

# **Emergency regimes in contemporary democracies**

By

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## **DECLARATION**

I declare that this thesis, which I hereby submit for the degree Doctor Legum (LLD), at the University of Pretoria, is my original work and has not been previously submitted by me for the award of a degree at this or any other tertiary institution.

Gerard Emmanuel Kamdem Kamga

## DEDICATION

To my parents, Kamga Maurice and Manedoum Alice,  
who have always known what is most important.

To my two beloved uncles, Penesson Francois and Nembot Paul,  
who passed away in 2014.  
May God bless their soul and welcome them in his kingdom.

To the Kamgas  
Jules, Patrick, Berard, Richard, Florian, Ghislain, Elvis, Serges,  
Rolline, Julie, Eveline, Blandine, Carole and Rose.  
Their love, faith accompanied me throughout these years.  
This work is as much theirs as it is mine.

To my lovely Princess Sandra Marlene and our little Angel Aiden Mahilan  
who brought so much joy in my life and a tremendous amount of motivation.

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Finally, I thank God for all. He always agrees to grant me whatever I ask to the extent that I find myself sometimes wondering how blessed I am.

## ACRONYMS AND ABBREVIATIONS

**AAC:** All Anglophone Conference

**AEF:** *Afrique Equatoriale Française* [French Equatorial Africa]

**ALCAM:** *Assemblée Legislative du Cameroun* [Legislative Assembly of Cameroon]

**ALNK:** *Armée de Libération Nationale du Kamerun* [National Army of Liberation of Kamerun]

**AM:** Ambazonia Movement

**ASCOCAM:** *Association des Colons du Cameroun* [Association of Colonisers of Cameroon]

**ATCAM:** *Assemblée Territoriale du Cameroun* [Territorial Assembly of Cameroon]

**BDC:** *Bloc Démocratique Camerounais* [Cameroon Democratic Bloc]

**BIR:** *Bataillon d'Intervention Rapide* [Rapid intervention Battalion]

**BMM:** *Brigade Mixte Mobile* [Mobil Mixed Brigade]

**CAM:** Cameroon Anglophone Movement

**Cameroon:** the current official name of the country which also refers to the reunification of the two Cameroons since the 'end' of colonialism.

**Cameroon:** The English spelling designates the portion of the country under British influence during British and French rules.

**Cameroun:** The French spelling refers to the area of the country under French influence during British and French rules.

**CAT:** Committee against Torture

**CNO:** *Comité National d'Organisation* [National Organisation Committee]

**CO:** *Commandement Opérationnel* [Operational Command]

**CRC:** *Centre de Rééducation Civique* [Civic Re-education Centre]

**DIRDOC:** *Direction Générale de la Documentation* [Office of documentation]

**FLN:** *Front de Libération Nationale* [Front of National Liberation]

**FWCM:** Free West Cameroon Movement

**GMI:** *Groupement Mobile d'Intervention* [Mobil Intervention Group]

**GP:** *Garde Présidentielle* [Presidential Guard]

**GSO:** *Groupement Special d'Operation* [Special Operation Group]

**ICCPR:** International Covenant on Civil and Political Rights

**ILO:** International Labour Organisation

**JEUCAFRA:** *Jeunesse Camerounaise Française* [French Cameroon Youth]

**Kamerun:** the German spelling refers to the era where the country was under German influence. During British and French rules, this spelling was adopted by the UPC to demand independence and reunification of the territory that had been divided into two portions between the French and the British.

**PDC:** *Parti Démocrate Camerounais* [Cameroon Democratic Party]

**SCAPO:** Southern Cameroons Peoples Organisation

**SCNC:** Southern Cameroons National Council

**SCPC:** Southern Cameroons Peoples Conference

**SDNK:** *Sinistre de la Défense Nationale du Kamerun* [Sinister of National Defense of Kamerun]

**SED:** *Secrétariat d'Etat à la Défense* [Secretariat of State Defense]

**SEDOC:** *Service des Etudes et de Documentation* [Office of Studies and Documentation]

**UC:** *Union Camerounaise* [Cameroon Union]

**UN:** United Nations

**UNC:** *Union National Camerounaise* [Cameroon National Union]

**UPC:** *Union des Populations du Cameroun* [Union of the Peoples of Cameroon]

**ZIFOC:** *Zone d'Insécurité des Frontières Occidentales du Cameroun* [Insecured Zone of the Borders of Western Cameroon]

**ZOE:** *Zone de maintien de l'ordre de la Sanaga-Maritime* [zone of law enforcement of Sanaga-Maritime]

**ZOPAC:** *Zone de Pacification de la Sanaga-Maritime* [Zone of Pacification of Sanaga-Maritime]



## SUMMARY OF THE THESIS

Emergency regimes as a legacy of French colonialism in Cameroon remain a key instrument to legalising strategies of control and subjugation of people. Officials in the country have been relying on these regimes not to save the state from a potential threat of war or invasion but to deny a fair democratic game, eliminate political opponents and keep control of power, people and resources. The core arguments of the present study devoted to emergency regimes in contemporary democracies with strong emphasis on Cameroon lies in its conceptual framing which is a clear contextualisation of the problem of the exception in the colonial period. In elucidating the situation in Cameroon, the study highlights how the permanent recourse to emergency regimes within the colony was central to Europeans' tactics in their strategies of control and domination of colonised people. Starting with detailed historical analysis grounded on colonial and postcolonial experiences in Cameroon (and even Algeria), the study attempts to shift the understanding of the theories on the exception and sovereign violence by placing contemporary legal and philosophical debates on the exception in the context in which they originally emerged, a means of legitimating the subjugation of colonised peoples. More specifically, the thesis shows how the country's colonial past strongly influences the current state's structures through a basic reliance on emergency measures which became normalised to a point where law's force has been reduced to the zero point of its own content. The draconian measures have been routinised and have successfully moved from the exceptional sphere to that of the normality. Additionally, patterns of rule by ordinance and decree were put in place in the early 'post-independence' period, and have now become the norm in Cameroon. As consequences, the process matters of justice are reduced to bare legal force, and in that process the legitimacy of both state and law are compromised, rendering subjects politically jaundiced and demoralised. The net effect of such developments appears to be detrimental to the very foundation of the state which is then subject to a process of disintegration.

## TABLE OF CONTENTS

DECLARATION.....	a
DEDICATION.....	b
ACKNOWLEDGEMENTS.....	c
ACRONYMS AND ABBREVIATIONS.....	I
SUMMARY OF THE THESIS.....	IV
TABLE OF CONTENTS.....	1
CHAPTER 1 INTRODUCTION .....	6
1. Thesis statement.....	6
2. Assumptions .....	7
3. Research questions .....	7
4. Motivations.....	8
5. Proposed structure .....	26
CHAPTER 2 THE FEATURES OF EMERGENCY REGIMES IN CAMEROUN .....	27
2.1 Introduction .....	27
2.2 Emergency regimes in Cameroun before independence: a legacy of colonialism .....	28
2.2.1 A brief history of colonialism in Kamerun .....	29
2.2.2 The introduction of emergency regimes in Cameroun under international supervision.....	31
2.2.3 The Algerian experience and the genesis of emergency regimes.....	40
2.2.4 The rise of nationalism and war for independence in Cameroun.....	45
2.3 The move toward 'independence' and the formalisation of emergency regimes in Cameroun .....	53
2.3.1 From <i>de facto</i> emergency to <i>de jure</i> emergency: <i>l'état d'alerte</i> and <i>l'état de mise en garde</i> .....	54
2.3.2 Emergency regimes, a keystone of constitution-making in Cameroun: the parliamentary session of October 1959, and the heated debate on <i>pleins pouvoirs</i> .....	59

2.4	Emergency regimes in Cameroun after ‘independence’: a major legal instrument of government.....	67
2.4.1	The emergency mechanism surrounding the drafting of the constitution.....	67
2.4.2	Emergency regimes within the legal architecture of Cameroun .....	70
2.5	Concluding remarks .....	88
CHAPTER 3 EMERGENCY REGIMES IN CAMEROON AND INTERNATIONAL STANDARDS .....		89
3.1	Introduction .....	89
3.2	Assessing the international standards on emergency regimes through the lens of Cameroon experience .....	91
3.2.1	Severity or exceptional threat.....	92
3.2.2	Notification and proclamation.....	98
3.2.3	Proportionality .....	100
3.2.4	Non-derogable rights.....	105
3.2.5	Non-discrimination .....	108
3.2.6	Good faith motivation.....	112
3.3	Concluding remarks .....	114
CHAPTER 4 LEGAL AND THEORETICAL DISCOURSES ON EMERGENCY REGIMES.....		115
4.1	Introduction .....	115
4.2	On the maxim <i>necessitas non habet legem</i> .....	115
4.2.1	The problem raised by the maxim <i>necessitas non habet legem</i> .....	116
4.2.2	The Christian origin of the maxim <i>necessitas non habet legem</i> : the medieval canon law 117	
4.2.3	The reception of the maxim outside the canon law .....	121
4.3	The Normative approach to emergency regimes .....	131
4.3.1	Emergency regimes as executive affairs: Rossiter and the approach of constitutional dictatorship.....	131
4.3.1.1	The historical development of constitutional dictatorship: the Roman experience .	132

4.3.1.2	The principle of constitutional dictatorship.....	136
4.3.1.3	The mechanisms of constitutional dictatorship .....	139
4.3.2	The place of parliament in emergency regimes: Dicey’s concept of legality .....	140
4.3.2.1	Characteristics of English martial law .....	141
4.3.2.2	Parliamentary sovereignty and the rule of law.....	144
4.3.3	Keeping the society inside the sphere of law: the necessity of judicial supervision in emergency regimes.....	150
4.3.3.1	Dyzenhaus: legal black holes and legal grey holes .....	151
4.3.3.1.1	Carl Schmitt’s challenge.....	151
4.3.3.1.2	The rule-of-law project .....	153
4.3.3.2.	The jurisprudential approach to emergency regimes .....	160
4.4	The critical approach to emergency regimes .....	164
4.4.1	Carl Schmitt and the doctrine of decisionism.....	165
4.4.1.1	The exception and the deployment of commissarial and sovereign dictatorship .....	165
4.4.1.2	Norm and decision: the structure of the legal order.....	168
4.5	Walter Benjamin and the messianism.....	175
4.5.1	Mythical violence as a means .....	176
4.5.2	Pure or divine violence as sovereign violence.....	182
4.6	Giorgio Agamben and the political nihilism.....	184
4.6.1	State of exception as constitutive paradigm of the legal sphere.....	184
4.6.2	State of exception, an emptiness of law .....	190
4.5	Concluding remarks .....	193
CHAPTER 5 THE MODERN EXPRESSION OF EMERGENCY REGIMES IN CAMEROON: THE IMPLICIT EXCEPTION .....		195
5.1	Introduction .....	195

5.2	The mechanism of the implicit within the Cameroon context: reducing the law to the zero point of its own content.....	196
5.3	The hallmarks of the implicit exception in Cameroon.....	199
5.3.1	The police machine and the deployment of draconian measures under normal circumstances.....	199
5.3.2	The space of exception .....	205
5.3.3	Judicial militarisation.....	220
5.3.4	The Kafkaesque trials .....	224
5.3.5	The permanent parliamentary function of the executive: the supremacy of ordinances having the force of law.....	227
5.4	Concluding remarks .....	234
CHAPTER 6 CONSEQUENCES OF THE NORMALISATION OF EMERGENCY REGIMES: THE DECLINE OF CAMEROON STATE .....		236
6.1	Introduction .....	236
6.2	The case of an implicit and hypocritical enforcement of a state of siege under the guise of <i>Commandement Opérationnel</i> .....	238
6.3	Violence as a mode of political expression and resistance to authority.....	242
6.3.1	Resistance to the state’s authority as mode of political expression.....	243
6.3.2	Appropriation of violence as a symbol of decline of Cameroon state .....	250
6.3.3	State prerogatives as a common good:.....	262
6.4	The logic of exit from the state: secessionist claims and emigration in Cameroon.....	266
6.4.1	The claims for secession .....	266
6.4.2	The phenomenon of mass emigration .....	272
6.5	Concluding remarks .....	274
CHAPTER 7 CONCLUSION AND SUGGESTIONS .....		276
7.1.	Introduction .....	276
7.2.	Summary of findings.....	276

7.3. Suggestions ..... 279

BIBLIOGRAPHY .....i

## CHAPTER 1 INTRODUCTION

### 1. Thesis statement

Emergency regimes in contemporary democracies appear as the device through which the ideal of liberal political theory may be achieved by resorting to the techniques particular to other political regimes, especially the absolutist ones.<sup>1</sup> This study raises the issue of the efficiency of the rule of law to bind and constrain the state's power in Cameroon's emergency regimes where the rule of law has become optional. In this study, I argue that the prerogatives that officials in the country are empowered to enforce, whether in crisis period or in peace time, emergencies are not in keeping with the normative considerations embodied in human rights protection, good governance, and international standards on emergency regimes. Moreover I show that emergency regimes in Cameroon, being a legacy of French colonialism, have, over time, come closer to authoritarian techniques and have shifted from the classic emergencies to the phenomenon of implicit exception. On the one hand, this is characterised by a constant and progressive incorporation within the body of ordinary laws of a set of extraordinary measures. On the other hand, the implicit exception is characterised by the loss of the temporary aspect<sup>2</sup> of emergency regimes, and entails an excessive deployment of draconian measures under normal circumstances. Starting from a historical and institutional context, I present the predominance of the emergency character within the legal architecture of Cameroon, as a result of the dichotomy between 'norm' and 'exception' that governs the legal and theoretical discourses on emergency regimes. The study goes further and against the framework of the doctrine of constitutional democracy,

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<sup>1</sup> Characterised by a concentration of powers to the profit of the president, human rights infringement and one single mode of thought, the absolutist regimes are at the opposite end of the democratic ones and include on the one hand the totalitarian states of between the two wars, and on the other hand the authoritarian states as witnessed in many countries around the world and materialised in most African countries from the post-colonial period.

<sup>2</sup> Emergency regimes as a provisional measure mean that their purpose is to eliminate the threat and restore normalcy and not change the nature of the political regime or the structure of powers.

actual instances and the challenges and consequences of emergency regimes in Cameroon are examined through the prism of the legal and theoretical discourses on these regimes.

## **2. Assumptions**

I have formulated five starting points regarding the institution of emergency regimes within the Cameroon context.

The first one concerns the features of emergency regimes in Cameroon.

The second starting point focuses on Cameroon peculiarities of these regimes with regard to international standards.

The third starting point deals with the origin and the substance of the doctrine of emergency by reviewing legal and theoretical discourses on emergency regimes, which include normative and critical approaches.

The fourth starting point frames the modern expression of emergency regimes in Cameroon notably the implicit exception.

The last point focuses on the consequences of the normalisation of emergency regimes in the country.

## **3. Research questions**

The following questions will guide the rest of the study. To what extent the reason of state can justify gross violation of human rights and democratic principles, without turning the regime into an authoritarian one? Are emergency regimes in Cameroon telling manifestations of the reality that the general reign of law, even in its non-exceptional mode, pivots on a non-legal outside or exception that constantly sustains every aspect of legal normality and normativity? In other words, are they mere derogations or failures of law or are they truly exceptional measures that can still be explained in terms of regular rules of law? In addressing these interrogations, I have asked the following sub-questions:

- What are the features of emergency regimes in Cameroon?



- Is there any international provision on these regimes, and if so, to what extent does the Cameroon emergency legislation comply with it?
- What are the origins of emergency regimes, and what is the substance of legal and theoretical discourses on these regimes? How can they assist in analysing this phenomenon in Cameroon?
- What is the modern expression of emergency regimes in the country?
- Are there any consequences following the normalisation of emergency regimes in Cameroon and if so what is their impact?

#### 4. Motivations

How could power exercise its highest prerogatives by putting people to death, when its main role was to ensure, sustain and multiply life, to put this life in order?<sup>3</sup>

The ultimate end of emergency regimes is the normalisation of state violence, a recession of democracy and human rights in modern states. Although they constitute a real sword of Damocles hanging over the liberal democratic ideal, there has been no sufficient attention paid to the phenomenon of emergency regimes. Frederick Schauer rightly observes the following:

The exception is an invisible topic in legal theory, thus distinguishing it from such thoroughly analysed concepts as precedent and legislative intent.<sup>4</sup>

In constitutional democracy, the concept 'exception' entails the idea of law on hold, and the government as the only entity that determines the 'rules of the game'. It means that the idea of exception pertains to a sovereign matter. In *Political theology*, the link between sovereignty and exception was emphasised by Carl Schmitt as follows:

The question of sovereignty to mean the question of the decision on the exception.<sup>5</sup>

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<sup>3</sup> Foucault M. *The history of sexuality volume 1: introduction* translated from the French by Robert Hurley (1978) New York, Pantheon Books 138.

<sup>4</sup> Schauer F. 'Exceptions' (1991) the University of Chicago Law Review 872.

Generally, deciding on the exception results in the denial of democratic principles and human rights infringements, with the state as ‘the ultimate holder of the monopoly of the legitimate use of physical force.’ Emergency regimes are essentially characterised by their echo on the well-established rules of the social contract and human rights protection. They materialise what Michel Foucault refers to as a relationship of domination between the government and population.<sup>6</sup> Through the concept of derogation, emergency regimes bypass the principle of separation of powers, good governance, and accountability, which are the keystones of a state of law. Never before has the world witnessed the rise of such a phenomenon as it has recently. On 17 December 2010, twenty-six-year-old Mohamed Bouazizi a Tunisian university graduate who worked as a hawker reached the front of the prefecture of Sidi Bouzid, opened a can of petrol and splashed its contents over his entire body from head to toe, struck a match and committed suicide by self-immolation. The tragedy was ignited because a policeman confiscated Bouzazi’s unlicensed counter of fruit and vegetables. The event sent shock waves around the world, and marked the beginning of unprecedented spate of unrests, protests, and riots in Tunisia, Egypt, Ivory Coast, Cameroon, Jordan, Syria, Bahrain, Yemen, and Libya; flooding in Australia, earthquake in New Zealand, Cambodia, Thailand and Turkey; tsunami in Japan followed by another earthquake and nuclear disaster. In addition to these events, there have been global economic crisis, global warming, terrorism and the issue of nuclear weapons. These plagues according to public law experts are termed necessity or exceptional circumstances. In most of these countries (notably the Arab ones) where people demand a regime change and improved living conditions, the governments consider their citizens as terrorists and internal enemies to be eliminated in order to ‘save the nation’. Governments have implemented bloody crackdowns against their unarmed citizens by using tanks, warplanes, army, snipers, and even mercenaries from neighbouring countries. Most of the measures

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<sup>5</sup> Schmitt C. *Political theology four chapters on the concept of sovereignty* (1985) Massachusetts and London, the MIT Press Cambridge 9.

<sup>6</sup> Foucault M. ‘Society must be defended’, Lecture at the college de France, 1975-1976, (2003) edited by Mauro Bertani and Alessandro Fontana, translated by David Macey, New York, Picador 17.

taken by governments are usually provided for in their country's constitution. These measures are termed emergency regimes and involve both limitations and human rights infringement from normally available constitutional rights, and call into question the principle of separation of powers among the different organs of the state. In Cameroon these measures are referred to as a state of emergency or a state of siege (or *l'état d'exception*) and are provided for by section 9 of the constitution and law of 19 December 1990 regarding a state of emergency.

The study is titled 'emergency regimes in contemporary democracies' but put strong emphasis on Cameroon. This requires further clarification. Akin to the way Foucault's use of Bentham's panopticon in *Discipline and punish*<sup>7</sup> to account for modern disciplinary powers, I rely on Agamben's concept of the example whereby Cameroon is used conceptually to elucidate the broader phenomenon of emergency regimes in contemporary democracies.<sup>8</sup> Applying Agamben's concept of the example in this study while emphasising the case of Cameroon means that the exception is not a peculiarity of this country. It is then necessary to untie the Republic of Cameroon and highlight it from the group of contemporary democracies without concealing its belonging to that group. Agamben observes not only that 'the example always belongs to a group',<sup>9</sup> but also that 'what the example shows is its belonging to a class, but for this very reason the example steps out of its class in the very moment in which it exhibits and delimits it [...]'<sup>10</sup> Another explanation of the title of the thesis could be that the study relies on universal theories of emergency regimes to sharpen and build up the example which in this case is Cameroon.

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<sup>7</sup> Foucault M. *Discipline and punish the birth of the prison* (1995) translated from the French by Alan Sheridan, New-York, vintage books

<sup>8</sup> Even though devoted to Cameroon, the study also unveils some mechanisms of emergency regimes available in France, Germany, Algeria and other former French African colonies such as Senegal.

<sup>9</sup> Agamben G. *Homo sacer sovereign power and bare life* (1998) translated by Daniel Heller Roazen, California Stanford University Press 20.

<sup>10</sup> As above.

I chose to place emergency regimes in Cameroon at the heart of this study because a permanent deployment of exceptional measures on the ground has made it difficult to distinguish between society under normal circumstances and the same society during a crisis period. Between the colonial period and 1992 the country has recorded more than one hundred decrees of declaration of a state of emergency.<sup>11</sup> These only reflect the cases that were declared as such, as provided for by local and international legislation on the issue. The international legislation on emergency regimes has been grouped into a set of principles called international standards that determine the validity of an emergency situation. These principles have been set out since 1945 by numerous instruments, experts, and international organisations on a treaty-based system and other soft laws with considerable moral and ethical purposes. These include, inter alia, the United Nations Charter, the Geneva Conventions, the International Covenant on Civil and Political Rights, the International Labour Organisation, and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. These documents agree on a set of rules that state parties must comply with when dealing with situations of emergency. These principles currently form the international standards on emergency regimes. They have since become the benchmarks of genuine emergency practice and include the following:

- severity or exceptional threat;
- notification and proclamation;
- good faith motivation;
- proportionality;
- non-discrimination; and
- non-derogable rights

It is assumed that State-parties that do not comply with these principles could be considered not a democratic society but rather an authoritarian one. The rule of law should prevail at all times and emergencies cannot serve as a pretext for non-compliance with democratic rules and human rights protection. In Cameroon, the gap between the

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<sup>11</sup> Atemengue J. *Le pouvoir de police administrative du président de la République au Cameroun: Réflexions sur les fondements de l'ordre juridique*, annales de la faculté des Sciences juridiques et politiques, université de Dschang, tome 3 (1999) Dschang 146.

provisions of Section 9 of the Constitution, the law of 19 December 1990 regarding a state of emergency and international standards is considerable. The current practice and legislation on emergency situations have illustrated that the issue of compliance with these international standards is subject to discussion. An example concerns the principle of declaration or proclamation of a state of emergency, which, according to international standards should involve the legislature in the process. In Cameroon, despite the existence of three powers, as provided for by the constitution,<sup>12</sup> the president remains the only authority in charge of the declaration of emergency regimes. Moreover, in the instance of a controversial declaration, there is no room for judicial review. The reason is that the act declaring a state of emergency or the so called state of siege, in the country falls under the category of acts of state. Such act, which is characterised by political motive, is above the competence of judges and therefore is not subject to judicial review. A second example concerns the necessity of lifting an emergency regime formally enforced by authorities once the threat is over. Yet as I will illustrate, in the case of Cameroon, lifting a state of emergency that was formally enforced, has also been an important concern. Bruce Ackerman asserts that:

Unless careful precautions are taken, emergency measures have a habit of continuing well beyond their time of necessity. Governments should not be permitted to run wild even during the emergency; many extreme measures should remain off limits.<sup>13</sup>

The practice of emergency regimes was introduced to the country before ‘independence’ and remains a legacy of French colonialism. These regimes remain the key instrument of

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<sup>12</sup> Part 2 of the Constitution provide for the executive power, part 3 for the legislative power, and part 5 for the judicial power. Before 1996 only two powers existed within the country, but since the amendment of 18 January 1996, the judicial authority has been emancipated and became the judicial power, even if, as provided by section 37(3), the president of the republic remains the guarantor of the independence of judicial power.

<sup>13</sup> Ackerman B. ‘The Emergency Constitution’ (2004) Yale Law School Faculty Scholarship Series, Paper 121, 1030.

colonialism and neo-colonialism within the Cameroon context. Emergency regimes, as currently experienced in the country, are hardly motivated by natural cataclysms, foreign invasion, and other threats to the life of the nation as intended. Rather, they essentially aim to perpetuate injustices, oppression, marginalisation, and domination of the largest portion of the population by the minority in power. After World War II, Hitler Germany were held accountable and internationally condemned for their fascist enterprise. However, the paradoxical fact about French colonialism in Africa in general, and Cameroon in particular, is the repeat of Hitler's methods from the colonial era until the present day. Indeed as I will portray later in the study, France have played a major role in the misfortune that Cameroon and its people has been subjected to for nearly a century. Prior to the so called independence, emergency regimes, whether real or *de facto*, were ceaselessly enforced by the French and their local collaborators to suppress the struggle for independence, to remain in power, and to control national resources. The killing of Cameroon nationalist leaders such as Ruben Um Nyobè, Felix Moumie, Ernest Ouandie, and Ossende Afana, and the slaughter of hundreds of thousands Cameroonians (mainly from the Bamiléké tribe) by the French are some of the facts that I will provide detailed information of in the course of this study. After the alleged independence, following similar techniques, emergency regimes remain the major weapon to suppress political opponents and personalise the power. Subsequently, these regimes were and are essentially enforced during pre or post-electoral campaigns. John Ferejohn and Pasqual Pasquino observe the following when referring to constitutional powers to suspend rights, where they exist:

[...] Unstable or young democracies tend repeatedly to resort to emergency powers, often as a way to protect or prolong the incumbent government against political opponents.<sup>14</sup>

An important issue relating to the features of emergency regimes in Cameroon is the ingenious combination of ordinary laws with extraordinary measures, achieved by

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<sup>14</sup> Ferejohn J. and Pasquino P. 'Emergency powers' *The oxford handbook of political theory* (2006) Oxford University Press 340.

adopting a new category of ‘ordinary legislation’ following pseudo parliamentary debates<sup>15</sup> and or presidential ordinances having the force of law. For example on 04 April 2011, Cameroon parliament passed a bill empowering the president to enact “ordinances on the security of intelligence activities in Cameroon” and “on the use of intelligence’s technologies in Cameroon.” Following the provisions of this bill, the president of the republic is entitled to request access to private emails, monitor the telephone traffic of people across the country, and waive the immunity of the elected parliamentarians at any time.

Exploring emergency regimes in Cameroon is important in order to account for the systematic reproduction and perpetuation of draconian measures and colonial patterns that harm the population and reinforce a politic of domination. Tracking these regimes is a necessary step to understand the scale of insecurity and (re)appropriation of violence by anyone, and the decline’s process characterising the Cameroon society. This decline is marked not only by violence and insecurity from both the government and population (they now constitute a mechanism of political resistance by people), but also by secessionist’s claims and a massive emigration phenomenon across the country. Raising the issue of emergency in Cameroon is a crucial step toward their reduction by placing the onus on the state to guarantee the primacy of the rule of law in all circumstances, to enhance justice, fair (re)distribution of resources, and to reduce oppression and social inequalities. A focus on Cameroon is paramount for many reasons: Cameroon is a central African country that has succeeded to merge together the features of a democratic state and authoritarian and totalitarian societies characterised by a dynamic between resistance and politic of domination. This dynamic is exemplified by the presidential decree of February 2001 introducing the Operational Command to fight large-scale banditry in the

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<sup>15</sup> Parliament in Cameroon has 180 seats. The previous legislature was dominated by the ruling party with 153 seats. Following the outcomes of the general elections organised in *trompe l’oeil* on 30 September 2013, the ruling party currently controls parliament with 148 seats out of 180. In such a context, a true parliamentary debate, whatever the issue, remains a utopia.

city of Douala (decree n° 2000/0027 of 24 February 2000). By virtue of this decree, the provisions of the Penal Code on robbery have been silenced, and a military commando has taken control of Douala. The operation resulted in the extrajudicial killing of more than one thousand ‘thieves’, and subsequently, the presidential measure that was supposed to restore security became the main source of insecurity across the city of Douala. Focussing on Cameroon is also justified by the fact that being from Cameroon, I am familiar with the country’s legal system, and can shed some light on its local reality.

The inflation of emergency regimes in contemporary democracies underlines the issue of the link between politics and human being perceived as living animal with the aptitude for political existence.<sup>16</sup> Emergency regimes within the Cameroon context can be considered as the intersection point where authoritarianism, totalitarianism, and democracy come together. In this regard Charles Fombad argues as follows:

In fact, the exercise of emergency powers is a phenomenon common to both democratic and undemocratic governments, the only difference between the two being the presence or absence of check and balances to prevent the abuse and arbitrary use of the emergency powers by the government.<sup>17</sup>

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<sup>16</sup> According to the Greek philosopher Aristotle (384-322 AD), the aim of politics is to facilitate the transformation from the bare life to good life or ‘in Aristotle’s terminology, to transform *zoé* (bare life) into *bios* (qualified life). By reaching this conclusion, Aristotle contrasts the style of life common to all species, including animals, men or gods (what he calls *zoé*), with the good life that indicates the form or way of living that is proper to an individual or a group (what he calls *bios*). However, in the classical world, simple natural life is excluded from the *polis* in the strict sense, and remains confined to the sphere of the *oikos*, or ‘home.’ Bare life/October 2007. Available at <http://www.edocfind.com/download/ebook/Bare%20Life%20%20October%202007/aHR0cDovL3BhZ2VzLnNsYy5lZHUvfnJicmFuZC9wdWJsaWNhdGlvbnMvYmFyZWxpZmV0ZXh0LnBkZg> (accessed 3 March 2011). See also Agamben G. (note 9) 9.

<sup>17</sup> Fombad C. ‘Cameroon’s emergency powers: a recipe for (un) constitutional dictatorship?’ (2004) *Journal of African Law* Vol.48, 62.



This observation, like many others, flows from a vast debate on emergency regimes as provided in various literatures on the issue.<sup>18</sup>

From a historical perspective, the doctrine of emergency powers dates back from the earliest Roman antiquity: there did exist in ancient Rome a political phenomenon, the dictatorship whereby in time of crisis an eminent citizen was called upon by the ordinary officials of a constitutional republic, and was temporarily granted absolute power over its whole life, not to subvert but to defend the republic, its constitution, and its independence.<sup>19</sup> Significantly, this provision formed part of the fundamental laws of the state.<sup>20</sup> In case of danger threatening national security, full powers were always granted in

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<sup>18</sup> See *Constitutional dictatorship (crisis government in the modern democracies)* by Clinton Rossiter; *The constitution of law legality in a time of emergency* by David Dyzenhaus; *Introduction to the study of the law of the constitution* by Albert Dicey; *Law in times of crisis emergency powers in theory and practice* by Oren Gross and Fionnuala Ní Aoláin. These authors argue for emergency powers to be a normative phenomenon. *Dictatorship and political theology*, two books by Carl Schmitt; *State of exception* and *Homo sacer sovereign power and bare life*, two documents by Giorgio Agamben, and 'Critique of violence', an essay by Walter Benjamin analyse the phenomenon from a critical approach. Other documents such as the *Manuel des antiquités Romaines* by Theodore Mommsen & Joachim Marquarot, *Le Droit Public Romain depuis l'origine de Rome jusqu'à Constantin le grand* by Pierre Willems, and *the Roman Republic* by William Heitland are also relevant in discussing the practice of the so called Roman dictatorship. In addition to these books there are also *Two treatises of government* by John Locke and *Du contrat social ou principes du droit politique* by Jean-Jacques Rousseau. Other relevant books include *The challenge of the exception* by Georges Schwab as it reveals Schmitt's thought on the exception; *au Cameroun de Paul Biya* by Fanny Pigeau; *Kamerun une guerre cachée aux origines de la Françafrique* by Thomas Deltombe, Manuel Domergue, and Jacob Tatsitsa are relevant testimonies of Cameroon atrocities and realities of governance; *Traité de droit constitutionnel* by Leon Duguit revisits the exception in France. Several other scholarly contributions on the topic have come from prominent authors such as Derrida, Foucault, Akerman, Saint Benoit François, Ferejohn and Pasquino.

<sup>19</sup> Rossiter C. *Constitutional dictatorship (crisis government in the modern democracies)* (1948) New Jersey, Princeton, Princeton University press 16.

<sup>20</sup> As above.

general terms in order to defend and preserve the state from harm.<sup>21</sup> In such a situation, the consults or their substitutes called for people to take up weapons by virtue of *senatus consulte*. The appearance of citizens wearing military uniform rather than toga, the *saga sumere* was the external manifestation of the establishment of exceptional regime.<sup>22</sup> It was the shortest way of recruitment of the army by the magistrate, the *tumultis*.<sup>23</sup> This is the classical story of emergency regimes as narrated throughout the ages by some authors like Guy Brabant who, when talking about emergency regimes in history refers to ‘Roman dictatorship.’<sup>24</sup>

However, this understanding of emergency regimes through the paradigm of Roman dictatorship constitutes the keystone of the controversy on the phenomenon. The issue raised by these regimes is to determine whether the state still acts according to law in a situation of turmoil, or whether it acts outside or in contradiction to the rule of law. If various contemporary states around the world fashionably provide for emergency regimes, the main focus at the heart of the debate interrogates whether or not a legal system can provide for its own suspension and critically assess which scenarios provide for emergency laws, since vagueness can be exploited to the detriment of civil liberties, security, and the rule of law. It is usually acknowledged that if emergency regimes have to be provided, its functioning allows the state to frame the extent and the duration of powers transferred, in order to avoid any blunder, and to protect oneself against a coup d’état.<sup>25</sup> In contrast, another opinion argues that since emergency situations are unpredictable by nature, a model of emergency regimes established beforehand cannot be adapted. Therefore, the

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<sup>21</sup> Mommsen T. & Marquarot T. *Manuel des antiquités Romaines tome septième* (1891) traduit de l’Allemand par Frederic Girard, Paris, Ernest Thorin editeur 476.

<sup>22</sup> As above 478.

<sup>23</sup> As above 479.

<sup>24</sup> Braibant G. ‘L’Etat face aux crises’ (1979) pouvoirs 7. Available at <http://www.scopalto.com/pouvoirs/10/les-pouvoirs-de-crise> (accessed 15 October 2013).

<sup>25</sup> Monod JC ‘le droit et l’état d’exception’. Available at [http://www.droitsfondamentaux.org/article.php3?id\\_article=58](http://www.droitsfondamentaux.org/article.php3?id_article=58) (accessed 9 March 2010).

heart of the debate lies in the confrontation between two fundamental concepts of law, namely norm and exception. It is this dichotomy between norm and exception that constitutes what John Ferejohn and Pasqual Pasquino refer to as 'the structure of emergency powers.'<sup>26</sup> Following these guidelines, I will now focus at length on the substance of the controversy, which basically contrasts two approaches, i.e. the normative approach and the critical one.

Firstly, the normative approach to emergency regimes is the one including these regimes within the sphere of law. According to this approach, dealing with a crisis situation should not be considered as an executive matter only, but also a judicial and parliamentary matter. The first idea from the normative approach to emergency regimes considers such regimes to be a constitutional dictatorship. Proponents of this thought, which include Clinton Rossiter, claim that the institution of democracy contains heavy mechanisms that can work only under normal circumstances. According to him:

Those republics which in time of danger cannot resort to a dictatorship will generally be ruined when grave occasions occur.<sup>27</sup>

The second idea from the normative approach to emergency regimes is presented in Albert Dicey's legality approach. While referring to the exception, the author argues for the priority of parliament, which is the only authority to grant *carte blanche* to officials when dealing with a threat. According to Dicey:

If a sudden emergency arises, e.g. through the outbreak of an insurrection, or an invasion by a foreign power, the ministry ought, if they require additional authority, at once to have parliament convened and obtain any powers which they may need for the protection of the country.<sup>28</sup>

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<sup>26</sup> Ferejohn J. & Pasquino P. 'The law of the exception: A typology of emergency powers' (2004) Oxford University Press and New York University School of Law Vol. 2, 221.

<sup>27</sup> Rossiter (note 19) see the title page.

However, further analysis of Dicey reveals a flexibility of the role granted to parliament. In the case where there is insufficient time to enact such an act, ministers ought to take every step, even at the peril of breaking the law, which is necessary either for restoring order or for repelling attack, and must rely for protection on parliament passing an Act of Indemnity.<sup>29</sup>

The third idea of the normative approach to emergency regimes is reflected through the concept of 'legal black and grey holes' as developed by David Dyzenhaus. According to him, suspending law and providing for exceptional powers during emergencies allows for the creation of 'legal black hole' and 'legal grey hole.'<sup>30</sup> Legality or the rule of law provides a legal constitution, which is the basis of the authority of those who have power to make law. If they should stray outside the limits of that authority, they lack not only legal authority, but also any authority at all.<sup>31</sup> Dyzenhaus advocates for a close collaboration between the executive and the legislature during emergencies, but he insists that a crucial role should be granted to judges who remain the last entity for maintaining the society inside the legal sphere. As he argued, when the legislature or the executive fails to comply with the requirements of legality, if the legislature makes plain its intention to override the rule of law, judges may not have the remedy of invalidation available to them. But they can still signal to the public that the current government is determined to govern extra legally.<sup>32</sup>

The role of the judiciary in the management of a crisis situation has been established by the jurisprudence, on the grounds that necessity can justify the enlargement of the powers of

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<sup>28</sup> Dicey A.V. *Introduction to the study of the law of the constitution* (8<sup>th</sup> edition) Liberty Fund. (<http://oll.libertyfund.org/title/1714>) 246. Also available at [http://www.constitution.org/cmt/avd/law\\_con.htm](http://www.constitution.org/cmt/avd/law_con.htm) (accessed 25 April 2012).

<sup>29</sup> As above.

<sup>30</sup> Dyzenhaus D. *The constitution of law legality in a time of emergency* (2006) Cambridge, Cambridge University Press 3.

<sup>31</sup> Dyzenhaus D. 'The compulsion of legality' *emergency and the limits of legality* (2008) edited by Ramraj V. Cambridge University Press 35.

<sup>32</sup> As above 51.

the administration. This approach was inaugurated essentially during the First and Second World Wars by French judges, via the proclamation of the *théorie des pouvoirs de guerre* [theory of powers of war] and has been reiterated several times and was officialised in 1950 through the *Ville de Lillebonne* case.<sup>33</sup>

The fourth idea of the normative approach to emergency regimes is reflected in international law through the concept of derogation. Indeed the international legal standards on emergency regimes provide that ‘in essence derogation clauses express the concept that states of emergency do not create a *legal vacuum*. The derogation regime aims at striking a balance between the protection of individual human rights and the protection of national needs in times of crisis by placing reasonable limits on emergency powers.’<sup>34</sup> However these normative and classical conceptions of emergency regimes are questioned by many authors who have examined the phenomenon from a critical perspective.

The critical approach to emergency regimes strongly opposes the arguments developed by the previous approach. The first idea from this approach was developed by Carl Schmitt who, through his doctrine of decisionism, considers the exception to be the limit not only of law, but of the whole doctrine of constitutional democracy. According to him:

The precise details of an emergency cannot be anticipated, nor can one spell out what may take place in such a case, especially when it is truly a matter of an extreme emergency and of how it is to be eliminated.<sup>35</sup>

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<sup>33</sup> *Cour de Cassation Française 29 Novembre 1950*. In this case the judge of the *Cour de Cassation* proclaimed the primacy of public safety over the law.

<sup>34</sup> Rule of law in armed conflict, project rulac, ‘derogations from human rights treaties in situations of emergency.’ Available at [http://www.adhgeneva.ch/RULAC/derogation from human rights treaties in situations of emergency.php](http://www.adhgeneva.ch/RULAC/derogation%20from%20human%20rights%20treaties%20in%20situations%20of%20emergency.php) (accessed 7 May 2012).

<sup>35</sup> Schmitt (note 5) 6-7.

Arising from the reasoning that the state suspends the law in the exception on the basis of its right of self-preservation,<sup>36</sup> the author argues for a fundamental relation between politics and the limit. Law should be thought not from the rule but from the exception. For Schmitt, every government must provide a dictatorial element within its constitution in order to guarantee its own existence because:

Like every other order, the legal order rests on a decision and not on a norm.<sup>37</sup>

The second idea from the critical approach comes from Walter Benjamin. In his essay 'Critique of violence',<sup>38</sup> the author argues for the possibility of a violence that lies absolutely 'outside' and 'beyond' the law and that, as such, could shatter the dialectic between law-making violence and law-preserving violence.<sup>39</sup> The basic problem Benjamin addresses refers to the relationship between law and justice as it hinges on violence. The issue is to know whether violence in the social and political realms can be justified as a pure means in itself, independent of whether it is applied to just or unjust ends.<sup>40</sup> Following an analysis of what he calls the mythical form of violence and the pure or divine violence, Benjamin considers a state of emergency decided by the sovereign to be a fictitious one, because a real state of emergency is one that can deny the law and affirm the possibility of human existence outside the law.<sup>41</sup>

The third idea from the critical approach was developed by Giorgio Agamben who argues for the state of exception to be the recognition of law outside, but it simultaneously prompts sovereign attempts to encompass the outside within the law.<sup>42</sup> State of exception

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<sup>36</sup> As above 12.

<sup>37</sup> As above 10.

<sup>38</sup> Benjamin W. 'Critique of violence' *the continental ethics reader* (2003) London, Routledge 115.

<sup>39</sup> As above.

<sup>40</sup> As above

<sup>41</sup> Benjamin W. 'Theses on the Philosophy of the history' *Illuminations* (1969) translated by Harry Zohn, New York, Schocken Books.

<sup>42</sup> Agamben G. *State of exception* (2005) translated by Kevin Attel, Chicago, University of Chicago Press 6.

is characterised by a ceaseless violence outside and against the law. It is a state in which the anomie prevails over the whole institution, a space void of law, a situation of ‘an emptiness of law’<sup>43</sup> a zone of anomie in which all legal determinations are deactivated.<sup>44</sup>

Following the controversy, it appears that a relationship of cause and effect exists between the concept of the exception and that of necessity. The latter is rooted in the constant maxim *necessitas non habet legem*, which holds a central place in the foundation of emergency regimes. The scope of this maxim is subject to diverse interpretation and understanding since it is sometimes perceived as a palliative measure to the insufficiency of the rule of law, and sometimes considered to be the foundation upon which the state of law rests. The different interpretations can be explained by the lack of information about the origin and the meaning of the maxim *necessitas non habet legem*. In this regard, Kenneth Pennington notes with concern that:

The history of *necessitas non habet legem*, from its origin in the early middle ages to its maturity in the *ius commune*, remains to be written.<sup>45</sup>

Despite the relevance of this statement, more information about the maxim is now available and in the course of this study, I attempt to provide detailed and comprehensive understanding of the maxim *necessitas non habet legem*. In so doing, I rely essentially on its Christian origin, as provided for by Franck Roumy,<sup>46</sup> on the Philosophy of Islamic law

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<sup>43</sup> As above 48.

<sup>44</sup> As above 50.

<sup>45</sup> Roumy F. *L’origine et la diffusion de l’adage canonique Necessitas non habet legem (VIII-XIIIe S.) Medieval church law and the origins of the western legal tradition a tribute to Kenneth Pennington*, edited by Wolfgang P. Müller & Mary E. Sommar (2006) Washington D.C. the Catholic University of America Press 303.

<sup>46</sup>As above 303-319.

reviewed by Mohammed Muslehuddin,<sup>47</sup> on the work of Thomas Aquinas<sup>48</sup> and Immanuel Kant.<sup>49</sup>

Unlikely to the above theoretical developments grounded on war, invasion's threats, deficiency of the rule of law, and a variety of crises, one of the peculiarities of the present study devoted to emergency regimes in contemporary democracies with emphasis on Cameroon lies in its conceptual framing which is a clear contextualisation of the problem of exception in the colonial period. In elucidating the situation in Cameroon, the study highlights how the permanent recourse to emergency regimes within the colony was central to Europeans' tactics in their strategies of control and domination of colonised people. The study depicts the origins of exceptional measures in Cameroon that is located in the colonial period of the country. Additionally, patterns of rule by ordinance and decree were put in place in the early 'post-independence period', and have now become the norm in Cameroon. Starting with detailed historical analysis grounded on colonial and postcolonial experiences in Cameroon (and even Algeria), the study attempts to shift the understanding of the theories on the exception and sovereign violence by placing contemporary legal and philosophical debates on the exception in the context in which they originally emerged (a means of legitimating the subjugation of colonised peoples). More specifically, the thesis shows how the country's colonial past strongly influences the current state's structures through a basic reliance on emergency measures which became normalised to a point where law's force has been reduced to the zero point of its own content. As consequences, the process matters of justice are reduced to bare legal force, and in that process the legitimacy of both state and law are compromised, rendering subjects politically jaundiced

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<sup>47</sup> Muslehuddin M. *Philosophy of Islamic law and the orientalist: a comparative study of Islamic legal system* (1992) Delhi, Taj Co.

<sup>48</sup> Aquinas T. *Summa theologiae* (1947) New Yorks, Benziger Bros edition.

<sup>49</sup> Kant I. *Groundwork for the metaphysics of morals* (2002) edited and translated by Allen Wood, New Haven and London, Yale University Press.



and demoralised. The net effect of such developments appears to be detrimental to the very foundation of the state which is then subject to a process of disintegration.

The present investigation of emergency regimes in Cameroon stretches from the colonial period to the present day and is conducted via a combination of different methods. The first method offers an examination of historical developments of emergency regimes within the Cameroon context. This method is useful as it is based on the collection and analysis of data, a study of French colonialism and historical cases, and the analysis of the normative architecture of such regimes in Cameroon in relation to international standards. The second method is essentially theoretical and offers an account of the understanding of the legal and theoretical discourses on emergency regimes through the lens of the Cameroon realities. The study also examines the barriers of integration of these discourses within the country's legislation and the consequences resulting from an excessive normalisation of draconian measures. The third method is prescriptive and provides suggestions and recommendations through the articulation of some mechanisms of constitutional restrictions and judicial reviews. Overall the thesis moves beyond a descriptive account by combining in an interdisciplinary approach the historical, theological, legal, and philosophical materials relevant to the discussion of emergency regimes and exceptional measures. Despite the fact that French and English are the two official languages in Cameroon as a result of a *de facto* French and British colonisation,<sup>50</sup> most of official documents, legislation, and data are not always simultaneously available in both languages. Therefore, in the course of this study, I will translate those available only in French into English where necessary. Where possible, I will provide the original version of the document, either in square brackets or right on top of any translated text or fragment of text.

