

# The Tussle with Constitutionalism and the Rule of Law: The Case of Cameroon

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## Abstract

*Most African countries have undergone structural and political changes that limited their post-colonial government's capacity to drive economic growth and make policy choices. This article bases itself on three current governance crises (decentralisation, linguistic marginalisation and controversial elections) plaguing Cameroon to examine the structural, institutional, administrative, and other socio-political tussles affecting Cameroonians. The current twenty-three years old Constitution is pending the implementation of 35% of its articles. This raises not only the question of constitutionalism but also the question of the practicality of Cameroon's development objective of an emerging democracy by 2035, which values freedom, equality, and citizens' sovereignty.*

*Increasing protest and pressure coupled with government repression has heightened political instability and violent conflicts. However, Cameroon is at the verge of reviewing her hybrid legal system, which is appropriate timing for the government to ensure constitutionalism and advance the rule of (administrative) law by deepening democratic engagement. Therefore, adopting a bill of rights on the Constitution is essential for Cameroon to ensure inclusive power sharing as well as political accountability. Nevertheless, the design, implementation and evaluation of this bill of rights require a broad-based people-centred developmental approach, which includes the proper application of the theories of self-reliance, legislative institutionalism, new institutionalism, and globalisation.*

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## Introduction

Cameroon is a 'bijural' system of a co-existing divergent European legal systems of the English Common Law and French Civil law.<sup>1</sup> The concept of democratic governance and constitutionalism were introduced in Cameroon in the 1990s through political reforms and constitutional amendments that have shaped its political economy.<sup>2</sup> Cameroon's 2035 developmental objective, "Cameroon: An Emerging, Democratic and United Country in Diversity" clearly identifies democracy (inequalities) and governance amongst critical socio-political developmental challenges that need to be addressed for Cameroon to effectively integrate the global economy.<sup>3</sup> However, the implementation of the governance-related and democracy-related constitutional provisions in Cameroon have remained questionable.

This essay attempts to conceptualise democratic governance by examining Cameroon's legal infrastructure to identify possible structural, institutional, administrative, and other socio-political reforms that can transform Cameroon into a real developmental state. It employs a historical analysis of law and development movement with reference to how the theories of modernisation, dependency, and liberal democracy have influenced interventionism, structuralism, and neoliberalism in Cameroon. Further, it explores the governance context based on three issues (decentralisation, linguistic marginalisation, and controversial elections). Finally, it seeks to understand how constitutionalism and the rule of (administrative) law can facilitate sustainable people-centred development while applying the theories of self-reliance, legislative institutionalism, new institutionalism, and globalisation. Overall, it affirms that constitutionalism and the rule of law are essential instruments to build inclusivity and ensuring democratic governance in Cameroon. It specifically recognises the strategic role of lawyers (and other citizens) in the struggle for socio-political transformation, public accountability, and inclusive power-sharing in Cameroon.

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<sup>1</sup> Charles Manga Fombad, 'Managing Legal Diversity: Cameroonian Bijuralism at a Critical Crossroads' in Vernon Valentine Palmer, Mohamed Y. Mattar (eds), *Mixed Legal Systems, East and West* (Routledge 2016) 101.

<sup>2</sup> Charles Manga Fombad, 'Constitutional Reforms and Constitutionalism in Africa: Reflections on Some Current Challenges and Future Prospects' (2011) 59 *Buffalo Law Review* 1007.

<sup>3</sup> Ministry of the Economy, Planning and Regional Development, *Cameroon Vision 2035* (Working Paper, Republic of Cameroon, 2009) vi.

## I. The History of Law and Development in Cameroon

It is important to understand the background to the current issues in contention within the governance context of Cameroon. Various substantive issues have characterised the three moments of law and development in the country. After World War II, Cameroon was a UN trust Territory under British and French governments, her former co-colonisers after they seized the territory from Germany.<sup>4</sup> Despite the departure of Britain and France from Cameroon in 1960 and 1961, Cameroon has not gained full independence from their influences on its socio-political and economic development. The development of Cameroon's post-colonial legal and economic system can be divided in three phases, which will be analysed in the subsequent paragraphs.

During the first phase of development (1960 to 1982), President Ahmadou Ahidjo led French-speaking Cameroon to independence in 1960 with a Constitution that was adopted top-down by elites and modelled after the fifth French (Gaullist) Republic political system, which is characterised by an imperial presidency with an unlimited exercise of a government agency.<sup>5</sup> In 1961, English-speaking Cameroon became independent through a referendum that joined it to French-speaking Cameroon, forming the "Federal Republic of Cameroon".<sup>6</sup> The Federal Constitution had a minor modification of the 1960 Constitution that merged the French Civil Law and British Common Law systems.<sup>7</sup> In 1972, a Unitary Constitution was adopted, creating the "United Republic of Cameroon".<sup>8</sup> Ahidjo's interventionist regime controlled the economic development process using planned liberalism and self-centred development approaches that utilised national resources (including a civic agency) and private initiatives to achieve sustainable development for Cameroonians.<sup>9</sup> He claimed liberalism needed to be directed so that it could conform to the interest of all citizens; accordingly, he created public establishments and initiated several social development projects that were executed by his predecessor.<sup>10</sup>

The second phase of law and development in Cameroon (1982 to 1990s) marked the beginning of President Paul Biya's reign after Ahidjo's resignation. In 1984, Biya named Cameroon the

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<sup>4</sup> John Mukum Mbaku, 'Judicial Independence, Constitutionalism and Governance in Cameroon: Lessons from French Constitutional Practice' (2014) 1 *European Journal of Comparative Law and Governance* 359.

