It is clearly impracticable for a candidate who contested a nation wide election for the presidency to effectively collect all the evidence of malpractice in the entire country prepare his pleadings, and file his action in Yaounde within 72 hours. More damning features of the judicial process are found in the fact that the court neither hear witnesses nor are its decision amendable to appeals no matter how outlandish they appear.<sup>63</sup>

The claims in *Eta Besong v The State of Cameroon represented by the Minister of Territorial Administration*<sup>64</sup> and *Ikomi N Joseph v The State of Cameroon represented by the Mi-*

61 The Post Newspaper, 17<sup>th</sup> October 2004.

62 Cameroonian judges have from time been used as agents and justifiers of repression, *Richard Joseph Gaullist* (ed.), Africa: Cameroon under Ahmadou Ahidjo, Enugu 1978, p. 102.

63 Ahidjo the first president of Cameroon started the practice of making laws limiting the rights of appeal against cases to ensure that the actions of the executive are not thwarted by the courts. This followed the attempt to ensure that the courts do not interfere with the conviction of his political opponents who opposed him in 1962. *Gaullist*, note 63, p. 104.

64 Affair No 33/CGS, unreported decision of the Supreme Court.

*nister of Territorial Administration*<sup>65</sup> are illustrative of the Supreme Court's contribution to the democratic deficit in the country. In the former, the plaintiff who was the SDF candidate for Buea rural constituency complained that the district officer and NEO officials inflated the vote of the CPDM candidate. The petition also alleged that this inflation of votes was facilitated by the fact that government officials colluded with the CPDM (often described in official rhetoric as government party) to drive away opposition election agents from the polling stations during the election.

This case which was based on a painstakingly prepared petition was dismissed for "insufficiency of evidence" and the fact that the CPDM candidate was not made a party to the petition. This ruling which is not appealable is particularly strange because the petitioner attached polling certificates showing that the number of votes cast were above the number of persons registered in various polling stations. It is equally bizarre that the court will dismiss the case for insufficiency of evidence in an action under a procedure<sup>66</sup> where witnesses are not permitted to be heard after giving counsel only a few minutes to argue his case.

The Supreme Court must be criticized for the manner it dealt with these and other electoral cases although their above decision appears based on the principle that it is not the duty of the organ that runs elections to establish that the election is free, fair and in substantial compliance with the law.<sup>67</sup> It is contended that the fact that the petitioner attached evidence of irregularities, collusion and counting errors ought to have shifted the burden to the respondent to show that the elections was done in substantial conformity with the law. Besides, in the case of the October presidential election result proclamation by the court, the fact that ELECAM had repeatedly undertook to conduct fair polls squarely placed a duty on it to prove that this was done which the court should have insisted on.

The Ikomi's case raised similar complaints but the Supreme Court summarily dismissed the suit. The case was in fact lumped up with the bulk of the petitions of opposition parties challenging the results of the CPDM candidates and dismissed because the CPDM winning candidates were not made parties in the petitions<sup>68</sup>. The arbitrary nature of the court in election cases was demonstrated by the fact that the court did not apply this rule in *Eta Besong v The State of Cameroon represented by the Minister of Territorial Administration*<sup>69</sup> where the petition did not make the winning CPDM candidate a party to the petition. The inevitable conclusion to be drawn in these cases is the one that suggests that the Supreme Court was in a hurry to confirm the results it has itself produced because of the synergy between it and the executive.

65 Affair No 34/CGS, unreported decision of the Supreme Court.

66 The Supreme Court in Cameroon prides itself as a court of Law concerned basically with form and technicality not facts. See *Manga Amougou Luc v SODECOTON* (Appeal No 58/S/02-03, unreported) where the Supreme Court stated that it was by its practice confined to issues of law and not facts.

67 *Buhari v Obansanjo* (2005) 2 NWLR Pt 941 1.

68 See affair No 34/CGS, unreported decision of the Supreme Court.

69 *Supra*.

The presidential election conducted in October 2011 has further confirmed the view that the Supreme Court is structured to facilitate the government's manipulation of the electoral process at the expense of the people's right to freely elect their leaders. By section 98 of Law No 2011/002/of 6/5/2011 the Supreme Court must receive, examine, adopt and proclaim the presidential election within 15 days from the closure of polling operations. The court is under this provision not only expected to receive and collate all the results from the ten provinces and the Diaspora but also to hear and determine challenges against the election including petitions for annulations of the entire process which must be filed within 72 hours from the close of polls.

The court received twenty petitions challenging the presidential elections for various irregularities. The bulk of the petitions were rapidly quashed on grounds of technical objections while the rest were dismissed because the petitioners could not prove that the elections were not conducted in conformity with the law.<sup>70</sup> The case of *In the matter of a petition for the cancellation of all polling operations of the October 9, 2011 presidential election by Ni John Fru Ndi, candidate of the elections*<sup>71</sup> illustrates how electoral laws are used to undermine the democratic process. The petitioner the presidential candidate of the SDF challenged the election of the incumbent CPDM president praying the court to cancel the entire polls for a variety of irregularities. The petitioner pleaded that the election was marred by a generalized poor organization involving countrywide none distribution electors cards, inflation of votes in favor of the incumbent by ELECAM and government officials, stuffing of ballot boxes, and a countrywide "unchecked violence against members and officials of the opposition leading to the death of an opposition militant".