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<sup>50</sup> As will be soon showed, Cameroon has never been formally a colony whether of France or Britain.

From a semantic point of view, emergency regimes generally refer to extraordinary measures provided for by states in order to face events such as war, insurrection, invasion, natural disaster threatening the life of the nation, and public order. Carl Schmitt contends that:

The exception, which is not codified in the existing legal order, can at best be characterised as a case of extreme peril, a danger to the existence of the state, or the like.<sup>51</sup>

Despite the identification of events that may lead to emergencies, it remains difficult to provide for a clear definition of emergency regimes. Instead of providing a precise definition, a set of characters inherent to emergency situations has been examined. According to Nomi Claire Lazar:

The key characteristics or ‘symptoms’ of emergencies are urgency and scale. To say that a situation is urgent is to say that it poses an immediate threat, one too pressing to be dealt with through the normal, years-long process of policy and legislation making. An urgent threat is one that must be dealt with immediately, if it is to be eliminated or mitigated. Citizens cannot wait for lengthy bicameral debate to decide on the best way to confront an epidemic, at the risk of allowing the epidemic to spread exponentially, with exponentially greater loss of life.<sup>52</sup>

Emergency regimes are also known as exception, state of exception, state of emergency, state of siege, emergency laws, emergency powers, exceptional powers, exceptional legality or exceptional regimes. In the course of this study, these terms might be used interchangeably to emphasise the same reality. In Cameroon, emergency regimes refer to various kinds of institutions from a legal perspective: a state of emergency (Section 9(1) of the constitution), a state of siege, and/or *l'état d'exception* (Section 9(2) of the constitution).<sup>53</sup>

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<sup>51</sup> Schmitt (note 5) 6.

<sup>52</sup> Nomi C. *States of emergency in liberal democracies* (2009) Cambridge, Cambridge University Press 7.

<sup>53</sup> Later in the study, I will clarify the concepts of ‘state of siege’ and ‘*l'état d'exception*’, which despite their fundamental differences, appear to be synonymous in the English and French versions of the constitution of Cameroon.

The concept 'democracy' refers to a political regime in which people exercise sovereignty themselves, without the intermediary of a representative organ (direct democracy) or through an intermediary (representative democracy). The adjective 'contemporary' is linked to the time and means 'belonging to or occurring in the present.'

## **5. Proposed structure**

The study is divided into seven chapters. Following the present introduction, chapter two examines the features of emergency regimes in Cameroon.

Chapter three brings together emergency regimes in Cameroon and international standards.

Chapter four sheds light on the maxim *necessitas legem non habet* and examines legal and theoretical discourses on emergency regimes that include the normative and critical approaches to emergency regimes.

Chapter five addresses the modern expression of emergency regimes in Cameroon especially the implicit exception.

Chapter six reviews the consequences of the normalisation of emergency regimes in Cameroon.

Chapter seven is the conclusion and summarises the research, presents the findings, and provides recommendations.

## CHAPTER 2 THE FEATURES OF EMERGENCY REGIMES IN CAMEROUN

### 2.1 Introduction

The present chapter examines the features of emergency regimes in Cameroun before and after independence. What are the origins of these regimes in the country? What are the historical circumstances of their development? How do they materialise, and what is their place and purpose in the current legal architecture of the state? The following points should be stated prior to further elucidation. Cameroon as a political unit was colonised consecutively by three countries, namely Germany on the one hand, England and France on the other. The latter countries succeeded in taking control of Cameroon following their victory over Germany in the First World War. As a result the territory was divided into two sections, one placed under French control and the other under British control. My investigation of emergency regimes in the country focuses more on the French section than the British section. The reason is that while operating under the authority of the League of Nations (as I will show shortly), England and France administered their respective spheres of influence as they did in other African colonies under their administration. The British incorporated their zone of influence into their colony of Nigeria, while the French administered their zone similarly to Ivory Coast, Congo Brazzaville, and Senegal. The British system of governance did not rely on draconian measures, as was the case with the Mau Mau in Kenya, instead they relied on the system of indirect rule characterised by a local administration of indigenous authorities over their own population. By contrast, the French system of governance heavily relied on brutal measures in the portion subjected to their influence. They applied the *politique d'assimilation*, which had more drastic implications for human rights and freedom of the people they governed. In other words, the indigenous people in the French administered area of Cameroun had to relinquish their

customs and traditions and adopt the French culture.<sup>54</sup> Such politics materialised through the introduction of emergency regimes in the early Cameroun institutions.

In the course of this chapter, I will use different spellings of the name 'Cameroon' according to circumstances, in order to simplify the understanding of the upcoming developments. 'Kamerun', the German spelling, will be used to refer to the era during which the country was under German influence. Even after German rule, members of the leading nationalist movement, the *Union des Populations du Cameroun* (UPC) [union of the people of Cameroon], maintained this spelling to claim independence and reunification of the country that had been divided into two sections between the French and the British. The French spelling 'Cameroun' is used to refer to the area under French influence, in other words to French Cameroun. Thus, the spelling 'Cameroun' as it appears for example in the title of the current chapter 2, and even in some parts of the current introduction is not a typing mistake. In a similar way, I will use the English spelling 'Cameroon' where it concerns the English or British section of the country. Finally in a later part of the study I will return to the English spelling 'Cameroon' to account for the general situation across the reunified state, because the colonial era officially 'ends' with the reunification of the two Cameroons.

## **2.2 Emergency regimes in Cameroun before independence: a legacy of colonialism**

Understanding this section requires a brief review of the history of colonialism in Kamerun, an analysis of emergency regimes in Cameroun under international supervision, the Algerian experience, and the rise of nationalism and the war for independence.

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<sup>54</sup> For more information, see Deltombe T. & al. *Kamerun! Une guerre cachée aux origines de la Françafrique 1948-1971* (2011) Paris, éditions de la découverte. See also Delancey M. W. *Cameroon dependence and independence* (1989) United States of America, Boulder, Great Britain, Dartmouth. Further Neville R, *Cameroun an African federation* (1971) London, Pall Mall Limited.

### 2.2.1 A brief history of colonialism in Kamerun

Kamerun came into being as a political unit in the 1880s. Prior to that time there were numerous states, nations, or political entities in this area, each with its separate culture, history, government, and economy.<sup>55</sup> The coastal people, especially the Douala, were the first to have contact with the Europeans. It is reported that in the 5<sup>th</sup> Century BC, during the first recorded European trip to Africa, that of Hanno of Carthage, the highest mountain in the country, namely Mount Cameroon, may have been sighted, and that it was this active volcano that he described as the 'chariot of the Gods.'<sup>56</sup> Two thousand years elapsed before the area was again described by Europeans. The Portuguese reached the Bight of Biafra in 1472 during the reign of King Alphonso V, and over the next twenty years they established a settlement on the island of Fernando Po, about twenty miles off the coast. Although they did not settle at the coast, the Portuguese traded in ivory and in slaves with the people they encountered there, which people they named the Ambos, or Ambozi.<sup>57</sup> The name 'Cameroon' is in fact derived from the Portuguese word *camarões*, in reference to the prawns discovered at the Wouri estuary, after the name given to the Wouri river, the *rio dos camarões*.<sup>58</sup> Hence, despite the early Portuguese involvement in the country, the 20<sup>th</sup> century social scientists, basing their assumptions on African affairs in 1880, assumed that the Cameroon coast would become an English colony if it were to lose its independent existence. Indeed the majority of traders were British and along the coast there was widespread use of Pidgin English.<sup>59</sup> Moreover, there was the presence of the English missionary group and the settlement at Victoria, which looked to the British fleet for protection.

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<sup>55</sup> Delancey M. W. *Cameroon dependence and independence* (1989) United States of America, Boulder, Great Britain, Dartmouth 2.

<sup>56</sup> Neville R. *Cameroon an African federation* (1971) London, Pall Mall Limited 20.

<sup>57</sup> As above.

<sup>58</sup> As above.

<sup>59</sup> Delancey (note 55) 8.

Meanwhile, the Douala people came into contact with German trading companies and their representatives, especially Woerman, Jantzen, and Thoermalen, and other posts were established further south by French commercial interests.<sup>60</sup> The competition between the traders of these three nations for the products the Douala sold at the coast was, by the 1880s, to develop into a scramble for control over the entire area, a process that led to the German colonisation of the territory in 1884.<sup>61</sup> On 14 July 1884, Gustav Nachtigal signed treaties with two Duala chiefs and raised the German flag at Douala.<sup>62</sup> For the first time, boundaries, albeit different from those that exist today, were drawn, and a potential identity, Kamerun (the German spelling), was established.<sup>63</sup> The agreements signed by Nachtigal effectively led to the kings' signatories surrendering 'the rights of sovereignty, legislation and administration' to the Germans. Notwithstanding, these agreements did not bring an immediate end to the competition for the region. A brief period of competition among European countries followed, mainly to make treaties with as many local chiefs as possible in order for one country or another to prove that it was actually occupying the land, as per the agreements of the Conference of Berlin, an international meeting on the European colonisation of Africa. The treaties were the symbolic nicety that prevented the Europeans from going to war against each other for territory in Africa. Soon after World War I began, French, British, and other colonial troops consisting mainly of African personnel, took control of Kamerun and were involved in a campaign that lasted until February 1916. Since Germany had lost control over the territory, Kamerun was then handed over to France and Britain under a system of international supervision.

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<sup>60</sup> Deltombe & al. *Kamerun! Une guerre cachée aux origines de la Françafrique 1948-1971* (2011) Paris, éditions de la découverte 48.

<sup>61</sup> Neville (note 56) 22.

<sup>62</sup> Delancey (note 55) 8.

<sup>63</sup> As above 2.

## 2.2.2 The introduction of emergency regimes in Cameroun under international supervision

Following the end the First World War, the Versailles peace conference established a new system of mandates to deal with the conquered colonies and placed them under a system of international supervision. Section 119 of the Versailles Treaty of 28 June 1919 transferred possession of Kamerun from Germany to France and Britain.<sup>64</sup> As a result, after thirty years of German control, from 1884 to 1916, the former colony of Kamerun was divided into two parts, with France taking control over the eastern part and Britain retaining the western part.<sup>65</sup> This partition was endorsed by the League of Nations on 20 July 1922, which placed the country under the regime of mandate.<sup>66</sup> Kamerun then became 'Cameroun' under French influence, and was named 'Cameroon' by the British administration.

After the French took over the largest part of the country, the French Royal Ordinance of 17 November 1840 on the government of Senegal and its dependencies was extended to the French Cameroun. This legislation had no effect in Cameroon, the portion of the country subjected to British rule. Some provisions of this document essentially contain emergency measures, which provide 'the governor shall ensure the security and peace of the colony' and that 'all acts and events likely to undermine public law and order or the peace shall be immediately referred to him.'<sup>67</sup> Similarly, a decree issued by the French President Emile Loubet on 9 November 1901 also became applicable in Cameroun. Two provisions of this decree regulating the relations between the governors and senior commanders of the troops are close to situations of emergency that might arise in the colonies. For instance Section 2 of the document reads:

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<sup>64</sup> The original document is available at <http://www.cinquantennaires-cameroun.org/en/cinquantenaire-cameroun.php> (accessed 21 September 2012).

<sup>65</sup> As above. The British were responsible for two narrow western sectors, north and south, whereas the French received the larger share, the eastern four-fifths.

<sup>66</sup> As above.

<sup>67</sup> Bouvenet J.G. & Bourdin R. *Codes et Lois du Cameroun* (1956) Yaounde, Imprimerie Coulouma 119.



*Le commandant supérieur des troupes exerce, en tout temps en toute circonstance, sous la haute autorité du gouverneur, le commandement de toutes les forces militaires de la colonie, et il a sous ses ordres les services et les établissements affectés à ces forces [...]*<sup>68</sup>

The senior commander of the troop exercises, at any time in any circumstance, under the authority of the governor, the command of all military forces of the colony, and services and institutions attached to these forces [...]

Such provisions are not to be confused with routine legislation characterised by bureaucratic procedures and parliamentary debates. The special powers of governors of the colonies were transferred to the commissioner of the French Republic by the decree of 23 March 1921 relating to his prerogatives in Cameroun. Section 2 of this decree conferred upon the *Commissaire de la République* powers of defence of the territory of Cameroun, and powers to be exercised under the authority of the minister of overseas territories of France.<sup>69</sup>

The introduction of emergency institutions within Cameroun's political context has not only been for the French to extend some draconian legislation already in force in other French African colonies on Cameroun, it was also provided for by international instruments which endorsed French control over the territory. For example, whereas Section 2 of the League of Nations on 20 July 1922, which handed the country over to France and Britain through the regime of mandate, mentions that the 'the mandatory powers will be responsible for peace, good order and good administration of the territory', Section 3 provides for special powers to the benefit of France and Britain who could use indigenous troops to fight threats following events of war or defence of the territory. The idea of draconian measures also emerges in Section 7, which vested the mandatory powers with the right to 'take all necessary measures' for maintaining public order and a good administration.

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<sup>68</sup> The document is available at <http://djibouti.frontafrique.org/?toDo=docs&ID=260&posID=116> (accessed 5 November 2013).

<sup>69</sup> Journal officiel du Cameroun 1921 Archives Nationales Yaoundé 88.

When the Second World War broke out in 1939, it was an opportunity for French authorities to tightening security, increasing exceptional measures, and sending the indigenous population into the killing fields. Yet due to its special judicial status as provided for by the Treaty of Versailles, it was clearly prohibited for Britain and France to 'give military instruction to the indigenous population except in the case of policing or defense of territory.'<sup>70</sup> Therefore, sending native Cameroonians into a war taking place outside the borders of their country was an abuse of power. Under the pretext of '*effort de guerre*' the Gaullist administration ignored these provisions and instituted *l'engagement volontaire* [voluntary commitment], which compelled around ten thousand indigenous Cameroonians to join the battle fields. In reality nothing was voluntary, and there is a recorded case where a man amputated his own arm with a machete in order not to be enrolled by French administration.<sup>71</sup> Although the battle fields were far from Cameroun, the atmosphere in the country was not different to that of countries involved in war. It is reported that:

*De fait, l'administration française au Cameroun pendant la guerre n'y va pas de main morte avec les 'indigènes'. Pour dire les choses clairement, le système mis en place par la France libre au Cameroun a toutes les apparences d'une dictature militaire. A peine arrivé, Leclerc instaure l'état de siège sur tout le territoire et abolit presque toute liberté publique. Le system de restriction des libertés sera maintenu durant tout le conflit. L'objectif est d'étouffer dans l'œuf tout sentiment antifrçais qui pourrait émerger dans une population autochtone toujours suspecte de sympathie potentielle avec son ancien colonisateur allemand. Les indigènes 'germanophiles' les plus notoires sont sommairement jugés et fusillés en place publique.*<sup>72</sup>

In fact the French administration in Cameroun during the war was very harsh with the 'indigenous.' To say it frankly, the system set up by the free France in Cameroun is similar to that of a military dictatorship. As soon as he arrived, Leclerc imposes a state of siege on the entire territory and abolished almost all public freedoms. The system of freedoms' restriction will be maintained during

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<sup>70</sup> Deltombe & al. (note 60) 34-35.

<sup>71</sup> As above 35.

<sup>72</sup> As above 34.

the entire war. The purpose is to suppress any anti-French feeling that could emerge from an indigenous population constantly suspicious of a potential sympathy with its former German coloniser. The well-known indigenous 'germanophiles' are summarily tried and publicly gunned down.

Then, during the course of the Second World War, a state of siege (the foremost institution of emergency regimes in history) was enforced by the French administration in a country whose institutional framework had yet to be designed.

The Second World War had highlighted the weaknesses of the League of Nations, which eventually led to the creation of the United Nations Organisation (UN) in 1946. This resulted in the two mandated territories of Cameroon and Cameroun being converted into United Nations Trust territories.<sup>73</sup> Indeed on 13 December 1946, the General Assembly of the United Nations approved the trusteeship of France over Cameroun (and Togo) by forty-six votes in favour, six votes against, and five abstentions.<sup>74</sup> The trusteeship agreement contains a lengthy provision that could raise controversial interpretations. Section 4 clearly vested French and British authorities with extensive powers of legislation, administration, and jurisdiction of the trust territory. This section allows for the establishment of military, maritime, and air force headquarters, and entitled authorities to 'take all necessary measures for the organisation and own defense to ensure the participation of the territory to the maintenance of peace and international securities, respect of interior order and the defense of the territory.' The provision arouses the feeling that the trusteeship agreement was designed to be implemented in an atmosphere of turmoil. The special prerogatives enshrined in it surely explain its wide implementation by French authorities in Cameroun as I will soon describe. The novelty of the new status of the country was that whereas the old mandate of the League of Nations did not envisage the evolution of French Cameroun and British Cameroon toward independence, the trusteeship agreements provide for

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<sup>73</sup> The original document is available at <http://www.cinquantennaires-cameroun.org/en/cinquantenaire-cameroun.php> (accessed 21 September 2012).

<sup>74</sup> Deltombe & *al.* (note 60) 35.

political, economic, social, and educational promotion, and the advancement of the inhabitants of the territory toward self-government or independence.<sup>75</sup> Despite the obvious directive that compelled Britain and France to plan for future independence of the territory, in reality there was no difference since both countries maintained their colonial policies. Additionally, on 4 October 1946, the new French constitution establishing the Fourth Republic was published. Among the provisions of this supreme law, was the creation of the *Union Française* [French union]. It was an association through which the overseas French territories were legally incorporated into the French Republic. Section 60 of the new constitution reads:

*L'Union française est formée, d'une part, de la République Française qui comprend la France métropolitaine, les départements et territoires d'outre-mer, d'autre part, des territoires et Etats associés.*

The French Union is composed, on the one hand by the French Republic, which includes metropolitan France, the departments and overseas territories, on the other hand, territories and associated states.

From a legal and technical point of views, Cameroun (like Togo) has never been a French colony. Nevertheless, French authorities still wished to incorporate the country within the French Union. Their aim was to change the status of Cameroun from a UN trust territory to a French colony, like Congo-Brazzaville, Chad, Ivory Coast, or Senegal. In theory, the French eventually succeeded in administering Cameroun in a similar fashion to their colonies. Then 'eastern Cameroun is placed under the tutelage of overseas French ministry, instead of that of the ministry of foreign affairs.'<sup>76</sup> Concerning political integration, the gendarmerie of the county was incorporated into the *Afrique Equatorial Française*, (AEF) [French Equatorial Africa] on 23 August 1949.<sup>77</sup>

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<sup>75</sup> See Section 76(b) of the UN Charter.

<sup>76</sup> Deltombe & *al.* (note 60) 69.

<sup>77</sup> The AEF was an entity under the French influence gathering French colonies together in this part of Africa. As above 67.

The reality was that French practices in Cameroun were characterised by injustice, torture, and social exploitation. Since 1916, after their annexation of Cameroun, French authorities introduced the *code de l'indigénat*, legislation that allowed forced labour even though it was strictly forbidden by the League of Nations.<sup>78</sup> On injustices and racial discrimination, a statement by Luciardi, former French prosecutor in the city of Douala sets the scene on the scale of the social malaise:

*Tant que je serai là, un nègre n'aura pas raison, au tribunal, contre un Blanc.*<sup>79</sup>

As long as I am here, a nigger will not be right, in court against a white.

In such a context, through a little organisation set up in 1938 called *Jeunesse Camerounaise Française* (JEUCAFRA), many Cameroun natives expressed their discontent and requested freedom of speech, the abolition of forced labour and *indigénat*, representation in French parliament, and minimum wages.<sup>80</sup> These claims were later echoed at the Brazzaville conference held between 30 January and 8 February 1944 on General de Gaulle's initiative and presided by the Governor of Chad, Felix Eboué. The conference granted all the rights and freedoms claimed by native Africans, even though none of them was invited to attend the conference.<sup>81</sup> On 7 August 1944, the commissioner of colonies, René Pleven, issued a decree allowing the *sujets Français*, [French subjects] to unionise. As there was no real progress on the ground, it was inevitable that a resistance movement was born, as demonstrated by the massacre of Thiaroye in Dakar, Senegal on 1 December 1944. The indigenous population who fought for France during the War and had returned home had been demanding their unpaid salaries. Given no satisfactory answer by French authorities, the Senegalese mutinied and on the night of 30 November 1944 the indigenous infantry men abducted General Joseph Dagnan. On the following night, the intervention of French

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<sup>78</sup> As above 72-73.

<sup>79</sup> As above 36.

<sup>80</sup> As above 36-37.

<sup>81</sup> As above 37. See also Neville (note 56) 52. Further Delancey (Note 55) 36.

authorities resulted in the killing of several people, and thirty five indigenous people were disarmed and imprisoned.<sup>82</sup> Dakar's event was relevant because it registered the rejection against all colonial abuses spreading across French African colonies and then Cameroun. Indeed what happened in Dakar attracted the attention of indigenous infantry men in Cameroun, where nearly seven thousand of them internalised the idea that Cameroun was no longer the Cameroun of colonisers. The hatred against the European and the eviction of Europeans were shared and the sentiment proliferated.<sup>83</sup> On 21 December 1944, three weeks following the slaughter of Thiaroye in Dakar, Perthuis de Laillevault, the new commander and head of the battalion in Douala grew concerned:

*Les derniers événements qui viennent de se dérouler à Dakar, semblent prouver que nos militaires noirs ne sont pas des 'articles d'exportation.'*<sup>84</sup>

The latest events in Dakar seem to show that our Black soldiers are not 'exportation's items.'

On 18 December 1944, the first Cameroun trade union was born under the name *Union des Syndicats Confédérés du Cameroun*, (USCC). Its membership increased rapidly and on 8 May 1945, people were not surprised to realise that the union had organised a demonstration where 'Nazism and colonialism' were denounced.<sup>85</sup> Following the growing emancipation of native Camerounians, the French company owners set up *l'Association des colons du Cameroun* (ASCOCAM) [association of colonisers of Cameroun] in April 1945, for the sake of their business interests. They then organised a summit on French colonisation in between 2 and 8 September 1945 in Douala, that was attended by other colonisers from French sub-Saharan Africa. The summit strongly rejected the resolutions of the Brazzaville-Conference which they considered to be 'made of fascism and demagogy.'<sup>86</sup> Against this background, the tension increased dramatically across the country as inflation seriously

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<sup>82</sup> Deltombe & *al.* (note 60) 38.

<sup>83</sup> As above.

<sup>84</sup> As above 39.

<sup>85</sup> As above 41-42.

<sup>86</sup> As above 44-45.

affected the living conditions of the local population. It reached its peak on 20 September 1945 with railwaymen striking for a decent salary. Four days later on 24 September, thousands of people were involved and the strike degenerated into bloodshed. At that time the French governor, Henri Pierre Nicolas, who arrived in Cameroun in November 1944, armed European civilians with weapons and ordered the French air force to shoot if necessary. As a result, several people were shot and killed to such an extent that to date the number of deceased remains uncertain.<sup>87</sup> The events of September 1945 in Douala cannot be ascribed to an isolated crisis, instead, it was the result of fundamental contradictions of a predatory colonialism that benefited a few colonisers and ‘generous’ promises made to the Cameroun population who grew tired of not being heard.<sup>88</sup>

Despite some democratic improvements, the atmosphere in the country remained subject to growing draconian measures, and on 10 April 1948, a nationalist movement came into being. The *Union des Populations du Cameroun* (UPC), [union of the people of Cameroon] was led by Ruben Um Nyobè, and the main objective of this movement was to achieve the reunification and independence of Kamerun. The written form ‘Kamerun’ from the German spelling referred to the original territory that the Treaty of Versailles and the League of Nations had divided between France and Britain following Germany’s defeat at the end of the First World War in 1918.<sup>89</sup> The movement was to become the stronghold of independence’s struggle in Cameroun; a struggle that was to last for decades and turn the country into a pure space of exception where, as I will explain shortly, no law prevailed, except that of the strongest.

Following growing independence claims across Africa, on 23 June 1956 the *loi cadre* was enacted by the French Assembly. It was an enabling law providing certain blanket provisions applicable to all the overseas possessions, such as the introduction of universal

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<sup>87</sup> As above 42.

<sup>88</sup> As above 43.

<sup>89</sup> As above 78-79.

suffrage.<sup>90</sup> However, the hidden purpose of this law was first of all a mechanism aimed at setting up obedient African leaders in each territory who could become the agents and local defenders of French interests.<sup>91</sup> Approximately a year following the *loi cadre*, Cameroun's status was amended by two French decrees: the decree of 16 April 1957 focused on the internal autonomy of Cameroun and that of 30 December 1958 focused on the complete autonomy of the country. As with previous laws, these documents contained some emergency provisions. Whereas Section 39 of the decree of 16 April 1957 entitled the High Commissioner 'in case of necessity' to move the headquarters of the High Commissioner by order, Section 41 of the same document stressed that the High Commissioner was in charge of public order and the security of persons and goods. He had at his disposal services of surety and the gendarmerie security was stationed in the territory and was allowed 'in case of urgency to take all necessary measure for the safeguard of order or its restoration.' Similarly, and following the provisions of Section 40, the High Commissioner ensured the command of the army, the navy and air force and forces in charge of securing the borders. He could not transfer his powers to the prime minister, the head of government in Cameroun. Similar aspects appear in Section 25 of the statute of 30 December 1958 on the complete autonomy of Cameroun, which provides that the High Commissioner of France in Cameroun and the prime minister may issue a joint order enforcing a state of exception in case of troubles during an armed attack, or serious presumption about such troubles or foreign war. Although the High Commissioner and the prime minister were both entitled to enforce a state of exception, the statute states that in case of disagreement, between the two, the decision of the French High Commissioner would prevail. The High Commissioner would, by virtue of order enforcing a state of exception, 'take necessary measures' to safeguard order and its restoration.

1 January 1960 in Cameroun marked the 'end' of colonialism. The state of Cameroun was born in a state of emergency and was soon going to experience the worst eras of its

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<sup>90</sup> As above 201. See also Neville (note 56) 54.

<sup>91</sup> Deltombe & *al.* (note 60) 203.



existence. The emergency regimes experienced in Cameroun were developed by the French during Algerian colonialism. These regimes remain the intersecting point between the history of Cameroun and that of Algeria. Therefore, a full understanding of the dynamic of emergency regimes within the context of Cameroun requires a review of the Algerian experience.

### 2.2.3 The Algerian experience and the genesis of emergency regimes

In the Algerian context, the phenomenon of emergency regimes was essentially implemented to suppress a nationalist tendency and struggles for independence led by a nationalist movement, the *Front de Libération Nationale* (FLN) [Front of National Liberation].

*J'ai souvent entendu en France des hommes que je respecte, mais que je n'approuve pas, trouver mauvais qu'on brûlât les moissons, qu'on vidât les silos et enfin qu'on s'emparât des hommes sans armes, des femmes et des enfants. Ce sont là, suivant moi, des nécessités fâcheuses, mais auxquelles tout peuple qui voudra faire la guerre aux Arabes sera obligé de se soumettre.*<sup>92</sup>

I often listened to some French men that I respect, but that I disagree with, say that it was immoral that harvests were burned, silos were emptied, and lastly that unarmed men, women, and children were arrested. These are, according to me, some unfortunate necessities, but with which any people who would like to wage war against Arabs will be forced to comply with.

These words were written in 1841 by Alexis de Tocqueville, an 'eminent' representative of the doctrine of liberalism. The author of *De la démocratie en Amérique*, [Democracy in America] praised the brutal methods used by General Lamoricière that characterised the bloody beginning of the French colonisation in Algeria.<sup>93</sup> On 5 July 1830 when the French took control of Alger, an agreement was signed between the local people and General Bourmont, which ensured that freedom of religion, trade, and property would know no

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<sup>92</sup> De Tocqueville A. *Travail sur l'Algérie* (1841) 15. Available at [http://classiques.uqac.ca/classiques/De\\_tocqueville\\_alexis/de\\_la\\_colonie\\_algerie/travail\\_sur\\_algerie/travail\\_sur\\_algerie.pdf](http://classiques.uqac.ca/classiques/De_tocqueville_alexis/de_la_colonie_algerie/travail_sur_algerie/travail_sur_algerie.pdf) (accessed 28 September 2012).

<sup>93</sup> Grandmaison O. 'D'Alexis de Tocqueville aux massacres d'Algériens en Octobre 1961' (2001). Available at <http://www.algeria-watch.org/farticle/1954-62/tocqueville1961.htm> (accessed 28 September 2012).

limit and women would be respected.<sup>94</sup> Two months later, the terms of the convention were ignored by General Clauzel who replaced General Bourmont. To destroy the power of the Algerian leader Abdel Kader and to consolidate French rule over the country, regular incidents of massacre, deportations, rape of women, and theft of harvests and cattle occurred.<sup>95</sup> Although there was no moral or legal justification for such behaviour, some political advisers actually encouraged it. De Tocqueville kept arguing that colonisation was an imperious necessity for France who had to restore its leading position among European countries following a period of international decline.<sup>96</sup> The author even went so far so as to recommend the prohibition of trade with Arabs and to engage in massive expropriation through exceptional measures to weaken them.<sup>97</sup>

After decades of French domination, Algeria became an overseas French territory (part of the French Republic) by virtue of Section 60 of the French Constitution of 4 October 1946 that instituted the French Union. As Algeria was technically subject to all types of abuses and fascist politics by the French, the rise of Algerian nationalism was inevitable and the struggle for independence began. In the previous sub-section, I have mentioned the demonstration that took place in Cameroun on 8 May 1945 (demonstration condemning Nazism and colonialism) following the massacre of Thiaroye in Dakar, Senegal on 1 December 1944. On that same day (8 May 1945), in Algeria there had been peaceful demonstrations of Algerian nationalists in the cities of Setif and Guelma. Under the pretext that an Algerian flag had been brandished, the demonstration turned into a bloody confrontation, resulting in the death of more than a hundred Europeans.<sup>98</sup> In response, General Raymond following the directive of General de Gaulle, president of the interim

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<sup>94</sup> *Conquête de l'Algérie: crimes de guerre et crimes contre l'humanité* (2003). Available at <http://www.ldh-toulon.net/spip.php?article182> (accessed 29 September 2012).

<sup>95</sup> De Tocqueville (note 92) 15.

<sup>96</sup> As above.

<sup>97</sup> As above.

<sup>98</sup> Deltombe & *al.* (note 60) 39.

government, deployed hundred thousand men to restore order.<sup>99</sup> For more than six weeks many villages were erased by the French and to date, the number of victims of the Setif and Guelma massacres still vary between six thousand and eight thousand and even thirty-five thousand deaths.<sup>100</sup> The events of Setif and Guelma appeared to be the prelude to independence struggles that were to shake Algerian society for decades. Following these events, many Algerians felt that freedom and independence would not to be obtained gently and peacefully. Resultantly, in November 1954, a nationalist movement was born under the name *Front de Libération National* (FLN). Its main objective was to achieve Algerian independence by any means, including a bloody guerilla war against the French colonisers. Conquered in 1830 and turned into a French department, Algeria was despite the events of Setif and Guelma, a relatively quiet country until 1 November 1954. On that day, nationalist fighters launched what was recorded as '*le massacre de la Toussaint sanglante*' [slaughter on All Saints' Day], which resulted in the killing of many French and Algerian Muslims supporting the colonial regime.<sup>101</sup> Following these events, the president of the council, Pierre Mendes France, and his interior minister, François Mitterrand, were shocked. The parliamentary session held in France on 12 November 1954 suggested a set of repressive measures aiming to prevent a repeat of such massacre and to retaliate against the FLN.<sup>102</sup> However, the subsequent failure of these repressive policies caused widespread discontent in France and led to the dismissal of the Mendes government on 5 February 1955.<sup>103</sup> In spite of this, the new president of the Council, Edgar Faure, decided to continue with the same repressive policies. On 3 April 1955 the French government finally

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<sup>99</sup> As above.

<sup>100</sup> As above.

<sup>101</sup> '*Guerre d'Algérie, de la colonisation à l'Indépendance.*' Available at <http://www.curiosphere.tv/guerre-algerie/>. See also Lebreton G. '*Les atteintes aux droits fondamentaux par l'état de siège et l'état d'urgence.*' Available at <http://www.unicaen.fr/puc/ecriture/revues/crdf/crdf6/crdf0607lebreton.pdf> (accessed 25 September 2012) 83.

<sup>102</sup> *Assemblée Nationale* 12 Novembre 1954. Available at [http://genepi.blog.lemonde.fr/files/2012/11/1.12\\_Algerie-discours-Mendes-France\\_nov.1954.pdf](http://genepi.blog.lemonde.fr/files/2012/11/1.12_Algerie-discours-Mendes-France_nov.1954.pdf) (accessed 25 September 2013).

<sup>103</sup> As above.

passed bill N° 55/385 regarding the declaration of a state of emergency. For the first time in history a law on a state of emergency was born, and it was soon enforced in Algeria. The main purpose of the new legislation aimed at increasing governmental prerogatives in suppressing violence and political contestation linked to independence struggles. It was essentially a weapon against nationalist tendency. Despite the enforcement of the new emergency law, the cycle of violence escalated a year later on 20 August 1955 with the killing of hundred and twenty-three Europeans and an official number of one thousand two hundreds and seventy-three dead among the rebels, twelve thousand dead according to the FLN.<sup>104</sup> What needs to be highlighted at this level of the study is that the law on the state of emergency was born not in an atmosphere of natural cataclysms, foreign invasion, or classic political turmoil, but in a context characterised by rising nationalism and the struggle for independence. The purpose of the emergency legislation was (and still is) to increase the police powers of civil and administrative authorities, to restrict freedom and liberty in order to restore order and peace. It is important to emphasise the genesis and purpose of the French law of 3 April 1955 regarding a state of emergency because similar legislation would soon be introduced in Cameroun by the French colonisers due to emerging nationalist tendencies in the country. Thomas Deltombe and others, show that the events in Algeria and Cameroun are strongly linked to the means and methods of French authorities:

*Face au 'désordre' upciste, la grille de lecture manichéenne des autorités françaises appliquée à la guerre d'Algérie est peu à peu importée et plaquée sur la situation Camerounaise par l'état-major militaire.*<sup>105</sup>

Facing the upcist 'disorder', the scale of Manichean interpretation French authorities implemented in Algerian war is gradually introduced and plastered on the Cameroun situation by the heads of army.

Upon the French military's return from Indochina where they were humiliated by Dien Bien Phu, the French administration decided to use all possible means to maintain what

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<sup>104</sup> 'Guerre d'Algérie' (note 101).

<sup>105</sup> Deltombe & al. (note 60) 186.

remained of the French empire.<sup>106</sup> Inspired by the old military colonial tradition and by advancement in European conflicts in the previous decades, and especially the methods used by the Viêt-minh to disorientate the French army, new methods were devised. These methods pertain to the ‘revolutionary war’, or ‘modern war’, [*guerre révolutionnaire ou guerre moderne*].<sup>107</sup> The revolutionary war revolves around the civil population which is placed at the heart of repression mechanisms. This method relies heavily on psychological weapon [*arme psychologique*], intelligence activities, and the systematic use of torture. These combined methods known as *l’école française de contre-insurrection*, [French school of counter insurgency] has been simultaneously used in Algeria and Cameroon.<sup>108</sup> As argued by Augusta Conchiglia:

*Humiliée en Indochine, l’armée française veut en découdre au Cameroun comme en Algérie. Dans les deux pays elle applique les nouvelles théories de ‘l’école française de contre-insurrection’: guerre psychologique contre les populations, tortures, villages brûlés [...]*<sup>109</sup>

Humiliated in Indochina, the French army wants to deal in Cameroun like they dealt with Algeria. In both countries they applied the new theories of ‘the French school of counter-insurgency’: psychological war against populations, tortures, burned villages [...]

With regard to the state of emergency law of 3 April 1955, it is relevant to mention that until its enactment by French Parliament, it had never existed before in France. Moreover, this law did not connect with the idea of independence’s struggle claimed by Algerian nationalists, but with the one of insurrection that Algeria, part of France, was subjected to. While it was the Algerian slaughter perpetrated by the FLN in 1954 that resulted in the new emergency law, other emergency regimes, such as a state of siege (repeatedly enforced during French revolution and the First World War), was already in force in France, but had not been enforced in Algeria. The difference is that a state of siege is

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<sup>106</sup> As above 12-13.

<sup>107</sup> As above 13.

<sup>108</sup> As above.

<sup>109</sup> Conchiglia A. *Le monde diplomatique ‘La Françafrique est née au Cameroun’*. Available at <http://www.monde-diplomatique.fr/2011/03/CONCHIGLIA/20211> (accessed 27 September 2012).

destined to end in war, whereas a state of emergency is limited to some trouble and internal disorder.

Algeria was among the first of the African countries to formally experience the traumas of a state of emergency, and in 1961 it also experienced another type of emergency regime, which was the very new state of exception, also to be introduced in Cameroun. Indeed, the general escalation of violence in Algeria resulted in the return of General de Gaulle as the French head of state who was then given full powers and allowed to revise the Constitution. This led to the collapse of the Fourth Republic and the birth of the Fifth. One of the greatest innovations of de Gaulle's new Constitution of 4 October 1958 was Section 16 concerning a state of exception. This section makes provision for a complete concentration of powers in the president when the state's safety, independence, international obligations, or institutions are threatened.<sup>110</sup> It was enforced in Algeria in April 1961 following the Putsch of Alger.<sup>111</sup> Emergency regimes had been enforced in Algeria especially to deal with the rise of nationalism, as was the case in Cameroun.

#### **2.2.4 The rise of nationalism and war for independence in Cameroun**

A recent publication based on various archives confirms that Cameroon remains the only sub-Saharan African country that experienced a liberation war during French

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<sup>110</sup> For more on this see, Agamben, state of exception (note 42 above), Michel Voisset, *l'article 16 de la Constitution du 4 Octobre 1958* (1969) Paris, Librairie Générale de Droit et de Jurisprudence. Further '*Guerre d'Algérie*' (note 101).

<sup>111</sup> Whereas de Gaulle acknowledged the demands of those seeking independence, many French settlers in Algeria opposed the struggle for independence, saw it as treason, and strongly disagreed with de Gaulle's politics. As a result, four French army generals organised a military putsch in Algiers on 21 April 1961 to prevent de Gaulle from relinquishing French sovereignty over French Algeria [*l'Algérie Française*]. Two days later, on 23 April, in retaliation, de Gaulle formally implemented Section 16 of the Constitution and declared a state of exception in Algeria, which lasted until 29 September 1961.

occupation.<sup>112</sup> The present sub-section of the study is crucial since it aims to set the scene for a generalised implementation of emergency regimes that characterise the current social and political atmosphere in the country. In Cameroun, the *Union des Populations du Cameroun* (UPC), the nationalist movement led by Ruben Um Nyobè, was at the heart of independence's struggles. The movement was established in April 1948 and demanded nothing less than the reunification of the British and French Cameroons followed by independence. To plead his case, Um Nyobè attended the UN sessions in New York three times between 1952 and 1955.<sup>113</sup> As a result, two UN resolutions in January 1952 and December 1953 required France's trusteeship in Cameroun to move toward autonomy or independence.<sup>114</sup> As the UPC kept pushing for the implementation of these resolutions and refused any compromise with the colonisers who strongly resisted any movement towards independence, hostilities inevitably broke out. The situation, escalated in 1954, a year which appears to be a turning point in French colonial history. Indeed in that same year, the French army was humiliated in Indochina after being defeated in a liberation war that lasted nine years and cost more than five hundred thousand lives. The Indochinese eventually succeeded in achieving their independence. It was also in 1954 that the Algerian *Front de Liberation Nationale* (FLN) launched 'the slaughter on all Saints day', which resulted in the killing of many French citizens and settlers who were considered Algerian collaborators. This resulted in the birth and enforcement of the law of 3 April 1955 on the state of emergency. Facing nationalist struggles in Cameroun led by Um Nyobè and his movement, the French were afraid of the repeat of similar situations in the country. More importantly, to concede independence at that moment would have set a precedent in the whole sub-Saharan African region where the issue of independence was not only limited to Cameroun. In any case the Indochina precedent and the French defeat in 1940 had not been gone unnoticed. Despite the enactment and enforcement of the law on the state of emergency in Algeria in 1955, in that same year Morocco and Tunisia also sought to obtain

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<sup>112</sup> Deltombe & *al.* (note 60).

<sup>113</sup> As above 127, 128 & 162.

<sup>114</sup> As above 128.

their independence from France through guerrilla warfare. As rightly observed by Deltombe and others:

*Déjà témoins de la défaite éclair de la France en 1940, [et de la défaite Française en Indochine] les nationalistes qui luttent pour l'émancipation de leur pays savent désormais qu'ils peuvent arracher l'indépendance par la violence et par les armes. Les algériens du FLN retiendront la leçon. Les camerounais de l'UPC aussi, dans d'autres circonstances.*<sup>115</sup>

Having witnessed the quick defeat of France in 1940 [and the French defeat in Indochina] nationalists who struggle for the emancipation of their country are now aware that they can gain independence through violence and weapons. Algerians of the FLN will remember the lesson. And so too will the UPC Cameroonians, in other circumstances.

Being embarrassed by incessant claims for independence in Cameroun, the French incited the UPC into violence by subjugating the party to social, political, and even religious harassment. For example, the French Catholic Church in Cameroun referred to the UPC movement as the 'organisation of Satan.'<sup>116</sup> As a result, militants of the movement were excommunicated and their children were denied the sacrament.<sup>117</sup> In April 1953, Um Nyobè was denied holy sacraments by Joseph Tjega, a Presbyterian pastor of the American Presbyterian mission in Douala, on the ground that 'faithfulness to communism' is incompatible 'with faithfulness to Jesus-Christ.'<sup>118</sup> As time went by the harassment's campaign against the movement was intensified. On 5 March 1955 when Um Nyobè returned from the ninth session of the UN he was summonsed by a judge.<sup>119</sup> Houses and headquarters of nationalist leaders and their supporters were systematically subjected to searches.<sup>120</sup> In a similar fashion, on 19 February 1955 the High Commissioner Roland Pré issued a decree entitling all employees of the administration to 'use force in order to

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<sup>115</sup> As above 151.

<sup>116</sup> As above 121.

<sup>117</sup> As above 122.

<sup>118</sup> As above 122-123.

<sup>119</sup> As above 162.

<sup>120</sup> As above 164.



prevent and disperse meetings that can foster public order. The police and the gendarmerie could therefore interrupt at will nationalist meetings and find pretexts for judicial actions.<sup>121</sup> The exceptional measure was then implemented not only by the police but by any civil servant. In other words, the status of administration's agent had implicitly shifted from being a mere citizen to becoming part of the security apparatus to the benefit of the colonial regime. Campaigns of arrest, intimidation, and discrimination were intensified against nationalist leaders, and in May 1955 led to a generalised atmosphere of violence across the country. On 15 May in the city of Mbanga, at the heart of the Mungo division, the police succeeded in dispersing an unauthorised meeting held by the UPC leaders. On the following day, another meeting was dispersed, and this was repeated on 22 May. But this time, nationalist leaders and the inhabitants of the area confronted the police. The situation degenerated into uncontrolled violence and an escalation of repression in the main areas of the country, such as Douala, Yaounde, Nkongsamba, Sanaga-Maritime division, and the western province.<sup>122</sup> Violence and repression lasted for several days until 29 May 1955. Nationalist leaders who had been hunted down, repressed, and dispersed quickly figured out that the 'events of May' were a premeditated offensive of colonialism aimed at removing their party from the Cameroun political scene.<sup>123</sup> Awesom Nicodemus observed that:

by victimising anti-French nationalists for insisting on obtaining independence and reunification, which the French were against, the French colonial administration pushed the *Union des Populations du Cameroun* (UPC) party into insurgency that resulted in uncontrolled and unnecessary violence and bloodshed in the territory. This situation, which was absent in France's colonies that bordered on Cameroon, was used as a pretext to ban the radical nationalists and impose a state of emergency.<sup>124</sup>

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<sup>121</sup> As above 163.

<sup>122</sup> As above 169-172.

<sup>123</sup> As above.

<sup>124</sup> Awasom N. 'Politics and Constitution-Making in Francophone Cameroon, 1959-1960' (2002) *Africa Today*, Vol. 49(4) 5.

This statement is relevant because Roland Pr e, the French High Commissioner in Cameroun, under the pretext of uprisings undertook to ban the UPC movement. On 30 May 1955, he addressed a telegram to the overseas French minister in this regard. On 13 July of the same year, a decree issued by the president of the Council, Edgar Faure, banned the UPC when the court in Yaounde pronounced the confiscation of its assets.<sup>125</sup> On the following day about eight hundred followers and militants were imprisoned.<sup>126</sup> The Cameroun nationalist leaders, with the support of their French lawyers, attempted for many months to obtain a cancellation of this decision through the Council of State and via complaints to the UN, but without success. As a result, part of the leadership of the movement which included its chairman, Roland Felix Moumi e, and his deputies, Abel Kingue and Ernest Ouandi e, went into exile after hiding in British Cameroon. Another section, led by its general secretary Ruben Um Nyob e, went underground. Subsequently, while Um Nyob e expected the movement to be rehabilitated by French administration, the two sections of the movement raised issues to know whether or not they had to turn the peaceful struggle for independence into an armed one. On the one hand, the section in exile advocated for a violent solution and on the other hand, the underground section led by Um Nyob e, completely opposed such idea, convinced that an agreement could be reached through democratic means. A few years earlier, in September 1952, during a congress of the party, Um Nyob e had clearly affirmed that armed struggle was outdated. According to him, violent means had been used once and for all by Cameroonians who had widely contributed to the defeat of German fascism, and independence and the freedom they were fighting for could not be achieved through an armed struggle.<sup>127</sup> However, as argued by Deltombe and others, with the new colonial context marked by the victory of the Vi t-minh in Indochina, the insurrection launched by the FLN in Algeria, and the new political

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<sup>125</sup> Deltombe & *al.* (note 60) 176.

<sup>126</sup> As above 177.