<sup>5</sup> *ibid.*

<sup>6</sup> Christopher Fomunyoh, African Center for Strategic Studies, 'Understanding Cameroon's Crisis of Governance' Africa Center for Strategic Studies <<https://africacenter.org/spotlight/understanding-camerouns-crisis-of-governance/>> accessed 14 March 2019.

<sup>7</sup> Mbaku (n 4).

<sup>8</sup> *ibid* 360.

<sup>9</sup> Alain Thomas Etamane Mahop, 'The Great Directions of Cameroon's Economic Policies during President Ahmadou Ahidjo's Political Regime, from 1960 to 1982: A Historical Analysis' (2009) 8 *Analele Universității Dunărea de Jos din Galați. Seria Istorie* 213.

<sup>10</sup> *ibid.*

“Republic of Cameroon”.<sup>11</sup> By the 1990s, given increased pressure from the Bretton Woods institutions on African countries to use privatisation as the vital instrument for stabilisation and structural adjustment programmes (SAP), Cameroon’s government started deregulating public establishments to attract domestic and foreign private capital.<sup>12</sup> In 1994, in search of political survival and alignment with global patterns of development, the government launched the privatisation of 15 companies.<sup>13</sup> However, this movement towards structuralism and neoliberalism did not serve the purpose of modernising the political economy. Instead, it caused Cameroon’s dependency on western systems and limited the government’s intervention in the national economic development process. Edigheji was right to point out that the adoption of SAP in African states incapacitated their ability to yield to their domestic developmental agenda, and the dominance of technocrats in decision-making directed state accountability to bureaucrats in international development agencies rather than towards citizens and political elites.<sup>14</sup>

From the 1990s, Cameroon commenced her current era of new developmentalism with political reforms pressured by the Breton woods and other institutions’ good governance condition for foreign aid.<sup>15</sup> Biya’s regime introduced various public participation reforms, including the creation of a multiparty system of politics and policy of regional balance to ensure a fair distribution in the management of national resources to diverse ethnic groupings.<sup>16</sup> In 1992, multiple political parties participated in the legislative and presidential elections.<sup>17</sup> In 1996, Cameroon’s (1958 Gaullist reflecting) Constitution was substantially amended through a controversial elite-driven process with the 39 articles text replaced by a 69 articles text.<sup>18</sup> This exercise excluded the general public from participating in the Constitution-making process and contributed to increasing constitutional illiteracy amongst Cameroonians. In 2008, another controversial Constitutional amendment process permitted Biya to continue running for the presidency.<sup>19</sup> This act gave Biya an unfair advantage in Cameroonian politics. After serving for 15 years in various ministerial functions, including Prime Minister, Biya records seven

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<sup>11</sup> *ibid.*

<sup>12</sup> Piet Konings, ‘Privatisation of Agro-industrial Parastatals and Anglophone Opposition in Cameroon’ (1996) 34 *Journal of Commonwealth and Comparative Politics* 199.

<sup>13</sup> *ibid* 199, 200.

<sup>14</sup> Omano Edigheji, ‘A Democratic Developmental State in Africa? Challenges’ (Centre for Policy Studies, Research Report, 2005).

<sup>15</sup> Martin Sango Ndeh, ‘Good Governance in Cameroon: Perception and Practice in an Emerging Cameroon by 2035’ (2015) 3 (6) *European Centre for Research and Development* 1.

<sup>16</sup> The Commonwealth, ‘Cameroon: Constitution and Politics | The Commonwealth’ <<http://thecommonwealth.org/our-member-countries/cameroon/constitution-politics>> accessed 5 April 2019.

<sup>17</sup> Joseph Takougang, ‘The 1992 Multiparty Elections in Cameroon’ (1996) 31 *Journal of Asian and African Studies* 52-65.

<sup>18</sup> Mbaku (n 4) 366-67.

<sup>19</sup> *ibid* 367.

presidential elections victories in 35 years and has an additional five years of presidency.<sup>20</sup> Therefore, Biya has held a government position for the past fifty years and anticipates spending up to fifty-five years in government office.

Biya claims that Cameroon practices advanced democracy (*démocratie avancée*) on the basis of multiple parties and regular elections.<sup>21</sup> This form of liberal democracy limits the measure of democratic governance as it does not take into account the degree of fulfilment of electorates' expectations by their elected officials.<sup>22</sup> Democracy is beyond voting; it is an everyday practice that enables citizens to monitor, evaluate, and questions their leaders on the management of the public resources entrusted to them.<sup>23</sup> Edigheji rightfully affirms that the good governance conditions of the SAP undermined the nature of African political regimes and limited their policy choices.<sup>24</sup>

## II. The Governance Context in Cameroon

Governance in Cameroon is primarily based on the Constitution of the state. This section discusses how the constitutional arrangements in Cameroon have affected three governance issues; decentralisation, linguistic marginalisation and controversial elections.

### A. The constitutional provisions on governance

Cameroon's 1996 constitutional amendment is illiberal and has been pending implementation of 24 of its 69 articles (35% of its provisions) for the past twenty-three years.<sup>25</sup> For example, the Constitutional Council provisions of articles 46-52 have been ineffectively implemented as the

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<sup>20</sup> The Commonwealth (n 16).

<sup>21</sup> Clébert Agenor Njimeni Njotang, 'The Speech of President Paul Biya during the first Ordinary Congress of the Cameroon Peoples Democratic Movement (CPDM), Yaounde 28 June 1990', *The speeches of Paul BIYA in the era of multiparty politics in Cameroon: contentions and power relations* (Université Bordeaux Montaigne, research report, 2018) 127.