To succeed, the petitioner must establish by credible evidence the grave allegations in his petition covering as it did events occurring in the entire country. This task is near impossible because of the difficulty of collating facts across the country and the Diaspora within the 72 hours statutory period given the poor road network and ineffective communication infrastructure of the country. In frustration, the petitioner begged for leave of the court to provide videos, pictures, elector cards, elector's registers, ballot papers and the reports of the divisional, regional and diasporian commissions on the election at some later date after the filling of the petition.<sup>72</sup> The court known for its support of the incumbent disregarded this plea as it probably ought to do because filling these facts is a condition precedent for the validity of the petition.

Apart from the obnoxious 72 hours rule, the handling of the presidential election petitions by the Supreme Court in the manner it did amounts to a travesty of justice that renders the right to vote nugatory. In a trial which look like theatre the court took about an hour to determine the entire petition of John Fru Ndi in spite of the enormity of the allegations it raised. Clearly, such a trial could not possibly address the essential substance of an election dispute

70 African Elections Database (2011).

71 Petition filed in the Supreme Court 11<sup>th</sup> October, 2011 (Unreported).

72 See paragraph 5 of the petition.

relating to the life issue of making the people's vote to count. The skewed nature of electoral laws in the country can be better appreciated when compared with those in neighboring Nigeria where a candidate for a state house of assembly elections has 30 days to file his petition in spite of the limited territorial coverage of the election and the petitions take weeks to determine.<sup>73</sup>

Cameroonian law regulating election cases are interesting when contrasted with what obtains in neighboring Nigeria. Section 98 of Law No 2011/ of May 2011 makes it impossible to challenge whatever the Supreme Court proclaims as the result on the basis of the fact that the petitions are heard contemporaneously with counting before the proclamation. By this curious legal dispensation, election results once pronounced are cast in stone and forever unchallengeable even on appeal regardless of the enormity of what happens after the proclamation by the Supreme Court.

In Nigeria election matters are heard by special tribunals which must sit in the chief town of the locality where the election took place. The hearing involves witnesses who are known by the local people testifying in public in trials that are not circumscribed by a time limit for the determination of cases. Apart from the fact that the Nigerian Supreme Court held in *Kadiya v Lar*<sup>74</sup> that such limitation of time is unconstitutional, an election case in Nigeria goes through a rigorous appeal process from the Court of Appeal to the Supreme Court. In *Bola Ige v Dr Omololu Olunloyo*<sup>75</sup> it was on appeal to the Supreme Court that the election was declared void and a bye election ordered. A review of election matters in Nigeria shows that some of the matters are won on appeal.

This right of appeal in electoral cases is by section 98 of Law No 2011/002/of 6/5/2011 not available in all election results determined by the Supreme Court. The absence of the right of appeal in Cameroon is a critical indicator of the unsoundness of the democratic system in the country. What this means is that justice is denied defeated candidates who lost their challenge of the election in the court of first instance which in Cameroon is the Supreme Court. In an election criticized for being marred by corrupt practices the absence of the right to appeal against a Supreme Court decision at first instance speaks volume for the country's democratic deficit.

## E. Conclusion

This paper has sought to demonstrate that Cameroon's electoral laws have failed to guarantee for the people the capacity to elect their leaders. It is argued that although highly publicized reforms has been undertaken, the reforms have remained cosmetic with the ruling elite not committed to changing the rules that enable them perpetuate themselves in power. The paper shows that the authoritarian culture which is deeply rooted in Cameroon extends to political

73 See *Obumneke v Sylvester* (2010) All FWLR 1945.

74 (1983) 2 SCNLR 368.

75 (1984) 1 SCNLR 158. See also *Opia v Ibru* (1992) NWLR (Pt.231) 658.

parties out of government. Not one of the over 200 parties in Cameroon has conducted a democratic election leading to a change of leadership in the party.

The author argues for a radical transformation of the legal system upon which the country's electoral structure is based. This must involve a radical constitutional revision. A constitutional amendment decentralizing executive and judicial powers to structures dispersed across the country would improve the democratic performance of the country. There can be no meaningful democratic improvement without constitutional reforms that will ensure the separation of powers between the three branches of government and institutional reforms leading to accountable and transparent administrative structures.

The revision of ELECAM through Bill No 855 which was passed by parliament in March 2010 to amend the law setting up ELECAM has not improved the electoral situation. Section 7 of the 2010 of the revised ELECAM Law struck a devastating blow on the independence and impartiality of ELECAM by providing that the ministry of territorial administration and ELECAM shall have equal representation at the Divisional and Regional Commissions charged with the counting of votes.<sup>76</sup> Under the same provision, the National Vote Counting Commissions are to be headed by magistrates who in the context of Cameroon serve under the direct control of the minister of justice who as a member of the executive is a member of the ruling party.

76 The same provision puts the representation for the commissions for the revision of voters' registers and the distribution of voters cards at 50% each between the ministry of Territorial Administration and ELECAM regardless of the fact that this is an area where ministry officials used to disenfranchise people with opposition sympathies in all previous elections.