<sup>127</sup> As above 179.

situation in Cameroun, it is the legalism of the nationalist movement, especially the one of its general secretary Um Nyobè, which appeared to be outdated.<sup>128</sup>

Following the enactment of the *loi-cadre Defferre*<sup>129</sup> by French national assembly on 23 June 1956, on 2 August, the new High Commissioner of France in Cameroun, Pierre Messmer, dissolved the *Assemblée territoriale Camerounaise* (ATCAM), [Cameroonian Territorial Assembly]<sup>130</sup> and scheduled new elections in Cameroun for 23 December 1956.<sup>131</sup> In the meantime, still outlawed the UPC movement grew tired of waiting for an amnesty and decided to actively boycott the elections. During a ‘national meeting’ held in Makaï, in the Sanaga-Maritime division between 2 and 3 December 1956, a paramilitary structure, *le Comité national d’organisation* (CNO), [National Organisation Committee] was urgently set up. For the first time the UPC movement had converted one of its sections into an armed body and scheduled the first action for 18 December:<sup>132</sup> this military architecture was supposed to paralyse the electoral processes through the sabotage of communications, dissuaded people to go to vote through violence and the killing of notorious ‘lackeys’ who betrayed the national cause in collaborating with ‘colonialists.’<sup>133</sup> As a result, the elections were marred by explosions, fires, derailed trains, pain, and the death of some candidates including Charle Delangué, a chief medical doctor, and his co-candidate Samuel Pouma. Urged by Um Nyobè and the UPC, people disagreed with the *loi-cadre* and rejected any idea of local autonomy, and instead sought total and immediate independence. Through such acts of violence, the UPC movement had initiated an extended armed resistance movement,

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<sup>128</sup> As above 180.

<sup>129</sup> This legislation provide for self-government and local autonomy of the colonies under the tight control of France.

<sup>130</sup> The ATCAM was a group of people representing Cameroon at the French Parliament, even though no native Cameroonian was part of this assembly.

<sup>131</sup> Deltombe & *al.* (note 60) 207.

<sup>132</sup> As above 211.

<sup>133</sup> As above 212.

the *maquis*<sup>134</sup> against French occupation. The *maquis* spread around the country and became very active in the Sanaga-Maritime division (hometown of Um Nyobè), and in the Bamiléké division in the western region of the country. This was to turn the hostile social and political atmosphere of the country into a lawless space. In response, a campaign of terror led by French administration resulted in torture, killings, and deportations of ‘terrorists.’ On 21 December, Pierre Messmer issued ‘specials requisitions’ that allow security forces to open fire on saboteur caught ‘in flagrante delicto.’ A day later, a *Zone de maintien de l’ordre de la Sanaga-Maritime* (ZOE), [zone of law enforcement of Sanaga-Maritime] was setup for two months.<sup>135</sup> This resulted in police, gendarmerie, and Cameroon guards’ patrols and raids in Douala, Yaounde, Nkongsamba, Bafia, and elsewhere.<sup>136</sup> To deprive the *maquisards* of their popular local support, many villages were burnt. Hence the day of elections, fifty of the eighty seven polling stations remained closed and elections were cancelled in Eséka.<sup>137</sup> Nonetheless the elections went ahead and a political party led by Andre Marie Mbida, *le Bloc Démocratique Camerounais* (BDC), [Cameroon Democratic Bloc], won the election. On 12 May 1957 Mbida was appointed Prime Minister of Cameroun by the High Commissioner of France, the first Prime Minister in the history of the country. In the meantime, as the *maquis* experienced by Um Nyobè and the National Organisation Committee (CNO) was more focused in the Sanaga-Maritime division, on 10 October 1957, a similar organisation named *le Sinistre de la défense nationale du Kamerun* (SDNK) was born in Baham, in the Bamiléké division.<sup>138</sup> The political wing was led by Martin Singap whereas the military section was under command of Paul Simo, a member of the UPC movement since 1956.<sup>139</sup> The purpose of this organisation was

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<sup>134</sup> The word *maquis* refers to a non-conventional war or guerilla warfare through which nationalists being aware of their inferiority and weaknesses in front of a well-equipped French army, remained hidden into the forest and organised sporadic strikes in the cities.

<sup>135</sup> Deltombe & *al.* (note 60) 214.

<sup>136</sup> As above.

<sup>137</sup> As above.

<sup>138</sup> As above 227.

<sup>139</sup> As above.

similar to that of the UPC movement: independence and reunification of the two Cameroons through armed struggle. As was the case in the Sanaga-Maritime division, the sections of this guerrilla were disguised as soccer or volley-ball team members and the political training of the militants was carried out during matches or training sessions.<sup>140</sup>

On 16 February 1958, following French manoeuvre<sup>141</sup> that led to parliamentary defeat and a collective resignation of the ministers of another political party, *l'Union Camerounaise* (UC), [the Cameroon Union] led by the deputy prime minister Ahmadou Ahidjo, the Mbida's government collapsed. Broadly supported by the French administration, on 18 February 1958 Ahidjo became the new Prime Minister of Cameroun and sought to rule the country with an iron hand. Seven months later, a major event in Cameroun independence's struggle was recorded. On 13 September, the location of Um Nyobè's hideout was discovered by the French army that then shot and killed him.<sup>142</sup> On the same day, the French government in Paris issued Ordinance N° 58/1375 on the status of Cameroun, wherein the Camerounians' desire to acquire independence was 'taken into account'.<sup>143</sup>

What is evident at this level of the study is that the enforcement of draconian measures and the tightening of security in Cameroun were essentially motivated by the continued struggles for genuine independence and the reunification of the two Cameroons led by the *maquis* (guerrilla warfare). The French relied heavily on such measures not for the sake of the country, but for the perpetuation of a colonial administration, which, blindsided by violence and exploitative enterprises, could not afford a transparent democratic game, yet

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<sup>140</sup> As above.

<sup>141</sup> Mbida strongly disagreed with the new High Commissioner Jean Ramadier, who, in his strategy of control, decided to recognise 'independence and reunification of Cameroun' as had been claimed by the UPC movement. Mbida still preferred assimilation with the French empire. Therefore, Ramadier convinced Ahidjo and his ministers to withdraw from Mbida's government. This was done and Mbida had to resign. See Deltombe & *al.* (note 60) 306.

<sup>142</sup> Deltombe & *al.* (note 60) 301. See also Conchiglia A. (note 109).

<sup>143</sup> As above.

engraved in the French Revolution of 26 August 1789 and incessantly claimed by the majority of Cameroon people. The idea of emergency regimes in such context was not yet codified by Cameroun legislation that did not yet exist. In the current legal *vacuum*, the High Commissioner issued emergency decrees at will, for example, allowing civil servants to disperse UPC meetings or the army to open fire on civilians. It may be assumed that the legality of the High Commissioner's decrees were derived from the colonial legislation previously mentioned, such as Section 4 of the Trusteeship Agreement of 1946, the French Royal Ordinance of 17 November 1840 on the government of Senegal and its dependencies, and the decree of 9 November 1901 regarding relations between the governors and senior commanders of the troops. The most prominent characteristic of emergency regimes was (and still is) not to save the state from an alleged threat such as a natural cataclysm or a foreign invasion, but to protect the government of the time. On 30 December 1958, the ordinance on the status of Cameroun was published. Therefore, in the name of 'terrorism' and 'rebellion', emergency regimes in the country were to be formally codified and ceaselessly enforced to protect French interests guaranteed by the Ahidjo government. This essentially materialised during the move toward 'independence' and the formalisation of emergency regimes in Cameroun.

### **2.3 The move toward 'independence' and the formalisation of emergency regimes in Cameroun**

The assassination of Um Nyobè did not stop the violence and insecurity perpetrated by the *maquis* in the country. On 10 June 1959, Franco-Cameroun authorities discovered the existence of another organisation named *l'Armée de Libération Nationale du Kamerun* (ALNK).<sup>144</sup> The authorities eventually realised that whether they liked it or not, independence in Cameroun was only a matter of time. The French then planned to retain their influence in the new government of an 'independent' Cameroun. To this end, Prime Minister Ahidjo persuaded the Legislative Assembly to revise the country's laws to promote full internal self-government, and scheduled the date for independence on 1

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<sup>144</sup> As above 337.

January 1960.<sup>145</sup> France turned to the UN and requested its Fourth Committee to terminate its trusteeship in Cameroun concurrently with the granting of independence on 1 January 1960. The February-March 1959 session of the UN was specifically devoted to the French and British Cameroons. On 12 March 1959, the UN overwhelmingly voted for the termination of trusteeship on 1 January 1960 without holding any fresh elections in Cameroun, and without lifting the ban on the UPC. Frustrated by its defeat at the UN, the *maquis* kept perpetrating acts of violent resistance across the country. Faced with this situation, Ahidjo, in collaboration with the French High Commissioner decided to legally request formal emergency powers from parliament through the initiation of *l'état d'alerte* and *l'état de mise en garde*.

### **2.3.1 From *de facto* emergency to *de jure* emergency: *l'état d'alerte* and *l'état de mise en garde***

In order to address the issue of generalised violence rooted in the struggle of independence, the regime in Yaounde radicalised itself. In a speech on 6 May 1959 at the Cameroun Legislative Assembly (ALCAM), Ahidjo argued as follows:

*L'heure est venue de châtier sans pitié ceux qui s'obstinent à perpétrer des crimes contre leurs compatriotes et la Nation elle-même [...]*<sup>146</sup>

The time has come to chastise without mercy those who persist in perpetrating crimes against their fellow countrymen and the Nation itself [...]

This quotation echoes Awasom's view who believed that one of the main concerns of the parliamentary session of May 1959 in Cameroun was the need to retaliate with brutal reprisals against the armed UPC uprising.<sup>147</sup> Ahidjo and the French were well prepared as they had an exceptional military arsenal at their disposal, including 'five overseas

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<sup>145</sup> Awasom (note 124) 9.

<sup>146</sup> Deltombe & al. (note 60) 359.

<sup>147</sup> Awasom (note 124) 9.

battalions, T-26 fighter-bombers and tanks.’<sup>148</sup> Since the autonomy and self-government of the country were formally entrenched by Ordinance N° 58/1375 of 30 December 1958 and the *loi cadre* of 1956, Cameroun had to design its own institutional framework to address its internal affairs. This step was significant because until then the country had relied essentially on foreign rules designed for other French colonies. This also meant that the repressive campaign and deployment of draconian measures across the country had been carried out through emergency techniques that were inexistent in local institutions. This situation was to end in May 1959, when facing violence and insecurity issues perpetrated by nationalist fighters, Ahidjo formally requested the Legislative Assembly of Cameroun, (ALCAM), to provide the legal means to cope with the situation.<sup>149</sup> These legal means were contained in four executive bills that were then approved by thirty-four to fourteen votes on 22 and 27 May 1959 through law N° 59/33 of 27 May 1959 regarding the maintenance of public order.<sup>150</sup> For the first time, this legislation formally provided for two specific emergency institutions, including *l'état d'alerte* and *l'état de mise en garde*.<sup>151</sup> The English translation of these two institutions are still lacking in Cameroun. One of the reasons could be that they existed before the reunification of the two Cameroons as they were applicable only in the portion of the country subjected to French influence. Based on their nature, content, and legal regime, which will be analysed shortly, I have translated them from French into English as follows: *l'état d'alerte* means a state of alert, whereas *l'état de mise en garde* refers to a state of warning. Even though the text does not mention it, the substance of these regimes was strongly inspired by the repressive provisions of law N° 55/385 of 3 April 1955 on the state of emergency that had been applied in Algeria since

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<sup>148</sup> Fearon J. & Laitin D. 'Cameroon (CameroonRN1.5) Stanford University. Available at [https://docs.google.com/viewer?a=v&q=cache:WkI1rVUtFIwJ:www.stanford.edu/group/ethnic/Random%2520Narratives/CameroonRN1.5.pdf+Cameroon+%28CameroonRN1.5&hl=en&gl=za&pid=bl&srcid=ADGEEsj9fQ417ZWLCUZH1bTO7wBjvMoXFjTbKZ0icTODLuq0QZtO4YJExnVdSD8I31s\\_TFqAieYq5WiR9vx2YAyoooBd0wi6uIn\\_T0a41djl-aW0EVxTKuQIIPmMqibyBxQIPucDa3r4&sig=AHIEtbQpjriC1tAHnh9QrPjiUzhCPyXHA](https://docs.google.com/viewer?a=v&q=cache:WkI1rVUtFIwJ:www.stanford.edu/group/ethnic/Random%2520Narratives/CameroonRN1.5.pdf+Cameroon+%28CameroonRN1.5&hl=en&gl=za&pid=bl&srcid=ADGEEsj9fQ417ZWLCUZH1bTO7wBjvMoXFjTbKZ0icTODLuq0QZtO4YJExnVdSD8I31s_TFqAieYq5WiR9vx2YAyoooBd0wi6uIn_T0a41djl-aW0EVxTKuQIIPmMqibyBxQIPucDa3r4&sig=AHIEtbQpjriC1tAHnh9QrPjiUzhCPyXHA) (accessed 3 October 2012).

<sup>149</sup> Eyinga A. *Mandat d'arrêt pour cause d'élections : de La démocratie au Cameroun 1970-1978* (1978) Paris, L'harmattan 14.

<sup>150</sup> As above.

<sup>151</sup> Journal officiel du Cameroun 27 Mai 1959 Archives Nationales Yaoundé 637.



1955. This legislation was not directly enforced in Cameroun because the ordinance of 30 December 1958 on the status of Cameroun and the *loi cadre Deferre* of 1956 provided for local autonomy and self-government; in other words, a sort of political emancipation, which means that the new state had to be ruled based on local legislation and practices.

As emergency institutions, a state of alert and a state of warning could be declared by both the interior minister and the Prime Minister in case of 'serious presumption or event threatening public order.'<sup>152</sup> Whereas a state of warning could not last more than eight days, a state of alert could last for up to three months.<sup>153</sup> Both measures were renewable and had several purposes:

- keeping people threatening public security in custody;
- establishing a curfew;
- Requesting administrative authorisation for the use of car;
- ordering the surrender of arms, ammunitions, and transceivers, or authorise the seizure thereof, or carry out their search;
- prohibiting meetings and publications;
- removing known criminals and people who do not live permanently in areas subjected to a state of alert; and
- placing under restricted residence people who live permanently in areas subjected to a state of alert who threaten public security, or removing them and forcing them to live in a specified area.

People who did not comply with these provisions could be imprisoned for twelve months or could pay a fine of between two hundred thousand and five hundred thousand francs FCFA (around four hundred and nine hundred US dollars).<sup>154</sup> Therefore, a state of alert and a state of warning appear to be the foremost institutions of emergency regimes in Cameroun. Even though they had been adopted by the Legislative Assembly of the time, this entity had no role to play in it, whether at the level of declaration or implementation.

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<sup>152</sup> As above.

<sup>153</sup> Eyinga (note 149) 14.

<sup>154</sup> Journal officiel du Cameroun 27 Mai 1959 Archives Nationales Yaoundé 637.

Only the executive branch of government (minister of interior and prime minister) was involved in the declaration and implementation of a state of alert and a state of warning. Abel Eyinga considers these measures to be administrative measures at the disposal of the interior minister and prime minister.<sup>155</sup>

Through a state of warning and a state of alert, the abuse of power that had previously been carried out in secret by Ahidjo's government and the French was now openly justified with the rule of law and human rights as its principal victims. The new legislation allowed the government to detain suspects repeatedly and ban meetings and press publications. The areas where nationalist fighters had settled were to experience extensive and repeated implementation of the new official draconian measures. The enforcement of these emergency regimes were not aimed at protecting the society per se, but at safeguarding Ahidjo's government and French interests in Cameroun. To this end, special criminal tribunals were set up in Bafia, Douala, Dschang, Nkongsamba, and Yaounde, and large numbers of suspects were arrested. Six opposition newspapers, including Bebey Eyidi's *L'opinion au Cameroun*, were suppressed.<sup>156</sup> Due to automatic extension by authorities, a state of warning and a state of alert in several parts of Cameroun finally lost their exceptional character as they had succeeded in entering the sphere of normality. In this study I do not intend to account for the scale of enforcement of a state of alert and a state of warning by scrutinising each one's different orders of declaration and their extensions throughout the country. Notwithstanding, by researching some archives, I have tried to group many of these orders in the following table to give an idea of the scale of their implementation.

## **DECLARATION AND EXTENSION OF A STATE OF ALERT AND A STATE OF WARNING IN CAMEROUN DURING 1959**

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<sup>155</sup> Eyinga (note 149) 14.

<sup>156</sup> Awasom (note 124) 9-10.

REFERENCE AND DATE	MOTIVATION AND LOCATION
Order N° 2086, 28 June 1959	Declaring a state of alert in the Bamiléké region. <sup>157</sup>
Order N° 2087, 28 June 1959	Declaring a state of alert in the Wouri region. <sup>158</sup>
Order N° 2088, 28 June 1959	Declaring a state of warning in the Nyong and Sanaga region. <sup>159</sup>
Order N° 2089, 28 June 1959	Declaring a state of alert in the Sanaga-Maritime region. <sup>160</sup>
Order N° 21/43, 4 July 1959	Declaring a state of alert in the Mungo region for three months. <sup>161</sup>
Order N° 21/48, 7 July 1959	Declaring a state of alert in the Nkam, Mbam Sanaga-Maritime, Nyong et Kelle, Ntem and Dja-et-Lobo regions for three months. <sup>162</sup>
Order N° 2041, 7 July 1959	Declaring a state of warning within the Kribi division. <sup>163</sup>
Order N° 2241, 15 July 1959	Declaring a state of alert within the Kribi division. <sup>164</sup>
Order N° 3270, 29 September 1959	Extending a state of alert within the Wouri division. <sup>165</sup>
Order N° 3272, 29 September 1959	Extending a state of alert in the Bamiléké region. <sup>166</sup>
Order N° 3272, 30 September 1959	Extending a state of alert within the Nyong and Sanaga for a new period of three months. <sup>167</sup>

<sup>157</sup> Journal officiel du Cameroun *1 Juillet 1959* Archives Nationales Yaoundé 839.

<sup>158</sup> As above 840.

<sup>159</sup> As above.

<sup>160</sup> As above.

<sup>161</sup> As above *15 Juillet 1959*, 918.

<sup>162</sup> As above *1 Juillet 1959*, 918.

<sup>163</sup> As above 840 & *5 Août 1959*, 1040.

<sup>164</sup> Eyinga (note 149) 151.

<sup>165</sup> Journal officiel du Cameroun *14 Octobre 1959* Archives Nationales Yaoundé 1391.

<sup>166</sup> As above.

Order N° 3414, 8 October 1959	Extending a state of alert for a new period of three months in the Nkam, Mbam Sanaga-Maritime, Nyong et Kelle, Ntem and Dja-et-Lobo divisions. <sup>168</sup>
Order N° 3520, 16 October 1959	Extending a state of alert within the Kribi division for three months. <sup>169</sup>

It is evident that Ahidjo's government was charmed by the new exceptional measures as they were to play a significant role in shaping the authoritarian character of institutions that still prevail today. As argued by Awasom, the May repressive laws were the genesis of the authoritarian and repressive machinery that Ahidjo created in Cameroun.<sup>170</sup> After the adoption (in May 1959) and heavy enforcement of these draconian laws, the predominant emergency aspect in building state's institutions in Cameroun materialised once again a few months later during the parliamentary session of October 1959 regarding the heated debate on *pleins pouvoirs*.

### **2.3.2 Emergency regimes, a keystone of constitution-making in Cameroun: the parliamentary session of October 1959, and the heated debate on *pleins pouvoirs***

To adequately understand this sub-section and the predominance of the emergency character in building Cameroun's state institutions, I have to firstly define the concept of *pleins pouvoirs*. It originated in France and means full powers. It is the major characteristic of a state of exception in comparison to other emergency regimes, such as a state of emergency and a state of siege. Herbert Tingsten observes that a state of exception embodies the concept of 'full powers', which is characterised by a concentration of powers in the executive hands and the provisional abolition of the distinction among legislative,

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<sup>167</sup> As above 14 Novembre 1959, 1391.

<sup>168</sup> As above 21 Octobre 1959, 1415.

<sup>169</sup> As above.

<sup>170</sup> Awasom (note 124) 10.

executive, and judicial powers.<sup>171</sup> During the parliamentary session on October 1959 in Cameroun, Prime Minister Ahidjo formally requested full powers from the deputies; in other words the enforcement of a state of exception even though until then this institution did not exist. Debate in parliament revolved around the two contending positions. Firstly there was the idea of a roundtable meeting suggested by the political classes to achieve national reconciliation and elect a constituent assembly to draft a constitution.<sup>172</sup> The key idea behind such a proposal was that national unity and internal peace could be attained if all Cameroun political leaders agreed on a common national program.<sup>173</sup> Secondly, there was the granting of emergency powers to the prime minister to design a constitution. Prime Minister Ahidjo had another vision as he considered the idea of a roundtable discussion to be '*une assemblée de bavards*', literally meaning an 'assembly of the talkative'. Instead he requested that parliament invest him with *pleins pouvoirs* [full powers] and permission to rule the country by decree for six months. Ahidjo justified his demand by citing the prevailing economic, social, and political difficulties in the country. As he put it, 'we find ourselves in an exceptional situation which requires exceptional solutions.'<sup>174</sup> He argued that many important decisions that had to be taken before 1 January 1960 could not even be approached, and that 'only a government with complete responsibility, endowed with *pleins pouvoirs* [. . .] will be able to resolve the problem of the hour.'<sup>175</sup>

The idea of full powers was an imitation of the French practice, such as a state of emergency that had come before it. There was a parallel between what happened in Cameroun's parliamentary session on October 1959 and the events that took place in France the previous year. In fact by May 1958, on the verge of the Algerian war that led to the collapse of the Fourth French Republic, many Frenchmen, including the then president Rene Coty, called for '*le plus illustre des Français*', that is, for General de Gaulle to take over

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<sup>171</sup> Tingsten H. as quoted by Agamben (note 42) 7.

<sup>172</sup> Gaillard P. *Ahmadou Ahidjo, patriote et despote bâtisseur de l'Etat Camerounais* (1994) Paris, le jlivre 97.

<sup>173</sup> Awasom (note 124) 10.

<sup>174</sup> As quoted by Awasom (note 124) 11.

<sup>175</sup> As quoted by Awasom (note 124) 12.

power to restore peace in the country. On 1 June 1958 de Gaulle who had retired from political life accepted the proposition. However de Gaulle's return was stated to be conditioned upon the granting of *pleins pouvoirs* to him by parliament for six months in order to reinstate law and order in Algeria and then in France. A day later, he was then given full powers by the National Assembly, and on 3 June he was allowed to revise the Constitution.<sup>176</sup> Once vested with full powers, de Gaulle introduced some draconian measures and designed a new constitution in its entirety that marked the transition from the Fourth to the Fifth Republic.<sup>177</sup> One of the greatest innovations of de Gaulle's new Constitution of 4 October 1958 was Section 16 concerning a state of exception, which can be enforced when the state's safety, independence, international obligations or institutions are threatened. The situation in Cameroun was more or less similar to that of France as the country was experiencing political troubles, serious economic crisis, and armed insurrection of the *maquis*. Moreover, there was no constitution in existence that gave Ahidjo an opportunity to become the 'Camerounian de Gaulle', the savior of the nation, by acting in a similar fashion to his French master. He then attempted to link the situation in Algeria with that in Cameroun. Ahidjo assumed that as de Gaulle successfully requested for full powers and obtained them, it would make sense if he did the same in his country.

In the course of the parliamentary session on October 1959, the main opposition to full powers included the deputies of the west Cameroon, the deputies of PDC (*Parti Démocrate Camerounais*) and the elected members from the divisions of Sanaga-Maritime and Nyong et Kelle.<sup>178</sup> Tsalla Mekongo, one of the opposition speakers of the PDC party, led by former Prime Minister Andre Marie Mbida in exile, observed as follows:

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<sup>176</sup> 'Guerre d'Algérie' (note 101)

<sup>177</sup> As above.

<sup>178</sup> *Le vote des pleins pouvoirs à M. Amadou Ahidjo le 29 Octobre 1959*. Available at: [http://www.pdccpd.org/images/stories/publications/doc/archives/Le\\_vote\\_des\\_pleins\\_pouvoirs\\_a\\_Amado\\_AHIDJO\\_29\\_octobre\\_1959.pdf](http://www.pdccpd.org/images/stories/publications/doc/archives/Le_vote_des_pleins_pouvoirs_a_Amado_AHIDJO_29_octobre_1959.pdf) (accessed 3 October 2012).

*Dans le domaine politique, j'ai signalé déjà que les circonstances qui ont porté le général de Gaulle au pouvoir ne sont pas les mêmes que celles qui sont actuellement connues au Cameroun.*<sup>179</sup>

In political matters, I have already mentioned that the circumstances that brought General de Gaulle in power are not similar to those currently known in Cameroun.

Anticipating that Ahidjo would identify himself to de Gaulle, members of the opposition party strongly denounced the attitude of the Prime Minister whose behaviour was in fact a pure mimicry of de Gaulle's political style. As coined by Mekongo:

*M. Ahidjo, grand citoyen Camerounais, et puis... et puis? Mais, pas général. Je ne doute pas qu'un jour notre premier ministre porte les mêmes étoiles et accomplisse sinon les plus grands, du moins, les mêmes exploits, puisqu'il s'agit d'affaire de vocation. Pour le moment, je m'en tiens aux seules réalités de l'heure et conclus qu'il ne peut pas valoir de Gaulle sur ce plan personnel.*<sup>180</sup>

Mr. Ahidjo, great Cameroonian citizen, and then... and then? But, not General. I have no doubt that one day our Prime Minister will bear the same stars and accomplish if not the greatest, or at least, similar successes, as it is a matter of vocation. For now, I adhere to the only truths of the moment and conclude that he cannot be compared to de Gaulle on a personal level.

Unlike the situation in France where de Gaulle's return to power resulted from widespread support, Ahidjo's desire was to eliminate parliament from the process of decision-making and the drafting of the constitution. Tsalla Mekongo contends that 'what is senseless is that in the precise moment where Cameroun people did not want to hear any more about Ahidjo's government, it was in that precise moment that the latter requested full powers.<sup>181</sup> Ahidjo kept insisting on the granting of full powers by arguing that the deteriorating situation across the country required a pause in the 'democratisation' of Cameroun society as all resources had to be mobilised against 'terrorism and violence.'<sup>182</sup> Through this request, the Prime Minister called on the Legislative Assembly to relinquish its legislative powers in his favour and to go on vacation until such a time that a new elected Assembly

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<sup>179</sup> As above.

<sup>180</sup> As above.

<sup>181</sup> As above.

<sup>182</sup> Noubissie M. 'Le régime ahidjo, la naissance du régime ahidjo'. Available at [http://www.histoire-du-cameroun.com/?a\\_id=128](http://www.histoire-du-cameroun.com/?a_id=128) (accessed October 2011).

was convened. This brought Mr. Yakana Joseph, another opposition speaker, to reply that: 'the necessity of granting full powers is required neither by the events nor by the will of the people.'<sup>183</sup> The debate between Ahidjo's government and its opponents kept unfolding and each party clearly expressed and explained its concerns. For example, Daniel Kemajou an opposition speaker and former classmate of Ahidjo, sought to prevent the bill from being sent to the committee by explaining its implications to the deputies. He warned that granting emergency powers to the Prime Minister would mean the suppression of liberty and the establishment of a dictatorship. According to him, Ahidjo would be so powerful that he would be able to enact laws directed against his opponents, to redraw electoral districts as he saw fit, and suppress anything he wanted to by decree.<sup>184</sup> As recorded, the speech of Kemajou remains a brilliant testimony of the strain that prevailed in the benches:

*M. Ahidjo qui est essentiellement impopulaire, demande les pouvoirs spéciaux, uniquement pour faire la guerre à ses frères Camerounais et surtout compromettre à jamais l'avenir de tout un peuple [...] Une fois que M. Ahidjo sera proclamé tout puissant, rien ne pourra plus l'arrêter sur le chemin du despotisme. Il fera la pluie et le beau temps. Vous savez que lorsque les médiocres sont au pouvoir, ils sont toujours tentés d'en abuser.*<sup>185</sup>

Mr. Ahidjo who is essentially unpopular, is requesting special powers, only to wage war against his Cameroonian brothers and especially to jeopardise forever the future of a whole people [...] Once Mr. Ahidjo is proclaimed almighty, nothing will be able to stop him on the path to despotism. He will make the sun shine or make it rain. You know when the mediocre are in power, they are always tempted to abuse it.

Notwithstanding these severe criticisms, Prime Minister Ahidjo relied on two trump cards to reject roundtable discussion and reconciliation demanded by the opposition that were the majority in the Legislative Assembly, and his protectors in the French administrators and military.<sup>186</sup> Ahidjo's emergency powers bill was formally proposed three days after his inaugural speech, and it provoked the fiercest parliamentary debate since the inception of

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<sup>183</sup> *Le vote des pleins pouvoirs* (note 178).

<sup>184</sup> As above.

<sup>185</sup> As above.

<sup>186</sup> Awasom (note 124) 10.



the assembly.<sup>187</sup> Victor Levine points out that the debate was ‘marked by a scene in which the opposition shouted, stamped on the floor, pounded the tables, and hurled insults at Assembly President Mabaya who, at one point, was forced to suspend the sitting for five minutes because no one could be heard above the tumult.’<sup>188</sup> As Ahidjo’s government held a significant parliamentary majority, it was a true challenge for the opposition parties to prevent passage of the new emergency powers bill. Daniel Kemajou continued to oppose the proposed legislation reinforcing the dangers of granting full powers to the Prime Minister:

*Les pleins pouvoirs permettraient [...] d’instaurer une dictature, le pouvoir personnel ou, en d’autres termes, le règne du bon plaisir, de l’omnipotence policière, des camps de concentration, des déportations, des arrestations et emprisonnements arbitraires, des exécutions sommaires, des pendaisons, des licenciements arbitraires et abusifs des fonctionnaires, des persécutions des étudiants dans les lycées et collèges, du chômage, de la misère noire, des injustices sur injustices etc.*<sup>189</sup>

Full powers would [...] allow a dictatorship, personal power or, in other words the reign of personal desire, police state, concentration camps, deportations, arbitrary arrests and imprisonments, summary executions, hangings, arbitrary and unfair dismissal of civil servants, persecution of students in high schools and colleges, unemployment, utter destitution, injustices following upon injustices, etc.

The opposition and other groups kept insisting on political reconciliation and compromise through the originally proposed roundtable discussion. Ahidjo’s Vice-Premier, Michel Njiné who was sympathetic to this claim was forced to resign from the government. As Ahidjo was not interested in a negotiated settlement, political leaders concluded that he was only interested in crushing the opposition using the most extreme measures.<sup>190</sup> As observed once again by Kemajou:

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<sup>187</sup> As above 12.

<sup>188</sup> Levine V. *The Cameroons from Mandate to independence* (1964) California, University of California Press 186.

<sup>189</sup> Deltombe & al. (note 60) 376.

<sup>190</sup> Awasom (note 124) 12.

*Si les pleins pouvoirs étaient accordés à M. Ahidjo, une nouvelle catégorie de régime politique serait née au Cameroun, consacrant une façade démocratique officielle, derrière laquelle se dissimulerait une autocratie plus rigoureuse que la monarchie de Louis XIV ou l'empire de Pierre le Grand.*<sup>191</sup>

If full powers were granted to Mr. Ahidjo, a new category of political regime would be born in Cameroun, enshrining an official democratic façade, behind which will be concealed an autocracy more severe than the monarchy of Louis XIV or the empire of Peter the Great.

As there was no compromise, Tsalla Mekongo, another opposition speaker from the Democratic Party, warned that the draft bill would further aggravate the deteriorating political situation. The entire southern part of the country was already under exceptional measures and Ahidjo sought more powers. It is important to remember that under Ahidjo, Cameroun was ruled by an accumulation of simultaneous emergency regimes. It means that two or more emergency legislations were enforced at the time. I have previously described how a state of alert and a state of warning were in force in the country since May 1959 following a vote by the Legislative Assembly. When Ahidjo requested full powers during the parliamentary session of October 1959, the previous emergency institutions were still enforced in different areas. The opposition's emotional protests did not prevent Ahidjo's draft bill from going to the committee for examination. When it returned to parliament six days later for general debate and final vote, tempers flared again. This time, Soppo Priso started the attack by contending that the Legislative Assembly was not authorised to deliberate on the granting of emergency powers because this was beyond its scope. According to Priso, Cameroun could not afford to alter the Statute without prior consent of the French government, which had the sole judicial competence to modify its own enactments.<sup>192</sup> As a response to such observation, Ahidjo contended that even if the Statute was of French origin, nothing precluded Cameroun government from requesting a modification of its terms.<sup>193</sup> Soppo Priso was well aware of the fact that Ahidjo, as a *protégé* of the French, could not have proposed the new emergency bill without French

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<sup>191</sup> *Le vote des pleins pouvoirs* (note 178).

<sup>192</sup> Awasom (note 124) 13.

<sup>193</sup> As above.

counsel and consent.<sup>194</sup> Despite the contradictory arguments and opposition's reservations, the bill was finally passed by a vote of fifty to eleven and two abstentions.<sup>195</sup> Ahidjo was the victor, with the most extended powers possible. To give an idea regarding such powers and the exceptional character of the brand new legislation, the following is in its entirety the first section of the full powers granted to the Prime Minister:

The Cameroon government sworn in on 19 February 1958 is empowered to take as from 1 November 1959 by decrees called ordinances, all measures of legislative nature necessary for the smooth function of nation's affairs and this, until the setting up of the institutions established by virtue of the Cameroon constitution and for a period of six months as from the promulgation of the present law.

These shall not undermine the principles spelt out in the first two paragraphs of Section 1 of Organic Law N° 59/2 of 18 February 1958, neither on the exercise of public and trade union freedoms such as they are stipulated by the present legislation, the qualification of felonies and misdemeanours, the determining of penalties applicable to them and criminal procedure, nor the provision of fundamental safeguards granted to the citizens.

Besides, these decrees shall be enforced upon their publication in the official gazette of the state of Cameroon.

On expiry of the deadline stated in section 1, they shall all be tabled before the bureau of National Assembly for ratification.<sup>196</sup>

Ahidjo then assumed full executive and legislative powers in a state without institutions and could now freely dictate the design of new institutions. As argued by Awesom, 'constitution making, in essence, came to be monopolised at the conceptual level by a selected elite, who were pro-colonial establishment, in collaboration with the French, while the anti-colonialists and opposition politicians were excluded or marginalised.'<sup>197</sup> Under French administration *République du Cameroun* became an 'independent' state on 1 January 1960, a state in which emergency regimes was to become a major legal instrument of government.

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<sup>194</sup> As above.

<sup>195</sup> *Le vote des pleins pouvoirs* (note 178). See also Deltombe & al. (note 60) 376.

<sup>196</sup> Journal Officiel de l'Etat du Cameroun 4 Novembre 1959 Archives Nationales Yaoundé 1477.

<sup>197</sup> Awasom (note 124) 5.

## 2.4 Emergency regimes in Cameroun after ‘independence’: a major legal instrument of government

This section examines the emergency atmosphere that surrounded the drafting of the constitution and set up the legal architecture of emergency regimes in Cameroun.

### 2.4.1 The emergency mechanism surrounding the drafting of the constitution

In 1959, after he was vested with full powers that allowed him to design a constitution without the Assembly, Prime Minister Ahidjo set up a Constitutional Committee [*Comité Constitutionnel*]. As the Assembly went on recess, the Committee that was then formed out of parliament, had civil servants, political and religious leaders, and traditional kings as members.<sup>198</sup> In the meantime, protected by the French army and locked up in his palace, Ahidjo’s priority was to reinforce his personal powers.<sup>199</sup> The constitutional scenario was to instrumentalise members of the Constitutional Committee by appointing them to the current government, a practice that aimed at dissuading them from any contestation.<sup>200</sup> As this Committee had no real power, key opposition figures like Daniel Kemajou and Soppo Priso simply refused to be associated with it.<sup>201</sup> The Committee had no power because the real architects of the first Constitution of Cameroun were not part of this Committee.<sup>202</sup> In fact the constitution was drafted in a single night by two French advisers, Jacques Rousseau and Paul Audat.<sup>203</sup> It was later proofread by a French political science expert, Maurice Duverger, who agreed to be part of the legal mockery for a fee.<sup>204</sup> Since the initial provisions were too liberal, it is reported that Colonel Jacques Richard, the French Commander of the gendarmerie in Cameroun, persuaded Duverger to include certain

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<sup>198</sup> Deltombe & *al.* (note 60) 384.

<sup>199</sup> As above.

<sup>200</sup> As above.

<sup>201</sup> As above. See also Awasom (note 124) 15.

<sup>202</sup> Deltombe & *al.* (note 60) 384.

<sup>203</sup> As above 384-385.

<sup>204</sup> As above.

repressive sections (such as Section 20 on a state of emergency and a state of exception) in the constitutional draft to counter the ongoing rebellion.<sup>205</sup> Gaillard sarcastically commented that in the absence of a secretary, ‘an eminent professor fashioned the draft Constitution for Cameroun under the dictates of a policeman.’<sup>206</sup> The draft constitution was inspired by the Constitution of the Fifth French Republic (especially its controversial Section 16 on the state of exception), but was more focused on the executive, with the head of state holding the major powers.<sup>207</sup> In reality, with the exclusion of liberal and democratic principles and the increase of presidential powers contained in the draft, it was actually what is known today as a presidentialist regime, and its main characteristic is a president who, while holding all the powers, is paradoxically responsible for nothing.

The draft constitution was about to be submitted to a referendum and it was perceived as a ‘curious’ fact ‘in a country where press freedom did not exist at all.’<sup>208</sup> Meanwhile serious problems started arising from the unresolved and ever-present UPC insurrection and the sensational resignation of certain members of the Constitutional Committee.<sup>209</sup> Ahidjo decided to crush the UPC rebellion by launching drastic measures with French assistance. On 18 January 1960, he sent an urgent message to Paris for military reinforcements of about two full-strength battalions of French troops.<sup>210</sup> It was only with military backing that Ahidjo could be sure that the constitution-making machinery would continue to function. Reconciliation with the armed opposition was out of question as long as French military assistance to the government was guaranteed.<sup>211</sup> Dr. Felix Moumié’s external wing of the UPC, based in Guinea-Conakry, which had been sponsoring the insurrectionist movement in Cameroun against the Ahidjo government, called for a total boycott of the

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<sup>205</sup> As above. See also Awasom (note 124) 14.

<sup>206</sup> Deltombe & *al.* (note 60) 16.

<sup>207</sup> As above 385.

<sup>208</sup> As above.

<sup>209</sup> Awasom (note 124) 18.

<sup>210</sup> As above.

<sup>211</sup> As above.

referendum.<sup>212</sup> The UPC's leadership-in-exile asserted that a 'Yes' vote would mean surrendering Cameroun, with legs and hands tied together, to imperial France and the French Community.<sup>213</sup> On 21 February 1960, the referendum took place and officially, after massive frauds,<sup>214</sup> the constitution was finally adopted by approximately sixty per cent of voters. However, the test of popularity appeared to be a complete disavowal of the current government.<sup>215</sup> The constitution was published on 4 March 1960. Through similar techniques of massive electoral frauds, a new National Assembly dominated by Ahidjo's party, *Union Camerounaise* (UC), [Cameroun Union] was elected on 10 April 1960.<sup>216</sup> On 5 May of the same year, this assembly chose Ahidjo, who then became president of the republic; he was the only candidate.<sup>217</sup>

The link between the establishment of the constitution and emergency regimes needs to be emphasised. Indeed the procedure and mechanisms that surrounded the drafting of the supreme law were similar to those usually applied in emergency situations. After Prime Minister Ahidjo fought to be vested with full powers, a kind of a state of exception was enforced when the Legislative Assembly, the supreme lawmaker, was adjourned. Ahidjo and the French authorities who took over the parliamentary function organised the drafting of the supreme law of a new state by two foreign advisers, and later imposed it on the citizens by force and massive electoral frauds. Celerity, confusion of powers, executive dominium, and the absence of check and balances are the main attributes of emergency regimes. It is evident that all these attributes were at the heart of the drafting of the first Constitution of Cameroun.

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<sup>212</sup> As above 21.

<sup>213</sup> As above.

<sup>214</sup> Deltombe & *al.* (note 60) 387.

<sup>215</sup> As above.

<sup>216</sup> As above. See also Pigeau F. *Au Cameroun de Paul Biya* (2011) Paris, éditions Karthala 18.

<sup>217</sup> Deltombe & *al.* (note 60) 387.

## 2.4.2 Emergency regimes within the legal architecture of Cameroun

After the independence of Cameroun (under French administration) on 1 January 1960, the exceptional powers vested in Ahidjo were incorporated into the new Constitution of 4 March 1960. The provisions on emergency regimes in Section 20 are directly inspired by those of Section 16 of the French Constitution of 4 October 1958. The following are the provisions of Section 20:

*Le Président de la République peut, lorsque les circonstances l'exigent, proclamer par décret présidentiel pris en Conseil des ministres, l'état d'urgence qui confère au gouvernement des pouvoirs spéciaux dans les conditions fixées par la loi organique qui règlera la matière.*

*Dans le cas de circonstances exceptionnelles pouvant porter atteinte à l'intégrité de la Nation, le Président de la République peut, par décret présidentiel pris en Conseil des ministres, après consultation du président de l'Assemblée Nationale, proclamer l'état d'exception, qui lui confère la responsabilité du gouvernement.*

*Une loi organique fixe les modalités de la proclamation de l'état d'exception et détermine les pouvoirs qui sont alors conférés au Président de la République.*

The president of the republic may, where circumstances so warrant, declare by presidential decree issued in the council of ministers, a state of emergency which confers upon the government special powers as may be provided for by the organic law on the issue.

In case of exceptional circumstances threatening the nation's integrity, the president of the republic may, by presidential decree issued in the council of ministers, after consulting the president of the National Assembly, declare a state of exception which confer upon him the responsibility of the government.

An organic law provides for the modalities of the declaration of a state of exception and determines the powers that are then conferred on the President of the Republic.<sup>218</sup>

It is apparent that Section 20 of the first Constitution of Cameroun provides for two brand new emergency institutions, which include a state of exception and a state of emergency. I have to emphasise that following the wording of these provisions, emergency regimes in Cameroun achieved a new dimension. Indeed, until then emergency institutions referred to *l'état d'alerte* [a state of alert] and *l'état de mise en garde* [a state of warning], both of which

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<sup>218</sup> Own translation.

have been previously analysed. The first paragraph of Section 20 provides for a state of emergency that may be declared by presidential decree 'where circumstances so warrant' and confer upon the government 'special powers' as may be provided for by an organic law on the issue. The second paragraph of Section 20 of the constitution provides for a state of exception that may be declared 'in the events of a serious threat to the nation's integrity' whereas the third paragraph refers to an organic law that will determine the powers conferred to the president, and the modalities of the declaration of a state of exception. On 7 May 1960, two days after Ahidjo was chosen as the president of Cameroun, he issued Ordinance N° 60/52 of 7 May 1960 on the organic law on the state of emergency.<sup>219</sup> The following day, he proclaimed by decree a state of emergency in eleven divisions of the country that had been subject to disturbances, such state of emergency to be implement for four months and renewable indefinitely.<sup>220</sup> The provisions of the new ordinance appear to be a directory of draconian measures and human rights infringements, even though these rights did not properly exist. As provided for instance by Section 4 of this ordinance:

As soon as a state of emergency is proclaimed within one or several specified divisions and for its duration, the prefects in charge might by orders immediately enforceable of which they will be held accountable in the shortest possible time:

- subject the movement of persons and property to restriction and eventually to an administrative authorisation;
- order the surrender of arms, ammunitions and transceivers or have them collected or carry out their search;
- prohibit meetings and publications which foster disorder;
- move away ex-convict and people who do not have their usual residence within the areas subject to the state of emergency;
- setting up areas of protection or security within which the stay of people is subject to regulation;
- prohibit the stay in a part or entire part of the division to any person likely to hamper somehow the action of public powers;

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<sup>219</sup> Journal officiel de la République du Cameroun *12 Mai 1960* Archives Nationales Yaoundé 679-680.

<sup>220</sup> Deltombe & *al.* (note 60) 387.



- request for military authorities for standing assistance in the maintenance of public order;
- authorise searches day and night by any judicial, civilian or military police officer.<sup>221</sup>

However, if Section 4 enumerates the powers of prefects in charge of the areas subject to a state of emergency, it is worth mentioning the powers devolved to the ministry of interior as well to the ministers and secretaries of state. Following the provisions of Section 7 of the ordinance of 7 May 1960:

As soon as a state of emergency is proclaimed and for its duration the ministry of interior over the entire area subjected to a state of emergency, and the ministers or secretaries of state in charge within their district might by orders immediately enforceable:

- order the temporary closing of entertainment rooms, drinking establishments and meeting places of all nature;
- monitor press and publications of all nature, as well as radio broadcast, movies show and theatrical or artistic productions
- dissolve any association or a de facto group likely to provoke armed demonstrations or would appear by its form and military organisation as a group of fighters or private militia, or that the purpose would be to undermine the nation's territorial integrity, national unity or the republican form of the government;
- confine under house arrest in a district or specified locality of all people residing in the area subjected to a state of emergency who might threaten public security.
- authorise the requisition of people and goods. People subjected to house arrest must live in urban area or nearer.

Even though these measures already appeared as some sort of sanction against merely being alive, offenders were subject to more severe punishment. In this regard, Section 10 of the above ordinance provides for an imprisonment of two to five years and a fine of three hundred thousand to one million francs CFA (around five hundred US dollars to eighteen thousand US dollars) for anyone who failed to comply with the above measures. In addition, offenders were forbidden civil and family rights for a minimum of five years and a maximum of ten years from the day they served their sentence. Additionally, the

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<sup>221</sup> Journal Officiel de la République du Cameroun 12 Mai 1960 Archives Nationales Yaoundé 679.

prohibition of stay could be pronounced against them for the same duration.<sup>222</sup> The scale of enforcement of emergency regimes in Cameroun after ‘independence’ was more or less similar to the situation that prevailed before 1960 during the official colonial era. In order to account for such a situation, as in the above case of a state of alert and a state of warning, I have tabled emergency decrees issued from the year 1960 until the first half of the year 1961.