<sup>22</sup> Agreement Lathi Jotia, 'Liberal Democracy: An African Perspective' (2012) 3(2) *Academic Research International* 622.

<sup>23</sup> Patience Agwenjang, 'YALI Talk on Youth Participation and Civic Engagement' (YALI Talk, February 2018). <<https://www.facebook.com/yaounde.usembassy/videos/10160039250470716/>> accessed 3 April 2019.

<sup>24</sup> Edigheji (n 14) 14-16.

<sup>25</sup> Fombad, 'Constitutional Implementation in Perspective: Developing a Sustainable Normative Constitutional Implementation Framework' in Fombad (ed), *The Implementation of Modern African Constitutions: Challenges and Prospects* (PULP 2016) 1017, 1024.

Supreme Court, as per article 67(4), continued to act as the Constitutional Council until 2018.<sup>26</sup> The Senate, which was laid out by articles 20-24, was only instituted after seventeen years (2013).<sup>27</sup> Crucial provisions such as Article 66, which requests all public officials - from the President, Prime Minister, members of the legislative, judicial, and legislative governments, including executives of public and semi-public establishments, administrative officers in charge of taxes, and all managers of public votes - to declare their assets and property at the beginning and end of their term of office, have never been implemented. The bilingualism provision in article 1(3) and the equal right obligations of citizens stated in the preamble have no laws enacting their implementation.<sup>28</sup>

The provisions on the impeachment of the President (article 53) are impossible as the ruling party is a significant majority in Cameroonian politics and Biya influences them to hinder such a cause at parliament.<sup>29</sup> A restrictive presidential term of service through the Constitution can prevent a situation of president for life.<sup>30</sup> However, Biya's continuous modification of the Constitution to stay in power, indicates worries of his life after Presidency; after Ahidjo's resignation as president in 1982, Biya accused him of plotting a coup d'état to oust him as president in 1983 and Ahidjo was tried and sentenced to death in absentia in 1984. Nevertheless, Ahidjo died in exile in Senegal in 1989 at the age of 65.<sup>31</sup>

Cameroon's Post-colonial constitution transformed into an instrument of oppression.<sup>32</sup> Biya has absolute power and cannot be removed by a democratic process.<sup>33</sup> Although disputable, his leadership is legally, sociologically, and morally legitimate.<sup>34</sup> This can be compared with President Paul Kagame's prolonged term of presidency in Uganda, which is legally, sociologically, and ethically legitimate as the referendum of 2015 granted Kagame presidential power until 2034.<sup>35</sup> However, a leader's respect for constitutionalism and constitutional

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<sup>26</sup> The Presidency of the Republic of Cameroon, 'Constitutional Council' <<https://www.prc.cm/en/cameroon/institutions/171-constitutional-council>> accessed 3 January 2020.

<sup>27</sup> Fomba (n 25).

<sup>28</sup> Fombad (n 1) 107.

<sup>29</sup> Mbaku (n 4) 385.

<sup>30</sup> Fombad (n 2) 1057.

<sup>31</sup> Glenn Fowler, 'Ahmadou Ahidjo Of Cameroon Dies; Ex-Leader Was 65' *The New York Times* (2 December 1989) <<https://www.nytimes.com/1989/12/02/obituaries/ahmadou-ahidjo-of-cameroon-dies-ex-leader-was-65.html>> accessed 6 April 2019.

<sup>32</sup> Fomba (n 25).

<sup>33</sup> Fombad, (n 2) 1034.

<sup>34</sup> Fombad (n 25) 221.

<sup>35</sup> Tracy McVeigh, 'Rwanda Votes to Give President Paul Kagame Right to Rule until 2034 | World News' (*The Guardian*, 20 December 2015) <<https://www.theguardian.com/world/2015/dec/20/rwanda-vote-gives-president-paul-kagame-extended-powers>> accessed 29 June 2019.

institution, as well as their vision and commitment towards national development and prosperity, are critical factors of institutional reforms.<sup>36</sup> If Biya wishes to adhere to Cameroon's developmental objectives of an emerging democracy by 2035, he must ensure the realisation of the principles and values of democracy and good governance through constitutionalism. This vision specifically describes the democratisation process as "the existence of a Constitutional State, promotion and respect for individual and collective freedoms, power separation, the emergence of a strong and accountable civil society and participation of all Cameroonians in public affairs management." It further states that "[t]he foundations of peace and democracy are freedom, equality and the sovereignty of the people of Cameroon", affirming Jean-Jacque Rousseau's political theory of popular sovereignty, which creates a social contract between the State and its citizens.<sup>37</sup> Governance, it says is "the efficient and effective use of the country's potential as well as human, material and financial resources for its development. Cameroon needs to address these challenges to better integrate into the global economy".<sup>38</sup>

## **B. Non-enforcement of decentralisation**

The 1996 Constitution creates a blurred legal environment with a complex administrative, institutional, managerial, and governance framework.<sup>39</sup> The decentralisation provisions established through *Law No 2004/18* of 2004 setting up rules applicable to local governance structures are unclear on roles distribution between councils and the central government, as central government continues to manage local taxes especially in municipalities with foreign investments.<sup>40</sup> A controversial corruption case (2008-2015) of Paul Eric Kingue (former Mayor of Njombe-Penja, a local council), who accused a foreign banana production company of tax fraud and non-beneficiation of social amenities for his constituents, exposed the lack of autonomy of local councils and corruption of government officials.<sup>41</sup> Kingue was charged for insurrection. Multiple civil society groups and international anti-corruption agencies and lawyers defended his cause until he was released after seven years of imprisonment.<sup>42</sup> Nonetheless, despite the adoption of an anti-corruption strategy in 2011 with 13 national and three international anti-

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<sup>36</sup> Fombad (n 2) 1108.