### **DECLARATION AND EXTENSION OF A STATE OF ALERT AND A STATE OF EMERGENCY IN CAMEROUN, FROM 1960-1961**

<b>REFERENCE AND DATE</b>	<b>MOTIVATION AND LOCATION</b>
Ordinance N° 62/2, 12 January 1960	Extending a state of alert in the Wouri, Bamiléké, Nyong et Kelle, Ntem, Dja-et-Lobo, Kribi, and Mungo divisions until further notice. <sup>223</sup>
Decree N° 60/124, 8 May 1960	Declaring a state of emergency. <sup>224</sup>
Decree N° 60/102, 9 November 1960	Extending a state of emergency in the usual ten departments. <sup>225</sup>
Law N° 61/5, 4 April 1961	Declaring a state of emergency throughout the national territory of the Republic of Cameroun. <sup>226</sup>
Decree N° 61/52, 24 April 1961	Extending a state of emergency in the usual ten departments for a new period of four months. <sup>227</sup>

<sup>222</sup> As above 679-680.

<sup>223</sup> As above *3 Février 1960*, 131.

<sup>224</sup> From 7 May 1960, the ordinance on the state of emergency was issued as provided for by section 20 of the constitution. From that moment the state of alert and the state of warning disappear from the legal architecture of the state. *Journal officiel de la République du Cameroun 12 Mai 1960 Archives Nationales Yaoundé 692.*

<sup>225</sup> As above *11 Novembre 1960*, 1429.

<sup>226</sup> As above *12 Mai 1961*, 446.

<sup>227</sup> As above *12 Mai 1961*, 577.

Decree N° 61/76a, 4 June 1961	Proceeding to the same extension. <sup>228</sup>
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Despite the release of a constitution, the declaration and extension of a state of emergency, and the enforcement of draconian measures across the country, the political climate in Cameroun remained hostile. The UPC continued its campaign for genuine independence through violence and different acts that challenged authority. Disabled, torn apart, disfigured, and beheaded – what Um Nyobè referred to as the ‘immortal soul’ of the Cameroon’s people resisted against all odds.<sup>229</sup>

In 1961, a year after ‘independence’ was offered to him, Ahidjo suddenly claimed the slogan of ‘unity’ that was one of the main concerns of the UPC that has been fighting for independence and reunification of Kamerun for years.<sup>230</sup> Therefore, the issue of reunification of this portion of the country with Cameroon, the other area of the country under British administration, emerged. On 11 and 12 February 1961, Britain presented the choice during a referendum whereby the inhabitants of Cameroon could decide on whether to become independent within the Nigerian federation or unite with the *République du Cameroun*.<sup>231</sup> The result of the plebiscite divided British Cameroon into two parts: North British Cameroon became part of Nigeria on 12 February 1961, while South British Cameroon became independent and by 1 October 1961 had officially attached itself to the *République du Cameroun*.<sup>232</sup> Ahidjo, who until then had never campaigned for the reunification of the two Cameroons, blamed electoral fraud in the North British Cameroon that led to its attachment to Nigeria.<sup>233</sup> He then left the matter in the hands of the

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<sup>228</sup> As above, 19 Août 1961, 936.

<sup>229</sup> Deltombe & al. (note 60) 482.

<sup>230</sup> As above.

<sup>231</sup> Fiftieth anniversary, Independence and reunification. Available at <http://www.cinquantenaire-cameroun.org/en/history.php> (accessed 12 October 2012).

<sup>232</sup> As above.

<sup>233</sup> Deltombe & al. (note 60) 483.

International Court of Justice and decreed a day of ‘national mourning.’<sup>234</sup> The reunification of the two Cameroons that the UPC has been seeking for years was to give birth to the Federal Republic of Cameroon. The drafting of the new constitution followed more or less the same process that guided the adoption of the previous constitution of 4 March 1960. The negotiations that took place out of parliament were between two people, namely Ahidjo’s adviser Jacque Rousseau for the Cameroun side, and a British attorney for the Cameroon side.<sup>235</sup> Instead of an equal federation, Ahidjo and the French had meticulously planned an annexation of the English portion to the centralised and authoritarian system in force in Yaounde since the previous year.<sup>236</sup> Rousseau observed that the disagreements among them were significant as ‘the attorney proposed a very complicated document where he cared too much about human rights like a British in sum. It was really ridiculous.’<sup>237</sup> Finally Rousseau emerged as the winner, and the constitutional reform, a mere adaptation of the previous constitution, was adopted on 14 August 1961 by the National Assembly.<sup>238</sup> The new constitution was then promulgated on 1 September, and entered into force on 1 October 1960, after neither referendum nor election.<sup>239</sup> I want to emphasise at this level the persistence of emergency practice since the new constitution vested president Ahidjo with full powers in the name of a ‘harmonious transition’ for a new period of six months during which he holds all the powers.<sup>240</sup> I have previously detailed the concept of full powers [*pleins pouvoirs*] and described it as the primary substance of a state of exception. In the new reunified Cameroon, nearly all the institutions remained in a state of suspension as president Ahidjo was endowed with all prerogatives, whether judicial, executive, or legislative. Indeed Section 50 of the new supreme law provides as follows:

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<sup>234</sup> As above.

<sup>235</sup> As above 484.

<sup>236</sup> As above.

<sup>237</sup> As above.

<sup>238</sup> As above.

<sup>239</sup> As above.

<sup>240</sup> As above.

*A titre exceptionnel, pendant une durée de six mois à compter du 1<sup>er</sup> Octobre 1961, les textes législatifs nécessaires à la mise en place des institutions et, jusqu'à cette mise en place, au fonctionnement des pouvoirs publics et à la vie de l'Etat Fédéral, seront pris par le président de la république fédérale sous forme d'ordonnances ayant force de loi.*

Exceptionally, during a period of six months from 1 October 1961, the laws necessary to the setting up of institutions and, until this setting up, to the functioning of public powers and the life of the federal state, will be issued by the President of the Federal Republic through ordinances having force of law.

While focusing on Section 50 of the constitution, it is tempting to believe that emergency regimes in the country relied on this section. In fact the same arsenal of repressive measures that prevailed in the previous constitution were merely reproduced in the new constitution but rather in Section 15. This section is sufficient proof that emergency regimes had become an indelible mark of colonial legacy and an essential link within the repressive arsenal of the legal architecture of the country. Section 15, which maintains a state of exception and a state of emergency, reads as follows:

*Le Président de la République peut, lorsque les circonstances l'exigent, proclamer par décret l'état d'urgence qui lui confère des pouvoirs spéciaux dans les conditions fixées par la loi fédérale.*

*En cas de péril grave menaçant l'intégrité du territoire, la vie, l'indépendance ou les institutions de la Nation le président de la république fédérale peut après consultation des premiers ministres des Etats fédérés proclamer, par décret, l'état d'exception et prendre toutes mesures qu'il juge nécessaire.*

*Il en informe la nation par voie de message.*

The president of the federal republic may where circumstances require proclaim by decree a state of emergency, which will confer upon him special powers as may be provided by the federal law.

In the event of grave peril threatening the nation's territorial integrity or its existence, independence or institutions, the president of the federal republic may after consultation with the prime ministers of the federated states proclaim by decree a state of siege.

He shall inform the nation by message of his decision.

The federal national assembly shall without more be in session throughout the state of siege.<sup>241</sup>

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<sup>241</sup> Despite some inconsistencies among them, both French and English versions as quoted are the original texts.

The section is a clear reproduction of Section 16 of the French constitution, except that constitutional restrictions were left out. Various inconsistencies between the English version and the French one need to be observed. The first paragraph of the French version on the declaration of a state of emergency provides that it can be declared by the 'President of the Republic' whereas the English version of the same paragraph mentions the 'President of the Federal Republic.' The second inconsistency is that the English version of Section 15 contains four paragraphs whereas the French one contains three paragraphs and misses a provision. The third inconsistency is the confusion between the institution of a state of siege provided for by the English version, and that of *l'état d'exception* [a state of exception] mentioned by the French version of the constitution.<sup>242</sup> This inconsistency is recurrent and has appeared in the country's successive constitutions.<sup>243</sup> The legal regime of these provisions on emergency regimes is almost the same as in the previous constitution, as previously analysed. It basically includes human rights restrictions, such as press and publications monitoring, day and night searches, and various requisitions. The difference was that the space and the duration of enforcement of a state of emergency and a state of exception had become broader than in the past. Indeed, before the reunification, such a provision had only been implemented in Cameroun, in other words in the portion of the country under French administration. The former British Cameroon would soon experience these draconian regimes, which had hitherto been unknown in that area. The state of emergency that was enforced and incessantly renewed in Cameroun since 8 May 1960 was renewed on 4 October 1960 in the new republic for six months.<sup>244</sup> After the reunification, President Ahidjo issued a new ordinance that was to frame a state of emergency within the new federal state. It was ordinance N° 61/OF/5 of 4 October 1961 on the state of

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<sup>242</sup> While a state of siege is characterised by the transfer of the control of the city from the administrative authorities to the army in a period of crisis, a state of exception entails a concentration of powers in executive hands and the provisional abolition of the distinction of legislative, executive and judicial powers.

<sup>243</sup> See both English and French version of section 11 of the constitution of 2 June 1972, section 9 of the constitution of 18 January 1996.

<sup>244</sup> As above 484.

emergency.<sup>245</sup> One month following the publication of this ordinance, decree N° 23 of 6 November 1961 extended a state of emergency, for the first time, to some portions of former British Cameroon. Even though President Ahidjo was vested with full powers, he still had the power to implement a state of emergency or a state of exception anywhere within the country. After all, he was not only the chief of the executive power, he was the executive power.<sup>246</sup> A few months later, the president crossed another important step by issuing another ordinance on a state of emergency. Indeed in 1962, Ordinance N° 62/OF/17 of 12 March 1962 was issued, extending to other parts of the federal territory certain provisions of ordinance N° 61/OF/5 of 4 October 1961 relating to a state of emergency.<sup>247</sup> The peculiarity of this ordinance is that when a state of emergency was declared within a portion of the federal state, its effects automatically spread across the entire country. Section 1 of this ordinance reads as follows:

*Lorsque l'état d'urgence aura été déclaré sur une partie du territoire, les dispositions énumérées ci-après de l'ordonnance N° 61/OF/5 du 4 Octobre 1961 relative à l'état d'urgence seront applicable de plein droit au reste du territoire fédéral [...]*<sup>248</sup>

When a state of emergency would have been declared in a part of the territory, the following provisions of Ordinance N° 61/OF/5 of 4 October 1961, concerning a state of emergency, will be enforceable as a right on the entire federal territory [...]

At this stage of the study, I have to pause to clarify new terminology. Since the country's status had changed to become a federal state following the reunification of the two Cameroons, its name had also shifted from République du Cameroun (Republic of Cameroon) to République Fédérale du Cameroun (Federal Republic of Cameroon). By now former French Cameroun was referred to as 'Eastern Cameroon', whereas former British

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<sup>245</sup> Journal officiel de la République Fédérale du Cameroun 1-6 Octobre 1961 Archives Nationales Yaoundé 8-10.

<sup>246</sup> Abes C. *Espace public et recompositions de la pratique politique au Cameroun*. Available at <http://www.polis.sciencespobordeaux.fr/vol13n1-2/arti3.html> (accessed 12 October 2012).

<sup>247</sup> Journal Officiel de la République Fédérale du Cameroun 1-6 Octobre 1961 Archives Nationales Yaoundé 232.

<sup>248</sup> As above 276.

Cameroon was known as ‘Southern Cameroons’ or ‘Western Cameroon.’ The provisions of Section 1 of the Federal Constitution of Cameroon stated:

With effect from the 1<sup>st</sup> October 1961, the Federal Republic of Cameroon shall be constituted from the territory of the Republic of Cameroon, hereafter to be styled East Cameroon, and the territory of the Southern Cameroons, formerly under British trusteeship, hereafter to be styled West Cameroon.

Whenever necessary, I might use these designations in the course of this study. The demarcation ‘Eastern Cameroon’ and ‘Western Cameroon’ was purely theoretical for the regime in Yaounde. In practice, the former British portion was subjected to a pure authoritarian policy that had not been the case in the past. The area was to be merely absorbed at an economic, social, cultural, and political level. On 1 September 1966, President Ahidjo setup a new political party, *Union National Camerounaise* (UNC), [Cameroon National Union] to replace the Cameroon Union (UC). The main purpose of the new party was to merge all the political parties of Eastern Cameroon and some of Western Cameroon in order to form a *grand parti unifié* [a great unified party].<sup>249</sup> The political system succeeded in shifting from a multiparty system to a single party system without a single amendment to the constitution. As time went by, the concentration of powers in the country kept growing to the extent that it became incompatible with the idea of federal entity. As a result, in May 1972, after Ahidjo had renewed his presidential mandate two years previously, he made the following announcement: ‘*mes chers compatriotes, j’ai décidé de mettre fin à la forme fédérale de l’Etat*’, [my dear countrymen, I have decided to end the federal form of the state]. To consolidate his powers, the president kept renewing and implementing a state of emergency, which intensified the repression locally and nationally. The scale of enforcement of a state of emergency in the federal state was by now similar to what had happened prior to 1960. To account for the severity of such exceptional

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<sup>249</sup> Even though it was clearly a system of single party, Ahidjo kept arguing that it was not the case. He tried to draw a difference between *parti unique* (single party) and *parti unifié* (unified party). See Fiftieth anniversary (note 231).



situations, I have tabled the different emergency legislation issued in eastern and western Cameroon after the reunification.

**EMERGENCY DECREES EXTENDING A STATE OF EMERGENCY FOR 6 MONTHS FROM THE YEAR 1961 IN EASTERN AND WESTERN CAMEROON.**

IN EASTERN CAMEROON	IN WESTERN CAMEROON
Decree N° 61/DF/31 a, 5 November 1961. <sup>250</sup>	Decree N° 23, 6 November 1961. <sup>251</sup>
Decree N° 62/FD/157a, 8 May 1962. <sup>252</sup>	Decree N° 62/FD/125, 7 April 1962. <sup>253</sup>
Decree N° 62/DF/382, 30 October 1962. <sup>254</sup>	Decree N° 62/FD/373, 8 October 1962. <sup>255</sup>
Decree N° 63/DF/130, 24 April 1963. <sup>256</sup>	Decree N° 63/FD/131, 24 April 1963. <sup>257</sup>
Decree N° 63/DF/398, 14 November 1963. <sup>258</sup>	Decree N° 63/FD/368, 11 October 1963. <sup>259</sup>
Decree N° 63/DF/156a, 10 May 1964. <sup>260</sup>	Decree N° 64/FD/134, 13 May 1964. <sup>261</sup>
Decree N° 64/DF/442, 9 November 1964. <sup>262</sup>	Decree N° 64/FD/418, 14 October 1964. <sup>263</sup>
Decree N° 65/DF/168a, 11 May 1965. <sup>264</sup>	Decree N° 65/FD/146, 17 May 1965. <sup>265</sup>

<sup>250</sup> Eyinga (note 149) 151.

<sup>251</sup> Deltombe & *al.* (note 60) 485.

<sup>252</sup> Journal officiel de la République Fédérale du Cameroun *1 Mai 1962* Archives Nationales Yaoundé 411.

<sup>253</sup> As above *15 Mai 1962*, 499.

<sup>254</sup> As above *1 Novembre 1962*, 1252.

<sup>255</sup> As above *15 Octobre 1962*, 1187.

<sup>256</sup> As above *15 Mai 1963*, 353.

<sup>257</sup> As above 354.

<sup>258</sup> As above *15 Novembre 1963*, 1164.

<sup>259</sup> As above 1096.

<sup>260</sup> Eyinga (note 149) 151.

<sup>261</sup> Journal officiel de la République Fédérale du Cameroun *15 Mai 1964* Archives Nationales Yaoundé 347.

<sup>262</sup> As above *15 Novembre 1964*, 1284.

<sup>263</sup> As above *15 Octobre 1964*, 1087.

<sup>264</sup> As above *15 Mai 1965*, 519.

<sup>265</sup> As above 436.

Decree N° 65/DF/500, 10 November 1965. <sup>266</sup>	Decree N° 65/FD/432, 12 October 1965. <sup>267</sup>
Decree N° 66/DF/221, 12 may 1966. <sup>268</sup>	Decree N° 66/FD/133, 17 march 1966. <sup>269</sup>
Decree N° 66/DF/545, 2 November 1966. <sup>270</sup>	Decree N° 66/FD/493, 8 October 1966. <sup>271</sup>
Decree N° 67/DF/179, 26 April 1967. <sup>272</sup>	Decree N° 67/FD/139, 6 April 1967. <sup>273</sup>
Decree N° 67/DF/469, 3 November 1967. <sup>274</sup>	Decree N° 67/FD/375, 28 August 1967. <sup>275</sup>
Decree N° 68/DF/122, 27 March 1968. <sup>276</sup>	Decree N° 68/FD/123, 29 March 1968. <sup>277</sup>
Decree N° 68/DF/389, 27 September 1968. <sup>278</sup>	Decree N° 68/FD/390, 27 September 1968. <sup>279</sup>
Decree N° 69/DF/102, 27 March 1969. <sup>280</sup>	Decree N° 69/FD/101, 27 March 1969. <sup>281</sup>
Decree N° 69/DF/413, 3 October 1969. <sup>282</sup>	Decree N° 69/FD/412, 3 October 1969. <sup>283</sup>
Decree N° 70/DF/140, 31 March 1970. <sup>284</sup>	Decree N° 70/FD/139, 31 March 1970. <sup>285</sup>

<sup>266</sup> As above *1 Décembre 1965*, 1329.

<sup>267</sup> As above *15 Octobre 1965*, 1137.

<sup>268</sup> As above *15 Mai 1966*, 734.

<sup>269</sup> As above *1 Avril 1966*, 357.

<sup>270</sup> As above *15 Novembre 1966*, 1765.

<sup>271</sup> As above *1 Novembre 1966*, 1489.

<sup>272</sup> As above *1 Mai 1967*, 695.

<sup>273</sup> As above *15 Avril 1967*, 561.

<sup>274</sup> As above *15 Novembre 1967*, 2261.

<sup>275</sup> As above *1 Septembre 1967*, 1905.

<sup>276</sup> As above *1 Avril 1968*, 703.

<sup>277</sup> As above *1 Mai 1968*, 1968.

<sup>278</sup> As above *1 Novembre 1968*, 1678.

<sup>279</sup> As above *1 Octobre 1968*, 1679.

<sup>280</sup> As above *1 Avril 1969*, 483.

<sup>281</sup> As above 482.

<sup>282</sup> As above *1 Octobre 1969*, 1936.

<sup>283</sup> As above *15 Octobre 1969*, 1935.

<sup>284</sup> As above *15 Juin 1970*, 371.

<sup>285</sup> As above *31 Mars 1970*, 371.

Decree N° 70/DF/494, 12 October 1970. <sup>286</sup>	Decree N° 70/FD/495, 12 October 1970. <sup>287</sup>
Decree N° 71/DF/123, 15 March 1971. <sup>288</sup>	Decree N° 71/FD/124, 15 March 1971. <sup>289</sup>
Decree N° 71/DF/498, 14 October 1971. <sup>290</sup>	Decree N° 71/FD/499, 14 October 1971. <sup>291</sup>
Decree N° 72/DF/151, 23 March 1972. <sup>292</sup>	Decree N° 72/FD/150, 23 March 1972. <sup>293</sup>

The table shows a consistent average of two decrees per year extending a state of emergency in each region for six months. Two decrees within a year normally resulted in the enforcement of a state of emergency throughout the entire year. This situation lasted for more than ten years in a row, and attests to a real crisis of normality in Cameroon.

On 20 May 1972 President Ahidjo called a referendum regarding the termination of the federal form of the state. The referendum was held in clear violation of the first paragraph of Section 47 of the Constitution of 1961 that prohibited ‘any proposal for amendment on the unity and the integrity of the federation.’ The said referendum was organised in such a way that there was no other solution other than the establishment of a new constitution. As reported by Enoch Meyomessse:

*Nous nous sommes ainsi retrouvés en train de subir le fameux référendum du 20 Mai 1972, pour lequel il n’y avait que des bulletins OUI et YES dans les bureaux de vote, et par voie de conséquence, une nouvelle constitution.*<sup>294</sup>

<sup>286</sup> As above *1 Mai 1971*, 632.

<sup>287</sup> As above.

<sup>288</sup> As above *15 Juin 1971*, 857.

<sup>289</sup> As above 858.

<sup>290</sup> As above *1 Décembre 1971*, 2633.

<sup>291</sup> As above 2634.

<sup>292</sup> As above *1 Avril 1972*, 585.

<sup>293</sup> As above.

<sup>294</sup> Meyomessse E. *Une nouvelle constitution pour le Cameroun et par les Camerounais eux-mêmes*. Available at <http://enoh-meyomessse.blogspot.com/2008/04/une-nouvelle-constitution-pour-le.html> (accessed 12 October 2012).

We end up ourselves being subjected to the famous referendum of 20 May 1972, for which there were only two types of ballots OUI [meaning 'Yes'] and YES in the polling stations, and consequently, a new constitution.

After the referendum, the federal form of the state was abolished and replaced by a unitary structure. By decree N° 72/270 of 2 June 1972 the Constitution of the United Republic of Cameroon was published, and like the previous ones, provisions on emergency regimes in Section 11 vested the president with exceptional powers. These provisions were slightly amended to suit the new form of the state. These provisions read:

The President of the Republic may where circumstances require proclaim by decree, a state of emergency, which will confer upon him such special powers as may be provided by law.

In the event of a grave peril threatening the nation's territorial integrity or its existence, independence or institutions, the president of the republic may proclaim by decree a state of siege and take all measures as he may deem necessary.

He shall inform the nation by message of his decision.

Emergency regimes in the third Constitution of Cameroon appear to be similar to those of the previous constitutions. With little variation the two main emergency institutions remain a state of emergency and the so-called state of siege (or *l'état d'exception*), both being the main repressive arsenal at the disposal of the president of the republic. These regimes remain also a legacy of French colonialism as they were copied from the French Constitution of October 1958 by Ahidjo's French advisers who were in charge of drafting the successive constitutions of the state. In 1972, President Ahidjo, who had acquired sufficient skills in ruling through draconian legislation, enacted a new ordinance on the state of emergency. It was ordinance N° 72/13 of 26 August 1972 which replaced the ordinance of 4 October 1961 relating to a state of emergency.<sup>295</sup> The provisions of this ordinance were more or less a repeat of the previous ones as previously explained: human rights infringements, administrative authorisation for the use of cars, handover of arms, ammunitions, and day and night searches. Section 7 of the 1972 ordinance also provides that when a state of emergency is proclaimed within a division of the country, the prefects

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<sup>295</sup> Journal officiel de la République Unie du Cameroun 1 Septembre 1972 Archives Nationales Yaoundé 81.

of the others divisions will automatically be endowed with prerogatives similar to those of the prefect in charge of the area subjected to a state of emergency. In other words, a state of emergency enforced at the local level for instance could expand its effects to a national level. As I have attempted to illustrate throughout this chapter, emergency regimes under Ahidjo had become the main tool of government. An important fact is that despite the scale of their enforcement and consequences for human rights and the rule of law, these regimes were never repealed. It is currently reported that emergency legislation was never repealed during Ahidjo's tenure of office, which ended in 1982; it was only repealed by President Biya in 1991.<sup>296</sup> The following table illustrates some of the emergency decrees made by president Ahidjo under the United Republic of Cameroon.

### EMERGENCY DECREES UNDER THE UNITARY STATE FROM 1972

Decree N° 72/550, 14 October 1972. <sup>297</sup>
Decree N° 73/174, 16 April 1973. <sup>298</sup>
Decree N° 73/634, 11 October 1973. <sup>299</sup>
Decree N° 74/248, 2 April 1974. <sup>300</sup>
Decree N° 74/832, 3 October 1974. <sup>301</sup>
Decree N° 75/266, 19 April 1975. <sup>302</sup>
Decree N° 75/720, 17 November 1975. <sup>303</sup>
Decree N° 76/199, 19 May 1976. <sup>304</sup>
Decree N° 76/553, 23 November 1976. <sup>305</sup>
Decree N° 77/128, 9 May 1977. <sup>306</sup>
Decree N° 77/532, 27 December 1977. <sup>307</sup>

<sup>296</sup> Awasom (Note 124) 10.

<sup>297</sup> Journal officiel de la République Unie du Cameroun *15 Octobre 1972* Archives Nationales Yaoundé 1291.

<sup>298</sup> As above *1 Mai 1973*, 1186.

<sup>299</sup> As above *15 Octobre 1973*, 3053.

<sup>300</sup> As above *15 Avril 1974*, 902.

<sup>301</sup> As above *15 Octobre 1974*, 1838.

<sup>302</sup> As above *1 Mai 1975*, 560.

<sup>303</sup> As above *12 Décembre 1975*, 1497.

<sup>304</sup> As above *1 Juin 1976*, 1542.

<sup>305</sup> As above *15 Décembre 1976*, 2928.

<sup>306</sup> As above *15 Mai 1977*, 1004.

<sup>307</sup> As above *1 Janvier 1978*, 39.

Decree N° 78/268, 5 July 1978. <sup>308</sup>
Decree N° 78/490, 15 November 1978. <sup>309</sup>
Decree N° 79/183, 16 May 1979. <sup>310</sup>
Decree N° 79/468, 13 November 1979. <sup>311</sup>
Decree N° 80/161, 1 June 1980. <sup>312</sup>
Decree N° 80/466, 18 November 1980. <sup>313</sup>
Decree N° 81/200, 15 May 1981. <sup>314</sup>
Decree N° 81/474, 27 November 1981. <sup>315</sup>
Decree N° 82/195, 2 June 1982. <sup>316</sup>

Since the country shifted its status from a federal state to a unitary one, it was still ruled via emergency decrees that were constantly issued over the years, as shown by the table. President Ahidjo was reelected in 1975 and 1980 as the President of the United Republic of Cameroon. However on the evening of 4 November 1982 he announced his resignation, live on Radio Cameroon. To date the reasons of his resignation remain unclear. In his resignation speech, Ahidjo transferred power to his constitutional heir, the then Prime Minister Paul Biya. The latter inherited a political system with more emphasis on emergency regimes and a poor agenda on human rights, democracy, and the rule of law. In 1984, a constitutional amendment once again modified the country's designation. According to law N° 84/001 of 4 February 1984, this designation shifted from 'United Republic of Cameroon' to that of 'Republic of Cameroon.' Through the same amendment, President Biya also removed the office of prime minister from the constitution. In so doing he removed the ladder through which he had succeeded to the presidential office. President's Biya power was shaken on the night of 6 April 1984 during an attempted coup d'état. As a result, a state of emergency was soon declared in the capital city Yaounde, with

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<sup>308</sup> As above *15 Juillet 1978*, 1365.

<sup>309</sup> As above *15 Novembre 1978*, 2263.

<sup>310</sup> As above *1 Juin 1979*, 661.

<sup>311</sup> As above *15 Novembre 1979*, 1651.

<sup>312</sup> As above *1 Juin 1980*, 886.

<sup>313</sup> As above *15 Décembre 1980*, 2352.

<sup>314</sup> As above *1 Juin 1981*, 1204.

<sup>315</sup> As above *1 Décembre 1981*, 2666.

<sup>316</sup> As above *15 Juin 1982*, 1261.

more than a thousand imprisonments and dozens of executions. I will provide detailed information on this event in the next chapter of the study. After the failed coup d'état of April 1984, the Biya regime was tested once again in the 1990s with the wind of democratisation blowing over Africa. In 1990, amidst general uprisings and growing democratic claims across the country, President Biya addressed the issue by following the path of his predecessor. A set of laws was then enacted including law N° 90/034 of 19 December 1990 regarding the maintenance of public order, and especially law N° 90/047 of 19 December 1990 regarding the state of emergency;<sup>317</sup> the latter repealing ordinance N° 72/13 of 26 August on the state of emergency. The provisions of this legislation are similar to those of ordinance of 26 August 1972 on the state of emergency, namely subjection of the movement of person and property to restriction or administrative permission (Section 5(1)), surrender of arms and transceivers (Section 5(2)), prohibition of meetings and publication (Section 5(3)), request for military assistance in the maintenance of law and order (Section 5(5)), authorising search at home day and night by any civilian, military, or judicial police officer (Section 5(6)), ordering the detention of people deemed dangerous to public security in any premises for a duration of 7 days by prefects, 15 days by the governors (Section 5(7)), and 2 months renewable once for the minister of territorial administration and decentralisation (Section 6(5)).

On 18 January 1996, law N° 96/06 to amend the constitution of 2 June 1972 was published by President Biya. The emergency institutions as provided for by this law remained a state of emergency and the so-called state of siege (or *l'état d'exception*) prescribed in Section 9:

The President of the Republic may, where circumstances so warrant, declare by decree a state of emergency which shall confer upon him such special powers as may be provided for by law.

In the event of a serious threat to the nation's territorial integrity or to its existence, its independence or institutions, the President of the Republic may declare a state of siege by decree and take any measures as he may deem necessary. He shall inform the Nation of his decision by message.

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<sup>317</sup> As above, 1 Janvier 1991, 8-10.

The section remains similar to that of the previous constitutions as it is strongly inspired by Section 16 of the French Constitution of 4 October 1958. The constitution was once again amended in 2008 allowing for the indefinite presidential mandate, and it is Section 9 that currently frames emergency regimes in the Cameroon context. The advent of a new president did not alter the situation much. On the contrary, a sort of stagnation was observed in the country, with a permanence of emergency decrees as typical governmental technique. The following table represents some of the emergency decrees issued after regime change in the country.

### EMERGENCY DECREES UNDER THE UNITARY STATE FOLLOWING REGIME CHANGE

Decree N° 83/8, 11 January 1983. <sup>318</sup>
Decree N° 83/257, 7 June 1983. <sup>319</sup>
Decree N° 83/616, 2 December 1983. <sup>320</sup>
Decree N° 84/159, 18 May 1984. <sup>321</sup>
Decree N° 84/619, 28 June 1984. <sup>322</sup>
Decree N° 85/110, 17 January 1985. <sup>323</sup>
Decree N° 85/847, 1 July 1985. <sup>324</sup>
Decree N° 85/1711, 9 December 1985. <sup>325</sup>
Decree N° 86/462, 10 May 1986. <sup>326</sup>

This table appears to be short compared to the previous ones but it does not imply that the enforcement of draconian measures in the country has since regressed. On the contrary, it has escalated to the extent that emergency regimes in Cameroon have lost their exceptional character and their enforcement no longer requires formal declaration as required by national and international instruments on the issue.

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<sup>318</sup> As above *1 Février 1983*, 163.

<sup>319</sup> As above *15 Juin 1983*, 1478.

<sup>320</sup> As above 3603.

<sup>321</sup> As above *1 Mai 1984*, 951.

<sup>322</sup> As above *15 Juillet 1984*, 1814.

<sup>323</sup> As above *1 Février 1985*, 364.

<sup>324</sup> As above *15 Juillet 1985*, 2390.

<sup>325</sup> As above *1 Janvier 1986*, 4349.

<sup>326</sup> As above *1 Juin 1986*, 1019.



## 2.5 Concluding remarks

The chapter has examined the Cameroon features of emergency regimes. The study showed that the country was born in a state of emergency after been subjected to harsh colonial domination and armed struggles for genuine independence. The major articulation portrays how the permanent recourse to emergency regimes within the colony was central to Europeans' tactics in their strategies of control and domination of colonised people. From German colonisation to the regime of mandate and trust territory under France and Britain, Cameroon has been subjected to the most draconian measures, such as a state of alert, a state of warning, a state of emergency, a state of exception, and a state of siege that still occupy a central place within the current legal architecture of the state. Under the presidency of Ahmadou Ahidjo, three republics evolved, all governed by severe emergency institutions characterised by state violence and bloody guerilla warfare. Emergency regimes in the country remain a legacy of French colonialism and the major instrument of governance aimed at protecting a political system deprived of any legitimacy. As a result, human rights agenda, democracy, and the rule of law appear to be alien to the mere idea of statehood in Cameroon. Yet the country, being an actor in the international arena, is subject to international commitment and should comply with the international standards on emergency regimes, which are the main concern of the following chapter.

## CHAPTER 3 EMERGENCY REGIMES IN CAMEROON AND INTERNATIONAL STANDARDS

### 3.1 Introduction

Derogation from rights recognised under international law in order to respond to a threat to the life of the nation is not exercised in a *legal vacuum*.<sup>327</sup>

In the previous chapter I have examined how Cameroon came into being as a political unit in the 1880s. After been colonised by Germany, France and Britain, and after its reunification, Cameroon was to become a modern state and therefore a fully-fledged protagonist in the international arena. As a result, the country is currently subject to international law and to its international commitments towards state and non-state participants. Among these international commitments, there are international legal standards on emergency regimes, a set of principles that states should comply with when confronted emergency situations. The UN Charter compels state parties to respect and protect human rights in all circumstances. With regard to a state of emergency especially, standards to be respected by state parties were established by the Economic and Social Council (ECOSOC), Commission on Human Rights, and Sub-commission on the Prevention of Discrimination and the Protection of Minorities. The Sub-commission expressed its deep concern in the manner in which certain countries applied the provisions relating to situations known as states of emergency.<sup>328</sup> It requested two of its members, Mrs. Questiaux and Mr. Perdomo, to undertake the preliminary preparation of the broad lines of

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<sup>327</sup> United Nations Economic and Social Council, Commission on Human Rights 41 Session E/CN.4/1985/4, 28 September 1984, Status of the international covenants on human rights, para 61 9.

<sup>328</sup> United Nations, Economic and social council, commission on human rights sub-commission on prevention of discrimination and protection of minorities 47 session item 10 (a) of the provisional agenda. Available at <http://www.unhcr.ch/Huridocda/Huridoca.nsf/0/9d7accdf228e4a3802566bf00556e7f?Opendocument> (accessed 16 October 2012).

such a study. A report was tabled in July 1982 and since January 1985 annual reports have been presented to the ECOSOC of the UN.<sup>329</sup>

From an international perspective the phenomenon of emergency is considered to be a mere derogation and an entire part of the legal order. Indeed the international legal standards on emergency laws provide that ‘in essence derogation clauses express the concept that states of emergency do not create a *legal vacuum*. The derogation regime aims at striking a balance between the protection of individual human rights and the protection of national needs in times of crisis by placing reasonable limits on emergency powers.’<sup>330</sup> Developed from a treaty-based system and characterised by their binding attributes, these standards are entrenched in certain international instruments, which include the UN Charter, the Geneva Convention, the International Covenant on Civil and Political Rights, the International Labour Organisation, and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. There are six principles guiding the management of emergency regimes, namely the principle of exceptional threat, notification and proclamation, good faith motivation, proportionality, non-discrimination, and the principle of non-derogable rights. From an international perspective they are the core elements and the criteria of the validity of genuine emergencies. Despite the relevance of these binding instruments, it is important to bear in mind that treaty texts are ‘imperfect documents’ and that the implementation has basically been weak.<sup>331</sup> This explains why despite the derogation clauses, the persistence of human rights violations and democratic

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<sup>329</sup> Wessels L Derogation of Human rights, International law standards-a comparative study, Part three state of emergency (2001) doctoral thesis, Rand Afrikaans University. Available at <https://ujdigispace.uj.ac.za/bitstream/handle/10210/1827/Partthree.pdf?sequence=3> (accessed 15 October 2012).

<sup>330</sup> Rule of law in armed conflict, Project Rulac ‘Derogations from human rights treaties in situations of emergency.’ Available at [http://www.adhgeneva.ch/RULAC/derogation from human rights treaties in situations of emergency.php](http://www.adhgeneva.ch/RULAC/derogation%20from%20human%20rights%20treaties%20in%20situations%20of%20emergency.php) (accessed 7 May 2012).

<sup>331</sup> Fitzpatrick J. *Human rights in crisis: the international system for protecting rights during states of emergency* (1994) Philadelphia, University of Pennsylvania Press 66.

principles during emergencies led to a continuing search for more effective standards with greater compliance. This resulted in the binding international standards on emergency regimes being completed by an important set of soft laws and recommendations from experts.<sup>332</sup> To what extent do the Cameroon emergency regimes comply with these requirements? This chapter will assess the scale of that compliance.

### **3.2 Assessing the international standards on emergency regimes through the lens of Cameroon experience**

Cameroon as a protagonist of international law should comply with its international commitment in general and in particular the international principles that guide emergency regimes. It is the meaning of the well-known Latin maxim *pacta sunt servanda* which is to say agreements and clauses between parties to a contract must be observed. The Constitution of Cameroon provides for the predominance of the provisions of international treaties over domestic legislation. Section 45 of the supreme law reads:

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

This section focuses on the scale of compliance of the Cameroon emergency system with the principles of exceptional threat, notification and proclamation, proportionality, good faith motivation, non-discrimination, and non-derogable rights.

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<sup>332</sup> This include among other the Martins Study (1966), the Resolution 1503 procedure (1970), the Questiaux Report (1982), the International Commission of Jurists (1983), the Siracusa Principles on Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (1984), the Paris Minimum Standards of Human Rights Norms in a State of Emergency (1985), Oslo Statement on Norms and Procedures in Times of Public Emergency or Internal Violence (1987), Gasser's Proposal for a Code of Conduct (1988), Turku/Abo Declaration of minimum humanitarian standards (1990) and Experts non-derogable Rights (1995).

### 3.2.1 Severity or exceptional threat

The idea of exceptional threat in emergency regimes is described in the first paragraph of Section 4 of the International Covenant on Civil and Political Rights (ICCPR). The section that is devoted to the exception clearly refers to the concept 'exceptional threat' as 'a public emergency which threatens the life of the nation and the existence of which is officially proclaimed.' The meaning of 'exceptional threat' may vary from one country to another. Sometimes called 'internal conflict' or 'war without international character', this concept denotes the seriousness and the level of gravity of a situation which may lead up to the declaration of a state of emergency or a state of exception. Accordingly, minor disturbances cannot justify the enforcement of emergency regimes and human rights restriction under the pretext of saving the state. In addition the concept of 'state' should be understood from a constitutional law perspective. According to this discipline, the state refers to a group of individuals living in a territory and subject to a government. Hence an exceptional threat to the life of the nation means that, some or all of the features that constitute statehood (territory, population and government) should be threatened. It is suggested that a threat to the life of the nation is one that on the one hand affects the whole of the population and either the whole or part of the territory of the state, and on the other hand, threatens the physical integrity of the population, the political independence or the territorial integrity of the state or the existence or basic functioning of institutions indispensable to ensure and protect the rights recognised in the Covenant.<sup>333</sup> It is currently observed that:

While 'the life of the nation' is clearly intended to have a restrictive meaning, its scope is not self-evident. An emergency that threatens the life of the nation must imperil some fundamental element of statehood or survival of the population.<sup>334</sup>

In Cameroon the concept of 'exceptional threat' remains vague. Indeed by virtue of the provisions of the first paragraph of Section 9 of the Constitution, a state of emergency may be declared by the president 'where circumstances so warrant.' The formula may result in

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<sup>333</sup> United Nations Economic and Social Council (note 327) para.39, 7.

<sup>334</sup> Fitzpatrick (note 331) 56.

diverse interpretations and in this case, anything can be qualified as an exceptional threat and lead to the enforcement of a state of emergency. Similar vagueness also appears in the second paragraph of Section 9 on the so-called state of siege. Following its wording, a state of siege may be proclaimed by the president in case of ‘serious threat to the nation’s territorial integrity or to its existence, its independence or institutions.’ In my view the expression ‘serious threat’ is deprived of any proper content and is open to all sorts of abuse. It is still unclear as to what a ‘threat’ really is, and how such a ‘threat’ can become ‘serious.’ The meaning of the adjective ‘serious’ is also subject to various appreciations in the sense that what can be deemed ‘serious’ by the president could appear as a mere urgency for civil societies. Another point to focus on is the first paragraph of Section 9 of the Constitution that provides for a state of emergency, whereas the second paragraph provides for ‘a state of siege.’ Indeed although a state of emergency is fundamentally different to a state of siege and even a state of exception,<sup>335</sup> there is not any specification of a substantial difference between these emergency institutions in the supreme law. Moreover when a legislation framing a state of emergency in Cameroon (law of 19 December 1990) is available, the so-called state of siege remains a presidential matter, as there is no law regulating it. This situation has given rise to a sort of hybrid regime in emergency matters. For instance, whereas the first paragraph of Section 9 of the Constitution provides for special powers conferred to the president by law upon the declaration of a state of emergency, the second paragraph of the same section allows the president to ‘take any measures as he may deem necessary’ in the case of a state of siege. Therefore, since there is no clear delineation between a state of emergency and a state of siege, it will be easy for the president not to embarrass himself with the first option where his powers are conferred by law.

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<sup>335</sup> If their common denominator is a crisis situation, the three institutions differ from each other in the following ways: a state of emergency entails an extension of the legal prerogatives of the authorities in charge of the executive branches of the state, whereas a state of exception calls into question the principle of the separation of powers of the executive, the legislature and the judiciary. The declaration of a state of siege transfers power from civil authorities to the army, which takes control over a city.

The concept of exceptional threat within the Cameroon context is unclear, not only in the constitution, but also in the law regulating a state of emergency. In 1990, following the struggle for liberalism and human rights, law N° 90/047 of 19 December 1990 on the state of emergency was published. Section 1 of this law reads:

A state of emergency may be declared on the part or entire part of the national territory either:

- in case of an occurrence which by its nature and gravity is deemed a national disaster;
- in case of a series of disturbances undermining public order or the security of the state; or
- in case of foreign aggression [foreign invasion].<sup>336</sup>

Looking closely at these provisions, the following should be highlighted: Firstly, the concept ‘national disaster’ has no clear meaning and no criteria at all. The jurisprudence has attempted to clarify this concept. Since the Rhodes case, it is assumed that the concept ‘national disaster’ refers to a natural cataclysm, such as a volcanic eruption.<sup>337</sup> In this case the judge admitted exceptional circumstances in a situation where in 1976 the *Préfet* (senior divisional officer) of Guadeloupe undertook drastic measures to prevent the eruption of a volcano called la Soufrière.

Secondly, the concept ‘disturbances undermining public order or state security or foreign invasion’ are also characterised by a lack of precision. Any fact or event even supported by legal attributes may in certain cases be considered as a threat to public order or state security. The reason is that the ‘expression “state security” is general and refers to both the internal and external security of the state as one can hardly be defined without the

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<sup>336</sup> The French version of the law of 19 December 1990 refers to ‘foreign aggression’ [*agression venant de l’extérieur*] whereas the English version mentions ‘foreign invasion.’

<sup>337</sup> Conseil d’Etat *18 Mai 1983* Rhodes. The jurisprudence of the French council of state is enforceable in Cameroon.

other.’<sup>338</sup> This was ruled in a case where the court acknowledged the exceptional circumstances following a strike by civil servants in November 1938.<sup>339</sup> The notion ‘state security’ is not part of public law lexicon, which rather refers to the concept ‘public safety.’<sup>340</sup> Indeed ‘state security’ belongs to the penal law vocabulary and is characterised by repressive measures, whereas public safety is characterised by preventive measures. For instance, in Cameroon the main legislation to deal with the concept of ‘state security’ is the Penal Code. The first chapter of the second book of Cameroon Penal Code deals specifically with the notion of state security without defining it.<sup>341</sup> Offences against state security encompass offences against the external security of the state on the one hand,<sup>342</sup> and offences against the internal security of the state on the other hand.<sup>343</sup> Whereas the former includes hostility against the fatherland and is sanctioned by capital punishment,<sup>344</sup> the latter refers to secession, civil war, spreading of false information, revolution, armed bands, and insurrection that are generally sanctioned by life imprisonment.<sup>345</sup>

Thirdly, another unclear notion within the emergency legislation in Cameroon is ‘foreign aggression’ or *agression venant de l’extérieur* as stated by the French version of the legislation. The English version of the text rather refers to ‘foreign invasion.’ English and French being the two official languages of Cameroon and having the same authoritative status,<sup>346</sup> it is not clear whether the law refers to foreign aggression or foreign invasion. For example, if it is assumed that the Cameroon law refers to ‘foreign invasion’, the concept will still lack precision, as it is subject to controversy. Under the statute of the International

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<sup>338</sup> As quoted by Nforbin ‘The Declaration of a state of emergency in Cameroon: Myth and reality’ *Annales de la Faculté des Sciences Juridiques et Politiques, Université de Dschang (Cameroun)* 1998 Tome 2, 68.

<sup>339</sup> Conseil d’Etat 18 Avril 1947 Jarrigon.

<sup>340</sup> As quoted by Nforbin (note 338) 68.

<sup>341</sup> Cameroon Penal Code, book 2, Chapter 1, ‘Felonies and misdemeanors against the state.’

<sup>342</sup> As above Section 1.

<sup>343</sup> As above Section 2.

<sup>344</sup> As above Section 102.

<sup>345</sup> As above Section 111, 112, 114, 115(1).

<sup>346</sup> Section 3 of the constitution.



Criminal Court, for example, the definition of ‘the crime of aggression’ is yet to come.<sup>347</sup> In return Section 1 of the UN definition of aggression provides that ‘aggression is the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state, or in any other manner inconsistent with the Charter of the United Nations, as set out in this definition.’<sup>348</sup> The problem of clarification of the concept of ‘exceptional threat’ remains unresolved within the Cameroon context. This lack of precision generally characterises authoritarian societies where all the powers are concentrated in the president’s hands. Accordingly, it favours the ever-present exceptional measures across the society. As contended by Franz Neumann:

Common to these institutions in most countries is the fact that the discretionary power of those who declare an emergency cannot be challenged. It is they who determine whether an emergency exists and what measures are deemed necessary to cope with it.<sup>349</sup>

Instead of assessing and identifying the conditions of the declaration of a state of emergency, the president in Cameroon is vested with ‘special powers as may be provided for by the law’, according to the law of 19 December 1990. Thus everyone has no other choice but to trust the presidential interpretation. Indeed as stated in Section 8(3) of the Constitution, the president ‘shall ensure the internal and external security of the republic.’ On this account Eric Nforbin argues as follows:

In Cameroon to know if an occurrence amounts to a national disaster or not is easy at constitutional level. If the president of the republic calls it a national disaster, then it is one.<sup>350</sup>

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<sup>347</sup> Under Section 5(1) (d) of the ICC Statute, the International Criminal Court is competent to deal with the crime of aggression. Notwithstanding, as mentioned by Section 5(2) of the International Criminal Court Statute, the Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with Sections 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime.

<sup>348</sup> Definition of Aggression, United Nations General Assembly Resolution 3314 (XXIX) 2319 plenary meeting, 14 December 1974.

<sup>349</sup> Neumann F. ‘The Concept of Political Freedom (1953) Columbia Law Review 917.

<sup>350</sup> Nforbin (note 338) 66.

This statement is in connection with the presidential declaration of a state of emergency in the capital city Yaounde following the failed coup d'état of 6 April 1984. As early as the evening of the 7 April, the president told the nation that loyal forces had obtained 'complete victory today', and in the later part of the following morning that 'calm now prevails all over the national territory.' On 10 April, President Biya reiterated that 'the situation [is] marked by calm all over the national territory and resumption of normal activities is normal again now that victory finally won is irreversible.' But on 18 April, a state of emergency was unexpectedly enforced by the president in the Mfoundi division. The declaration in this case cannot be based on 'a series of disturbances undermining public order or the security of the state.'<sup>351</sup> The view of the author is relevant because in the complete absence of exceptional threat, nothing justified the enforcement of a state of emergency twelve days following the attempted coup and in a context where the president himself acknowledged several times that calm prevailed over the entire territory. Moreover, this situation leads to the question to know whether an attempted coup d'état could be included within the nomenclature of events considered as 'exceptional threat to the life of the nation' or 'circumstances so warrant' to the nation's territorial integrity. Fitzpatrick answers by arguing that 'the commentary to the draft guidelines for the development of legislation on states of emergency suggests that even serious disruption of the organised life community would not constitute sufficient grounds for a state of emergency if the disruption would not present a serious danger to the life, physical security, or other vital interests of the population.'<sup>352</sup> According to Fitzpatrick, derogation would not be permissible in the case of a war that did not threaten the 'life of the nation' or the 'independence or security' of the derogating state.<sup>353</sup> This analysis is close to that of the International Commission of Jurists, which in 1983 observed that there is unfortunately a tendency for some governments to regard any challenge to their authority as a threat to 'the life of the nation.'<sup>354</sup> The commission went on to argue that this is particularly true of

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<sup>351</sup> As above.

<sup>352</sup> Fitzpatrick (note 331) 56.

<sup>353</sup> As above 57.

<sup>354</sup> As quoted by Wessels (note 329) 153.

regimes that do not provide any lawful means for the transfer of political power and which, in consequence, are inclined to regard any criticism of the government as an act subversive of public order. When these regimes feel threatened they often declare a state of emergency.<sup>355</sup> Within the Cameroon context, looking at the vagueness of law, the compliance with the principle of exceptional threat during emergency situations is yet to come.

### **3.2.2 Notification and proclamation**

A state of emergency entails human rights violations and infringement of the rule of law. Therefore it must be officially proclaimed to inform the population about the new political civil and economic climate in the society. The principle of notification is flexible as a formal notification is admitted. The Covenant requires that the other state parties be notified through the intermediary of the secretary general of the UN. As provided for by Section 4(3) of the International Covenant on Civil and Political Rights:

Any state party to the present Covenant availing itself of the right of derogation shall immediately inform the other states parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

The existence of a public emergency must be officially proclaimed, the procedures for the proclamation must be prescribed in national law in advance of the emergency.<sup>356</sup> Emergency regimes that are not officially proclaimed remain deprived of any legal attribute and are internationally reprehensible. States should comply with these requirements whether at the level of declaration or extension of a state of emergency, a state of siege, or a state of exception. The principle of notification and proclamation are publicity mechanisms aimed at preventing the implicit exception, as will be seen later in the study.

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<sup>355</sup> As above.

<sup>356</sup> United Nations Economic and Social Council (note 327) para.42 & 43 7.

Cameroon experience attests to the fact that compliance with the principle of proclamation and notification are questionable. The outcome of the controversial presidential elections on 12 October 1992, which resulted in the defeat of the opposition, led to crackdown and uprisings in some areas of the country. Gross violation of human rights and drastic security measures were deployed. Political leaders, especially Ni John Fru Ndi, the head of the opposition party, were placed under house-arrest. People came to realise that the north-west province, the stronghold of the main opposition party was under a state of emergency. The peculiarity of such a situation lies in the fact that a state of emergency that submerged the north-west province was never officially proclaimed, as provided for by law. Indeed, within the Cameroon context and from a legal perspective, a state of emergency must be declared by a 'presidential decree.'<sup>357</sup> In this situation, the information was simply read on television on the evening of 27 October 1992.

Connecting this event with the principle of proclamation of public emergency, as required by the Covenant, it is hardly difficult to exclude any idea of failure of law in that matter. My argument is that emergency provisions of the previous Cameroon constitutions, especially those of 1960, 1961 and 1972 were always written in three paragraphs. The first paragraph was devoted to a state of emergency, the second one to the so-called state of siege, and the third one to the president's proclamation. The question has been asked whether the proclamation as provided for by the third paragraph was limited to a state of siege or a state of emergency, or whether it was applicable to both. In 1995 a year before 'Law N° 96/06 of 18 January 1996 to amend the constitution of 2 June 1972' was published, Eric Nforbin, a local scholar, met the late François Sengat Kuo, one of the drafters of the Constitution of 2 June 1972 to request an answer. The answer provided by Sengat Kuo was that paragraph 3 of the proclamation was to be read in connection with both preceding paragraphs on a state of emergency and the so-called state of siege.<sup>358</sup> On 18 January 1996,

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<sup>357</sup> Section (9) of the constitution and Section 2 (1) of law N° 90/047 of 19 December 1990 on the state of emergency in Cameroon.

<sup>358</sup> Nforbin (note 338) 64.

the constitution was amended and the emergency provisions were to be released this time with two paragraphs instead of three as had always been the case in the previous constitutions. The former third paragraph on the proclamation was merely cut and pasted at the end of the second paragraph on the 'state of siege.'<sup>359</sup> Therefore, one of the interpretations could be that the proclamation would only be limited to a state of siege and would no longer concern a state of emergency.

### 3.2.3 Proportionality

The principle of proportionality is without a doubt one of the most important in the appreciation of the validity of emergency regimes. This clause 'acquires paramount importance, being the main substantive criterion employed to assess the legality of the derogating measures taken by states in situation of emergency.'<sup>360</sup> Fitzpatrick observes the following on the principle of proportionality:

Along with the threshold of severity, the principle of proportionality is the most important and yet most elusive of the substantive limits imposed on the privilege of derogation.<sup>361</sup>

The requirement of proportionality is reiterated by various international instruments. For example the International Labour Organisation (ILO) has come to realise that a state of emergency entails the suspension of public liberties and freedoms, including freedom of association and freedom of assembly, with trade unionists as frequent targets of harsh measures.<sup>362</sup> It is currently reported that 'many governments imposing emergency measures will suspend trade union rights and arrest and subject trade union leaders to torture, arbitrary execution or exile.'<sup>363</sup> The ILO conventions that govern the freedom of association (the right of association and protection of the right to organise convention, 1948 (N<sup>o</sup> 87) and the right to collective bargaining (the right to organise and collective

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<sup>359</sup> Section 9 of the law N<sup>o</sup> 96/06 of 18 January 1996 to amend the Constitution of 2 June 1972.

<sup>360</sup> Jaime Oraa, as quoted by Wessels (note 329) 278.

<sup>361</sup> Fitzpatrick (note 331) 60.

<sup>362</sup> As above 106.

<sup>363</sup> As above 109.

bargaining convention, 1949 (N° 98)) do not allow derogation from them. Therefore, state parties to these conventions cannot rely on state of emergency measures when they suspend these rights.<sup>364</sup> In 1983, the Committee of Experts on the Application of Conventions and Recommendations referred to the Greek case in restating the limited basis for restricting labour rights in times of emergency:

The freedom of association Conventions do not contain any provision permitting derogation ... or any suspension of their application, based on a plea that an emergency exists. The committee considers that, as regards the enjoyment of civil liberties which are essential for the effective exercise of trade union rights, the plea of a state of emergency to justify the restriction of these liberties should only be invoked in circumstances of extreme gravity constituting a case of *force majeure* and subject to the condition that any measures affecting in any way the guarantees established in the Conventions should be limited both in extent and in time to what is strictly necessary to deal with the particular situation.<sup>365</sup>

The principle of proportionality means that a declaration of a state of emergency would be illegal in a situation where ordinary legislation could bring adequate solutions to the crisis. In other words, the enforcement of emergency regimes would be valid only if the existing legal order is inefficient in addressing the situation. The derogation measures shall be such as are strictly necessary to deal with the threat to the life of the nation and should be proportionate to its nature and extent.<sup>366</sup> The government shall have a duty to assess individually the necessity of any derogation measure taken or proposed to deal with the specific dangers posed by emergencies.<sup>367</sup> The events must be particularly serious and unpredictable, meaning that a simple case of urgency should not be assimilated to exceptional circumstances. These clarifications were emphasised in the case of Marion by the Conseil d'Etat.<sup>368</sup> Moreover, it was ruled in the case of Laughier that exceptional measures should be taken at the time of the peril threatening the life of the nation.<sup>369</sup> The

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<sup>364</sup> As quoted by Wessels (note 329).

<sup>365</sup> Fitzpatrick (note 331) 110.

<sup>366</sup> United Nations Economic and Social Council (note 327) para.51, 8.

<sup>367</sup> As above.

<sup>368</sup> Conseil d'Etat *5 Mars 1948* Marion.

<sup>369</sup> Conseil d'Etat *assemblée du 16 Avril 1948* Laughier.

derogation measures according to the case of *Entreprise Chemin* should be implemented for general interest and safety of the state.<sup>370</sup> The principle of proportionality also requires that the enforcement of emergency regimes be limited in time and place, and thus that emergency regimes be repealed as soon as the threat is over. The Conseil d'Etat expresses this exigency in the Rhodes case by referring to *circonstances exceptionnelles de temps et de lieu* [exceptional circumstances in time and place].<sup>371</sup>

The enforcement of emergency regimes in Cameroon in relation to the principle of proportionality remains questionable since the aftermath of the alleged independence of the country. For example, on 12 March 1962 President Ahidjo enacted Ordinance N° 62/OF/17 that included some provisions of Ordinance N° 61/OF/5 of 4 October 1961 relating to state of emergency.<sup>372</sup> The first section of this ordinance provides that 'when a state of emergency will be declared in a part of the territory, the following provisions of ordinance N° 61/OF/5 of 4 October 1961 relating to a state of emergency will be automatically applicable on the entire federal territory...' Later in 1972, a new Ordinance<sup>373</sup> relating to a state of emergency was issued. Section 7 of this legislation underlines the generalisation of a state of emergency in the whole country, as did the provisions of the first section of the repealed legislation. Moreover, the provisions of the new text succeeded in removing the temporal factor of a state of emergency. In fact the text provided for the indefinite extension of a state of emergency across the country. The ordinance of 1972 was repealed in 1990 by law N° 90/047 of 19 December on the state of emergency. If Section 2 of this legislation moves a little step forward by providing that the act of enactment of a state of emergency should identify the area of the country subject to emergencies and its duration, it does not adequately comply with the principle of proportionality prescribed by international instruments. To clarify this argument, it is worth quoting the provisions of Section 5 and Section 6 of this law in their entirety:

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<sup>370</sup> Conseil d'Etat *4 juin 1947* *Entreprise chemin*.

<sup>371</sup> As above *18 Mai 1983* Rhodes.

<sup>372</sup> Journal Officiel du Cameroun 1962 Archives National Yaoundé 232.

<sup>373</sup> Ordinance N° 72/13 of 26 August 1972

Section 5 of the law of 19 December 1990 on the state of emergency empowers the administrative authorities of a portion of the country subjected to a state of emergency to issue, as a right, orders immediately enforceable to:

- (1) subject the movement of persons and property to restriction and if necessary to administrative authorities;
- (2) order the surrender of arms, ammunitions, military clothing and equipment and transceivers and also authorise the seizure thereof;
- (3) prohibit all meetings and publications that foster disorder;
- (4) Prescribe areas of protection or of security within which the presence of human beings shall be subject to regulation;
- (5) call in prescribed form, upon military authorities for standing assistance in the maintenance of law and order;
- (6) authorise the search by day or night of dwelling houses by any civilian, military or judicial police officer in accordance with the law;
- (7) order the detention of persons deemed dangerous to public security in any premises, including special prison cells for a duration of 7 days by senior divisional officers and 15 days by governors; Upon expiry of such periods, the release shall be as a right if the measure is not in accordance with the conditions laid down in Section 6(6) below.

After the powers of the administrative authorities were enlarged by the above provisions, the minister in charge of territorial administration was also vested with special powers by Section 6. Following the provisions of this section, upon the proclamation of a state of emergency, this minister may by orders immediately enforceable:

- (1) order the closure as and when necessary of entertainment halls drinking and meeting places of any kind;
- (2) organise the control of the press and of all kinds of publications, audio-visual broadcasting and theatrical or artistic productions;
- (3) disperse any assembly or suspend any association which may provoke armed demonstrations or by reason of its constitution or its military or paramilitary organisation may be equivalent to a combat unit or a private militia or may have the object of undermining the integrity of the national territory or the unity, the security or the republican character of the state;
- (4) authorise the requisition of persons and property in accordance with the law;



- (5) order in a given jurisdiction or area, the house arrest of any person residing in the area under a state of emergency who may prove dangerous to public security.
- (6) order either on his own initiative or at the request of authorities responsible for the administration of the areas under a state of emergency, the detention of persons deemed dangerous to public security for a two months period renewable once.

Regarding the above provisions of Sections 5 and 6, it is my contention that compliance with the principle of proportionality remains problematic. Firstly, Section 5 concerns the competence of local authorities, in other words, the authorities of the area subjected to a state of emergency. If it is assumed that these authorities have an appropriate knowledge of the local situation due to their proximity to the area, the law lacks clarity concerning the powers of the minister in that matter. Indeed the problem concerns the extended competence vested in the minister in charge of territorial administration who is also entitled to implement a state of emergency, but in which area precisely? There is a double set of measures applicable in case of a presidential declaration of a state of emergency, one for local authorities and the other for the central authority, which is the minister in charge of territorial administration. The law does not mention whether these measures are cumulative or alternative. In addition to this double standard, some measures are similar and enforceable by both the central and local authorities such as the monitoring of publications. As it stands, a combination of the provisions of Sections 5 and 6 would be similar to the repealed provisions of ordinances N<sup>o</sup> 61/OF/5 of 4 October 1961 and N<sup>o</sup> 72/13 of 26 August 1972, which provided that when a state of emergency is declared in a part of the territory, its effects automatically extend to the entire country. The law of 19 December 1990 does not specify whether the competence of the minister in charge of territorial administration applies only in the area subjected to a state of emergency, or outside that area. In any case, nothing prevents him from extending the effects of a state of emergency in areas that were not originally included in the presidential decree of declaration.

### 3.2.4 Non-derogable rights

Non-derogable rights refer to those rights attached to human beings and which cannot be subject to limitation by states, even during emergency situations. It was reported that the drafters of the Covenant touched on the basic issue when defining whether non-derogable rights should proceed from the perspective of identifying those rights most vital to human integrity and most likely during abusive emergencies, or whether those rights should include all provisions whose suspension could not conceivably be necessary during times of public emergency.<sup>374</sup> To answer this, Section 4(2) of the Covenant provides that ‘no derogation from Sections 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.’ These Sections refer respectively to the right to life, freedom from torture or cruel, inhuman, or degrading treatment or punishment, slavery or being held in servitude, imprisonment on the grounds of an inability to fulfill a contractual obligation, arbitrary detention, right to recognition everywhere as a person before the law, and freedom of thought, conscience, and religion. This requirement was also reaffirmed by the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment in its non-derogation clause in Section 2 which reads:

1. Each state party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

The non-derogable clause provided by Section 2(2) expressly targets emergency situations, which are usually deemed a legal excuse for torture and other gross violation of human rights. The state’s experience of an emergency is irrelevant by virtue of non-derogability of the prohibition on torture, but the Committee Against Torture’s (CAT) reviews are likely to be influenced by the frequent association of widespread torture practices with public

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<sup>374</sup> Fitzpatrick (note 331) 64.

emergencies.<sup>375</sup> It is reported that the ten members Committee Against Torture seek compliance primarily through the review of periodic state reports under Section 19 of the treaty. However, it has already begun to consider confidential allegations of systematic torture practices under Section 20 and individual communication under Section 22.<sup>376</sup>

Similarly, the Geneva Conventions provide one of the most important provisions of international humanitarian and international law that aims to frame the conduct of armed conflict and seeks to limit its effects. It is by its nature designed to be applied during emergency situations involving armed conflict.<sup>377</sup> As contended by Fitzpatrick, the entire body of international humanitarian law, both customary and codified, is highly relevant to the protection of human rights during states of emergency, especially in defining non-derogable rights.<sup>378</sup> The most important standards are set out in Section 3, common to the four Geneva conventions of 1949:

In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

- (a) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed '*hors de combat*' by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria. To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (b) Taking of hostages;
- (c) Outrages upon personal dignity, in particular humiliating and degrading treatment;

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<sup>375</sup> As above 113.

<sup>376</sup> Fitzpatrick (note 331) 113.

<sup>377</sup> Wessels (note 329)

<sup>378</sup> Fitzpatrick (note 331) 51-52.

(d) The passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilised peoples.

(2) The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention. The application of the preceding provisions shall not affect the legal status of the Parties to the conflict.

Therefore, the principle of non-derogable rights appears to be a major concern of international instruments regarding the management of emergency regimes. It is important to note that this non-derogation clause is applicable in case of internal conflict or 'armed conflict not of an international character, occurring in the territory' by the High Contracting Parties, but also frames emergency situations at the domestic level.

The real situation in Cameroon emphasises the lack of consideration of these fundamental rights, especially during states of emergency. With regard to the right to life for instance, the events that took place in the aftermath of the failed coup d'état of 6 April 1984 traumatised countless families in the country, especially in the northern area. As it is currently reported, 'Biya's reactions to this coup attempt were rapid. The most obvious steps were a tightening of security all over the country (a six-month state of emergency was declared in the Yaounde area) and the removal of a number of government officers. Trials of those convicted may have begun as early as May 1, only three weeks after the attempt. By mid-May the government admitted that one thousand and fifty-three persons had been arrested, but that over half had been set free, and that forty-six had been executed. Three others, unnamed but probably including Ahidjo, were sentenced to death in absentia. Amnesty International has claimed that as many as one hundred and twenty

executions took place.<sup>379</sup> Many others were imprisoned and died in their cells due to bad treatment after state confiscation of their heritage.<sup>380</sup> The situation does not differ when it comes to the freedom from torture or cruel, inhuman or degrading treatment, or punishment, which has become routine in many police stations. The late Jean Fochive, former chief of the political police under presidents Biya and Ahidjo, did not deny such allegations, since he possessed a unique conception of torture:

*La torture est sans doute un procédé d'une efficacité expéditive pour obtenir des aveux ou des renseignements; pour convaincre un homme d'accepter la responsabilité d'un crime et pour avoir quelques garanties qu'il continuera d'assumer cette responsabilité après sa sortie des locaux de la police. Le moyen le plus sûr est de lui démontrer que sa culpabilité est logiquement irréfutable, et que tout l'accable; qu'il est fou de s'obstiner à nier l'évidence.*<sup>381</sup>

Torture is without a doubt a speedy process to obtain confessions or information; to convince a man to bear the responsibility of a crime and to have some guarantees that he will adhere to this responsibility upon his release from the police premises. The surest way is to show him that his guilt is logically compelling, and that all overwhelms him; that he is insane to persist denying the evidence.

This quotation reflects the climate in the prisons of the country before and after the alleged independence. The abuse of torture during a state of emergency by Cameroon authorities was acknowledged by judges in an unprecedented case where the plaintiff nearly died due to mistreatment.<sup>382</sup>

### 3.2.5 Non-discrimination

This principle is entrenched in Section 3 of the Geneva Convention, which states that 'persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed "hors de combat" by sickness, wounds,

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<sup>379</sup> Delancey (note 55) 72.

<sup>380</sup> *Cameroun, 6 Avril 1984 - 6 Avril 2010: 26 ans après, les putschistes étaient-ils des visionnaires dans leur état?* Available at <http://www.camer.be/index1.php?art=9613&rub=6:1> (accessed 15 September 2012).

<sup>381</sup> Fenkam F. *Les révélations de Jean Fochive le chef de la police politique des présidents Ahidjo et Biya* (2003) Paris, éditions Minsi 166.

<sup>382</sup> Judgment N° HCB/19/CRM/921 of 23 December 1992 retired Justice Nyo Wakai & 172 Others vs. People. High Court of Mezam Judicial Division, Bamenda.

detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.’ Similar provisions appear in the Covenant which mentions that certain discrimination clauses may not be imposed in a manner that discriminates on the grounds of race, color, gender, language, religion, or social origin. Section 4(1) of the Covenant reads:

In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the states parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

The adjective ‘solely’ in the text raises some controversial issues on the nature of discrimination itself. The idea that only arbitrary discrimination is outlawed by Section 4(1) is underlined by the deliberate inclusion of the word ‘solely’ in its text.<sup>383</sup> Notwithstanding this, it is suggested that even without this term, the reference to discrimination in Section 4 conveys the implication that only arbitrary and unjustifiable distinctions in the application of emergency measures would be outlawed.<sup>384</sup>

In Cameroon the constitution prohibits discrimination based on gender, race, and religion.<sup>385</sup> However, these provisions are tempered by the same text. The supreme law published on 18 January 1996 formally introduces a token distinction of the rights of nationals through the concepts of ‘*autochtone*’ and ‘*allogene*’.<sup>386</sup> Such a distinction inspired the following comment from the local media:

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<sup>383</sup> Fitzpatrick (note 331) 63.

<sup>384</sup> As above.

<sup>385</sup> Preamble, Section 7 of the Constitution of 1996.

<sup>386</sup> Preamble of the constitution, the concept of *autochtone* refers to ‘settlers’ whereas the meaning of *allogene* is close to the idea of foreign national. These two concepts are bizarre in the sense that a Cameroonian born in the west or in the north of the country will enjoy the status of ‘settler’ as long as he

If the inhabitants of Douala who were born in the south, north, west and east of Cameroon or parents originally from these regions can live in Douala only on a temporary basis while expecting to return 'to their homes', needless to cheat on people by stating that 'a Cameroonian is everywhere in his homeland in Cameroon.'<sup>387</sup>

The protection of minorities in relation to the principle of non-discrimination during emergency regimes in Cameroon remains a sensitive issue. The country is part of a complex multicultural landscape with nearly three hundred local languages, a principal division between Anglophones (around 20% of the population) and Francophones. Democracy in Cameroon is strongly influenced by tribal and linguistic affiliations. The current president of the republic, Paul Biya comes from the Beti/Yezoum tribe that is located in what is currently referred to as the Big South, formed by three regions that include the south, the east and the centre. The president mostly gains support from this area of the country irrespective of the political agenda. The other portions of the state are presumed to belong to the opposition and are by definition considered hostile to the president and his tribe. For example, in June 1991 following the *operation ville morte*<sup>388</sup> [ghost town operation], due to a poor response to growing democratic demands and his refusal to organise a national conference, President Biya enforced a *de facto* emergency in the entire country, except in the three provinces that supported his politics. The *de facto emergency* was realised by placing seven of the ten provinces of the country under a *statut special*, by setting up what was called '*Commandement Militaires Operationnels*', [Military Operational Command] to 'pacify' the country. This resulted in the deployment of harsh measures, tightening of security, human rights violations, and army brutality committed in taking control of the

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remains in his or her birth place. If he or she moves in another region of the country, then he becomes *allogene*, which is to say a sort of foreigner in the same country.

<sup>387</sup> *Commentaire: Les populations de l'Ouest sont à l'Ouest*. Available at <http://www.cameroon-info.net/reactions/@.16555.7.commentaire-les-populations-de-l-ouest-sont-a-l-ouest.html> (accessed 19 October 2012).

<sup>388</sup> In 1990 following the democratisation's wind over the African states and then Cameroon, a rise of democratic demand led to the requirement of a national conference from the people. As president Biya found the demand '*sans objet*' [useless], people and the opposition party launched what was called *opération ville morte*, [ghost town operation] characterised by the cessation of every activities around the country.

cities, a situation that normally characterises a state of siege. The exception enforced by the presidential decree draws a line between the inhabitants of the same country, showing them to be unequal before the law. People that do not belong to the president's geographical area and do not support his politics found themselves living in an area that had suddenly been outlawed and then abandoned by law. Those who stood for the president and his politics were the true Cameroon citizens vested with patriotic attributes, the law's protection, and the enjoyment of rights.

The influence of diverse cultures in Cameroon remains a challenge to the achievement of a genuine democracy and implementation of the principle of non-discrimination, whether under normal circumstances or in time of turmoils. In a confidential report by former US Ambassador to Cameroon, Elizabeth Janet Garvey, released on 1 September 2011 on Wikileaks cable, Cameroon's Vice Prime Minister, Minister of Justice and Keeper of the Seals, Amadou Ali, from the northern region made revelations that support the idea that discrimination on the ground of ethnicity in Cameroon is not a mere spiritual perception. As argued by Garvey:

The struggle for Cameroon's future, including President Paul Biya's succession, should be viewed through ethnic and regional lenses, according to Amadou Ali, Vice Prime Minister and Minister of Justice. In a recent, wide-ranging and frank discussion with the Ambassador, Ali said the foundation of Cameroon's stability is the detente between Biya's Beti/Bulu ethnic group, which predominates in Cameroon's South Region, and the populations of Cameroon's three northern Regions, known as the *Septentrion*, which are ethnically and culturally distinct from the rest of the country. The *Septentrion* will support Biya for as long as he wants to be president, Ali predicted, but would not accept a successor who was either another Beti/Bulu, or a member of the economically powerful Bamiléké ethnic group... Asked what the *Septentrion* would do if Biya nominated a fellow Beti to succeed him, Ali asserted that Biya, knowing it would be unacceptable to the rest of Cameroon, would never make such a decision. Even if Biya's own tribesmen sought to assert themselves, Ali said the Betis were too few to take on the Northerners, much less the rest of Cameroon Ali's analysis and his willingness to



speak so frankly about such a sensitive topic reinforced our conviction that Cameroon's political elite is increasingly focused on jockeying for the post-Biya era.<sup>389</sup>

Such revelations could lead to serious ethnic consequences across the state, such as the genocide experienced in Rwanda, Burundi, or former Yugoslavia. Indeed, in a context where some individuals believe that they should be vested with supreme power on the grounds of ethnicity and outside any democratic competition, draconian measures and the state's army could well be deployed against the people from other tribes who would dare to challenge such individuals. In this scenario, any opposition or any contestation from other tribes will be interpreted as a threat to the 'life of nation' or a 'crime against the national territorial's integrity.' It is evident in the following observation:

Thus, where an identifiable racial or religious group poses a distinct security threat not posed by other members of the community, presumably, emergency measures could be deliberately targeted against the group, despite the non-discrimination clause.<sup>390</sup>

### **3.2.6 Good faith motivation**

The principle of good faith motivation in the case of emergency is merely implicit in the derogation articles.<sup>391</sup> In this regard, the provision of Section 5 of the Covenant reads:

1. Nothing in the present Covenant may be interpreted as implying for any state, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognised herein or at their limitation to a greater extent than is provided for in the present Covenant.
2. There shall be no restriction upon or derogation from any of the fundamental human rights recognised or existing in any state party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognise such rights or that it recognises them to a lesser extent.

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<sup>389</sup> Viewing cable 09yaounde256, Cameroon's justice minister says north will. Available at <http://wikileaks.org/cable/2009/03/09YAOUNDE256.html> (accessed 9 September 2011).

<sup>390</sup> Fitzpatrick (note 331) 63.

<sup>391</sup> As above 59.

The meaning of these provisions is that the emergency regimes declared in order to destroy a democratic system of government would arguably be invalid.<sup>392</sup>

In the case of Cameroon, emergency regimes reach their peaks in the country during the periods when democratic demands are highest. Considering the events prior to independence, emergency regimes have been repeatedly enforced to paralyse the democratic demands made by the UPC. After independence and especially after the (re) instauration of political pluralism in 1990, the declaration of a state of emergency occurred essentially during popular contestations and notably during pre and post-electoral campaigns. Thus, it seems that within the Cameroon context, these regimes sought to frustrate people and paralyse their democratic claims. Such was the case when a state of emergency prevailed in the north-west region of the country following the outcome of the controversial presidential elections of October 1992. Thus, it can be argued that compliance with good faith motivation in implementing draconian measures in Cameroon remains questionable. In addition, the appreciation of good faith motivation remains subjective especially in a country like Cameroon where the president of the republic has been elevated to the status of God by some of his ministers. The statement by Jacques Fame Ndong, Minister of Higher Education and spokesperson of the ruling party, during the preparations of the Ebolowa Agro-Pastoral Fair is revealing:

*Nous sommes tous des créatures ou des créations du président Paul Biya, c'est à lui que doit revenir toute la gloire dans tout ce que nous faisons. Personne d'entre nous n'est important; nous ne sommes que ses serviteurs, mieux, ses esclaves.*<sup>393</sup>

We are all the creatures or creations of President Paul Biya, he should receive all the glory in all that we do. Nobody among us is important; we are only his servants, better, his slaves.<sup>394</sup>

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<sup>392</sup> As above.

<sup>393</sup> *Des propos du 'Pasteur' Fame Ndong qui soulèvent l'indignation.* Available at <http://www.camer.be/index1.php?art=9828&rub=6:1> (accessed September 2011).

<sup>394</sup> Own translation.

It is not possible to conceive good faith motivation in emergency matters in a political system such as Cameroon, where the president is the only authority involved in the declaration of emergency regimes. Moreover, the act of declaration is an act of state, which means that it is not subject to judicial review or contestation of any kind.

### **3.3 Concluding remarks**

In this chapter, I have examined the international standards on emergency regimes and their compliance within the Cameroon context. These international standards essentially from a treaty-based system are compulsory among state parties to a treaty. They are located within a set of international instruments that include the UN Charter, the Geneva Conventions, the International Covenant on Civil and Political Rights, the International Labour Organisation, the Convention against torture. The principles that the states must comply with when dealing with a threat emerged from these standards and include the principles of exceptional threat, proportionality, non-discrimination, good faith motivation, non-derogable rights proclamation, and notification. I have assessed the scale of compliance of the Cameroon emergency system against these criteria. The analysis shows a comprehensive inadequacy between emergency regimes as practiced in Cameroon and that of international standards.

## CHAPTER 4 LEGAL AND THEORETICAL DISCOURSES ON EMERGENCY REGIMES

### 4.1 Introduction

In the previous chapter I have examined the international standards on emergency regimes that appear as the benchmark for genuine emergencies. These standards aimed at drawing a clear distinction between the democratic societies and the absolutist ones. Whereas the former are characterised by the circumstantial enforcement of draconian measures, these draconian measures are immanent to the latter. I have also analysed the failures of law in the Cameroon system of emergency regimes in accordance with international standards in that matter. As a result, the country could be brought to the edge with absolutist regimes. It is thus evident that the approach to emergency regimes prescribed by international standards is not the only one available. My main concern in this chapter is to review the other approaches available in order to understand where the Cameroon system stands. The idea of emergency regimes is currently subject to a significant controversy and has, over the years, become the object of various legal and theoretical discourses. These can be divided into two approaches, namely the normative approach and the critical approach. Before analysing such discourses through the lens of the Cameroon context, it is crucial to firstly understand the origin of the idea of legally breaking a pre-established norm. This idea is rooted in the medieval maxim *necessitas non habet legem*, which appears to be the very foundation of emergency regimes.

### 4.2 On the maxim *necessitas non habet legem*

I chose to examine the maxim *necessitas non habet legem* in this work because it holds a central place in the theory of emergency regimes. The legal and theoretical discourses that I review in the second portion of this chapter follow from this maxim. Being at the centre of the study, it would have not been judicious to ignore the maxim *necessitas non habet legem* in a thesis entirely devoted to the exception. To understand its place in the discourses on

emergency regimes, I dwell at length on its meaning, origin, and development. But it is important to first understand the problem raised by the maxim *necessitas non habet legem*.

#### **4.2.1 The problem raised by the maxim *necessitas non habet legem***

The maxim *necessitas non habet legem* appeared in the exegetic literature of the 17<sup>th</sup> Century and was to be rapidly developed at the end of the 19<sup>th</sup> Century. Based on various interpretations, the maxim *necessitas non habet legem* or *necessitas legem non habet* literally means ‘necessity has no law’, ‘necessity knows no law’, ‘necessity creates its own law’, or ‘necessity does not recognise any law.’<sup>395</sup> It is linked to serious and extreme cases (real or alleged) that constitute an immediate threat to the society’s or individual’s safety, and that the restoration absolutely requires the departure from the rule of law. It has become a common practice to resort to illegal means for repelling serious emergency situations. The rule of law in such a context appears not to be an end in itself but a means to an end, since the author of such illegal means cannot be held accountable.

One of the crucial problems raised by the maxim *necessitas non habet legem* is the dilemma regarding the management of extreme emergency situations where the issue concerns complying with the rule of law or non-compliance. For example, in a desperate situation will it be possible to use torture or to kill innocent people in order to prevent more serious consequences? This scenario was recently observed in Germany in the famous Air-transport Security Act. The Act enacted by the Bundestag in June 2004 in the aftermath of 9/11 went into force on 15 June 2005. Its prominent provision contained in Section 14(3) empowered the Minister of Defence to order that a passenger airplane be shot down, if it could be assumed that the aircraft would be used against the life of others, and if the downing is the only means of preventing the actual danger. In its judgment of 15 February 2006, the German Federal Constitutional Court declared the said provision unconstitutional on the grounds that it was a violation of the fundamental right to life of

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<sup>395</sup> See *infra*

Section 2 (2) sentence 1 and Section 1 (1) of the Basic Law.<sup>396</sup> The dilemma raised in this situation emphasises the controversy surrounding the justification and the foundation of the maxim *necessitas non habet legem*. On the one hand, there are strong deontological sentiments that suggest that we ought not to torture or kill innocent individuals even if this is likely to save lives.<sup>397</sup> The argument rests on the principle according to which the prohibition on killing and torturing are grounded, in some sense, in the sacredness of life (or life's intrinsic value), meaning that the life of a person ought not to be sacrificed even for the sake of saving the lives of others. On the other hand, there is an equally powerful sentiment that when the threat is serious, when consequences might be catastrophic, lives may have to be sacrificed and rights may have to be infringed upon.<sup>398</sup> In sum, these two positions reject the dilemma, thereby indicating the outer limits of the debate. The latter rejects the deontological intuition and claims that consequences and only consequences are to determine what ought to be done in all cases, extreme cases included.<sup>399</sup> The other extreme is occupied by the position often called 'absolutist deontology', which rejects the intuition that deontological rules must sometimes be violated to prevent catastrophic outcomes.<sup>400</sup> Whatever the appropriate stand might be, the analysis of the origin, development, and meaning of the maxim *necessitas non habet legem* is a necessary starting point.

#### **4.2.2 The Christian origin of the maxim *necessitas non habet legem*: the medieval canon law**

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<sup>396</sup> Lepsius O. 'Human Dignity and the Downing of Aircraft: The German Federal Constitutional Court Strikes down a Prominent Anti-terrorism Provision in the New Air-Transport Security Act' German Law Journal Vol.7 No.9, 1 September 2006, 1-2. Available at <https://www.unodc.org/tldb/pdf/EssayCivilAviation2.pdf> (accessed 22 March 2013).

<sup>397</sup> Harel & Sharon "necessity knows no law' on extreme cases and uncodifiable necessities.' Available at <http://law.huji.ac.il/upload/Harel-Sharon - Necessity Knows No Law.pdf> (accessed 22 March 2013).

<sup>398</sup> As above.

<sup>399</sup> As above.

<sup>400</sup> As above.

The maxim *necessitas non habet legem* originated in medieval canon law. Rooted in the *jus commune*, the idea that necessity in exceptional circumstances can be considered an excuse for a person not complying with the rules is very old and widespread.<sup>401</sup> For a long time, jurists have discussed the origin of the maxim and were reluctant to acknowledge its Roman or canonical roots.<sup>402</sup> It is necessary to consider the reported case of a soldier in Seneca's Rhetoric controversies, who, having lost his weapons during a battle, took the weapon of another soldier who had died and was buried. Despite the fact that he came out of the battle as victor, the soldier was accused of invading the grave.<sup>403</sup> The author of Rhetoric justifies these acts by referring among others, to the *lex Rhodia de jactu*, and by asserting the following:

Necessity requires the load of a ship to be thrown away in order to lighten it, necessity requires the demolition of houses to extinguish fires; necessity is the law of the moment.<sup>404</sup>

The formula *necessitas est lex temporis* used by the Rhetorician prefigures the one that proclaims that '*la nécessité n'a point de loi*,' [necessity knows no law], but in reversing the words since necessity does not undo law but makes it.<sup>405</sup> Another formula closer to the medieval maxim includes '*necessitas dat legem, non ipsa accipit*' meaning 'Necessity gives the law without itself acknowledging one.' It was established by Publilius Syrus and is what Franck Roumy believes to be at the origin of the maxim *necessitas non habet legem*.<sup>406</sup> Roumy realises that the idea of the flexibility of canon law due to exceptional circumstances is premature, since it seems to have been shaped in the 5<sup>th</sup> Century at the moment when a set of legal provisions pertaining to the Christian church appeared. According to him, the first text that directly prefigures the formulation of the maxim is the wording of *l'expositio* from Bede the Venerable on the gospel of Marc, composed circa 725-

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<sup>401</sup> Roumy (note 44) 301.

<sup>402</sup> As above.

<sup>403</sup> As above 304.

<sup>404</sup> As above.

<sup>405</sup> As above.

<sup>406</sup> As above.

730. Commenting on the verse which proclaims that the Sabbath was made for man, and not man for the Sabbath (Mc.2-27), Bede implicitly refers to the case of David, who, being hungry, entered the temple and ate the bread of the presence (Mc.2-26). This aimed at justifying the possibility for a sick person not to fast by arguing that ‘what is not allowed by law, becomes it by necessity.’<sup>407</sup> Roumy also realises that in medieval canon law, the maxim appears twice in the middle of the 12<sup>th</sup> Century in Gratian decree, later in a *dictum Gratiani*, and in a false-decree of Pope Felix IV included in the *De consecration*.<sup>408</sup> Some decades later the maxim was found in a decree of Innocent III, addressed on 19 November 1199 to Lucius, Apostolic vicar in Constantinople and was to be included in the *Compilatio tertia*, and in the *Liber extra*.<sup>409</sup> In addition on the basis of *De regulis Juris* some decrees of Gregoire IX exist, stating that what is not allowed by law is permitted by necessity: *quod non est licitum lege, necessitas facit licitum*.<sup>410</sup>

The early reception of the idea of necessity as an alternative measure in exceptional situations is evident in the ecclesiastical discipline. Then, in Pope Leon I’s *decretal*, addressed on 11 June 451 to the Bishop of Theodore de Frejus, the Pope argues that those who in case of necessity or imminent peril, plead for penance, after the reconciliation they can neither be denied this favour nor the reconciliation, as it is not possible to limit divine mercy and that there is no deadline for real conversion.<sup>411</sup> This requirement from the Pope appears later in various important documents throughout the entire Middle Ages, such as the *Hispana*. It was propagated by authors such as Hincmar de Reims in his *Traitée sur le Divorce de Lothaire II*, in his letter *Sur la Pénitence de Pépin*, and in *l’Opuscule en 55*

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<sup>407</sup> As above 306.

<sup>408</sup> As above 302.

<sup>409</sup> As above.

<sup>410</sup> As above.

<sup>411</sup> As above 304-305.



*chapters*. This papal requirement was also included in a canon of a council held in Metz in May-June 859 where the texts were laid out by Hincmar.<sup>412</sup>

Various evidence and circumstances exist that account for the implementation of the maxim itself. For example, Gilles Couvreur's thesis on theft attests to the significant reputation acquired by the maxim *necessitas non habet legem* in the era of classical canon law and the beginning of scholastic theology. A reference is made to the false letter of Felix IV included in Gratian's decree, and the suggestion that the *brocard* applies only to the permission to celebrate mass outside of the sacred places, in case of necessity.<sup>413</sup> Another important document on the relevance of the maxim *necessitas non habet legem* in the middle of the 9<sup>th</sup> Century is the false decree of Pseudo-Isidore. Issued in France, this document includes the apocryphal letter of Felix IV on the prohibition of the celebration of mass outside of sacred places. Sticking to the idea of necessity, reference is clearly made in the document that this prohibition can be lifted in the case of 'necessity of higher degree' because *necessitas legem non habet*. This was the first time that the maxim was formulated in its current understanding.<sup>414</sup> Years later, three pieces of Felix IV's false decree, including the maxim, were found in various canonical collections prior to the Gratian decree. Among these collections are the *judei ergo* canon, the *Satius est* canon, and the *Sicut non alii* canon.<sup>415</sup>

Another instance of implementation of the maxim is evident in John VIII's August 879 decree to the emperors of Byzance, Basile, Constantin, and Alexandre, which required them to reinstate the patriarch of Constantinople Photius who had been dismissed in 863 by Nicolas I.<sup>416</sup> Among the justifications for this reinstatement, John VIII mentions the

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<sup>412</sup> As above 305.

<sup>413</sup> As above 303.

<sup>414</sup> As above 309.

<sup>415</sup> As above 310.

<sup>416</sup> As above 310-311.

necessity, by referring to the second canon of the Nicea Council, which claims that men often infringe the ecclesiastic rule by necessity. He then mentioned Gelasius' letter to the bishops of Lucania and Sicilia of 11 March 493, stating that if there is no urgent necessity, the rules laid down by the Fathers should not be infringed. Similarly, he adds that Saint Leon prescribes 'to forget or not judge guilty what was caused by necessity' quoting through the *Dionysiana* a letter on 21 March 456 by Leon I to the Bishop of Aquileia.<sup>417</sup>

Roumy refers to the significant reception of the maxim at the beginning of the 12<sup>th</sup> Century by the canonists. He then mentions the constitutions laid down by Lanfranc of Canterbury between 1074 and 1077, which reformed the cathedral monarchy that belonged to British islands and provides for the possibility to derogate to the respect of canonical hours in some cases 'because the necessity is not held by law.'<sup>418</sup> He also notices a similar provision in the customs of Chanoine of Springiersbach-Klosterrath, written between 1127 and 1128, where the reform of the regular chapters compels everyone to respect the canonical hours, 'except in case of necessity, which is exempt from the law.'<sup>419</sup> It is also the case with the rule of the Order of Grandmont that prescribes a rigorous silence to be permanently observed by the brothers 'except a great necessity that does not have law.'<sup>420</sup> Finally, the rule of St Francis prior to the approved version by Honorius in 1223, which was written toward 1210 and refers to the example of David, prescribes that in the case of obvious necessity the brothers could act to enjoy the generous gifts from the Lord by levying over the almsgivings what is necessary for their subsistence, 'because necessity has no law.'<sup>421</sup>

### 4.2.3 The reception of the maxim outside the canon law

The maxim *necessitas non habet legem* appears in other religions and disciplines.

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<sup>417</sup> As above 311.

<sup>418</sup> As above, 312.

<sup>419</sup> As above.

<sup>420</sup> As above.

<sup>421</sup> As above 312-313.

With regard to religion, in the Jewish Talmudic tradition there is a category of acts conceived as necessary violations of law. A notable example concerns the act of writing the oral corpus of Jewish law, which was strictly prohibited. Facing an imminent threat that may bring about the forgetfulness of the corpus, writing it became an urgent necessity. As the great medieval interpreter of the Talmud, Shlomo Yitzhaki proposed, ‘there are times you must violate the words of the law to do for God.’<sup>422</sup> This is the Talmud’s way of anchoring the notion of necessary violations in scripture.<sup>423</sup> There can be violations of the law that are necessary to uphold the spirit of the law or its underlying purpose. However, the act of breaking the law, even if it is for suitable purposes, does not change the reprehensible nature of such an act. In such situation a violation (which cannot be incorporated into the legal corpus) is called for, rather than conformity with the law. Given the circumstances, such an act is the ‘right thing to do’; and yet it is not governed by law, and hence cannot be incorporated into the legal corpus.<sup>424</sup>

Similarly, but without explicitly denominating *necessitas non habet legem*, Islamic law and jurisprudence also refer to the concept of necessity as a legal or spiritual excuse as follows:

[...] But he who is driven by necessity, neither craving nor transgressing, it is no sin for him.<sup>425</sup>

Al-Marwardi has described the rule of necessity in Islamic law as one of the four pillars supporting the structure of jurisprudence.<sup>426</sup> The concept holds an important place in the social, legal, and spiritual dimensions of Islam as the rule of necessity applies in many legal rules, such as the alteration of debt repayment terms, redeemable sales, and religious

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<sup>422</sup> As quoted by Harel & Sharon (note 397).

<sup>423</sup> As above.

<sup>424</sup> As above.