<sup>37</sup> Kolawole, A. A., 'Good Governance, Constitutionalism and the Rule of Law: Imperatives for Sustainable Development in Nigeria' (2013) 6 OIDA International Journal of Sustainable Development 131.

<sup>38</sup> Republic of Cameroon (n 3).

<sup>39</sup> Cosmas Cheka, 'The State of the Process of Decentralisation in Cameroon' (2007) 32 (2) Africa Development 181.

<sup>40</sup> *ibid* 193.

<sup>41</sup> Transparency International, 'Cameroonian Corruption Fighter Paul Eric Kingue Is Free!' <[https://www.transparency.org/news/feature/cameroonian\\_corruption\\_fighter\\_paul\\_eric\\_kingue\\_is\\_free](https://www.transparency.org/news/feature/cameroonian_corruption_fighter_paul_eric_kingue_is_free)> accessed 5 April 2019.

<sup>42</sup> *ibid*.

corruption laws guiding the operations of the National Anti-corruption Agency – *Commission Nationale Anti-Corruption* (CONAC), corruption has remained a pervasive practice in Cameroon.<sup>43</sup>

### *C. Linguistic marginalisation – “The Anglophone problem”*

Multiple claims of marginalisation, poverty, unequal access to the retribution of resources, bad governance practices, and an authoritarian style of leadership in Cameroon have resulted in political tension in the Anglophone regions.<sup>44</sup> In 2016, common law lawyers raised corporate grievances on the civil law system, and the French-speaking lawyers and magistrates dominating the legal order and undermining the Common Law system and putting to question the existence of bijuralism in the nation-state of Cameroon.<sup>45</sup> The legislature’s harmonisation of the Criminal Procedure Code, the Organisation for the Harmonisation of Business Law in Africa (OHADA) Uniform Acts, and the Inter-African Conference on Insurance Markets (CIMA) Code had no Common Law considerations.<sup>46</sup> The existence of 65% representation of civil law background lawyers and magistrates in the Common Law courts of the Anglophone regions and their Civil Law exigencies on the legal procedures indicated further disregard of the Common Law in the Civil Codes and the Commercial Civil Procedure Codes that were being drafted.<sup>47</sup> They accused the government of its incapability to set up a separate Common Law Bar to safeguard the practice of common law and requested for the creation of a Common Law Bench at the Supreme Court.<sup>48</sup> This claim, however, coincided with the Anglophone teachers’ strike and request for the respect of Anglo-Saxon norms in the educational system.

Government’s response to the lawyers and teachers was the creation of an inactive National Commission for Bilingualism and Multiculturalism and the recruitment of Anglophone magistrates and teachers in the public service in 2017.<sup>49</sup> Government proceeded in repression and arrested prominent Anglophone negotiators causing more extremist leaders to begin demanding independence for Cameroon’s Anglophone regions under the state of “*Ambazonia*” as per United Nations General Assembly Resolution 1608 (XV) of 21<sup>st</sup> April 1961 prior to the *de facto* referendum that joined English-speaking Cameroon to French-speaking Cameroon as a

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<sup>43</sup> Anti-Corruption Authorities Portal, 'National Anti-Corruption Commission, Cameroon' <<https://www.acauthorities.org/country/cm>> accessed 11 April 2019.

<sup>44</sup> Patience Agwenjang with Julien Landry and Racheal Garbary, 'Engaging Youth in Municipal Youth Policy Development (Santa, Northwest Cameroon)' (2018) 7 Coady Institute Innovation Series 7.

<sup>45</sup> Fomunyoh (n 6).

<sup>46</sup> Ateki Seta Caxton, 'The Anglophone Dilemma in Cameroon - Cameroon' (*ReliefWeb*, 21 July 2017) <<https://reliefweb.int/report/cameroon/anglophone-dilemma-cameroon>> accessed 8 April 2019.

<sup>47</sup> *ibid.*

<sup>48</sup> *ibid.*

<sup>49</sup> C Nna-Emeka Okereke, 'Analysing Cameroon’s Anglophone Crisis' (2018) 10 Counter Terrorist Trends and Analyses 3, 8.



'Federal Republic'.<sup>50</sup> Justice Ayah Paul Abine, Advocate at the Supreme Court, Member of Parliament, political party leader and Anglophone, while advocating for a return to Federalism, instead of Separation as a solution for the Anglophone crisis was arrested in January 2017.<sup>51</sup> Immediately after his arrest, he was sent on retirement by a Presidential decree and stripped of his immunity. Since then, a succession of strikes and violence in the Anglophone regions have led to the self-proclamation of the "Republic of Ambazonia" in October 2017.<sup>52</sup> By January, the self-acclaimed Interim President, Sisiku Julius Ayuk Tabe and 46 Ambazonia leaders were arrested, and charged with terrorism and secession.<sup>53</sup> Ayuk's and nine others have been sentenced to life imprisonment.<sup>54</sup>

Since then thousands of lawyers, teachers, activists and youths have been arrested, 206 villages have been burnt down, thousands of Anglophones are internally displaced (some living in bushes), thousands are refugees in Nigeria, and multiple insecurities and hostilities have remained the order of the day in the Anglophone regions.<sup>55</sup> Government's continuous militarisation in these regions has caused thousands of deaths and casualties (mostly civilians and Ambazonian soldiers) and has made the separatists more resolute to establish the Republic of Ambazonia.<sup>56</sup> Cameroon is heading towards what can be defined a *genocide*, as information on extrajudicial killings of women and children by the central government's military forces appears as a crusade of systemic violence against civilians.<sup>57</sup> This is significantly reducing its youthful population and systematically side-lining youth integration in the decision-making and peace-building processes across both the English-Speaking and French-Speaking regions.