<sup>425</sup> Muslehuddin M. *Islamic jurisprudence and the rule of necessity and need* (1975) Pakistan, Islamic Research Institute 60-63. As quoted by Desierto D. *Necessity and national emergency clauses: sovereignty in modern treaty interpretation* (2012) Leiden, Boston, Martinus Nijhoff publishers 67. Also Muslehuddin (note 46) 182-185

<sup>426</sup> As above 66-67.

practices during war, among others.<sup>427</sup> Notwithstanding, the rule of necessity is not an exonerating mechanism from the obligations of each and other. Subhi Mahmassani explains that this part of the *Majallah* (Ottoman Civil Code) operates as a general maxim that does not, in any case, remove the right of compensation in situations involving loss or taking of property out of necessity.<sup>428</sup> The issue is then to know whether necessity that renders the prohibited permissible (Article 21 of the *Majallah*) can justify trespassing upon another person's rights. For example, if a person consumes another's food to ward off hunger, would the former be liable to make good the latter's loss? In answering this question, the author refers to the Hanafi School and Article 33 of the *Majallah*, which provides that 'necessity does not invalidate the right of another. Consequently, if a hungry person eats bread belonging to another, such person must later pay the value thereof' (Article 33).<sup>429</sup>

Subhi Mahmassani enumerates several examples that account for the importance of the rule of necessity. These include 'those legal excuses which exempt from legal duties, such as minority, lunacy, illness, duress, forgetfulness and ignorance, eating of the meat of a dead animal by the hungry, and drinking of wine by the thirsty, or according to some jurists, by the sick as a medicine.'<sup>430</sup> In his analysis, Mahmassani emphasises the precautionary aspect of the rule of necessity that cannot be inscribed within the legal sphere. He argues as follows:

[...] License by necessity, or the exceptional rule based on it, remains valid so long as the excuse or cause of the urgency exists. If this exceptional circumstance ceases, the license also ceases and there would be a return to the original principle.<sup>431</sup>

As arguments, Mahmassani refers to Sections 23 and 24 of the *Majallah*, which respectively provide that: 'whatever is permissible owing to some excuse ceases to be permissible with

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<sup>427</sup> As above 67.

<sup>428</sup> As above.

<sup>429</sup> As above.

<sup>430</sup> As above.

<sup>431</sup> As above.

the disappearance of that excuse' and 'when a prohibition is removed, the thing to which the prohibition attaches reverts to its former status of legality.' These provisions conform to the scientific rule that a result ceases with the disappearance of its cause.<sup>432</sup>

In the 12<sup>th</sup> Century or at the beginning of the 13<sup>th</sup> Century, at least five branches of medieval knowledge, which includes civil law, liturgy, theology philosophy, and narrative literature had received the maxim.<sup>433</sup>

Concerning civil law, Ennio Cortese asserts that the maxim *necessitas non habet legem* was borrowed from the canonists as it appears on the first page of a manuscript of Gratian decree in the *Digestum vetus* discovered in 1952 by Guido Rossi.<sup>434</sup> The text refers to a piece of text from Papinien that allowed for the proconsul to give his power of jurisdiction to a representative before arriving there and taking possession.<sup>435</sup> This was possible when the magistrate was subject to an inescapable delay (*mora necessaria*) during his trip.<sup>436</sup> The chronology of the incorporation of the maxim *necessitas non habet legem* within civil law materialises by its presence in the famous collection of maxims called *Dolum per subsequentia* published in England circa 1160 and which was successful in the northern Europe.<sup>437</sup> The twenty-fourth heading of the collection titled '*quando necessitas vel paupertas non habet legem*' includes not less than eleven allegations referring to *sedes materiae* of *Corpus Juris Civilis* that pertain to the issues of excuse on the ground of necessity or poverty. The maxim *necessitas non habet legem* also appears in a slightly different form in the *Brocarda Dunelmensia*, made in England at the end of the 12<sup>th</sup> Century. The document reads:

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<sup>432</sup> As above.

<sup>433</sup> Roumy (note 44) 313.

<sup>434</sup> As above.

<sup>435</sup> As above.

<sup>436</sup> As above.

<sup>437</sup> As above 313-314.

The necessity does not have common law but make law by exception.<sup>438</sup>

With regard to liturgy, the maxim *necessitas non habet legem* appears in the *summa de ecclesiasticis officiis* made between 1160 and 1164 by Jean Beleth. While teaching in Paris, he explains that the burial is subject to a strict rule that requests that the deceased must be buried by people of similar ranking.<sup>439</sup> A deacon should be buried by deacons, a priest by priests, but otherwise this formality can be ignored 'because necessity does not serve law.' At the end of the 13<sup>th</sup> Century this requirement is also found word for word in the *Rationale divinorum officiorum* composed by Guillaume Durand who observed that when people of similar ranking are unavailable, they will do otherwise 'because necessity is not subject to law.'<sup>440</sup>

Talking about the discipline of theology, various examples attest to the relevance of the maxim *necessitas legem non habet*. In the Treaty of Principle and Exemption written circa 1142 by Bernard de Clairvaux, it is observed that necessity can justify the change of monastic rules when they are contrary to the charity.<sup>441</sup> Similarly, Saint Bernard in his sermons on the Song of Songs written between 1139 and 1143 uses the formula *necessitas non habet legem* to justify the necessity for a priest to exempt himself from certain duties of priesthood in order not to neglect material tasks that pertain to his obligation of charity.<sup>442</sup>

The maxim is also observed in the narrative literature in the second half of the 12<sup>th</sup> Century. The first example comes from Guillaume de Tyr, in his *Histoire des croisades* between 1180 and 1186.<sup>443</sup> The document refers to the Earl of Edesse who organised riots in 1138 in order to bring the people of Antioche against the Byzantine emperor who had decided to

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<sup>438</sup> As above 314.

<sup>439</sup> As above 314-315.

<sup>440</sup> As above 315.

<sup>441</sup> As above 316.

<sup>442</sup> As above.

<sup>443</sup> As above 319.

keep his soldiers in town.<sup>444</sup> Against all practices, the Earl of Edesse hypocritically threw himself at the feet of the emperor justifying his attitude by arguing that necessity has no law and that infuriated at being hunted down by the people, he did what he did just to escape death.<sup>445</sup>

In the middle of the 13<sup>th</sup> Century the maxim *necessitas non habet legem* entered the field of philosophy. The maxim appears in a famous work assigned to Aristotle entitled *Secretum secretorum*. A passage from this document translated into Latin by Roger de Tripoli circa 1220 and 1230 advises those who have to change the hour and the frequency of their food by ‘necessity that has no law’, to do so judiciously and with wisdom, changing only one behaviour at the time.<sup>446</sup>

Later, famous philosophers such as Saint Thomas Aquinas and Immanuel Kant developed arguments concerning the maxim. In *Summa theologica*, St Thomas Aquinas in the section entitled ‘whether he who is under a law may act beside the letter of the law?’<sup>447</sup> claims that the rule of law should govern every situation as it was established with the aim of providing welfare to everyone.<sup>448</sup> However, Aquinas is aware of the fact that complying with the letter of the law at all times may be harmful to society as it is often the case that the observance of some point of law conduces to the common weal in the majority of instances, and yet, in some cases, is very hurtful.<sup>449</sup> The legislature is not able to foresee and provide for every scenario. In Aquinas’ view, if this was possible, it would bring more confusion than clarity:

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<sup>444</sup> As above.

<sup>445</sup> As above.

<sup>446</sup> As above 318.

<sup>447</sup> Aquinas (note 47) 1366.

<sup>448</sup> As above.

<sup>449</sup> As above 1368.

No man is so wise as to be able to take account of every single case; wherefore he is not able sufficiently to express in words all those things that are suitable for the end he has in view. And even if a lawgiver were able to take all the cases into consideration, he ought not to mention them all, in order to avoid confusion: but should frame the law according to that which is of most common occurrence.<sup>450</sup>

What is generally done by the lawgiver is that he 'shapes the law according to what happens most frequently, by directing his attention to the common good.'<sup>451</sup> As a result, if a case arises wherein the observance of that law would be harmful to the general welfare, it should not be observed.<sup>452</sup> However, illegal behaviour performed in an extreme situation cannot serve as a legal precedent nor a general theory of law. Aquinas considers that he who follows the intention of the lawgiver, does not interpret the law simply, but in a case in which it is evident, by reason of the manifest harm, that the lawgiver intended otherwise.<sup>453</sup>

He who in a case of necessity acts beside the letter of the law, does not judge the law; but of a particular case in which he sees that the letter of the law is not to be observed.<sup>454</sup>

Immanuel Kant is renowned for his works on ethics and morality, especially his concept of the categorical imperative that can be summarised in the formula 'act so that you use humanity, as much in your own person as in the person of every other, always at the same time as end and never merely as means.'<sup>455</sup> In direct line with this principle, is truthfulness, which Kant considers to be a duty that should not be subject to any exception. For example, when referring to a lie, Kant points out that 'every lie is objectionable and deserving of contempt, for once we declare that we are telling the other our thoughts, and fail to do it,

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<sup>450</sup> As above.

<sup>451</sup> As above.

<sup>452</sup> As above.

<sup>453</sup> As above.

<sup>454</sup> As above.

<sup>455</sup> Kant (note 48) 46-47.



we have broken the *pactum*, and acted contrary to the right of humanity.’<sup>456</sup> Thus, it would be a crime to tell a lie to a murderer who asked whether our friend who is being pursued by the murderer had taken refuge in our house.<sup>457</sup> This conception was strongly criticised in 1797 by Benjamin Constant in his article ‘On political reactions’. Benjamin argues that ‘the [Kantian] moral principle stating that it is a duty to tell the truth would make any society impossible if that principle were taken singly and unconditionally.’<sup>458</sup> His main argument is that ‘to tell the truth is a duty, but is a duty only with regard to one who has a right to the truth.’<sup>459</sup> In response to such criticism, Kant developed the concept of a ‘necessary lie’ where he questions whether a man (in cases where he cannot avoid answering Yea or Nay) has the warrant (right) to be untruthful.<sup>460</sup> Through the idea of a ‘necessary lie’, Kant concedes that in the case of necessity, lying might appear as the only solution to escape from a threat.<sup>461</sup> Therefore, lying cannot be reprehensible if it is used as a means for a just end, as a weapon of defence.

In his book *The metaphysics of morals* under the section ‘The right of necessity, *ius necessitatis*,’ Kant argues that this alleged right contradicts the doctrine of right, as the right of necessity itself appears to be an authorisation to take the life of another who is doing

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<sup>456</sup> Kant I. *Lectures on ethics* (1997) Cambridge, Cambridge University Press, edited by Peter Heath and J. B. Schneewind translated by Peter Heath 203-204.

<sup>457</sup> Kant I. ‘On a supposed right to lie because of philanthropic concerns’, *Grounding for the metaphysics of morals with on a supposed right to lie because of philanthropic concerns* (1993) Ellington, Hackett Publishing Company, Inc 3<sup>rd</sup> edition, translated by James W.. 63.

<sup>458</sup> As above. See also ‘on a supposed right to tell lies from benevolent motives’, Kant I. *Critique of practical reason and other works on the theory of ethics* (1879) London, Longmans, Green & Co. translated by Thomas Kingsmill Abbott 431.

<sup>459</sup> Kant (note 457) 64.

<sup>460</sup> As above.

<sup>461</sup> Kant (note 456) 204.

nothing to harm me, when I am in danger of losing my own life.<sup>462</sup> Kant's analysis of the concept of necessity needs to be distinguished from the self-defence characterised by a violent response against another act of violence directed against me, and where the principle of proportionality has to be taken into account. As observed by Kant the concept of necessity in fact is not that of a wrongful assailant upon my life whom I forestall by depriving him of his life in which case a recommendation to show moderation belongs not to right but only to ethics.<sup>463</sup> It is instead a matter of violence being permitted against someone who has used no violence against me.<sup>464</sup> The author went on to argue that:

The motto of the right of necessity says: 'necessity has no law' (*necessitas non habet legem*). Yet there could be no necessity that would make what is wrong conform with law.<sup>465</sup>

Illegal actions that occur under necessity remain illegal even though they serve as a mean for just end. The relationship between the maxim *necessitas non habet legem* and the rule of law appears to be a neutral relationship, since the established rule of law has no influence over necessity and vice versa. As contended by Kant:

There can be no penal law that would assign the death penalty to someone in a shipwreck who, in order to save his own life, shoves another, whose life is equally in danger, off a plank on which he had saved himself. For the punishment threatened by the law could not be greater than the loss of his own life. A penal law of this sort could not have the effect intended, since a threat of an evil that is still uncertain (death by a judicial verdict) cannot outweigh the fear of an evil that is certain (drowning). Hence the deed of saving one's life by violence is not to be judged *inculpable* but only

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<sup>462</sup> Kant I. *The Metaphysics of Morals* (1991) Cambridge, Cambridge University Press, Introduction, translation and notes by Mary Gregor 60. The argument put back into context the provisions of the German Air-transport Security Act which §14 (3) empowered the minister of defence to order that a passenger airplane be shot down, if it could be assumed that the aircraft would be used against the life of others and if the downing is the only means of preventing this present danger.

<sup>463</sup> As above.

<sup>464</sup> As above.

<sup>465</sup> As above.

*unpunishable* and by a strange confusion jurists take this *subjective* impunity to be *objective* impunity (conformity with law).<sup>466</sup>

Kant on the saying ‘necessity has no law’ as developed at the end of one of his books posits that there is no *casus necessitatis* except in the case where an unconditional duty conflicts with a duty, which although perhaps great, is yet conditional.<sup>467</sup> His concern is about preserving the state from harm by betraying a person who has a relationship to another, such as that of father and son. He argues that ‘to save the state from harm is an unconditional duty, whereas to save an individual is only a conditional duty provided that he has not been guilty of a crime against the state.’<sup>468</sup> The information given to the authorities may be given with the greatest reluctance, but it is given under pressure of necessity, namely, moral necessity.<sup>469</sup> Therefore, Kant’s idea of unconditional duty is linked to the idea of common interest. When it is about saving the state, the highest entity par excellence, there is no need to comply with legal or moral obligation. In return, unconditional duty also espouses the idea of the sacredness of innocent life that should not be threatened, even in exceptional situations. The author rejects the idea that in an extreme case, lives must be weighed against lives to address the threat. According to Kant, if a shipwrecked man thrusts another from his plank in order to save his own life, and it is said that he had the right of necessity (physical necessity) to do so, this is wholly false.<sup>470</sup> For to maintain my own life is only a conditional duty (if it can be done without crime), but it is an unconditional duty not to take the life of another who does not injure me or does not even bring me into peril of losing it.<sup>471</sup> The right of necessity or physical necessity should not be open to all kinds of abuse.

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<sup>466</sup> As above.

<sup>467</sup> Kant I. *Critique of practical reason and other works on the theory of ethics* (1879) London, Longmans Green & Co translated by Thomas Kingsmill Abbott 437.

<sup>468</sup> As above.

<sup>469</sup> As above.

<sup>470</sup> As above 437-438.

<sup>471</sup> As above.

From its canonical roots in the medieval age, the maxim *necessitas legem non habet* is evident today in the different approaches to emergency regimes, including the normative approach and the critical approach.

### **4.3 The Normative approach to emergency regimes**

The normative approach to emergency regimes is the one including these regimes within the realm of law, and affirms their compatibility with the doctrine of constitutional democracy. According to this approach, emergency regimes should be considered as an essential part of the legal order. A popular conception is that emergency situations are primarily an executive's affair. To properly comprehend the substance of this approach, I will examine three points in this section. As I am working in the framework of contemporary democracies, the three points I am about to analyse show that there is no point resorting to autocratic techniques to address a crisis situation in a democratic society. The three points clearly emphasise the role of the different powers (executive, legislature, and judiciary) in crisis management. As a result, dealing with an emergency should not be considered as exclusively a presidential or executive affair, but also a judicial and parliamentary matter. In this section I examine the following: Firstly, emergency regimes as executive affairs; secondly, the necessity of parliamentary involvement in emergency regimes; and thirdly, the role of the judiciary in such regimes. I examine all of these approaches through the lens of Cameroon context.

#### **4.3.1 Emergency regimes as executive affairs: Rossiter and the approach of constitutional dictatorship**

This approach posits that the doctrine of constitutional democracy is designed to function under normal circumstances and is not suitable in times of turmoil where haste is required. Therefore, in crisis periods, the executive power must resort to the striking power of autocracy to suspend the constitution and to preserve the state from harm, because law is made for the state and not vice versa. This section focuses on Rossiter's approach to

constitutional dictatorship through the historical development of this institution, its principles, and its mechanisms.

#### **4.3.1.1 The historical development of constitutional dictatorship: the Roman experience**

In his book *Constitutional dictatorship, crisis government in the modern democracies*, Clinton Rossiter develops an approach to emergency regimes known as constitutional dictatorship, based on special powers vested in the executive during a crisis period. In the first pages, the book quotes the question that former American President Lincoln asked on the Day of Independence (4 July 1861) while addressing the congress about the draconian measures previously enforced and pertaining to the war of secession. The president asked whether a government of necessity would be too strong for the liberties of its people, or too weak to maintain its own existence.<sup>472</sup> The question was rephrased by Rossiter as follows: 'Can a democracy fight a successful total war and still be a democracy when the war is over?'<sup>473</sup> Rossiter's study is rooted in descriptive and historical methodology and is a factual account pertaining to extraordinary measures implemented in Roman antiquity, the United States, Germany, France, and Great Britain. In Rossiter's view, the leading characteristics of constitutional dictatorship are its antiquity and universality, for it is coeval and coextensive with constitutional government itself. The fact that the institutions of free government cannot operate normally in abnormal times has always been recognised.<sup>474</sup> According to Rossiter, the logical origin of this dictatorship is grounded in the peculiar political conditions prevalent in the early years of the Roman Republic. On the one hand, the Republic was usually subject to wars and incessant class struggles. On the other, the Roman governmental scheme was unusually vulnerable to the impact of temporary emergencies.<sup>475</sup> At the time, Rome was a composite constitutional state characterised by

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<sup>472</sup> Rossiter (note 19) 3.

<sup>473</sup> As above.

<sup>474</sup> As above 8.

<sup>475</sup> As above 18.

aristocracy, direct democracy, and a representative system where debate, freedom of speech, and contradiction of ideas among public officials and assemblies on what was and was not constitutional prevailed.<sup>476</sup>

The institution of dictatorship was established in 501 AD by a *lex de dictature creando*. Whenever the Senate was convinced that the state was the target of enemies and that the ordinary legal arsenal could not respond properly, it could initiate the appointment of a dictator via the consuls; via a *lex curiata* the citizen selected as dictator was soon vested with absolute powers. This constitutional procedure gave the dictatorship its stamp of legality.<sup>477</sup> Once the *imperium* had been conferred upon him, the dictator became an absolute ruler. Unlike the ordinary magistrates who were subject to constraints and limitations, the powers conferred upon the dictator were absolute and he could not be challenged for any of his actions. Constitutional magistrate par excellence, the dictator was allowed to resort to all measures to preserve institutions.<sup>478</sup> Whatever had to be done to repulse the enemy and guarantee the safety of the state fell within the scope of his *imperium*. As military commander, his discretion was extreme and he did not require the consent of the Senate and consul, and he could raise more than four legions. Additionally, the dictator could call every man in Rome to the ranks. He could convene any of the assemblies and preside over them, and this power extended to the Senate. In the realm of judicial power, the dictator's jurisdiction extended to all criminal cases pertaining to the preservation of the society. To this end, he possessed the power to execute summarily and without appeal, and to fix fines. According to Roman constitutional law, the dictator had the *ius edicendi* - his decrees lasted for the duration of his power and were as good as laws, and published as such.<sup>479</sup>

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<sup>476</sup> As above.

<sup>477</sup> As above 20.

<sup>478</sup> As above 23.

<sup>479</sup> As above. 25.

The dictatorship was subject to several limitations. The first was the six-month term of office that framed the institution.<sup>480</sup> The second limitation was that the dictator was entirely dependent upon the Senate in financial matters. Thirdly, the right of the people to decide on offensive wars was never conveyed to any dictator. Fourthly, the dictator could not act as a legislator, meaning he could not initiate and promulgate laws.<sup>481</sup>

With regard to the Cameroon context, the approach of constitutional dictatorship is difficult to assess. If the president of the republic could today incarnate the role formerly devoted to the dictator, as he is already entitled to by the constitution, the idea of the universality of the institution is hardly evident. Rossiter considers antiquity and universality to be the main characteristics of the dictatorship, which is coextensive with constitutional government itself. Such attributes are questionable in light of Cameroon experience. Regarding universality, in Chapter 2 of this study, I have described how the institution of dictatorship was introduced in Cameroon, namely under international supervision by international instruments and by French colonial legislation. The institution has been used as the main tool for imperialism to invade and destroy the existence and culture of people living in a geographical space far from that of the aggressors. It can then be said that the purpose of the institution of constitutional dictatorship in Cameroon has been reversed. Instead of being used to repel a threat to their nation, the colonial authorities resorted to it to invade and subjugate people from other lands. Having taken possession of Cameroon, the dictatorship was institutionalised not to repel some hypothetical invasion by a foreign enemy, but to repress the enemy from within, in this case members of the *Union des Populations du Cameroun* who had been fighting for independence and reunification of the country.

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<sup>480</sup> As above 23.

<sup>481</sup> As above 24.

In contrast to Rossiter's proposition, which posits that dictatorship is aimed at saving the state and restoring the *statu quo ante*, in Cameroon the institution guarantees the survival of the regime in place, which regime does not hesitate to fill the gaps of its illegitimacy through repression and gross violation of human rights. Since colonialism introduced emergency regimes, they have been updated year after year and are regularly enforced during pre-and post-electoral campaigns across the country. The International Court of Justice reiterates the link between states of emergency and situations of grave violations of human rights. According to this court, the most serious violations tend to occur in situations of tension when those in power are threatened or perceive that forces challenging their authority are threatening them.<sup>482</sup> As has been reported, unfortunately there is a tendency for some governments to regard any challenge to their authority as a 'threat to the life of the nation.'<sup>483</sup> This is particularly true of regimes that do not provide any lawful means for the transfer of political power and which, consequently, are inclined to regard any criticism of the government as an act subversive of public order. When these regimes feel threatened they often declare a state of emergency.<sup>484</sup>

With regard to some of the limitations of the dictatorship, Rossiter emphasises the six-month term allocated to the institution. In Cameroon the experience shows that the practice of emergency regimes is not subject to time limitations. Firstly, Section 9(2) of the constitution on the so-called state of siege does not provide for any limitation of time for its implementation. Secondly, concerning a state of emergency, Section 2(2) of law N° 90/047 of 19 December 1990 provides that this institution cannot last for more than three months and that this duration is subject to an extension of three months. In theory this is the provision of the law, but in reality there are recorded situations where a state of emergency declared across the country has lasted for years. Such was the case during the twenty-four years of Ahidjo's tenure that ended in 1982, and that emergency legislation was never

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<sup>482</sup> Wessels (note 329) 152.

<sup>483</sup> As above 153.

<sup>484</sup> As above.



repealed. It was only repealed by President Biya in 1991.<sup>485</sup> With regard to the limitation linked to the dictator's financial dependence on the Senate, it does not apply in the Cameroon context. Although Section 26 of the Constitution devolves upon parliament the financial prerogative in the state, Section 16 (2) (b) of the same document entitles the president of the republic to issue the state budget by decree in case parliament fails to do so. Section 16 (2) (b) reads:

The National Assembly shall, during one of its sessions, adopt the State budget. Where such budget is not adopted before the end of the current financial year, the President of the Republic shall be empowered to extend the previous budget by one-twelfth until a new one is passed.<sup>486</sup>

As observed by Joseph Owona, the practice has witnessed at least one case where the entire state budget was enforced by Ordinance N° 72/1 of 23 June 1972 on the financial law of the United Republic of Cameroon.<sup>487</sup> It is assumed that this important prerogative of the president in budget matters is available during peaceful times and during crisis periods.

#### **4.3.1.2 The principle of constitutional dictatorship**

According to Rossiter, the principle of constitutional dictatorship means that drastic measures enforced by modern democracies in crisis periods should be considered as part and parcel of the democratic process, so that it will be redundant to refer to the term 'constitutional dictatorship.' In fact the striking power of autocracy has been used many times to preserve democracy, and more than one constitution has been suspended so that it might not be permanently destroyed.<sup>488</sup> As claimed by Rossiter, 'indeed, the qualifying adjective constitutional is almost redundant, for the historical conception of dictatorship was that it could not be other than constitutional.'<sup>489</sup> The measures issued by officials

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<sup>485</sup> Awasom (note 124) 10.

<sup>486</sup> See also section 19 of the Constitution of 1 September 1961, section 15 of the Constitution of 2 June 1972.

<sup>487</sup> Owona J. '*L'institutionnalisation de la légalité d'exception dans le droit public camerounais*' (1974) Yaoundé, *Revue Camerounaise de Droit* N°6, 113.

<sup>488</sup> Rossiter (note 19) 8.

<sup>489</sup> As above 4.

during emergency situations would be undemocratic if they were made during peaceful periods. Rossiter cited the American civil war where 'in the successful prosecution of a bitter struggle for survival the administration at Washington continuously resorted to actions that would have been looked upon as unconstitutional, undemocratic, and downright dictatorial in times of peace. Since it was a time of war these actions seemed altogether necessary and proper, and the American people generally gave them their support and applause.'<sup>490</sup>

The principle of constitutional dictatorship finds its rationale in the following postulate: Liberal democracy is complex, heavy, and designed to function under normal circumstances and peaceful conditions. Accordingly, it is not adaptable to crisis periods that require celerity. Civil liberties, free enterprise, constitutionalism, government by debate, and compromise are strictly luxury products:

Therefore, in time of crisis a democratic, constitutional government must be temporarily altered to whatever degree is necessary to overcome the peril and restore normal conditions. This alteration invariably involves government of a stronger character; that is, the government will have more power and the people fewer rights.<sup>491</sup>

Three types of crisis in the life of a democratic nation can justify a government to resort to dictatorial institutions and powers. The first one is war, particularly a war to repel invasion, when a state must use every possible means to defeat the enemy. The second crisis is rebellion, which occurs when a constitutional government's authority is resisted openly by a significant portion of its citizens who are engaged in violent insurrection against the enforcement of the government's laws, or are bent on capturing it illegally or even destroying it altogether. The third crisis refers to economic depression.<sup>492</sup> In addition to these categories of crisis, there are others pertaining to natural cataclysms, such as fire,

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<sup>490</sup> As above.

<sup>491</sup> As above 5.

<sup>492</sup> As above 6.

flood, drought, earthquake, riots, and general strikes that governments deal with by unusual and often dictatorial methods. Such methods were implemented during the Second World War since it 'was proof enough that crisis government means strong and arbitrary government, and that in the eternal dispute between government and liberty, crisis means more government and less liberty.'<sup>493</sup> The ultimate purpose of the principle of constitutional dictatorship is 'the complete restoration of the *status quo ante bellum*.'<sup>494</sup> Rossiter makes a distinction between the so called constitutional dictatorship and fascist dictatorship. The former is characterised by its provisional and ephemeral aspect, whereas the latter is established for good. As Rossiter argues:

The only reason for its existence (dictatorship) is a serious crisis; its purpose is to dispense with the crisis; when the crisis goes, it goes.<sup>495</sup>

Applying this approach to the Cameroon reality, the variety of crises justifying a governmental resort to dictatorial power is effectively present, but only theoretically since most of these categories of crises exist within the law. Experience shows that neither a natural cataclysm such as the repeated volcanic eruptions (1959, 1982, 1989, 1999, and 2000) of Mount Cameroon, the deadly gas emission of lake Nyos in the northwest region of the country, which on 21 August 1986 suffocated over a thousand people and thousands of livestock, nor gas emission from lake Monoun in the western region that on 15 August 1984 resulted in the death of thirty seven people, nor the economic depression that has prevailed since the eighties nor the threat of invasion during the war between Cameroon and Nigeria regarding the Bakassi peninsula in the nineties have ever led to the declaration of a state of emergency. This emergency institution has been repeatedly enforced across the country, especially to repress struggles for independence and since then it has been enforced during pre- and post-electoral campaigns.

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<sup>493</sup> As above 6.

<sup>494</sup> As above 7.

<sup>495</sup> As above 8.

Rossiter distinguishes between the so-called constitutional dictatorship and fascist dictatorship. Cameroon is close to a fascist dictatorship owing to the recurrent enforcement of draconian measures that have become a permanent government strategy. Indeed as the legitimacy of the ruling class is ceaselessly challenged, the government sees an enemy in every citizen, a potential threat to 'the life of nation' that must be eliminated. This may explain the permanent deployment of draconian measures across the country on a daily basis and a regular incorporation of exceptional legislation within the ordinary legislation.<sup>496</sup>

#### **4.3.1.3 The mechanisms of constitutional dictatorship**

Two mechanisms of constitutional dictatorship are distinguished, namely emergency action of an executive nature and emergency action of a legislative nature. The basic institution of constitutional dictatorship of an executive nature is martial rule, whereas the outstanding institution of constitutional dictatorship of a legislative nature is the delegation of legislative power.<sup>497</sup> On the one hand, crisis rebellion urgently requires executive action and calls for the institution of some form of military dictatorship. On the other hand, the crisis of economic depression is subject to emergency laws and calls for law-making by the government's executive branch. This refers to a voluntary transfer of legislative power from parliament to the executive during a crisis period. A solution cannot come from a daily routine characterised by legislative heaviness and lack of celerity.<sup>498</sup> Rossiter considers the government as the ultimate bastion that must use all means to preserve society from perishing. It is always the executive branch of government that

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<sup>496</sup> For example on 4 April 2011 parliament in Cameroon controlled by the ruling party passed a bill empowering the president to enact 'ordinances on the security of intelligence activities in Cameroon' and 'on the use of intelligence's technologies in the country.' Through this law, the president is entitled to request access to private emails and monitor the telephone traffic of people across the country at any time. Moreover despite the immunity which characterised their functions until then, the elected members of parliament can on the ground of this law be subject to spy activity and physical search.

<sup>497</sup> Rossiter (note 19) 9.

<sup>498</sup> As above.

possesses and wields the extraordinary powers of self-preservation of any democratic, constitutional state. Indeed a crisis government is primarily, and often exclusively, the business of presidents and prime-ministers.<sup>499</sup> Law is made for the state, not the opposite, and in the case where a choice has to be made, the maxim *Salus populi suprema, lex esto* should prevail.<sup>500</sup> Several other mechanisms of constitutional dictatorship are mentioned and include cabinet dictatorship, presidential dictatorship, wartime expansion of administration, a peacetime emergency planning agency, a 'war cabinet', a congressional investigating committee, and executive dominance of the legislature.<sup>501</sup> Rossiter is convinced that these institutions could be a trusted guarantee for state safety.

In the Cameroon emergency system the distinction between an emergency action of an executive nature and an emergency action of a legislative nature remains unknown. Emergency matters that occur in the country, whether they be a crisis rebellion and/or an economic depression is first of all a presidential concern. There is no such mechanism of legislative delegation in the Cameroon emergency system. Indeed at the level of declaration of a state of emergency and the so-called state of siege, the law provides absolutely no role for parliament. There is a vague reference to parliamentary consultation, which may happen only in case of extension of a state of emergency. In addition, there is no further elucidation about the relevance and the meaning of such consultation, clarifying as to whether or not the opinion of the legislature about such an extension should be considered.<sup>502</sup>

#### **4.3.2 The place of parliament in emergency regimes: Dicey's concept of legality**

This approach posits that in case of exceptional circumstances, it is an absolute right and even a duty not only for the government, but also for any soldier or civilian whether

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<sup>499</sup> As above 12.

<sup>500</sup> As above 10.

<sup>501</sup> As above 10-11.

<sup>502</sup> Section 3 (a) (b) of law N° 90/047 of 19 December 1990 on a state of emergency.

connected to the administration or not, to react for the restoration of order. Contrary to the common conception that assimilates emergency regimes to the special powers of the executive body, this approach recalls that martial rule does not confer upon the state or its citizens, special powers for the circumstance. Accordingly, officers, magistrates, soldiers, policemen, and ordinary citizens are all equal before the law and they are each and all of them, liable and accountable for the use of unnecessary force.

However, Dicey is aware of some constraints that may necessitate the use of discretionary powers that are denied to the Crown by the law of the land. The approach suggests that the executive body formally requests these powers in advance from the legislature. The legislature should be the body granting such discretionary powers as it is the supreme authority in charge of making laws. Therefore, if these laws were to be broken, it is reasonable that parliament be the body entitled to break them. Dicey's concept of legality also gives rise to a situation where the executive body might be compelled to react prior to parliamentary permission. In this case, authorities can break the law and request for an act of indemnity, which is a parliamentary control implemented subsequently. In this section, I examine Dicey's concept of legality through the characteristics of English martial law on the one hand and parliamentary sovereignty and the rule of law on the other.

#### **4.3.2.1 Characteristics of English martial law**

In *Introduction to the study of the law of the constitution*, Albert Venn Dicey examines the issue of emergency regimes in English constitutional law, using the term 'martial law.' Dicey provides for two interpretations or definitions of the concept martial law. On the one hand 'martial law' in the proper sense means the suspension of ordinary law and the temporary government of a country, or parts of it, by military tribunals.<sup>503</sup> This type of martial law, which is characterised by the transfer of powers from civil authorities to the army during the crisis period is equivalent to the French state of siege, and is unknown in

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<sup>503</sup> Dicey (note 28) 287.

English law. On the other hand, the second meaning of the concept ‘martial law’ refers to the absolute right that belongs not only to the state, but also to its population to intervene in the case of events threatening society’s safety. Therefore, it is a right and even a duty for the government and for any soldier or civilian, whether connected with the administration or not, to get involved in the restoration of order. It is this type of martial law that is recognised by English legislation. As stressed by Dicey, ‘martial rule is sometimes employed as a name for the common law right of the Crown and its servants to repel force by force in the case of invasion, insurrection, riot, or generally of any violent resistance to the law.’<sup>504</sup> Some aspects need to be emphasised. Firstly, the legal attribute of martial law is to be found in the necessity to save the state, by repelling force by force. This prerogative shared by the Crown and its servants arises from their common law right to resist against violence. As Dicey states, ‘this right or power, is essential to the very existence of orderly government, and is most assuredly recognised in the most ample manner by the law of England.’<sup>505</sup>

Secondly, in a state of crisis everyone is subject to the law and share the same status before the law, because martial rule does not confer upon the state or its citizens, special powers for the circumstances. As previously mentioned, English martial law has nothing to do with the French state of siege characterised by the suspension of law, special powers conferred upon the army, and gross violation of human rights. Therefore, the rights and duties of citizens remain the same in peace time and in crisis periods. Officers, magistrates, soldiers, policemen, and ordinary citizens all occupy the same position in the eyes of the law and all of them are liable to be called to account before a jury for the use of excessive, that is, unnecessary force.<sup>506</sup> Breaking the law and abusing power not required by the circumstances when addressing a crisis situation may therefore result in sanctions.

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<sup>504</sup> As above 288.

<sup>505</sup> As above.

<sup>506</sup> As above 289.

Thirdly, it is apparent that martial law is an institution of preventive character rather than repression, since its main role is to tackle the possible disappearance of the state. No matter how serious the situation is, this task should be accomplished within the ordinary legal framework and not in a *legal vacuum*:

Soldiers may suppress a riot as they may resist an invasion, they may fight rebels just as they may fight foreign enemies, but they have no right under the law to inflict punishment for riot or rebellion. During the effort to restore peace, rebels may be lawfully killed just as enemies may be lawfully slaughtered in battle, or prisoners may be shot to prevent their escape, but any execution (independently of military law) inflicted by a Court-martial is illegal, and technically murder.<sup>507</sup>

Martial law is then perceived as an emergency institution of national concern involving the population and authorities and that does not confer special powers on anyone. This approach is foreign to the Cameroon context where the institution of emergency regimes is first of all an executive affair that confers upon the president of the republic 'special powers as may be provided for by law' according to the wording of Section 9(1) of the constitution on the state of emergency. Whereas, according to Dicey, the entire community should be involved in the management of emergency situations, this approach is ignored by the Cameroon emergency system. Dicey strongly rejects the concept of martial law understood to be the suspension of ordinary law and the transfer of powers from civil authorities to the army in crisis periods. This idea is alien to Cameroon realities where undesirable martial law effectively exists under the appellation 'state of siege', which suspends law and transfers the control of the cities from administrative authorities (governor, prefect, sub-prefect, mayor, etc.) to the army. This state of siege may be declared by the president of the republic according to the wording of Section 9(2) of the constitution 'as he may deem necessary.' In reality, and even though it has never been formally declared in terms of the provisions of Section 9(2) of the constitution, in the recent past the city of Douala has witnessed the implementation of this regime under the guise *Commandement Opérationnel*. Indeed according to decree N° 2000/0027 of 24 February 2000, President

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<sup>507</sup> As above 293.



Biya setup the *Commandement Opérationnel* (CO) [Operational Command] to fight large scale banditry [*grand banditisme*] in the city of Douala. This institution, which in fact was nothing else than a state of siege, appointed soldiers to deal with theft in the city of Douala and implicitly silenced the law and suspended the provisions of the Cameroon Penal Code<sup>508</sup> on theft. As a result, most people who were found guilty of theft (sometimes following denunciation through phone calls) were executed without judgement after being subjected to torture. Those responsible for such killings have never been troubled either by state authorities or by a court. This conception of emergency regimes that grant unlimited exceptional powers to public authorities and the army has been strongly criticised by Dicey, who recommends the idea of parliamentary sovereignty and the rule of law.

#### **4.3.2.2 Parliamentary sovereignty and the rule of law**

Dicey posits that modern life has some constraints linked to certain facts, such as the presence of other actors within the international arena that may impact on the peaceful status of society. These facts include the risks of war, disorder, and invasion that the management belongs in principle to the executive power. However, the rigidity of the law constantly hampers (and sometimes with great injury to the public) the action of the executive<sup>509</sup> and in times of war, disorder or invasion, the rule of law might be insufficient to restore peace and order. Consequently, repelling all these threats necessitates the use of arbitrary powers:

Under the complex conditions of modern life no government can in times of disorder, or of war, keep the peace at home, or perform its duties towards foreign powers, without occasional use of arbitrary authority.<sup>510</sup>

Using arbitrary powers even occasionally in a democratic state remains a delicate issue; the reason being that such powers are at the opposite end of the rule of law. It is then

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<sup>508</sup> Law 67/LF/1 12 June 1967.

<sup>509</sup> Dicey (note 28) 411.

<sup>510</sup> As above.

suggested that the use of special powers in crisis period be conceded to the executive power by parliament provided that 'the discretionary authority be denied to the Crown by the law of the land.'<sup>511</sup> In other words, the necessity of arbitrary powers should be subject to exceptional legislation<sup>512</sup> and not to the will of the executive entity. The executive entity that is about to resort to emergency powers must request in advance the assistance of the legislature. As Dicey puts it 'the executive therefore must ask for, and always obtains aid from parliament.'<sup>513</sup> The reason being that parliament is the supreme authority in charge of making laws. If these laws were to be broken, it makes sense that parliament be the authority entitled to do so. Emergency regimes should be based on statutes, and it is this parliamentary authorisation that gives its legal endorsement to such regimes. This requirement limits the powers granted to the executive that is then compelled to act in accordance with the rule of law. Moreover, its acts are subject to judicial review that can bring about their sanction in case of violation:

The fact that the most arbitrary powers of the English executive must always be exercised under Act of Parliament places the government, even when armed with the widest authority, under the supervision, so to speak, of the courts.<sup>514</sup>

Even if Dicey advocates for the respect of the rule of law in all circumstances, he also acknowledges that there are times of tumult or invasion, when, for the sake of legality itself, the rules of law must be broken.<sup>515</sup> He refers to a case where, when facing a tumult, officials should take action without the intervention of parliament; in other words without the issue of any parliamentary statute or exceptional legislation framing their acts. In this scenario 'the ministry must break the law and trust for the protection to an Act of indemnity.'<sup>516</sup> The Act of Indemnity is a parliamentary control operated *a posteriori* on the

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<sup>511</sup> As above.

<sup>512</sup> As above.

<sup>513</sup> As above 412.

<sup>514</sup> As above.

<sup>515</sup> As above.

<sup>516</sup> As above 413.

actions of the authorities following the repulsion of the threat. This Act represents ‘the last and supreme exercise of parliamentary sovereignty.’<sup>517</sup> In the first chapter of his book ‘The sovereignty of parliament’ the author stresses:

An Act of Indemnity is a statute, the object of which is to make legal transactions which when they took place were illegal, or to free individuals to whom the statute applies from liability for having broken the law.<sup>518</sup>

Therefore, an Act of Indemnity is endowed with the capacity to provide an action with legal attributes, if, when such action took place it was originally reprehensible from a legal perspective. The purpose of such an Act is to bring back within the sphere of law an action, which, if undertaken in another circumstance, would have been illegal. Therefore, the ultimate purpose of an Act of Indemnity is to legalise illegality.<sup>519</sup> The central place occupied by parliament in allowing the use of discretionary powers to the government appears at first glance as a mere substitution of the despotism of parliament for the prerogative that belonged to the Crown.

Dicey’s concept of legality strongly rests on the nature of the political regime in place, especially the parliamentary one, as illustrated by the British practice. In such a context, the separation of powers among the executive, the legislature, and the judiciary should be effective. Analysed through the lens of the Cameroon political system, Dicey’s concept of legality highlights the incompatibility between the two. In Cameroon, the nature of the political regime is unknown, and it is often referred to as presidentialist regime. This regime is a variant of authoritarianism, where despite a formal proclamation of the three powers by the constitution, a genuine separation is inexistent, since the president of the republic remains the bearer of all of them. The Cameroon system is characterised by the supreme hegemony of the president of the republic over all institutions. Dicey emphasises

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<sup>517</sup> As above.

<sup>518</sup> As above 49.

<sup>519</sup> As above 413.

the main function of parliament (representativeness) as the bearer of national sovereignty. This concept would have been applicable to the Cameroon context of 1960 and 1961 where this function used to be exclusively devolved upon the deputies by virtue of Sections 2 of the constitutions of 1960 and 1961. These sections provide that national sovereignty shall be vested in the people of Cameroon who shall exercise it either through its deputies at the (national) or (federal) assembly, or by referendum. This formula could well match Dicey's concept of legality conditioned by parliament as a genuine representative of the people. In fact, until shown proof to the contrary, the people in any genuine democracy remain the only bearer of national sovereignty. However, since the Constitution of 2 June 1972 and the current one of 18 January 1996, national sovereignty in Cameroon is firstly devolved upon the president, and secondly upon parliament. Section 2 of the Constitution reads as follows:

National sovereignty shall be vested in the people of Cameroon who shall exercise it either through the president of the republic and the members returned by it to the National Assembly or by way of referendum; nor may any section of the people or any individual arrogate to itself or to himself the exercise thereof.

The consequence of such provisions is that there is no need for the president to request parliamentary blessing for the use of arbitrary powers since he considers himself to be the first representative of the people, and as such, is entitled to act on their behalf. This could be the reason why in Cameroon today, parliament has no role to play in the declaration of emergency regimes, contrary to what was provided for in Section 20 of the Constitution of 1960 that formally requested parliamentary consultation prior to the declaration of such regimes. Currently, neither the law nor the constitution of the country provides for a parliamentary role at the level of the declaration of a state of emergency, or a so-called state of siege.

Dicey's concept of legality is not applicable in Cameroon because not only is the separation of powers not genuine, but these powers are not independent of each other. An example is found in the provisions of the different Sections 2 of previous constitutions, which provide as follows:

The authorities in charge of the state shall derive their powers from the people by way of election by universal suffrage, direct or indirect.<sup>520</sup>

This provision clearly determines the process that guides the involvement of people, especially members of parliament, in the management of the state. The main observation is the liberal political attribute that characterised such a stipulation. However, the wording of this provision was to be significantly altered by the authoritarian configuration entrenched in the Constitution of 18 January 1996. The new Section 2 was re-written as follows:

The authorities responsible for the management of the state shall derive their powers from the people through election by direct or indirect universal suffrage, unless otherwise provided for in this Constitution.

The last fragment of the sentence ‘unless otherwise [...]’ aims at reducing the scope and judicial force attached to an election. This is the case in Section 20(2) of the Constitution, which provides that seventy per cent of senators should be elected while thirty per cent should be appointed by the president. This provision was brought into being in May 2013 when the Cameroon Senate was established (the first one in the history of the country), with seventy per cent of them having been effectively ‘elected’, and thirty per cent including the chairman of the Senate, having been appointed by President Biya. Can the degree of independence of an elected member of parliament be weighed with that of an appointed member of the same institution? It is purely anti-democratic to appoint people to an institution, which is essentially deemed to be representative. This explains why in such a context there is no need for the president to request a statute in various situations, including before, during, and after a declaration of a state of emergency, because of the hierarchical relationship between him and members of parliament. Gicquel and Hauriou observe that the excessive control of the presidents over deputies through the party is not

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<sup>520</sup> See sections 2 of the Constitutions of 4 March 1960, 1 September 1961 and, 2 June 1972.

mere intellectual speculation. Among them, hierarchical relationships exist from head to sub-ordinate, from tutor to performer, and from censor to penitent.<sup>521</sup>

Looking at Dicey's concept of legality, parliament should be strong and effectively incarnate the role of checks and balances to counterweigh the executive hegemony, whether in peaceful times or in crisis periods. In Cameroon, not only does the president not account to parliament, but the executive branches also behave in much the same way. For example, in their prerogative of control of government, Cameroonian ministers can refuse to answer questions from the deputies. As provided for by Section 61 of the Rule of Procedure of the National Assembly, 'ministers are entitled to declare that public interest prevents them from answering.' This provision, which is unconstitutional (it contradicts the provisions of Section 35(2) of the constitution), is a disaster because the concept of 'public interest' remains a flexible one. Refusing to answer a question posed by the representative of the people on the ground of public interest is a clear reference to the concept of *raison d'état*. This concept belongs to the emergency sphere and one could well imagine a reference to it in time of turmoil. Indeed in Cameroon, when the president of the republic declares an emergency regime, it is the government's responsibility to implement this measure. If abuses occur during the implementation of these regimes, the authorities in charge are not subject to accountability before parliament.

Dicey's concept of legality is not the only approach to grant a place of choice to the legislature in crisis situation. A similar approach also appears through the extra-legal measures (ELM) model developed in Oren Gross and Fionnuala Ní Aoláin's 2006 book.<sup>522</sup>

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<sup>521</sup> As quoted by Bigombe P. *'émergence et consolidation des tendances constitutionnelles au Cameroun (1990-1195)'la réforme constitutionnelle du 18 janvier 1996 au Cameroun : aspects juridiques et politiques (1996). Sous la direction de Stanislas Melone, Adolphe MinkoaShe et Luc Sindjoun. Yaoundé, Fondation Friedrich Ebert/Association Africaine de science politique (section Camerounaise, Grap) 8.*

<sup>522</sup> Gross O. & Ní Aoláin F. *Law in Times of Crisis Emergency Powers in Theory and Practice* (2006) Cambridge, Cambridge University Press.

The ELM model (which is not also applicable in Cameroon for the above-mentioned reasons) is based on the premise that when facing an emergency situation, public officials may act extra-legally when they believe that such an action may result in protecting the state from harm and in order to reinstate order. It is important to observe that as is the case with Dicey's concept of legality, the extra-legal measures model does not undermine the rule of law. Public officials who choose to act extra-legally are violating the rule of law, and as such, are liable and accountable for their actions. Emergency situations do not mean cancellation or termination of the rule of law; the public official who, in addressing the peril, chooses not to comply with the law, must openly and publicly acknowledge the extra-legal character of her action.<sup>523</sup> Such action would be subject to what the authors called ex-post ratification (what Dicey refers to as an Act of Indemnity), which is a subsequent deliberation process afterwards that may lead effectively to ratification or rejection of unlawful actions by public officials.<sup>524</sup> There are three essential features in the ELM model, which include a situation of crisis, a disclosed disobedience of the rule of law by public officials, and ex-post ratification by the people. The ELM model and Dicey's concept of legality are suitable for genuine democratic societies based on separation of powers and the sacredness of the rule of law.

#### **4.3.3 Keeping the society inside the sphere of law: the necessity of judicial supervision in emergency regimes**

As is the case with parliament, it is currently required that judges should be granted a significant place in the management of the state, whether in peaceful periods or in times of turmoil. As the bearers of the third power in democracy, this requirement is necessary to guarantee the maintenance of the society inside the realm of law. In this section, I present two arguments. The first one is the concept of legal black holes and legal grey holes, as

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<sup>523</sup> As above 112. See also Gross O. 'Chaos and Rules: should responses to violent crises always be constitutional?' (2003) the Yale Law Journal Vol.112, 1023.

<sup>524</sup> Gross O. & Ní Aoláin (note 522) 137.

developed by Dyzenhaus. The second is the jurisprudential approach to emergency regimes.

#### **4.3.3.1 Dyzenhaus: legal black holes and legal grey holes**

David Dyzenhaus rejects all approach to emergency that rely on the suspension of law and the use of draconian measures by the executive power. Suspending law and allowing for special powers are at the origin of what he calls a legal black hole and a legal grey hole. Dyzenhaus considers the former to be a legal *vacuum* and the latter to be a situation with inefficient legal mechanisms. The author is more concerned about the legal grey hole that can be merciless to constitutional democracy. To address the issue of legal black holes and legal grey holes, he suggests the adoption of what he refers to as the rule-of-law project that denotes the substantial role allowed to judges, and the necessary cooperation between the executive and the legislative branch of government. The roles granted to judges, whether in peaceful periods or in emergency situations, should bear the same amount of importance as those devolved to the executive and the legislature. In this section I present Dyzenhaus' approach to emergency regimes through two main ideas, namely Carl Schmitt's challenge and the rule-of-law of project.

##### **4.3.3.1.1 Carl Schmitt's challenge**

Dyzenhaus articulates a legal approach to emergency regimes based on the reinforcement of the role of judges. In his book, *The constitution of law legality in a time of emergency*, he disagrees with all approaches to emergency regimes that advocate for the suspension of law and the granting of discretionary powers to the government in a crisis period. His argument revolves around what he referred to as 'Carl Schmitt's challenge' which amounts to 'the claim that a response to an emergency situation has in the nature of things to be partly or even wholly exempted from the requirements that we associate with the rule of law in normal times.'<sup>525</sup> Schmitt is one of the most renowned theorists on a state of

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<sup>525</sup> Dyzenhaus (note 30) 16.



exception who posits that the rule of law in liberal political theory is unable to address emergency situations, and that only the sovereign can deal adequately with such situations. Dyzenhaus rejects Schmitt's approach by arguing that even during a crisis period, the rule of law still has an important role to play as 'the law contains moral resources sufficient to respond to the challenge.'<sup>526</sup> Therefore, suspending law and providing for discretionary powers during emergencies allows for the creation of a 'legal black hole' and a 'legal grey hole.'<sup>527</sup> According to him the real test for Schmitt's challenge is whether legislative responses to emergencies necessarily create black holes or grey holes which are in substance black but in effect worse because they give to official lawlessness the façade of legality.<sup>528</sup> A 'legal black hole' is characterised by a total lack of legal controls, 'a situation in which there is no law'<sup>529</sup> whereas a 'grey hole' is a situation that provides for inefficient legal controls, a situation characterised by a façade of legality where public officials can argue that they still act in accordance with the rule of law.<sup>530</sup> Therefore, Dyzenhaus' analysis is concerned with the management of 'legal spaces' and 'legal controls.' Even though a black hole constitutes a lawless void,<sup>531</sup> the author is more concerned about the grey hole, which he considers to be a serious threat to constitutional democracy because grey holes imply more harm to the rule of law than black holes.<sup>532</sup> As he argues, 'a grey hole is in substance a legal black hole but worse because the procedural rights available to the detainee cloak the lack of substance.'<sup>533</sup>

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<sup>526</sup> As above 16.

<sup>527</sup> As above 3.

<sup>528</sup> As above 59.

<sup>529</sup> As above 3.

<sup>530</sup> As above.

<sup>531</sup> As above 41.

<sup>532</sup> As above 50.

<sup>533</sup> As above.

In addressing Carl Schmitt's concept of decisionism, which places the sovereign in the centre of politics, Dyzenhaus assumes that this concept does not create a legal black hole as such, but rather a space beyond the law. It is a space that is revealed when law recedes, leaving the legally unconstrained state, represented by the sovereign, to act.<sup>534</sup> For legal theorists to perceive black holes and a space beyond the law as legal features playing a substantial role during emergencies represents 'a vain effort to banish the exception from legal order.'<sup>535</sup> Far from subscribing to such a view, Dyzenhaus considers that there is a genuine choice in any real or alleged emergency as to whether or not to respond to emergency through the rule of law.<sup>536</sup> He then argues that whatever the gravity of the situation, we still have a basis for not giving up on the idea that law provides moral resources sufficient to maintain the rule-of-law project, even when legal and political order is under great stress.<sup>537</sup>

#### **4.3.3.1.2 The rule-of-law project**

To face emergencies adequately, it is important to take into account the rule-of-law project. According to Dyzenhaus, law provides a moral resource that can inform a rule-of-law project capable of responding to situations that place legal and political order under great stress, for example, states of emergency or executive decisions concerning national security.<sup>538</sup> The rule-of-law project refers to the substantial role to be granted to judges and the necessity of cooperation between the executive and the legislative branches of government.<sup>539</sup> Emergency situations do not require departure from the exigencies of the rule of law on the ground that necessity has no law.<sup>540</sup> The rule-of-law project urges the

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<sup>534</sup> As above 39.

<sup>535</sup> As above.

<sup>536</sup> As above 66.

<sup>537</sup> As above 19.

<sup>538</sup> As above 17.

<sup>539</sup> As above 3.

<sup>540</sup> As above 4.

legislature, the executive, and the judiciary to work together in peace times and in crisis situations, because the duty to act to preserve the law's inner morality is their joint responsibility. The fact that judges are not trusted and are generally marginalised by the executive and the legislature, especially during emergencies, constitutes a severe impediment to the rule-of-law project. Like the executive and the legislature, the judiciary has a constitutional duty to uphold the rule of law in emergency times no less than in ordinary times.<sup>541</sup> They effectively play the role of a weatherman to show which way the wind blows.<sup>542</sup>

If the rule-of-law project emphasises the complementary character of the relationships between the different branches of government, it also recalls the mechanisms of judicial review and the checks and balances that should govern the relationships among these organs. As a result, judges are entitled to assert the rule of law in the face of what seem to be legislative or executive indications to the contrary.<sup>543</sup> An example is the situation where the law explicitly gives officials the power to disregard rule-of-law principles. In such a context, it is the duty of judges to point out publicly in their judgments that a matter that is susceptible to the control of the rule of law, and which is very important for the rule of law to control, has been deliberately removed from such control.<sup>544</sup> Therefore, raising judges' awareness of their roles' importance within society appears to be an efficient way out of the grey hole:

The rule of law can be imposed in national security matters, but also that judges are under an obligation to impose the rule of law until they are explicitly told by the legislature that it wants government to govern outside of the rule of law. The full realisation of the rule of law will require the

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<sup>541</sup> As above.

<sup>542</sup> As above 11.

<sup>543</sup> As above 4.

<sup>544</sup> As above 218.

cooperation of all three branches of government, but judges must adopt as a regulative assumption of their practice that the other two are cooperating.<sup>545</sup>

Therefore, emphasis is placed on the relationship between the three powers in terms of their complementariness and not their differences, as their separation benefits a common set of principles.<sup>546</sup> The powers are all involved in the rule-of-law project and are committed to realising principles that are constitutional or fundamental, but which do not depend on the fact that they have been formally enacted for their authority.<sup>547</sup> Dyzenhaus refers to Dicey's view, which agrees with Hans Kelsen's identity thesis. This thesis posits that the state is totally constituted by law and therefore, when a political entity acts outside of the law, its acts can no longer be attributed to the state, and therefore they have no authority.<sup>548</sup> For the rule-of-law project to be effective then, judges should be aware of the 'regulative assumption of their role that all the institutions of government are cooperating in what we can think of as the rule-of-law project that tries to ensure that political power is always exercised within the limits of the rule of law.'<sup>549</sup>

By insisting on the meaning of the role of judges, Dyzenhaus emphasises that they should uphold the rule of law without being limited by legislation. He then raises criticisms of constitutional positivism, which is a doctrine that usually allows for the creation of legal black holes. Therefore, judges who subscribe to such a doctrine would realise that there is nothing legally wrong with statutes that put public officials beyond the reach of the rule of law.<sup>550</sup> This is generally due to the assumption of 'legislative supremacy' or 'absolute' parliamentary sovereignty that governs the judges' mindsets. Three solutions that will

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<sup>545</sup> As above 217.

<sup>546</sup> As above 5.

<sup>547</sup> As above.

<sup>548</sup> As above 199. See also Dyzenhaus D. 'the compulsion of legality' *Emergency and the limits of legality* (2008) Cambridge, Cambridge University Press, edited by Ramraj V. 36.

<sup>549</sup> Dyzenhaus (note 30) 130 & 200.

<sup>550</sup> As above 201.

allow judges to occupy the crucial place assigned to them in the rule-of-law project are suggested. Firstly, they have to be committed to the view that the rule of law has content, which is to say it is constituted by values that make government under the rule of law something worth having. Secondly, judges are entitled to review both legislative and governmental decisions in order to see whether or not these comply with the value. Thirdly, the onus is on both the legislature and the executive to justify their decisions by reference to these values.<sup>551</sup>

Dyzenhaus' idea of legal black holes and legal grey holes strongly advocates for a judicial contribution to fill these holes. As with the previous approach, this approach is destined to be applied to a purely democratic system based on the separation of powers and the rule of law. In the case of Cameroon, such approach would irremediably fail since the domestic provisions on a state of emergency and the so-called state of siege provides no room for judicial review. Indeed, in emergency matters, judges are completely absent, whether at the level of declaration or implementation. The main reason justifying such omission in the role of judges is that the act declaring a state of emergency or a state of siege in Cameroon is an act of state. This category of act, which is characterised by its immunity, is above the competence of the courts and as such prevents judges from ruling on them. Therefore, Dyzenhaus' approach would be inappropriate in such a context.

Another issue in Cameroon regarding the judiciary concerns the issue of its independence. First of all the concept of powers in the political system of the country remains a vain formula without proper content. In advocating for a place of choice to be granted to the judiciary, a relationship of complementariness among the three powers in the state is highly recommended. In Cameroon, the previous constitutions provided for two powers, which included the President of the republic and the Legislative Power. Since 18 January 1996, the new constitution formally refers to three powers, namely the executive, the legislature, and the judiciary. Former judicial authority has changed the status and has

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<sup>551</sup> As above 139.

since become ‘a judicial power.’<sup>552</sup> The judiciary has ‘matured’ and has even become ‘independent from the executive and legislative powers’ following the wording of Section 37(2) of the constitution. Yet the formulation of ‘judicial power’ and ‘independence’ was to remain insignificant. After reading the first sentence of the section on ‘judicial power’, the institution is soon placed under the supervision of the president of the republic. In reality there has been no improvement between the status of former judicial authority and that of the new judicial power. As provided for by Section 37(3) of the constitution:

The president of the republic shall guarantee the independence of judicial power. He shall appoint members of the bench and for the legal department.

The above provision is a repeat of Section 31 of the Constitution of 2 June 1972. Olinga mentions that Section 37(2) and (3) are mutually incompatible and account for the insufficient elaboration of the judicial power by the constituent. It is hardly comprehensible that a power independent from the other two, sees its independence guaranteed by one of the latter.<sup>553</sup> The independence granted by the supreme law in Section 37 (2) is soon trivialised by the subsequent paragraph that reaffirms the tied control of the president over the institutions. An example of this situation in Cameroon is that the bearers of judicial power, including the Chief Justice of the Supreme Court (highest judicial organ while waiting for the setting up of Constitutional Council) are appointed by the president. Moreover, according to Section 1 of law N° 89/016 of 28 July 1989, which amends law N° 82/14 of 26 November 1982 on the organisation and functioning of the higher judicial council, the president of the republic is the chair of this council with the Minister of Justice as the deputy chair. It is then almost incomprehensible how, under such a system, the judge might follow a path different to that of the president. Can he really incarnate a role of ‘weatherman who shows which way the wind blows’? Under Ahidjo’s regime for instance, judges were well aware of their situation of indebtedness vis à vis of the president, and did

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<sup>552</sup> Part 4 of law N° 96/06 of 18 January 1996 to amend the Constitution of 2 June 1972.

<sup>553</sup> Olinga D. *La Constitution de la République du Cameroun* (2006) Yaoundé, les éditions terre africaines, presses de l’UCAC 147.

not hesitate to openly and publicly express their gratitude. In December 2004, Ananga Beyina Onesiphore, retired Colonel of Gendarmerie and military judge observed that when the media undertook to interview a judge, it was an opportunity for him to reiterate his allegiance to the president:

*Je n'ai pas de comptes à vous rendre. Je ne vous dois rien. C'est au Président de la république seul que je dois le poste que j'occupe. J'y serai tant qu'il le voudra. Si je réponds à vos questions, c'est parce que je veux. Vous n'avez aucun droit, aucun pouvoir sur moi.*<sup>554</sup>

I am not accountable to you, I owe you nothing. I owe my position only to the President of the republic. I will keep it as long as it suits him. If I answer your questions it is because I am willing to do so. You have no right, no power over me.

Therefore, true independence of the organ remains questionable since the authority in charge of appointments (in this case the president of the republic), also has the power to dismiss them. Yet, until 1961, Cameroonian judges enjoyed a relatively independent status owing to their constitutional protection. Indeed under Section 41 of the Constitution of 4 March 1960 judges could not be dismissed. This important provision has disappeared since 1961, with the second constitution and is still ignored by the current one. In addition, until 1995, the status of magistracy (executive bill) did not allow for the dismissal of judges, who in the meantime could not be transferred without their consent. This provision, which was established in 1982, was removed in 1995 following the amendment of the bill on the magistracy. If the transfer of a judge required the view of the Higher Judicial Council headed by the president of the republic, it is worth mentioning that the president was not abided by this view. Following Dyzenhaus it would have been suitable within the Cameroon context to inscribe the principle of judges' non dismissal within the constitution itself, as had been done in the recent past. Currently, the president of the republic remains endowed with the power to appoint and dismiss judges at will.<sup>555</sup>

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<sup>554</sup> As quoted by Tsala C. *Les détenus politiques au Cameroun de 1958 à 1991* (2011) thèse de doctorat, Yaoundé, Université de Yaounde I, 181-182.

<sup>555</sup> Olinga (note 553) 148.

Dyzenhaus emphasises the role to be granted to an independent judiciary in a relationship of complementarity and not difference. Yet emergency regimes as a legal black hole and a legal black grey hole in the case of Cameroon will surely last for quite some time because due to its mode of functioning and organisation, the judiciary remains a dismemberment of the administration, and not a third power as intended. Prior to the 1996 Constitution, Augustin Kontchou Kouomegni, former Minister of Communication in Cameroon and the government's spokesperson, unveiled the place of the judiciary in the legal architecture of the country:

*L'autorité judiciaire est une simple branche de l'administration publique et non un troisième pouvoir [...] L'autorité judiciaire dans ce contexte, n'a pas pour fonction, comme dans le constitutionnalisme classique, de garantir la séparation et l'équilibre des pouvoirs et partant la limitation des pouvoirs des gouvernants, mais un instrument du maintien de l'hégémonie administrative sur l'appareil de l'Etat.*<sup>556</sup>

The judicial authority is a mere branch of public administration and not a third power [...] The judicial authority in such context does not aim as in classic constitutionalism at fulfilling the balance of powers and, thereby the limitation of powers, but as a tool of the administrative hegemony over the state apparatus.

The idea of 'judicial power' in the country is then alien to the conception defined by the foremost proponents of liberalism, such as Locke and Montesquieu, and echoed by Dyzenhaus.

The lack of independence of the judiciary in Cameroon manifests also in the ascendancy of the president of the republic over the Constitutional Council. According to the provisions of Section 46 of the constitution, this institution is the entity that has jurisdiction in matters pertaining to the constitution, the constitutionality of laws, and the regulation of the functioning of institutions. It is provided for by Section 51 of the Supreme Law that this institution comprises eleven members. Three are appointed by the president of the republic, including the Chairman of the Council, three by the Chairman of the National Assembly, three by the Chairman of the Senate, and two by the Higher Judicial Council. It is

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<sup>556</sup> As quoted by Bigombe (note 521) 8-9.



important to keep in mind that the latter is headed by the president of the republic who is not bound by the opinion of other members. The lack of independence of the members of this institution is due to the fact that the mandate of a member of the Constitutional Council, although irrevocable, can nevertheless be terminated following the requirement of the authority who appointed him. The meaning of such measure is that the appointed member must act in accordance with the will of the authorities to whom he owes his appointment.

In light of these developments, it is evident not only that judges do not have a role to play in emergency situations in Cameroon, but additionally, even if this role was to be provided, it would remain meaningless, owing to the lack of independence of the institution. As a result, there is no room for Dyzenhaus' proposal that during emergencies, judges should play an instrumental role in a relationship of complementarity with other powers; a role of a weatherman who shows which way the wind blows.<sup>557</sup> Yet judiciary supervision in time of turmoil is evident around the world today and has even gave birth to the jurisprudential approach to emergency regimes, which is the second argument to be developed in this section.

#### **4.3.3.2. The jurisprudential approach to emergency regimes**

The jurisprudential approach to emergency regimes emerged in France during the First and Second World Wars through the judges' proclamation of the *théorie des pouvoirs de guerre* [theory of powers of war].<sup>558</sup> The new theory allowed the possibility for the government to depart from the rule of law in the case of necessity. The argument is that in times of normality, the government is subject to the principle of legality, meaning that all administrative acts and actions should be framed by pre-established norms. In other

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<sup>557</sup> Dyzenhaus (note 30) 11.

<sup>558</sup> Poulet-Gibot N. *Droit administratif: Sources, moyens, contrôles 3<sup>e</sup> édition* (2007) Paris, éditions Breal 92. See also [Maslarski D. La conception de l'État de Gaston Jéze](http://www.juspoliticum.com/La-conception-de-l-Etat-de-Gaston.html). Available at <http://www.juspoliticum.com/La-conception-de-l-Etat-de-Gaston.html> (accessed 19 July 2012).

words, the principle of legality comprises the idea of administrative submission to the rule of law during peaceful periods. However, following a situation of turmoil, judges grant administration the power to break the rules to address the peril. The jurisprudential approach to emergency regimes is aimed at justifying the enlargement of administrative powers to safeguard peace and state security. This approach that I am about to expand upon was experienced in numerous cases, but for purposes of this study, I refer only to the first and the second cases in the history of exceptional circumstances.

The first case is of *Heyriès*, who was a French civil servant at the time.<sup>559</sup> In France, Section 65 of the law of 22 April 1905 regarding expenditure and income for the year 1905 required that any civil servant had to be informed prior to any disciplinary sanction being taken against him. A presidential decree of 10 September 1914 was issued effectively overruling the application of this law. Mr *Heyriès*, who had been dismissed was a victim of such a situation and brought the matter before the court on the grounds that the presidential decree did not comply with the hierarchy of the legal norms. Indeed a law, an act of parliament, had been overruled by a decree issued by the executive power. *Heyriès'* allegations were dismissed by the court, which in validating the presidential decree ruled that the right to examine a personal file prior to any disciplinary measure may in fact be subject to suspension during exceptional circumstances. As argued by the judges, whose decision was based on Section 3 of the Constitutional Law of 25 February 1875, 'public powers have the responsibility to ensure that at any time, public services setup by laws and regulations be in proper operating condition and that the difficulties resulting from war do not impair their functioning.'<sup>560</sup>

The second instance refers to the case of *Dol and Laurent*,<sup>561</sup> two prostitutes living in Toulon without incident. By three orders on 9 April, 13 May, and 24 June 1916, the prefect of Toulon prohibited all owners of cafes, bars, and drinking establishments from

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<sup>559</sup> Conseil d'Etat *28 Juin 1918 Heyries*.

<sup>560</sup> Own translation.

<sup>561</sup> Conseil d'Etat *28 Février 1919 dames Dol et Laurent*.

welcoming and serving drinks to unaccompanied ladies, banning any woman from soliciting outside of designated areas, and prohibiting any woman or girl from managing a drinking establishment or working there under any circumstances. Dol and Laurent, acting as victims of the new measures, took the matter to court on the grounds that their freedom of movement and trade had been infringed. Judges of the Council of State ruled against them by validating the three orders in arguing that, because of war and then exceptional circumstances, 'it belongs to the judge in charge of the control of these police's powers, to determine the necessities of a state of war, according to circumstances of time and place, the type of targeted individual and the nature of the peril to prevent.'<sup>562</sup>

The main purpose of the jurisprudential approach to emergency regimes is to legalise governments' abusive conducts that would have been reprehensible if they had been performed in peaceful times. Under the guise of necessity, the administration is entitled to resort to every means at its disposal. The institution of a crisis of legality implies a flexibility of the rule of law. The national security and the principle of the continuity of public service must not be interrupted, and to achieve such a task, any administrative authority is authorised to act beyond and even outside its sphere of competence. Another interesting situation occurred during the war when a mayor and the town councillors abandoned their community, ordinary citizens acted validly as administrative authorities without qualification, as shown in the case of *théorie du fonctionnaire de fait*, [theory of de facto civil servant].<sup>563</sup>

The jurisprudential approach to emergency regimes requires the fulfilment of some conditions in order to be validated. In the case of *Soufriere*, concerning a volcanic eruption in Guadeloupe, the judge defined the distinction between a simple emergency and exceptional circumstances by insisting on *circonstances exceptionnelles de temps et de*

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<sup>562</sup> Own translation.

<sup>563</sup> Conseil d'Etat *5 Mars 1948* Marion.

*lieu*,<sup>564</sup> [exceptional circumstances of time and place]. The first condition when referring to the exception is the scale of the gravity of the situation. In other words, the circumstances must be really exceptional or ‘particular’, such as the events of May 1968 where the Minister of National Education issued an order to deal with situations that normally fall under a decree.<sup>565</sup> The situation should also be characterised by unpredictability, such as war or serious social disorder, as ruled in the case of Jarrigon.<sup>566</sup>

The second condition pertaining to the validity of the exceptional circumstances is that the circumstances must really exist, and it must have the character of absolute necessity at the moment when the administration acts. That is, the administration should not be able to act in conformity with the legality.<sup>567</sup> The third condition is that the enlargement of the police’s powers of the government must be limited to the duration of the exceptional circumstances. Moreover, the super powers granted to the administration must be limited to satisfying general interest and the continuity of public service.<sup>568</sup>

Certain features of the jurisprudential approach to emergency regimes can be verified easily while examining the case of Cameroon. Firstly, it is important to mention the coexistence of two orders of jurisdiction in France, namely the civil order and the administrative order. The administrative order deals specifically with matters of public character involving private citizens, public officials, and the government in general, whereas civil courts are reserved for civil matters. The former is headed by the Conseil d’Etat and the latter by the Cour de Cassation. The separation between the administrative and judicial authorities was entrenched in the aftermath of the French Revolution by the laws of 16 and 24 August 1790 which explicitly introduced the distinction between judicial

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<sup>564</sup> As above *18 Mai 1983* Soufrière.

<sup>565</sup> As above *12 Juillet 1969* Chambre de commerce de Saint-Etienne.

<sup>566</sup> As above *18 Avril 1947* Jarrigon.

<sup>567</sup> As above *7 Janvier 1944* Lecoq.

<sup>568</sup> As above *7 Mai 1944* Mile Idessesse.

and administrative functions. The provisions of this law clearly prohibit judges to rule on matters involving the administration and public officials. This requirement was reiterated in the Constitution of 1791 and by the Decree of 16 *Fructidor an III* which is 2 September 1795.

A similar structure of jurisdiction is also evident in Cameroon, where the administrative order is clearly distinct from the civil order. In Cameroon, the reception of the jurisprudential approach to emergency regimes is a given. In the second chapter of the study, I have showed how the emergency phenomenon was introduced to Cameroon by the French colonial administration. Therefore, as a legacy of French colonialism, the decisions of the French Conseil d'Etat are currently enforceable in Cameroon. The jurisprudential approach to emergency regimes is an entire part of the current Cameroon jurisprudence. A wide range of judicial activities in the country relies essentially on the principles established by the French Conseil d'Etat.

However, unlike France, what is questionable in Cameroon is the compliance to the requirements specified by the judges.<sup>569</sup> Some of these requirements are actually very similar to those of international standards on emergency regimes, such as the principle of proportionality and exceptional threat. While examining them, I have showed how difficult it is for the Cameroon emergency system to comply with such requirements.

#### **4.4 The critical approach to emergency regimes**

This approach strongly opposes the arguments developed by the previous approach which is the normative approach to emergency regimes. According to the tenants of the critical approach, not only are emergency regimes located beyond the sphere of law, but they also represent a political nihilism and a vicious circle of violence. In this section, I examine the

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<sup>569</sup> For further information see Chapter 3 of this study on emergency regimes in Cameroon and international standards.

critical approach to emergency regimes through a review of Schmitt's decisionism, Benjamin's messianism, and Agamben's political nihilism.

#### **4.4.1 Carl Schmitt and the doctrine of decisionism**

Schmitt's doctrine of decisionism posits that the occurrence of an exception is proof enough of the rule of law's weakness and inefficiency to frame human life. The approach rejects the possibility for liberal constitutional endeavors to control the exception as precisely as possible. The idea is that the norm is made for men and not vice versa, and that following a crisis situation the sovereign should decide on the suspension (or abrogation) of the legal order to allow for the application of the norm. The doctrine of decisionism considers the state of exception to be a space in which the true structure of the legal order is revealed via the separation of norm and decision. To account for such doctrine, in this section I focus on the link between the exception and the deployment of commissarial and sovereign dictatorship on the one hand, and the norm and decision as the structure of the legal order on the other.

##### **4.4.1.1 The exception and the deployment of commissarial and sovereign dictatorship**

Carl Schmitt's interest in the issue of dictatorship and the state of exception was piqued in February 1915 following his transfer from the infantry to the state-of-war section in Munich due to a serious vertebra injury.<sup>570</sup> At this time, the struggle against the monarchical doctrine launched more than a century previously had reached its peak in terms of the disagreement between an omnipotent lawgiver and the development of democratic principles based on separation of powers and the rule of law. The struggle aimed to replace the sovereignty of men with the sovereignty of law.<sup>571</sup> In this debate, even

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<sup>570</sup> The contents of this section are essentially indebted to the works of Georges Schwab, *the challenge of the exception: an introduction to the political ideas of Carl Schmitt between 1921 and 1936, 2<sup>nd</sup> edition with a new introduction* (1989) New-York, Greenwood Press.

<sup>571</sup> As above 14.

though Schmitt does not undermine the rule of law in itself, he nevertheless thinks that human affairs rest upon humans and can never be independent of them.<sup>572</sup> In 1921 he published *On dictatorship* that addresses the problem of emergency. The book emphasises the link between the phenomenon of the exception and that of dictatorship. Schmitt distinguished between two categories of dictatorship, namely commissarial dictatorship and sovereign dictatorship. The former materialises during times of crisis when the sovereign must suspend the rule of law in order to guarantee its application. The latter happens when the exception leads to the abrogation of the existing constitution so that the legal order can be revived. For a better understanding, the difference between the commissarial dictatorship and the sovereign dictatorship is as follows: in the former, although the rule of law remains in force, its application is suspended as this is the only condition for the restoration of peace and stability upon which the functioning of the legal order depends. The dictator's task is to eliminate the danger and strengthen the foundation of the state that has been threatened.<sup>573</sup> Therefore, the main characteristic of commissarial dictatorship is the appointment of a dictator following a situation of peril that sufficiently threatened a peaceful situation. Abraham Lincoln, former American president, was cited as an example of a commissarial dictator during the American Civil War.<sup>574</sup> Similarly, former Cameroonian President Ahidjo can also be cited as an example of a commissarial dictator during the war for independence and the national insurrection led by the *Union des Populations du Cameroun*. The observation is based on the provisions of Section 1 of the Full Powers legislation that suspends law and confers upon President Ahidjo the powers to rule the country by decree. This happened at the end of the October 1959 parliamentary session during the heated debate on *plein pouvoirs*, as previously analysed in the second chapter of this study. Ahidjo as an example of commissarial dictatorship was so determined due to Section 50 of the Constitution of 1 September 1961, which vested the president with full powers in the name of a 'harmonious transition' for a new period of six months. The

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<sup>572</sup> Schmitt (note 5) xviii.

<sup>573</sup> Schwab (note 570) 32-33.

<sup>574</sup> Schmitt (note 5) xiii-xiv.

only difference with regard to the threat described in the commissarial dictatorship is that in the case of Cameroon, the so-called threat concerns the battle for power between the colonial administration and their local collaborators and members of the UPC movement led by Ruben Um Nyobè.

In the case of a sovereign dictatorship, a new constitution is established in lieu of the existing one so that the state can be revived. The ultimate purpose of a sovereign dictatorship is to create a condition whereby a constitution that is considered to be a true constitution will become possible. Former French President General De Gaulle, who established a new constitution in 1958 following a crisis situation, is regarded as a sovereign dictator.<sup>575</sup> The qualification of sovereign dictatorship is also applicable to Ahidjo who, when facing the UPC insurrection across Cameroon, succeeded in designing and releasing two constitutions (4 March 1960 and 1 September 1961), being prompted to do so by neither election, nor referendum. On 2 June 1972 Ahidjo released a third constitution following a sham referendum.

In making such a distinction between commissarial and sovereign dictatorship, Schmitt also established a difference between *pouvoir constitué* and *pouvoir constituant* [constituent power and constituted power]. As observed by George Schwab, commissarial dictatorship is based upon the *pouvoir constitué* appointing the dictator, while in sovereign dictatorship the appointment depends upon the *pouvoir constituant* of the people.<sup>576</sup> In the latter case the existing constitution is not merely suspended, but abrogated.

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<sup>575</sup> As above xiv.

<sup>576</sup> Schwab (note 570) 35.



#### 4.4.1.2 Norm and decision: the structure of the legal order

In 1922 Schmitt published *Political theology* in which the first section appears to be a response to ‘Critique of violence’, an essay by Walter Benjamin published a year earlier.<sup>577</sup> This publication partially addresses the issue of exception. However, unlike the previous book that assimilated exception and dictatorship, *Political theology*, in its first section ‘The definition of sovereignty’ focuses on the fundamental differences between two components of the legal order, namely norm and decision. According to Schmitt, a state of exception is a space where ‘the decision frees itself from all normative ties and becomes in the true sense absolute as the norm is destroyed.’<sup>578</sup> Although Schmitt is prepared to accept modern constitutional developments, he is also determined to restore the personal element to sovereignty, as this is a vital element for the preservation of the modern constitutional state.<sup>579</sup> He shares Thomas Hobbes’ conviction according to which man is basically dangerous and that primary goal is physical security. Schmitt advocates for a strong state that would ensure order, peace and stability.<sup>580</sup> Following a ‘friend-enemy’ distinction that is at the heart of the political, the author is convinced of the ever-present possibility of conflict within society and believes that only a resolute action can overcome the peril and ensure order and stability.<sup>581</sup> Therefore, his conception of the state is different to those jurists such as Kelsen, who considers the state to be a ‘system of ascriptions to a last point of ascription and to a last basic norm.’<sup>582</sup> For Schmitt *a contrario*, a genuine appreciation of a rule is possible only in the particular context of its application. Against ‘liberal normativism’ that seeks to establish a theory of law that would be universally valid for all times and all situations, Schmitt posits that ‘all law is situational law.’<sup>583</sup> He then reiterates

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<sup>577</sup> See the next section on Walter Benjamin and the messianism.

<sup>578</sup> Schmitt (note 5) 12.

<sup>579</sup> As above xvi.

<sup>580</sup> As above xxiv.

<sup>581</sup> As above xvi.

<sup>582</sup> As above xvii.

<sup>583</sup> As above 13.

the impossibility for liberal theory to foresee every aspect of human life and the exception. Therefore, the rule must be thought from the exception and the provisions of the constitution should be interpreted in a manner that would strengthen the state's *raison d'être* so as to guarantee order and stability to citizens, which in turn would enable the constitutional order to function normally.<sup>584</sup> The idea is that every government should provide a dictatorial element within its constitution to protect itself against threats, because liberal constitutional endeavors cannot regulate the exception precisely.<sup>585</sup> The exception can neither be anticipated by norm, nor spell out what can really occur in such a case. Consequently, it is recommended that proponents of liberal political theory consider the issue of the competence in a state of exception:

Who is entitled to act when the legal system fails to answer the question of competence?<sup>586</sup>

Schmitt answers this question by arguing that law gives authority but 'it cannot be just anybody who can execute and realise every desired legal prescription.'<sup>587</sup> Thus, the sovereign is logically the only authority that can successfully handle legal prescription and emergencies. Therefore, these tasks entail the true mark of sovereignty. As Schmitt observed:

Sovereign is he who decides on the state of exception.<sup>588</sup>

Schmitt's sovereign does not only decide on the exception, but he is also revealed by and in it.<sup>589</sup> The peculiarity of an exception is unlimited authority, meaning the suspension of the entire existing order as in such a case the state remains, whereas law recedes.<sup>590</sup> This suspension does not mean anarchy and chaos, since order, in the juristic sense, still

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<sup>584</sup> As above xix.

<sup>585</sup> As above xvii.

<sup>586</sup> As above 11.

<sup>587</sup> As above 32.

<sup>588</sup> As above 5.

<sup>589</sup> As above xx.

<sup>590</sup> As above 12.

prevails, even if it is not of the ordinary kind.<sup>591</sup> If exception means unlimited authority, it also explains the fact that Schmitt's concept of sovereignty is a 'limiting' or border 'concept.'<sup>592</sup> Therefore, the idea of sovereignty encompasses a double space comprising a space governed by the rule of law and a space subject to the exception.<sup>593</sup> Schmitt's concept of sovereignty can be summarised as a situation where two spaces overlap each other as the inside and the outside of legal sphere. Thus, a proper understanding of the concept of sovereignty would mean focusing our attention on the legal sphere but also focusing on the side that opens up on to the province of the exception.<sup>594</sup>

In a state of exception, the sovereign takes control of a situation, not to establish a state of lawlessness, but to prevent it, since the rule of men must always existentially underlie the rule of law.<sup>595</sup> The assumption that a state can ultimately rest on a set of mutually agreed-to procedures and rules that trump particular claims and necessities should not be considered.<sup>596</sup> The occurrence of an exception is sufficient proof that law is unable to frame human life. A choice needs to be made between the application of the law and the existence of the state. The sovereign remains the only entity that can exercise this choice, since the authority to suspend valid law is so much the actual mark of sovereignty.<sup>597</sup> The point is that 'the existence of the state is undoubted proof of its superiority over the validity of the legal norm.'<sup>598</sup> The sovereign must do whatever possible to address the exceptional situation as he is bound to the normally valid legal order, but also transcends it.<sup>599</sup> Therefore, the exception symbolises a situation where the sovereign acts outside and

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<sup>591</sup> As above

<sup>592</sup> As above xxi.

<sup>593</sup> As above.

<sup>594</sup> As above.

<sup>595</sup> As above xx.

<sup>596</sup> As above xvi.

<sup>597</sup> As above 9.

<sup>598</sup> As above 12.

<sup>599</sup> As above xvii-xviii.

beyond the law in order to reinstate peace and stability that depends on the restoration of norms. Moreover, the instauration of an exception is not totally alien to the rule, because there can only be an exception if there is a rule, and the designation of something as an exception is in fact an assertion of the nature and quality of the rule.<sup>600</sup>The suspension of the ordinary legal normativity is performed on the basis that life can never be reduced or adequately understood by a set of rules, and all things considered, rule is of men and not of law.<sup>601</sup> The only constraints that the sovereign is subject to are the social and political atmospheres within the state. The sovereign's sole purpose is to protect the state from harm and restore peace and order, and this explains why in a state of exception, the state suspends the law on the basis of its right of self-preservation.<sup>602</sup>Indeed, for a legal order to make sense, a normal situation must exist because rules are applicable only to this situation. In addition he is sovereign who definitely decides whether this normal situation actually exists.<sup>603</sup>The decision is rendered possible on the grounds that the legal order comprises two features, namely the norm and the decision. Therefore, the state of exception appears as a space in which the true structure of the legal order is revealed through the fundamental separation of the norm and the decision. Schmitt argues that in itself the norm is insufficient and becomes actual only by decision and interpretation.<sup>604</sup> The decision is not to be considered as a mere sub-set or emanation of the norm; it is an independent precept that has its own specific role. The state of exception reveals what the routine of normalcy veils<sup>605</sup>as the two features norm and decision untie from each other and thereby testifies to their conceptual autonomy.<sup>606</sup> In this regard, 'human society can

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<sup>600</sup> As above xxi.

<sup>601</sup> As above xx.

<sup>602</sup> As above 12.

<sup>603</sup> As above 13.

<sup>604</sup> Schwab (note 570) 45.

<sup>605</sup> As above 49.

<sup>606</sup> Schmitt (note 5) 12.

thus never be made to rest on the determination and application of rules to individual situations. Decisions and judgments would always be necessary.’<sup>607</sup>

Schmitt’s concept of decisionism can be summarised in two main ideas: as reported by Georges Schwab, firstly it refers to an individual’s capacity to restore, maintain, and safeguard order, peace, and stability from a chaotic situation. Should order, peace, and stability break down, it becomes the task of this particular individual to undertake all necessary measures to re-establish order.<sup>608</sup> Secondly, decisionism also means Hobbes’ *auctoritas, non veritas facit legem*. He who has authority (authority and power are combined here) can make the laws. The sovereign, by virtue of his authority, can also demand obedience.<sup>609</sup> Consequently, the sovereign who cannot protect, has no right to demand obedience. Hobbes calls it ‘mutual relations between protection and obedience.’<sup>610</sup>

Schmitt’s concept of decisionism is not suitable for a genuinely democratic society since the sovereign is not bound by the pre-established norms. This stand espouses the approach to emergency regimes as currently practiced in the Cameroon context. The president in Cameroon closely resembles the Schmittian sovereign since he remains the only one to decide whether the situation across the country is normal. The constitution of the country has vested the president with the exclusive power to declare a state of emergency or a state of siege ‘where circumstances so warrant’. Following the provisions of Section 9, the president can decide on the enforcement of draconian measures ‘as he may deem necessary’. Schmitt’s doctrine of decisionism can be tested within the Cameroon framework considering the irrelevance of the place of the legislature and the complete absence of the judiciary in times of turmoil. The idea of decisionism is clearly symbolised through the concept of act of state. Indeed in Cameroon, the act declaring a state of emergency and the so called state of siege lies in its status, which is an act of state. It means

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<sup>607</sup> As above xix.

<sup>608</sup> Schwab (note 570) 45.

<sup>609</sup> As above 45-46.

<sup>610</sup> As above 46.

that an act of declaration of a state of emergency or a state of exception falls under the category of acts invested with political motive. The main characteristic of such an act is its immunity, and as such, it is subject neither to parliamentary approval nor to judicial review. The act of state demonstrates the transcendence of the president vis à vis the sphere of law.

The theory of act of state during exceptional circumstances was established in 1962 by the jurisprudence of the Conseil d'Etat in the case of Rubin de Servens. Following violence in Algeria in 1961, French President Charles De Gaulle, after consulting parliament, launched Section 16 of the Constitution, which enforced a state of exception in Algeria and granted him full powers. The enforcement of Section 16 lasted until 29 September 1961. On 3 May 1961, despite the fact that the threat against France's national integrity had been over for a long time, De Gaulle set up a special military tribunal for the trial of people who threatened the republic and infringed the discipline of the army. Ten officers of the army including Mr. Rubin de Servens were sentenced by the military court. They went to the Council of State to challenge the presidential decision of the creation of the military tribunal on the ground of abuse of power. The judge argued about the presidential decision to implement Section 16 of the Constitution as follows:

*Cette décision présente le caractère d'un acte de gouvernement dont il n'appartient pas au Conseil d'Etat d'apprécier ni la légalité, ni de contrôler la durée d'application.*<sup>611</sup>

This decision appears to be an act of state that it does not belong to the Council of State to rule neither the legality nor the control of the duration of implementation.

This decision, which is part of Cameroon jurisprudence, soon became an absolute excuse and *carte blanche* to various presidential decisions. For example Section 22 of Ordinance N<sup>o</sup> 72/6 of 26 August 1972 on the organisation of Supreme Court reads:

No court or tribunal is entitled to rule on acts of states.

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<sup>611</sup> Conseil d'Etat 2 Mars 1962 Rubin de Servens.

This requirement was reaffirmed by Section 4 of law N° 2006/022 of 29 December 2006 on the organisation of the administrative courts, which states that ‘no court is entitled to rule on acts of states.’ In the case of *Kouang Guillaume Charles vs the state of Cameroon*<sup>612</sup> the administrative court ruled that ‘one refer to an act of state when it is about a political matter of an exclusive governmental concern.’ This jurisprudence also provides for various categories of acts of state vested with judicial immunity. These include, inter alia, those pertaining to the diplomatic relationships of the state with foreign countries, the governmental acts issued in its relationships with parliament (promulgation of laws, convening or ending of parliamentary sessions), presidential acts convening the Electoral College, and a presidential act declaring a state of emergency and a state of siege. The president is not responsible for any of these acts, which in any case cannot be challenged at any level. With regard to the presidential act convening the Electoral College for instance, in 1992 amidst the deteriorating atmosphere characterised by political troubles and instability across the country, a presidential decree setting up an agenda for early presidential elections was issued. The judicial action before the court aimed at cancelling the decree was unsuccessful since the judge qualified the presidential decree to be an act of state above his competence. Similarly, comparable events were repeated in 1995 when the Minister of Youth and Sport dissolved the Cameroon Football Federation (FECAFOOT). In responding to the International Federation of Football Association’s (FIFA) request for an explanation, the Minister replied that the decision to dissolve the Federation was an act of state, and therefore not subject to accountability.<sup>613</sup> This led to significant criticism of the concept of an act of state in Cameroon, which is characterised by uncertainty and an administrative law that is extremely inconsistent with lack of precision.<sup>614</sup> The reality of an act of state in Cameroon accounts for the structure of the legal order as described in Schmitt’s decisionism, namely norm and decision. The act of state is a permanent tool of sovereignty in the hands of the president who can use it to place himself outside and

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<sup>612</sup> *Kouang Guillaume Charles contre Etat du Cameroun jugement n°66 ADD/CS/CA du 31 Mai 1979.*

<sup>613</sup> Kamto M. ‘*Le contentieux électoral au Cameroun*’ (1995) Lex Lata N°20, 8.

<sup>614</sup> As above 5-6.

beyond the realm of law. It is proof enough that the legal order rests on the decision and not on the norm. Moreover, since the amendment of the April 2008 Constitution, the notion of act of state in Cameroon has been enlarged and constitutionalised. The president of the republic's irresponsibility during and after his office is clearly entrenched in the new Section 53(3) as follows:

Acts committed by the President of the Republic in pursuance of articles 5, 8, 9 and 10 above shall be covered by immunity and he shall not be accountable for them after the exercise of his functions.

Another materialisation of decisionism in Cameroon can be explained by the legal *vacuum* surrounding the so-called *l'etat d'exception* and the state of siege. Whereas a state of emergency (Section 9(1) of the Constitution) is organised by the law of 19 December 1990, there is no similar legislation regarding a state of siege mentioned only in the vague provisions of Section 9(2) of the Constitution. In case of a declaration of a state of siege, the citizens in the country must rely on the power of the president to decide. Here again the structure of the legal order is exemplified by the autonomy of the decision. Therefore, a state of siege in Cameroon appears as a situation where the idea of sovereignty is fully expanded since the president is held accountable neither by law (which does not exist anyway) nor by any other consideration. If Schmitt relies on decisionism to efficiently address the issue of the exception, it is not the case for Benjamin who expects the return of the messiah.

#### **4.5 Walter Benjamin and the messianism**

Walter Benjamin considers emergency regimes as a means, a brutal enterprise with the ultimate purpose of protecting the law and nothing else. The state of emergency as currently experienced is nothing but violence against humans. Such violence is termed 'mythical violence' and is either law-making or law-preserving violence. Benjamin considers the state of emergency in which we live as a fiction, and calls for the introduction of a true state of emergency to improve the struggle against oppression. Benjamin's



approach to emergency regimes revolves around two categories of violence. The first one is termed mythical violence and operates as a means; the second is called divine violence and is considered an end.