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<sup>50</sup> Interim Government of Ambazonia, Press Office, 'Who We Are'

<<https://www.ambazoniagov.org/index.php/about-us/who-we-are>> accessed 18 August 2019.

<sup>51</sup> Nsom YK, 'Hon. Ayah Paul Arrested | Cameroon Postline' (Cameroon Postline, 25 January 2017)

<<https://cameroonpostline.com/hon-ayah-paul-arrested/>> accessed 9 April 2019

<sup>52</sup> Human Rights Watch, "'These Killings Can Be Stopped" | Abuses by Government and Separatist Groups in Cameroon's Anglophone Regions' Human Rights Watch, 19 July 2018

<<https://www.hrw.org/report/2018/07/19/these-killings-can-be-stopped/abuses-government-and-separatist-groups-camerouns>> accessed 8 April 2019.

<sup>53</sup> AfricaNews, 'Cameroon Receives Separatist Leader, 46 Others Deported from Nigeria' Africanews, 29 January 2018 <<https://www.africanews.com/2018/01/29/cameroon-receives-ambazonia-leader-46-others-deported-from-nigeria/>> accessed 9 April 2019.

<sup>54</sup> Aljazeera, 'Cameroon Anglophone Separatist Leader Gets Life Sentence: Lawyers'

<<https://www.aljazeera.com/news/2019/08/cameroon-anglophone-separatist-leader-life-sentence-lawyers-190820100057209.html>> accessed 7 January 2020.

<sup>55</sup> Centre for Human Rights and Democracy in Africa, '206 villages raided and partially or severely burnt in the anglophone regions of cameroon since 2016 - chrda' <<https://www.chrda.org/206-villages-raided-and-partially-or-severely-burnt-in-the-anglophone-regions-of-cameroon-since-2016/>> accessed 14 August 2019.

<sup>56</sup> Human Rights Watch (n 52).

<sup>57</sup> Ibrahim Azeem, 'Should We Worry about Genocide in Cameoon?'

<<http://english.alarabiya.net/en/views/news/middle-east/2019/03/18/Should-we-worry-about-genocide-in-Cameroon-.html>> accessed 14 August 2019.

Consequently, this despicable situation impacts on sustainable socio-political and economic development in Cameroon.

Three recent proposals by the government has only made Anglophone Cameroonians more disgruntled and intensified the crisis. First of all, a September-October 2019 Grand National Dialogue organised by the government was boycotted by separatist leaders who considered it a non-event and request for international mediation.<sup>58</sup> This dialogue was proceeded by the release of over 300 Anglophone detainees by presidential clemency though hundreds of others remain detained or sentenced, and the arrest and killing by the government and separatist movements continues to increase in the English-Speaking regions.<sup>59</sup> Secondly, a devolution bill has been passed by the parliament to grant English-Speaking Cameroon a special status that will enable her develop her own education and justice policies though without financial autonomy.<sup>60</sup> Most members of parliament are however displeased with this bill that lack consultation from both the general public and parliamentarians, and is allegedly written in the spirit of assimilation, which has a 36 years rule in Cameroon.<sup>61</sup> Thirdly, the government has adopted a controversial Bill on Bilingualism, which amongst other issues allows that Francophone civil law magistrates can try cases and pass judgement in French in English Common Law courts.<sup>62</sup> English-Speaking Lawyers have peacefully marched in protest of such a Bill and threaten to go on strike again if the President signs it as Law in Cameroon.<sup>63</sup> This circle of events is only prolonging the Anglophone crisis.

#### *D. Controversial elections*

Amidst the Anglophone crisis, the government organised the 2018 Presidential elections, and Biya was declared the winner. Similar to the 1992 Elections, this election caused widespread

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<sup>58</sup> Cameroon Intelligence Report, 'Grand National Dialogue in Yaounde Goes on without Southern Cameroonians – Cameroon Intelligence Report' <<https://www.cameroonintelligencereport.com/grand-national-dialogue-in-yaounde-goes-on-without-southern-cameroonians/>> accessed 7 January 2020.

<sup>59</sup> R. Maxwell Bone and Akem Kelvin Nkwain, 'Why Has Violence Increased since Cameroon's National Dialogue?' (*African Arguments*, 29 October 2019) <<https://africanarguments.org/2019/10/29/violence-increased-cameroon-conflict-national-dialogue-anglophone/>> accessed 7 January 2020.

<sup>60</sup> Moki Edwin Kindzeka, Voice of America, 'Cameroon MPs Approve Law Giving Special Status to English-Speaking Regions' (*Voice of America*) <<https://www.voanews.com/africa/cameroon-mps-approve-law-giving-special-status-english-speaking-regions>> accessed 7 January 2020.

<sup>61</sup> Deutsche Welle, 'Cameroon's Anglophones to Get "Special Status"' <<https://amp.dw.com/en/cameroon-anglophones-special-status-too-little-too-late/a-51747683>> accessed 7 January 2020.

<sup>62</sup> Boris Esono Nwenfor, Pan African Visions, 'Pouring Fuel on Fire: Cameroon's Controversial Bilingualism Bill Adopted' (*PAN AFRICAN VISIONS*, 11 December 2019) <<https://panafricanvisions.com/2019/12/cameroons-controversial-bilingualism-bill-adopted/>> accessed 7 January 2020.

<sup>63</sup> *ibid.*

protests and violence. Two major opposition leaders, Joshua Osih and Maurice Kamto, disputed this election to no avail at the Constitutional Council for fraud, irregularities, and manipulations.<sup>64</sup> Kamto, a Lawyer and former Minister Delegate of Justice, represented by a team of 15 prominent Civil and Common Law lawyers, justified their claims with evidence and questioned the impartiality of the Constitutional Council whose judges were core members of the ruling party that allegedly rigged the elections.<sup>65</sup> Kamto later self-proclaimed himself the victor of the election ahead of ELECEM (Elections Supervisory organ) and the Constitutional Council's proclamation of results.<sup>66</sup> This sparked a series of protests by Francophones and the arrest of Kamto, Kingue (former Mayor of Njombe-Penja) and 101 others in January 2019 who were charged with insurrection and sedition in contest of the election results by the Constitutional Council.<sup>67</sup> After eight months of detention, they were released as Biya dropped the charges against them.<sup>68</sup> It is worthy to note here that after the controversial corruption case discussed previously, Kingue resigned from the ruling party and formed his own political party.<sup>69</sup> In 2018, he joined a Kamto-led coalition of opposition parties and became Kamto's Campaign Director.<sup>70</sup>

Both Kamto and Kingue have announced their candidature for the forthcoming February 2020 legislative and municipal elections in Cameroon. Amidst contradictory partisan opinions Kamto is facing the dilemma of continuing the contest of 2018 presidential elections or joining the 2020 elections and renegotiating with his allies.<sup>71</sup> Kingue on his part has affirmed his party's support for the coalition with Kamto, and depends on his charisma, popularity and youthfulness

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<sup>64</sup> Africa Blogging, 'Paul Biya: Elected by the Constitutional Council', <<https://www.africablogging.org/paul-biya-elected-by-the-constitutional-council/>> accessed 9 April 2019.

<sup>65</sup> *ibid.*

<sup>66</sup> Moki Edwin Kindzeka, 'Two Candidates Claim Victory in Cameroon Vote' (*Voice of America*, 9 October 2018) <<https://www.voanews.com/a/two-candidates-claim-victory-in-cameroon-vote/4605957.html>> accessed 9 April 2019

<sup>67</sup> Aljazeera, 'Cameroon: Maurice Kamto Charged with Sedition, Insurrection', <<https://www.aljazeera.com/news/2019/02/cameroon-opposition-leader-maurice-kamto-charged-sedition-190201061120366.html>> accessed 9 April 2019.

<sup>68</sup> Jeune Afrique, 'Cameroun : L'opposant Maurice Kamto a Été Libéré Après d'intenses Négociations Avec Le Régime de Paul Biya' (*JeuneAfrique.com*, 5 October 2019) <<https://www.jeuneafrique.com/838966/politique/cameroun-lopposant-maurice-kamto-a-ete-libere-apres-dintenses-negociations-avec-le-regime-de-paul-biya/>> accessed 3 January 2020.

<sup>69</sup> Cameroon Online 'Cameroun - Présidentielle 2018 : Maurice Kamto Choisit Paul Eric Kingué Comme Directeur de Campagne' (*Cameroun Online*) <<https://237cameroun.online/en/node/26365/pharmacie>> accessed 3 January 2020.

<sup>70</sup> *ibid.*

<sup>71</sup> Joseph Essama, 'Crisis: Who to Reconcile the MRC and Its Coalition? | Cameroon News' <<http://www.newsducamer.com/le-mrc-au-bord-de-leclatement/>> accessed 3 January 2020.

(compared to Kamto and other coalition members) to prolong his stay within the political scenery in Cameroon.<sup>72</sup>

Given the challenges with decentralisation, linguistic marginalisation, and controversial elections, Cameroonians' security and wellbeing has become stifled through multiple forms of repression, strife and lawlessness. This experience justifies Rotberg's edict that bad governance creates significant suffering and extended negative consequences for people.<sup>73</sup> Nevertheless, the government can intentionally and systematically address these grievances and inequalities.

### **III. Developing a Regulatory Framework for Democratic Governance in Cameroon**

This section explains how the government can address the challenges of decentralisation, marginalisation, and controversial elections raised above. First, it explains how constitutionalism and administrative law can be useful tools in regulating democratic control and inclusive power sharing. Then, it further attempts to propose appropriate people-centred development approaches that can be integrated into the regulatory framework.

#### ***A. The Role of constitutionalism and administrative law***

Cameroon is in the process of modifying its hybrid legal system to reflect local customary norms and practices.<sup>74</sup> Constitutionalism and administrative law can play a strategic role in ensuring that Cameroon becomes an emerging democracy by 2035. Constitutionalism provides limited two-way government accountability that imposes core values for the government to respect and enables citizens to compel the government to act within the limits of these values.<sup>75</sup> Nonfulfillment of constitutional rules threatens the fundamental basis of the Constitution and constitutionalism, raising the issues of fidelity and legitimacy of the Constitution.<sup>76</sup> Fidelity is based on political will and biases of officials, who should ensure that Constitutional enforcement mechanisms that enable citizens (who did not participate in the constitution making process) to self-identify and commit to its effective implementation.<sup>77</sup> The interpretation of the Constitution is therefore not just a duty for judges, but also for citizens who should ensure it reflects their

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<sup>72</sup> 24 Cameroun, 'Coalition Kamto: Les Calculs Politiques de Kingué Sur Ses Alliés de Lutte' (<http://www.24cameroun.com>) <<http://www.24cameroun.com/politique/coalition-kamto-les-calculs-politiques-de-kingue-sur-ses-allies-de-lutte/28542-nouvelles>> accessed 3 January 2020.

<sup>73</sup> Robert Irwin Rotberg, 'On Improving Nation-State Governance' (2007) 136 (1) *Daedalus* 152.

<sup>74</sup> Fombad (n 1).

<sup>75</sup> *ibid.*

<sup>76</sup> *ibid.*

<sup>77</sup> *ibid.*

realities.<sup>78</sup> As Fombad emphasises, constitutional implementation is a question of the substantive rule of law as everything depends on what the law says.<sup>79</sup>

Administrative law on its part can help regulate democratic control of public and private power and enable Cameroonians to consult daily political choices that affect their wellbeing.<sup>80</sup> Administrative law enables the courts to dissect the legislator and executive government to make sure that constitutional provisions are implemented through public policy and budgetary distributions. Thus, it ensures transparency, accountability, inclusiveness, responsiveness, and predictability in the exercise of public and private power. Social, economic, and cultural rights should be incorporated into the Constitution to ensure the government's commitment to poverty reduction.<sup>81</sup> People need concrete progress such as the provision of basic social services (good educational system, quality healthcare, and infrastructural facilities), job creation, decent employment opportunities, and overall economic development particularly at grassroots levels. As highlighted in this essay, marginalised and disadvantaged groups of people, such as ethnic minorities and the Anglophones, need legal recognition and fair participation in the governance processes in Cameroon.

If Cameroon is modernising to integrate the global economy, Cameroonians should be able to determine whether or how modernisation meets their developmental needs. Foreign partnerships should be established based on public interest and Cameroonians should oversee the globalisation (privatisation) processes to ensure that it serves their needs. Drawing lessons from the controversial corruption case in Njombe-Penja, administrative law principles such as legality, reasonableness, procedural fairness, and proportionality could help safeguard the establishment and implementation of minimum standards for government agencies to exercise procedural fairness in their decisions and actions.<sup>82</sup> Besides, various community governance and social accountability schemes have been successfully implemented in some municipalities.<sup>83</sup> The government can institutionalise such schemes in all 374 local government councils to ensure their consistency and sustainability and to open up spaces for civil society to challenge the enforcement of constitutional rights. However, Cameroonians do not just need spaces of engagement, they need dialogue to be institutionalised and created as a value rooted in their expectations. Public

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<sup>78</sup> *ibid.*

<sup>79</sup> Fombad (n 25).

<sup>80</sup> Migai Akech, 'Globalization, the Rule of (Administrative) Law, and the Realization of Democratic Governance in Africa: Realities, Challenges and Prospects' (2013) 20 (1) *Indiana Journal of Global Legal Studies* 339.

<sup>81</sup> *ibid.*

<sup>82</sup> *ibid.*

<sup>83</sup> Agwenjang (44).

deliberation and citizens' dialogue is an essential part of policy-making and policy dialogue leads to regulatory dialogue.

Cameroon judiciary should be independent of political interference from the President and public official. The Constitutional Council should be reconstituted, independent and neutral of political interference. Cameroon can draw lessons from South Africa's and the United States of America's progressive legal systems to codify, adjudicate, and implement Constitutional provisions using the Bill of Rights.<sup>84</sup> This will aid judges as agents of change to adopt bold, liberal, progressive activist (principled and rights-sensitive) approaches to achieve socio-political change in interpreting constitutional provisions.<sup>85</sup> Seidman rightly argues that for social change to be effective, the capacities of both the institution and the individuals that make up the institutions of governance should be strengthened.<sup>86</sup> President Barack Obama says "Africa needs strong Institutions, not strong leaders", but without good quality human resources, the effectiveness of government institutions cannot be guaranteed.<sup>87</sup> Cameroon's judiciary is stifled and needs legal empowerment.

### ***B. Applying people-centred development approaches***

The theory of self-reliance as propounded by Baderin advises on the conscious usage of the law to realise development, and Ocran says that the legislation is the most innovative, fastest, and dynamic law-making reform.<sup>88</sup> Self-reliance will enable Cameroon to utilise its national resources (including its people) to address its developmental challenges. However, the application of both individual and collective self-reliance in this context requires the complementary theory of institutional legislation (including the theories of new institutionalism and globalisation as illustrated in the previous sub-section on Constitutionalism and administrative law). This will harness Cameroon's national efforts to generate both internal and external support to improve participatory governance as will be subsequently explained.

Cameroon's parliament should adopt a Bill of Rights on the Constitution.<sup>89</sup> The current Constitution has preambular references to political and socioeconomic rights, including the right

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<sup>84</sup> Christian Aimé Chofo Che, 'Challenges of Incorporating and Enforcing a Bill Of Rights in the Cameroonian Constitution' (2008) 2 (1) Cameroon Journal on Democracy and Human Rights 68.

<sup>85</sup> Fombad (n 2).

<sup>86</sup> Ann Seidman and Robert B. Seidman, 'Law, Social Change, Development: The Fatal Race - Causes and Solutions' in Ann Seidman, et al. (eds) *Africa's Challenge: Using Law for Good Governance and Development* (Africa Research and Publications 2007) ch 2, 19.

<sup>87</sup> Kufuor John, 'Strengthening Good Governance in Africa' (2011) G8 Deauville 140.

<sup>88</sup> Mashood A Baderin, 'Law and Development in Africa: Towards a New Approach' (2011) 1 NAILS Journal of Law and Development, 1.

<sup>89</sup> Chofo Che (n 84).

to development and peace, yet electoral fraud, torture, and deplorable prison conditions continue to persist in Cameroon.<sup>90</sup> The principle of progressive realisation of socioeconomic and cultural rights obstructs citizens' enjoyment of good housing, healthcare, drinking water, and education. Thus, a Bill of Rights will guarantee Constitutional supremacy and justiciability of entrenchment of Constitutional rights of individuals against the state and establish a legal base for good governance. Democratisation needs the institutionalisation of people's rights.<sup>91</sup> Constitutional literacy should be a sovereign right of citizens, guaranteed by the Constitution so that citizens can own, protect, interpret, and implement constitutional provisions.

In drafting the Bill of Rights, the parliament (and drafters) can employ a jurisprudential (legal realism, problem-solving, and sociology of law methodologies) appreciation of the legal and non-legal factors that constrains or facilitates institutional, structural, and socio-political changes as proposed by Seidman's theory of legislative institutionalism.<sup>92</sup> In this regards, combining the legal and non-legal (for example the ideologies of special interest groups such as the Anglophone separatists or ethnic groups, cultural diversity, various inequalities in resource allocation and poverty) factors affecting governance in Cameroon will establish a mechanism to logically analyse the details of the nature and scope of Cameroonians' grievances in relation to the Constitution, the impact on various populations and alternative ways to build a consensus-based, decentralised, and inclusive governance. Drawing from the case studies afore-mentioned, four options are demanded by different groups of Cameroonians; Local councils (as Kingue and his constituents) demands effective decentralisation as professed by the constitution, Justice Ayah (possibly the opinion of some English-speaking Cameroonians) prefer a return to the 1961 federation, Ayuk Sisiku and Ambazonia fighters want separation of both Cameroons, and political parties (Kamto and others) demand an independent Electoral Commission.

This notwithstanding, it will be judicious for the government to negotiate and renegotiate with key leaders from the Anglophone groups, political parties, and other social actors to organise a proper 'Grand National Dialogue'. The negative reactions on the controversial devolution and bilingualism bills that resulted from the previous national dialogue are indications that Cameroon government is not ready or willing to enforce decentralisation, especially that both bills lack due consultation from both the public and their elected representatives. An effective national dialogue could be one way of making up for the non-participation of citizens in the drafting of Cameroon's current Constitution. This, in essence, would aid the realisation of individual self-reliance within the nation-state of Cameroon.

However, from the point of view of collective self-reliance, Cameroon as an African country that has pledged commitment to international and regional conventions on democracy and

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<sup>90</sup> *ibid.*

<sup>91</sup> Nyong'o Peter Anyang, "Governance in Africa: Challenges for the Next 50 Years" (2014) 58 (3) Development 308.

<sup>92</sup> Amy Seidman and Robert B. Seidman (86).

governance should incorporate minimum Constitutional standards of citizens' protection in its constitution.<sup>93</sup> Despite past failures, the African Union (AU) can still place measures to ensure fair elections and respect for presidential term limits in Cameroon based on the 2001 AU *Constitutive Act* and the 2012 *African Charter on Democracy, Elections and Governance*.<sup>94</sup> The AU, through the African Peer Review Mechanism (APRM) of the New Partnership for Africa's Development (NEPAD), can oversee Cameroon's national dialogue process to ensure that it is well-inclusive and has an effective accountability mechanism to address the claims of various disgruntle groups and in respect to the "freedom, equality and the sovereignty of the people of Cameroon" as propounded by her 2035 vision for development an.<sup>95</sup> This will include her adherence to democracy, the primacy of the rule of law, judicial independence, peace and security, and overall governance.<sup>96</sup> Hence, Cameroonians should be able to rely on the African community, and particularly on the African Union to achieve democratic governance.

## Conclusion

Drawing from the three governance issues raised in this essay, Cameroonian lawyers, in their different capacities have championed the struggle for social, administrative, and institutional change in the political and judicial spheres of Cameroon despite the continuous repression from the government. Their efforts encouraged citizens to claim their rights and become more conscious of the law, including the decentralisation process, their constitutional and linguistic history, and the electoral laws. The resilience of lawyers gives hope to the ordinary Cameroonians that positive change is possible. Bhattacharyya rightly asserts that the essence of development should be to increase "the capacity of people to order their world" and to offer people "the power to *de ne* themselves as oppose to being *de ned* by others."<sup>97</sup><sup>98</sup> Gerald Caiden says that people often obtain the government they merit. If they desire a good government, they should be diligent, demanding, inquisitive, and caring.<sup>99</sup>

Cameroon has the potential to mediate its differences and improve governance using proactive measures that build upon political accountability and inclusive power-sharing, starting with the

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<sup>93</sup> Akech (n 80).

<sup>94</sup> Fombad (n 25).

<sup>95</sup> Obonye Jonas, 'The Quest to Achieve African Renaissance: Reflections on NEPAD' (2012) 5 *Journal of Pan-African Studies* 3, 83.

<sup>96</sup> 'Roundtable of Heads of Government of Commonwealth Africa on Democracy and Good Governance in Africa' (1997) 41 (2) *Journal of African Law* 250.

<sup>97</sup> Edigheji (n 14).

<sup>98</sup> What Edigheji is trying to say here is that, people should be offered the power to drive their development themselves as opposed to being driven by others, Edigheji (n 14).

<sup>99</sup> Edigheji (n 14).



public service.<sup>100</sup> A jurisprudential appreciation of the realities of the governance-related issues will facilitate effective rights-based, and sustainable development approaches that open up spaces for public participation in policy development, law enforcement, resource allocation, and management. Constitutionalism and the rule of law can leverage on democratic governance to provide broad-based, inclusive, and decentralised socio-political alliances for real developmentalism in Cameroon.

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<sup>100</sup> World Bank, *Can Africa Claim the 21<sup>st</sup> Century?* (World Bank 2000) ch 2, 48.

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