#### 4.5.1 Mythical violence as a means

Emergency regimes are brought into being through the deployment of violence within social and political realms. In Benjamin's essay 'Critique of violence'<sup>615</sup> the author asks whether violence, in a given case, is a means to a just end or an unjust end.<sup>616</sup> According to him, any legal system is essentially defined by the relationship between means and ends, and then if violence is not an ethical or legal goal, it can only belong to the realm of means as an effective force that aims to sanctioning violence, whatever its justification might be.<sup>617</sup> The basic precept of any theory of violence is the following:

Just ends can be attained by justified means, justified means used for just ends.<sup>618</sup>

Following an analysis of the legitimation of violence by two major schools that include natural law and positive law,<sup>619</sup> Benjamin considers violence to be a basic component of society with the purpose of protecting the law. Law has an 'interest in a monopoly of violence' that does not strive to protect any given just ends but the law itself.<sup>620</sup> Therefore, the idea of violence is conceived as an instrument of protection of law and appears to possess the same nature as a means:

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<sup>615</sup> Benjamin (note 38) 115.

<sup>616</sup> As above.

<sup>617</sup> As above.

<sup>618</sup> As above 115, 122.

<sup>619</sup> On the one hand the school of natural law 'perceives in the use of violent means to just ends no greater problem than a man sees in his 'right' to move his body in the direction of a desired goal.' Benjamin argues that natural law regards violence as 'a natural datum' and therefore, if people have agreed to give up all their violence for the sake of the state it is because before the conclusion of such agreement, they have *de jure* the right to use at will the violence that is *de facto* at their disposal. On the other hand, the school of positive law, which is more concerned with just means, sees violence as a product of history. As above 115.

<sup>620</sup> As above 117.

All violence as a means is either law making or law preserving.<sup>621</sup>

Jacques Derrida observes that violence as a means refers to violence in law, in relation to law. It includes on the one hand, the founding violence or law-making violence, which is the violence that institutes and positions law,<sup>622</sup> and on the other hand the law preserving violence, which is the one that conserves, maintains, and ensures the permanence and enforceability of law.<sup>623</sup> It is this violence as a means, which is referred to as 'mythical violence.'<sup>624</sup> The first attribute of this violence, the law-making violence belongs to the state, which remains its only bearer within the society. The state monopoly of violence is a matter of survival and domination as 'law sees violence in the hands of individuals as a danger undermining the legal system.'<sup>625</sup> The second attribute attached to violence as a means, which is the law preserving violence, allows the state to declare war, raise an army, and repel actions threatening its existence. Therefore, the double-sided mythical violence appears to be a 'raw material', a crucial component necessary for keeping the political system alive. Accordingly, the disappearance of mythical violence would lead irremediably to the collapse of the legal system. Benjamin rightly observes as follows:

When the consciousness of the latent presence of violence in a legal institution disappears, the institution falls into decay.<sup>626</sup>

Mythical violence does not take human beings into account. It aims only at protecting the law, and therefore appears to be essentially harmful since it brings guilt and retribution.<sup>627</sup> Such violence is pernicious and bloody as it threatens and considers human destiny as a

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<sup>621</sup> As above 120.

<sup>622</sup> Derrida J. 'Force of law: the mystical foundation of authority' *deconstruction and the possibility of justice*. (1990) Cardozo Law Review Vol.11, 981.

<sup>623</sup> As above.

<sup>624</sup> Benjamin (note 38) 123.

<sup>625</sup> As above 116.

<sup>626</sup> As above 120.

<sup>627</sup> As above 124.

means and never as an end.<sup>628</sup> Mythical violence as a means represents a fundamental principle of law that is a regular means for a just end.

The connection between mythical violence and emergency regimes lies in the following idea: as mythical violence aims essentially at protecting the state, the ultimate purpose of emergency regimes is also to protect the state through the suspension of law. The two phenomena follow the same path to a similar end. The suspension of law in emergencies implies the suspension of both law-making violence and law preserving violence. For instance, the police body is the ultimate institution on which the materialisation of emergency regimes rests. Upon the declaration of a state of emergency or a state of exception, the police body is instantaneously vested with both law-making violence and law preserving violence and thus the police become law-makers. This is the meaning of Benjamin's concept that posits that law-making violence and law preserving violence are materialised in a very important institution of modern state, namely the police.<sup>629</sup> As claimed by the author, 'the police intervene for "security reasons" in countless cases where no clear legal situation exists, when they are not merely, without the slightest relation to legal ends, accompanying the citizen as a brutal encumbrance through a life regulated by ordinances, or simply supervising him.'<sup>630</sup> The police body once vested with mythical violence represents what Derrida refers to as a 'faceless figure, a violence without form.'<sup>631</sup> Thus, emergency regimes appear to be a device through which the guarantee of the survival of the legal system remains possible through the suspension of the mythic form of laws. This mechanism of suspension is, following Derrida's word, 'mystical', because violence is not alien to law, 'but it is in *droit* what suspends *droit*.'<sup>632</sup> By suspending the mythical form of violence, emergency regimes keep following the same purpose of that

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<sup>628</sup> As above 118.

<sup>629</sup> As above 119.

<sup>630</sup> As above.

<sup>631</sup> Derrida (note 622) 1011.

<sup>632</sup> As above 991.

violence as a means and reinforce the idea of a state of emergency as a fiction. In his 'Theses on the philosophy of the history' Benjamin observes as follows:

The tradition of the oppressed teaches us that the 'state of emergency' in which we live is the rule. We must attain to a conception of history that is in keeping with this insight. Then we shall clearly realise that it is our task to bring about a real state of emergency, and this will improve our position in the struggle against Fascism. One reason why Fascism has a chance is that in the name of progress its opponents treat it as a historical norm.<sup>633</sup>

The above quotation is linked to Carl Schmitt's view, which posits that the state of exception, or more precisely the implementation of Nazism across Germany in that era, expresses a very unique political moment in its fullness. Nazism used law-making violence and law-preserving violence as raw material, which constitutes the mythical forms of law. As expressed in the Nazi state of exception, law-making violence symbolises the foundation and inauguration of the National Socialist State. Such violence is foundational, as it set up the new institutions of the third Reich incarnated by the Fuehrer who is at the same time law himself. In this context, law-making violence operates, as Jacques Derrida put it, in the *futur antérieur* since it is violence that finds legitimation not in the past, but in a not-yet-realised legal order on behalf of which it claims to speak.<sup>634</sup> Law-preserving violence in the Nazi state of exception is not explained by the intention of preserving legal ends but rather by that of preserving the law itself.<sup>635</sup>

Overall, mythical violence is the manifestation of the power of fate over humans considered guilty by nature. Benjamin considered it in its archetypal form as a mere manifestation of the gods.<sup>636</sup> It is a foundation of law that lies within law and establishes law as power. The growing concern is that mythical violence is the device through which the status of the state of emergency has moved from the realm of rule to that of reality. As observed by

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<sup>633</sup> Benjamin (note 41) 257.

<sup>634</sup> Derrida (note 622) 991.

<sup>635</sup> Benjamin (note 38) 117.

<sup>636</sup> As above 123.

Benjamin, 'the current amazement that the things we are experiencing are "still" possible in the 20<sup>th</sup> Century is not philosophical. This amazement is not the beginning of knowledge-unless it is the knowledge that the view of history which gives rise to it is untenable.'<sup>637</sup> A distinction is made between the real state of emergency and the state of emergency as a fiction, the one that characterises the legal normativity of the Nazi state 'in which we live and which is now the rule.' The state of emergency as a fiction is considered to be a continuous succession within the cycle between law-making violence and law-preserving violence. As Benjamin emphasises, any law-destroying act results in a new positing of law that again violently tries to preserve itself.<sup>638</sup> In addition this fateful cycle of overcoming law by re-establishing it is a clear indicator that there is something fundamentally 'rotten in the law.'<sup>639</sup> The infernal cycle of mythical violence needs to be halted by the introduction of a real state of emergency that would annihilate the *continuum* of the state of emergency.

Benjamin's approach can be tested through the lens of the Cameroon reality. In the second chapter of this study, I have reviewed in detail the scale of enforcement of a state of alert, a state of warning, and a state of emergency across the country. These institutions were implemented not for the sake of protecting the society from a hypothetical foreign threat, but especially to allow for the survival of the colonial system in place. This is in line with Benjamin's assertion that the only purpose of the law is to protect itself. The idea of law-making violence materialises in President Ahidjo's enterprise to institute different republics and place people at the centre of calculations of power. Vested with full powers, President Ahidjo was able to silence the law and established three republics in Cameroon during twenty-four years of office.<sup>640</sup> These republics were important to the president since they allowed him to control and master a brutal authoritarian policy toward the

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<sup>637</sup> Benjamin (note 41) 257.

<sup>638</sup> Benjamin (note 38) 119.

<sup>639</sup> As above.

<sup>640</sup> These include the Republic of Cameroon from 4 March 1960 to 1 September 1961, the Federal Republic of Cameroon from 1 September 1961 to 2 June 1972 and the United Republic of Cameroon from to 2 June 1972 to 4 February 1984.

population in order to ensure his own political ambition and safeguard the interests of colonial authorities. The violence in this case is foundational since it repeatedly set up the new institutions to be preserved through a permanent deployment of another kind of violence to be administered by the police, army, and special units; in other words the law-preserving violence. It is also important to mention the close proximity between Benjamin's idea of law-making violence and that of Schmitt's sovereign dictatorship in which violence creates and institutes law.

In the authoritarian Cameroon ruled by an iron hand, the idea of law-preserving violence is materialised through the DIRDOC and the *Brigade Mixte Mobile* (BMM). The DIRDOC and the BMM were established by the regime to 'take care' of political opponents. The DIRDOC was the political police that the head office in Yaounde was a confirmed centre of torture as attested thereto by former police commissioner Pierre Ela.<sup>641</sup> The BMM's premises were located within areas hostile to the regime and brigade's activities were ensured by the police commissioner.<sup>642</sup> These units allied with the traditional police body, the gendarmerie, and the army were the organs in charge of spreading violence and ensuring the protection of Ahidjo's regime against his own citizens. In so doing, a state of emergency has been declared repeatedly and members of the *Union des Populations du Cameroun*, the nationalist movement, were the first target of various emergency legislation. In suspending the law, this police machine was vested with full powers and became lawmakers in hunting nationalist leaders. In such a context, violence appeared to be an essential instrument for the realisation of goals alien to the welfare of the Cameroon society. The use of violence by the ruling class in the repression campaigns against nationalist claims and other political contestations supports the idea that violence is a means to achieve an end, in this case keeping the power.

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<sup>641</sup> As quoted by Tsala (note 554) 142.

<sup>642</sup> As above 143.

After Ahidjo's tenure of office ended in 1982, the new regime in Yaounde soon established a range of institutions to preserve and protect the system in place. These include inter alia, the *Garde Présidentielle* (GP) [presidential guard] in charge of protecting the presidential palace and the president, the *Bataillon d'Intervention Rapide* (BIR) [Rapid intervention Battalion], the *Commandement Opérationnel* (CO) [Operational Command], and the *Groupement Mobile d'Intervention* (GMI) [Mobil Intervention Group]. All these units are the materialisation of law-preserving violence, aimed only at safeguarding and protecting the political system in place. I will provide further details on these units in the next chapter of this study when analysing the police machine. Benjamin's idea of mythical violence is real since the state's sole mission is to protect itself with the use of violence and the implementation of a fictitious state of emergency because a genuine state of emergency exists outside of the mythical forms of law. This variety of state of emergency does not threaten human destiny and the violence that derives from it, is never a means since it comes from God himself. Such violence is referred to as pure or divine violence.

#### **4.5.2 Pure or divine violence as sovereign violence**

Only a genuine state of emergency can disentangle the dialectic between law-making violence and law-preserving violence. The infernal cycle characterising the mythical form of violence threatening human destiny needs to be ended, and to successfully achieve such a task Benjamin introduces another category of violence. In so doing, he draws a demarcation line between the founding violence of law termed 'mythic' and the annihilating violence of destructive law that is termed 'divine.'<sup>643</sup> Unlike mythical violence that is characterised by wild violence, divine or pure violence is singularised by purity. The two categories of violence are portrayed in the following way: '[...] mythical violence, law making violence, which we may call executive, is pernicious. Pernicious, too, is the law preserving, administrative violence that serves it. Divine violence, which is the sign and seal but never the means of sacred execution, may be called sovereign violence.'<sup>644</sup> Divine

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<sup>643</sup> Derrida (note 622) 1026.

<sup>644</sup> Benjamin (note 38) 126.

violence destroys the link between law and violence and appears not like a violence that governs, but the one that purely acts. The alleged state of emergency that has become the rule cannot resist the power of divine violence because it annihilates law. Derrida observes that the violence of God, instead of founding *droit*, destroys it.<sup>645</sup> The aim of divine or pure violence is not to establish a new order, but to break the mythical forms of law that threaten human destiny and affirm its sovereignty. Mythical and divine violence are not to be confused. Benjamin emphasised the fundamental features that distinguish the two as follows:

[...] Just as in all spheres God opposes myth, mythical violence is confronted by the divine. And the latter constitutes its antithesis in all respects. If mythical violence is law making, divine violence is law-destroying; if the former sets boundaries, the latter boundlessly destroys them; if mythical violence brings at once guilt and retribution, divine power only expiates; if the former threatens, the latter strikes; if the former is bloody, the latter is lethal with-out spilling blood.<sup>646</sup>

Therefore, the two sets of violence are not to be confused since both originate from different spheres, one that is human, and the other, which is divine. The author went on to argue that mythical violence is bloody power over mere life for its own sake, divine violence is pure power over all life for the sake of the living. The first demands sacrifice, the second accepts it.<sup>647</sup>

Benjamin highlights the Manichean confrontation between two sets of violence that are constantly superseded by one another in a cycle that has no end, except the end of time; and while anticipating this end, one should consider that ‘every second is the small gate through which the Messiah may enter’<sup>648</sup> to free humanity from the mythical forms of law. As he argues, ‘the Messiah comes not only as the redeemer, he comes as the subduer of

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<sup>645</sup> Derrida (note 622) 1027.

<sup>646</sup> Benjamin (note 38) 124.

<sup>647</sup> As above.

<sup>648</sup> As quoted by Terpstra M. and de Wit T. ‘Walter Benjamin and Carl Schmitt: a Political-Theological confrontation’. Available at <http://docsse.com/view.php?id=961905> (accessed 26 March 2013).



Antichrist.<sup>649</sup> While hoping for the return of the messiah with pure or divine violence, the cycle of mythical violence in Cameroon has reached its full speed and is not far from what Agamben refers to as political nihilism.

#### **4.6 Giorgio Agamben and the political nihilism**

In his approach to emergency regimes, Agamben rejects any consideration of the state of exception as a dictatorship, which according to him espouses the idea of fullness of law. He portrays the state of exception to be a suspension of law in which application and norm reveal their separation. Accordingly, fact is converted into law and law into fact with both merging into each other. However, despite the emptiness of law that characterises it, the state of exception appears to be related to the legal order. In this section, I focus on Agamben's approach to the state of exception as a constitutive paradigm of the legal sphere and as an emptiness of law.

##### **4.6.1 State of exception as constitutive paradigm of the legal sphere**

In Giorgio Agamben's 2005 book *State of exception*, the author observes that the state of exception has moved from the realm of the exception to that of the rule. According to him, if the state of exception is not to be included within the sphere of law, it is neither to be considered as an external phenomenon. Schmitt paints the state of exception as a dictatorship, which espouses the idea of fullness of law, a pleromatic state in which the distinction among legislature, executive, and judiciary has not yet been achieved. For Agamben, the state of exception is rather close to an institution of Roman antiquity called *iustitum*, which means 'suspension of law.'<sup>650</sup> The author initially classifies human action into three categories, namely the legislative, the executive, and the transgressive. He then observes that under the *iustitum* none of these acts are made because of the actual suspension of the law.<sup>651</sup> Therefore, the institution of *iustitum* appears to be the prototype

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<sup>649</sup> Benjamin (note 41) 255.

<sup>650</sup> Agamben (note 42) 48.

<sup>651</sup> As above 50.

of the modern concept of the state of exception. The state of exception is not to be perceived as a special kind of law such as the law of war but rather as a mechanism of suspension of the legal order itself.<sup>652</sup> The institution has nothing to do with a fullness of law, a pleromatic state of law as in the dictatorial model, but as a kenomatic state, an emptiness and standstill of the law.<sup>653</sup> The state of exception rests on a legal void, human rights restrictions, and exceptional powers. As a result, the emptiness and standstill of the laws allows for the combination of the extension of the military authority's wartime powers and the suspension of the constitution or of those constitutional norms that protect individual liberties.<sup>654</sup> Therefore the state of exception aims to increase the prerogatives of the executive power and allows for the possibility to operate as if there were no pre-established norms. Accordingly, the state of exception implies the idea of full powers and entails the confusion of powers to the profit of the executive, and the undermining of parliament's role in constitutional democracies. As stated by Agamben, the idea of 'full powers' which is sometimes used to characterise the state of exception, refers to the expansion of the government's powers and in particular the conferral on the executive of the powers to issue decree having the force of law.'<sup>655</sup>

These developments can be appreciated in light of Cameroon experience. As defined by Agamben, the state of exception entails the idea of full powers and then a complete confusion of powers to the profit of the executive and the collapse of the distinction among the executive the legislature and the judiciary. This is the original meaning of the concept 'state of exception', which is provided for by the French version of Section 9(2) of the Constitution of Cameroon under the designation *l'état d'exception*.<sup>656</sup> The precision is important because the Cameroon emergency system currently provides for more than one

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<sup>652</sup> As above 4.

<sup>653</sup> As above 48.

<sup>654</sup> As above 5.

<sup>655</sup> As above.

<sup>656</sup> The French version refers to a state of siege.

emergency regime, including a state of emergency and the so-called state of siege. The three institutions are fundamentally different, as previously shown in the study. For example, contrary to a state of emergency, a state of exception has never been formally declared in terms of the provisions of Section 9(2) of the constitution. Notwithstanding, in reality, the experience illustrates different cases where this institution has been brought into being. Such was the case when at the end of the parliamentary session of October 1959, devoted to the heated debate on *pleins pouvoirs*, President Ahidjo was granted full powers that allowed him to legislate and design a new constitution while at the same time parliament went into recess. Another instance of the implementation of a state of exception also appears in Section 50 of the 1 September 1961 Constitution that entitled President Ahidjo to set up all the institutions of the country and organise the functioning of public powers for a period of 6 months. If the state of exception as a constitutive paradigm of the legal order was shaped and experienced during the two world wars, in Cameroon it is the war of independence and reunification of the country that favors its development.

Agamben also realises that what characterises the state of exception is not only the confusion among the three powers, but its tendency to become a lasting practice of government.<sup>657</sup> In this regard, numerous works have recorded how the democratic regimes were transformed by the gradual expansion of the executive power during the two world wars, and more generally by the state of exception that had accompanied and followed those wars.<sup>658</sup> Therefore, an observation is made regarding the French experience where, ‘until the end of the third republic the normal procedures of parliamentary democracy were in a state of suspension.’<sup>659</sup> The use of the exception as an ordinary governmental technique has considerably altered the traditional distinction between constitutional forms and has therefore appeared as a threshold between democracy and absolutism.<sup>660</sup>

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<sup>657</sup> Agamben (note 42) 7.

<sup>658</sup> As above 6.

<sup>659</sup> As above 13.

<sup>660</sup> As above 2.

Agamben contends that since the implementation of Nazism through the declaration of a state of exception, the voluntary creation of a permanent state of emergency has become one of the essential practices of modern states, including the so-called democratic ones.<sup>661</sup> It is worth mentioning that if the state of exception has moved from an exceptional sphere to that of an ordinary one, it has also shown itself to be an essential part of the legal sphere. Indeed it is clearly mentioned that ‘the state of exception not only appears as increasingly as a technique of government rather than an exceptional measure, but it also let its own nature as the constitutive paradigm of the legal order come to light.’<sup>662</sup> Agamben highlights the Italian experience which shows that the law-decree ‘changed from a derogatory and exceptional instrument for normative production to an ordinary source for the production of law.’<sup>663</sup> As a result, ‘the democratic principle of the separation of powers has today collapsed and that the executive power has in fact, at least partially absorbed the legislative power.’ This may explain why, technically, the Italian republic is no longer parliamentary but executive.<sup>664</sup>

Agamben posits that if a state of exception is usually characterised by a confusion of powers and the pre-eminence of the executive acts over the legislative functions, its most prominent peculiarity in modern states is the separation of ‘force of law’ from the law.<sup>665</sup> The concept of law in modern democracies has been drained of its content since many acts from the executive acquire force of law in lieu of the legislative acts. The gradual erosion of parliamentary legislative powers of which the main mission is to ratify measures that the executive issues through decrees, having the force of law has since become a common practice.<sup>666</sup> The current meaning of law has drastically evolved as the state of exception

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<sup>661</sup> As above.

<sup>662</sup> As above 6-7.

<sup>663</sup> As above 16.

<sup>664</sup> As above 18.

<sup>665</sup> As above 38.

<sup>666</sup> As above 7.

reveals a situation where the traditional hierarchy of legal norms has been radically restructured with the executive decrees taking over the legislative function and having the full force of law. A recurrent example is the Nazi regime in which Hitler's right-hand Eichmann never tired of repeating that 'the words of Fuhrer have the force of law.'<sup>667</sup>

These developments are relevant in the case of Cameroon considering the practice of '*Ordonnance ayant force de loi*' [ordinance having the force of law], which has succeeded in shifting the executive office to that of a legislator. The ordinance is a delegation mechanism that allows parliament to empower the president of the republic to legislate for a limited period on given purposes. Thus, it is a technique of bypassing regular parliamentary process to the profit of the executive. In the next chapter of the study, I provide detailed information on the ordinance having the full force of law under the section devoted to their supremacy. The practice of ordinance was formally introduced in Cameroon during colonialism, and later provided for in its subsequent constitutions.<sup>668</sup> Today the possibility for the Cameroonian president to continuously assume his function of lawmaker by way of ordinance having the force of law is the consecration of overturning the hierarchy of legal norm, which Derrida refers to as 'the mystical foundation of the authority.'<sup>669</sup> This supports the idea that a state of exception in the country is no longer an exceptional phenomenon.

Agamben also claims that the state of exception is no longer formally declared by the executive power in modern societies, but that the phenomenon keeps materialising itself through other practices, such as economic crisis, the fight against terrorism, the problem of nuclear weapons, and the security paradigm. He argues that the declaration of a state of

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<sup>667</sup> As above 38.

<sup>668</sup> See Section 25 of the Constitution of 4 March 1960, Section 50 of the Constitution of 1 September 1961 and, Section 21 of the Constitution of 2 June 1972.

<sup>669</sup> Derrida (note 622).

exception has gradually been replaced by an unprecedented generalisation of the paradigm of security as the normal technique of government.<sup>670</sup> As a result:

The normative aspect of law can thus be obliterated and contradicted with impunity by a governmental violence that (while ignoring international law externally and producing a permanent state of exception internally) nevertheless still claiming to be applying law.<sup>671</sup>

With regard to the problem of nuclear weapon, Agamben is sceptical about the atomic era. According to him, in the atomic age that the world is now entering, the use of constitutional emergency powers may well become the rule and not the exception.<sup>672</sup> Except for the incessant alteration of constitutional democracy, the recurrent normalisation of the state of exception currently constitutes a transitional step toward the establishment of absolutism or a totalitarian state. A typical example is the Weimar experience where the end of the republic clearly demonstrates that a 'protected democracy' is not a democracy at all, and that the paradigm of constitutional dictatorship functions instead as a transitional phase that leads inevitably to the establishment of a totalitarian regime.<sup>673</sup>

If, for Agamben, the issue of security, terrorism, and nuclear weapons are the major factors that allow for the enforcement of a state of exception in western societies, in Cameroon it has been the war of independence. Whereas, currently the struggles for genuine independence are expressed through different methods, the state of underdevelopment and economic crisis has become the principal excuse for a permanent deployment of exceptional measures. During a conference held in Geneva on 2 September 1969, Keba Mbaye, former Chairman of the Supreme Court of Senegal, made the following observation on the African way of governance, which remains relevant today:

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<sup>670</sup> As above 14.

<sup>671</sup> As above 87.

<sup>672</sup> As above 9.

<sup>673</sup> As above 15.

*Au nom de la sécurité et du développement économique et social, il arrive trop souvent que la défense des libertés et droits publics soient relégués au dernier plan [...] Pour assurer la subsistance aux populations qu'ils gouvernent, pour éloigner la famine, la maladie, l'ignorance, les pouvoirs publics du monde Noir se considèrent comme en état de guerre. Ils en déduisent aisément leurs droits à décréter la mobilisation générale, à élargir le cadre de la légalité et à apporter des restrictions aux droits et libertés découlant du droit public. En somme il s'agirait d'une application permanente des règles découlant de l'état de siège, de l'état d'urgence ou des circonstances exceptionnelles et grâce auxquelles, les gouvernements ont le droit au nom de la nécessité, d'assurer la survivance de l'Etat en apportant des entorses aux droits et libertés publiques.*

In the name of security and social and economic development, it happens very often that the protection of liberties and public freedoms are left in the background. [...] To ensure the wellbeing of populations they rule upon, to keep hunger, illness, ignorance at bay, public powers in the Black world consider themselves in a state of war. They infer their rights to enforce a general mobilisation, enlarge the framework of legality and restrict rights and freedoms. In sum it is about a permanent enforcement of rules pertaining to a state of siege, a state of emergency or exceptional circumstances through which the governments are entitled in the name of necessity to ensure the survival of the state in restraining rights and public freedoms.

The overturning of the hierarchy of norms in modern societies with the supremacy of ordinance having the force of law results in the state of exception being considered an emptiness of law.

#### **4.6.2 State of exception, an emptiness of law**

The state of necessity is not a 'state of law' but a space without law.<sup>674</sup>

In the state of exception, the law that has lost its *vis obligandi* has contributed to the legalisation of lawlessness and allows for illicit fact to become operational inside the legal sphere. In return, legal acts could be stamped with the attribute of lawlessness. For example, such was the case during the *iustitum*, where the consults were reduced to the conditions of private citizens, whereas every citizen acts as if he were invested with an

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<sup>674</sup> As above 51.

*imperium*.<sup>675</sup> The state of exception becomes a space where fact is converted into law and law into fact, and where a threshold of undecidability is produced at the point where law and fact merge into each other.<sup>676</sup> Following this observation, the state of exception is defined as a 'state of the law' in which the norm is in force but is not applied (it has no 'force') and, where acts that do not have the value of law acquire its 'force.'<sup>677</sup> The phenomenon of the exception appears not only as a device through which the structure of law is unveiled, but also appears as the opening of a space in which application and norm reveal their separation.<sup>678</sup> In reality, the state of exception is rooted in a space without law, a space devoid of law, a space where there is neither permission nor prohibition. When addressing the killing of a person during the Roman *iustitum* it is observed the following:

He who acts during the *iustitum*, neither executes nor transgress the law but inexecutes it.<sup>679</sup>

As an emptiness of law, a state of exception also refers to the complementarity of two opposite features that are norm and anomie. Both share a similar space where it is no longer possible to distinguish between the inside and the outside, the prohibited and the non-prohibited. Suspension of law, executive decrees taking over the legislative function, and liquidation of democracy are reprehensible. Yet the norm absolutely needs to be allied to all these features in order to be balanced. In the section of his book that refers to the Roman relation of *auctoritas* (first of the Senate in ratifying the will of the people, later of the emperor) to the *potestas* of the magistrate, Agamben unveils the legal structure of the west as a dual structure formed by two heterogeneous yet co-ordinated elements: One that is normative and juridical in the strict sense, and one that is anomic and meta-juridical.<sup>680</sup> What make the legal sphere an empty legal space is the combination between norm and exception, between the inside and the outside. In light of this combination, the state of

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<sup>675</sup> As above 79.

<sup>676</sup> As above 29.

<sup>677</sup> As above 38.

<sup>678</sup> As above 40.

<sup>679</sup> As above 50.

<sup>680</sup> As above 85-86.



exception is characterised as a phenomenon that is neither external nor internal to the legal order, but rather a place where a zone of indifference, an inside and outside do not exclude each other, but rather blur with each other.<sup>681</sup> Once coupled, the exception and the norm lead to nothing but a space devoid of law, a zone of anomie in which all legal determinations are deactivated.<sup>682</sup> This explains why the state of exception brings about the suspension of the law and not its abolition.<sup>683</sup> The zone of anomie that it establishes is not (or at least claims not to be) unrelated to the legal order.<sup>684</sup>

Focussing again on the Cameroon context, the idea of a state of exception as a space where the law has lost its *vis obligandi* can be tested. The Operational Command to fight large-scale banditry in the city of Douala instituted by decree N° 2000/0027 of 24 February 2000 remains one of the most noticeable examples. This institution was in fact an implementation of a state of siege owing to the transfer of the responsibility of the security in Douala from administrative authorities to the army, and which was to deal with theft. As a result, most people who were found guilty of theft were executed after being tortured, without judgement by the army. This is a situation where the law is in force but is not applied regarding the provisions of Cameroon Penal Code on theft.<sup>685</sup> The same situation also illustrates that the value of law is not necessary to acquire its force; in this case the extra-judicial killings by the army that appears as a lawmaker. The operational command in Cameroon in conjunction with the idea of a state of exception exemplifies a situation where the status of law has reached the 'zero point of its own content' and appears as Gerschom Scholem put it, in the form of its unrealisability.<sup>686</sup> In such situation, the provisions of the Penal Code on theft are not abrogated, but are unenforceable since they appear as 'being in

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<sup>681</sup> As above 23.

<sup>682</sup> As above 50.

<sup>683</sup> As above 23.

<sup>684</sup> As above.

<sup>685</sup> Law 67/LF/1 12 June 1967.

<sup>686</sup> Agamben (note 9) 35.

force without significance.<sup>687</sup> These provisions are close to what Kant refers to as the ‘simple form of law’ which is to say a law emptied of its content, or a law that neither prescribes nor prohibit.<sup>688</sup> These notions will be developed significantly in the next chapter of the study.

#### 4.5 Concluding remarks

This chapter aimed to analyse legal and theoretical discourses on emergency regimes, and was divided into four major sections. The first section shed some light on the canonical maxim *necessitas non habet legem* that originated around the 4<sup>th</sup> Century and was later received by various disciplines. In light of the development of different approaches to emergency regimes throughout the chapter, it appears that the maxim *necessitas non habet legem* is currently no longer considered as an alternative instrument to the weakness or insufficiency to the rule of law, but as the very foundation upon which the modern state of law rests. In other words, currently the idea of necessity, far from being a particular case has been generalised.

The second section of the chapter introduced the normative approach to emergency regimes and explained three ideas that included emergency regimes as an executive affair, the role of parliament in those matters, and the necessity of judicial supervision in emergency regimes. Proponents of the normative approach, which include respectively, Clinton Rossiter, Albert Dicey, and David Dyzenhaus posit that emergency regimes are essentially part of the legal order.

The third section focuses on the critical approach to emergency regimes under the aegis of Carl Schmitt, Walter Benjamin, and Giorgio Agamben. According to Schmitt, law is unable to frame the exception since this situation reveals the very essence of sovereignty through the separation of norm and decision as being the structure of the legal order. According to

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<sup>687</sup> As above.

<sup>688</sup> As above.

Benjamin the state of exception materialises an endless infernal cycle of violence between law-making violence and law-preserving violence. This violence that is called mythic is a means essentially aimed at protecting the law and threatening human beings and can only be stopped by the divine violence that is yet to come. For Agamben, a state of exception means suspension of the legal order and establishment of anomie as norm and application are separated from each other.

## CHAPTER 5 THE MODERN EXPRESSION OF EMERGENCY REGIMES IN CAMEROON: THE IMPLICIT EXCEPTION

### 5.1 Introduction

In the previous chapters I have developed arguments regarding the classical modes of suspension of law that normally occurs in times of turmoil. The law is then suspended through a formal declaration of a state of exception, a state of emergency or a state of siege. However, what will happen if without formally enforcing these regimes, the society still witnesses its effects? Can we still refer to the exception? The current chapter focuses on different processes that lead more or less to the same outcome, the difference being the permanent incorporation of a set of mechanisms within the legal order, aimed at paralysing the rule of law and democracy. If the classic state of exception is characterised by a concentration of powers in the executive hands and the provisional abolition of the distinction among legislative, executive, and judicial powers,<sup>689</sup> the implicit exception operates very differently. It maintains all the structures and elements of constitutional democracy, but the status of the law is transformed to the zero point of its own content.<sup>690</sup> Therefore, the implicit exception within the Cameroon context is characterised by a law, which, despite being in force, has been emptied of its content. The implicit exception is not about a derogation mechanism or formal suspension of law, as is the case in classic emergencies. It refers to an exceptional mechanism that is no longer exceptional since it has fused with the normality. It is the move from a temporary state of exception to a permanent state of exception following the combination between ordinary laws and exceptional mechanisms.

The purpose of the implicit exception in Cameroon is not to cope with a threat to the national's integrity of the state, but to deal with the enemy from within, namely the

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<sup>689</sup> Tingsten H. as quoted by Agamben (note 42) 7.

<sup>690</sup> As quoted by Agamben (note 9) 35.

citizens. It is another technique of domination, control and subjugation of people, a lethal weapon against a free society and human rights. Its purpose is to brutally suppress political opponents, hamper democracy, and silently bypass the national and international commitments of the state regarding human rights and the rule of law. With the army taking control of the city during times of peace, the release of exceptional legislation under the rubric of the ordinary one, the creation of a space of exception, the judicial militarisation, and the ordinance having the force of law, there is no longer a need to formally declare an emergency regime in the country since the legal order has been reduced to the zero point of its own content. In this chapter I present the issue of the implicit exception in Cameroon by analysing its mechanisms and hallmarks.

## **5.2 The mechanism of the implicit within the Cameroon context: reducing the law to the zero point of its own content**

This section examines the mechanisms of implementation of draconian measures under normal circumstances. A review of these mechanisms underlines a combination between ordinary laws and extraordinary legislation. Once the exceptional legislation has entered the sphere of ordinary laws, the former are emptied of their content and overshadowed by the latter, consequently annihilating a clear distinction between the two. The implicit exception or undeclared exception is the one prevailing silently over a peaceful society. It is characterised by a lack of publicity or formal declaration, and the impairment of rights and the rule of law. A report submitted in 1995 to the ECOSOC on the negative trends on emergency decries the effect of such legislation on human rights that literally changes the status of the society from normalcy to emergency.

A particularly disturbing development is that these laws introduce, under normal circumstances, restrictions on rights which may be suspended only during formally declared states of emergency. What is more, the ordinary legislation in question occasionally affects even inalienable rights from which no derogation is possible, even under exceptional circumstances.<sup>691</sup>

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<sup>691</sup> United Nations Economic and Social Council (note 328).

The concept of implicit requires particular attention. According to the electronic version of the *Longman Dictionary of Contemporary English*, the word 'implicit' originates sometime between 1500-1600 from the Latin word '*implicatus*', having as past participle '*implicare*', which means 'implicate'. Therefore, the term 'implicit' means 'suggested or understood without being stated.' Being the antonym of the term 'explicit', the concept 'implicit' is understood as 'formal/forming a central part of something, but without being openly stated.' Some previous terms have been used in the past in reference to the idea of implicit exception, and include 'state of emergency not notified', '*de facto* state of emergency', 'permanent state of emergency' and 'complex state of emergency.'<sup>692</sup> In Cameroon, it has become a real challenge to distinguish between the functioning of a society during peacetime and during periods of crisis. My argument is that a society that does not confront (or no longer confronts) a particular peril, but experience the implementation of draconian measures and human rights violations that normally belong to emergency situations, is subject to the exception. The modern expression of emergency regimes in the Cameroon context is not about a derogation mechanism or formal suspension of law as in the case of a classic state of exception or emergency. It is a situation where the rule of law remains in force, except that this law appears as Gerschom Scholem put it, in the form of its unrealisability.<sup>693</sup> The modern expression of emergency regimes accounts for a situation where the status of law has reached the zero point of its own content.<sup>694</sup> Such a law is portrayed as 'being in force without significance' or in force but which does not signify.<sup>695</sup> Currently in Cameroon, the pre-established rules are not suspended following some kind of formal enforcement of emergency regimes by the executive power. The current rule of law fully remains in force except that it is merely emptied of its content by a parallel sphere of

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<sup>692</sup> For more information, see United Nations Economic and Social Council, E/CN. 4/Sub /1982/15/27 July 1982. Commission on Human Rights, Sub-commission on Prevention of Discrimination and Protection of Minorities, 35<sup>th</sup> Session. *Question of the Human Rights of Persons subjected to any form of detention or imprisonment. Study of the implications for human rights of recent developments concerning situations known as states of siege or emergency*, 26-30.

<sup>693</sup> As quoted by Agamben (note 9) 35.

<sup>694</sup> As above.

<sup>695</sup> As above.

law and/or non-law. Therefore, the actual legal order is reduced to what Kant refers to as the ‘simple form of law’, which is to say a law which neither prescribes nor prohibit.<sup>696</sup> A state of implicit exception clearly results in a situation where the rule of law has lost its compelling character and remains a pure form of law. Such a law is exemplified by the life portrayed in Kafka’s novel, in which law is all the more pervasive for its total lack of content, and in which a distracted knock on the door can mark the start of uncontrollable trials.<sup>697</sup> The combination between ordinary laws and exceptional legislation is at the heart of the modern expression of emergency regimes in Cameroon. The 1995 report to the ECOSOSC regarding the negative trends on a state of emergency has addressed the techniques of the incorporation by states of exceptional legislation within the ordinary ones by raising ‘the perilous distortion of or deviation from the rule of law that ensues from the implementation of emergency measures under ordinary legislation, without recourse to a formal declaration of a state of emergency, which was described by the Special Rapporteur in his seventh report to the Commission and to the Sub commission (E/CN.4/Sub.2/1994/23, paras. 39-41)[...]’<sup>698</sup> The report further describes the mechanisms that states use to establish exceptional measures under normal circumstances:

Such a misuse of law, which is daily becoming more frequent, even in countries with a long-standing democratic tradition, is particularly serious when it takes the form of criminal laws or procedures applicable under normal circumstances. The most common spheres of such legislation are state security (and more particularly anti-terrorist legislation), the campaign against drug trafficking, provisional arrest, occasionally questions relating to publications, and quite recently, questions of immigration.<sup>699</sup>

For example, in Cameroon, the misuse of law is reinforced by Section 28 of the Constitution that provides for ordinances having the full force of law to the profit of the president who

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<sup>696</sup> As above.

<sup>697</sup> As above.

<sup>698</sup> United Nations, Economic and Social Council (note 328).

<sup>699</sup> As above.

does not require any parliamentary approval to make laws in the true sense of the word.<sup>700</sup> The difference between the mechanism of classic emergency regimes and that of the modern expression of emergency regimes is as follows: In a classic emergency, it is the act of formal declaration or the decision of the sovereign to enforce these regimes that result in the separation between the law and its application. In the modern expression of emergency regimes, a combination of certain features under normal circumstances, such as the incorporation of extraordinary legislation into ordinary legislation, a setting up of repressive units, spaces of exception contribute to transform the status of the law to a pure form of law, which then leads to its unrealisability.

### **5.3 The hallmarks of the implicit exception in Cameroon**

Agamben defines concentration camps as the place in which the most absolute *conditio inhumana* that has ever existed on earth was realised.<sup>701</sup> He considers the camps as the ‘hidden matrix’ of the politics where the exception becomes the rule.<sup>702</sup> Therefore, according to Agamben the concentration camps appear to be the hallmark of a state of exception. Following a similar reasoning, I have diagnosed in the Cameroon context a combination of features, which, when grouped together, constitute the hallmarks of the implicit exception. These include the police machine, the space of exception, the judicial militarisation, the Kafkaesque trials, and the supremacy of ordinances having the force of law.

#### **5.3.1 The police machine and the deployment of draconian measures under normal circumstances**

In this section, I use the term ‘police machine’ to refer not to the body of the police’s civil servants but to the army and special units in charge of the security of the president in

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<sup>700</sup> Section 28 of the Constitution empowers the president to enact a decree, which after ratification by the parliament, will acquire full force of law. I have to mention that currently in the Cameroon parliament, the ruling party controls 148 of 180 seats, and therefore ratifying a presidential decree is not a problem.

<sup>701</sup> Agamben (note 9) 95.

<sup>702</sup> As above 99.



Cameroon. It is almost impossible to consider the exception without the police machine because it includes gross violation of human rights and the deployment of draconian measures. In Cameroon, as in most countries, there are the police body and other security forces that are expected to protect the state and guarantee peace and order. As I will show the singularity of the police machine in Cameroon is that its aims essentially to ensure the protection of the president and not the population. During the colonial period, Decree N° 95/57 of 11 November 1959 established Cameroon army and the general defence organisation of the territory. This decree provides that the main orientations in defence and security issues were to be issued by the Council of Ministers headed by the prime minister, the head of government. In 1967, in the aftermath of the so-called independence, a new law regarding the organisation of the defence mechanism confirms the president of the republic as the bearer of the politics of national defence. Indeed Section 7 and 8 of law N° 67/LF/9 of 12 June 1967 provide that in his duty of national defence, the president will be assisted by a Higher Council of National Defence, a Technical Committee of National Defence, and will have a Permanent Secretariat to the national defence and a Defence Committee at his disposal. In light of these decrees it is evident that the politics of defence and the use of security forces are a mutual prerogative among the president and the ministers or various councils and committees. But this configuration was about to change and become a presidential affair. By decree N° 83/539 of 5 November 1983, President Biya established the *Etat-Major Particulier du Président de la République* [general staff of the President of the Republic]. The role of this staff is to 'keep the president informed on all military issues.' As a result of the presidential will to monopolise the security forces, and in spite of the presence of a national force, various groups of security forces within the army and the police still exist in the country. Some of them are not subject to the ministry of defence or to the *délégation générale a la sûreté nationale* (head office of the police), but to the presidency of the republic. When the classic police body or the ordinary army fails to follow orders, these security units assume control. Among these units are the *Garde Présidentielle* (GP) [presidential guard] established by decree N° 85/738 of 21 May 1985, which is not attached to the Ministry of Defence and its purpose is to protect the

presidential palace and the president; the *Bataillon d'Intervention Rapide* (BIR) [Rapid intervention Battalion] established in 1999, which is also subject to the presidency of the republic; the *Commandement Operationnel* (CO) established in 1991, 2001, and 2012; the *Groupement Special d'Operation* (GSO) [Special Operation Group], which is a subset of the police who were established by presidential decree N° 89/175 of 1 February 1989 and inaugurated on 5 May 1989; the *Groupement Mobile d'Intervention* (GMI) [Mobil Intervention Group], and several others. These units occupy a central place in the modern expression of emergency regimes in Cameroon. For clarity of the study, I will briefly present the roles of two of them, which include the BIR and the Operational Command.

Firstly the BIR was established by decree N° 99/16 of 1 February 1999 under the name *Bataillon Leger d'Intervention* [Light Intervention Battalion]. Following the provisions of this decree, this is a specialised army commando unit. The Oxford Advanced Learners' Dictionary defines commandos as 'a soldier or group of soldiers who are trained to make quick attacks in enemy areas.' This unit was later re-named the Rapid Intervention Battalion (BIR) and was headed between 2001 and 2010 by Abraham Avi Sirvan, a retired colonel from the Israeli army who was recently killed in a helicopter crash in 2010. The BIR was established to address the transnational criminality perpetrated by the *coupeurs de route* [highway robbers] in various areas of Cameroon. The robbers used to operate on the borders with the Central African Republic in the eastern part, and on the borders with Chad and Nigeria in the northern portion of the country, taking hostages for ransom, stealing cattle, and attacking and looting passenger vehicles.<sup>703</sup> Therefore, the BIR was established to deal essentially with facts and criminality of an international character. The unit was even sent to Bakassi to secure ownership of this peninsula handed over to Cameroon by a judgment of the International Court of Justice following many years of war and dispute between Cameroon and Nigeria. With the progression of time, the BIR's mission shifted significantly since the enemies were no longer found at an international level, but rather

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<sup>703</sup> Cameroon: Rapid intervention military unit strays from its mission. Available at <http://www.irinnews.org/report/80065/cameroon-rapid-intervention-military-unit-strays-from-its-mission> (accessed 10 February 2014).

inside the domestic sphere. The enforcement of implicit exception through the deployment of this unit has become a key presidential tool to suppress political contestations and challenge the will of people. For example, 2008 was marked by a global financial crisis resulting in inflation and international demonstrations. In Cameroon two events emerged: the general inflation that led to what has been called 'hunger's riots' [*émeutes de la faim*] and a governmental bill regarding the constitutional amendment of the section that prevented President Biya in power since 1982 to run for another term. In February 2008 several people peacefully demonstrated in the street to show their disagreement. Though emergency regimes had never officially been enforced in terms of the provisions of Section 9 of the Constitution, the BIR was brought in to repress the protesters and the society witnessed the systematic use of violence characterised by gross human rights violations, torture, and killings. Reacting as a private militia in charge of protecting the regime in place, the BIR has never been trained to maintain public order or to settle disturbances in urban areas. In most cases, these soldiers shoot with live bullets, by direct orders from the president of the republic. Yet the provisions of decree N° 2001/178 of 25 July 2001 regarding the general organisation of defence and central general staff, provides that the mission of the defence forces is 'to ensure in all time, all circumstance and against all kind of aggression, the security and integrity of the territory; to provide respect of alliances, international treaties and agreements.' Despite the clarity of these provisions, in reality the situation shows that citizens have become victims of the defence forces whose main purpose is to protect the ruling class in power. As a result to their intervention during the uprisings of February 2008, more than one hundred and thirty-nine people were gunned down according to a report by the National Committee of Human Rights, hundreds more according to NGOs. Such situations never lead to any investigation and the soldiers of the BIR are not concerned about the consequences of their actions. Therefore, it can be said that the implicit exception entails a complete lack of judicial and political irresponsibility by authorities. The above report to the ECOSOC regarding the negative trends on state of emergency observes the following:

Another negative trend is the persistence of immunity from prosecution for the perpetrators of human rights violations which characterises such situations, and which persists even after the state of emergency has been lifted and even when the country has returned to normal. Frequently, in many countries that have experienced long periods during which their institutions have operated under a state of emergency and there have been gross and systematic human rights violations, Governments adopt measures of clemency or amnesty laws, on the grounds of realpolitik or national reconciliation.<sup>704</sup>

The modern expression of emergency regimes in Cameroon during 2008 reached its peak because the deployment of repressive units was done silently, ignoring the so-called 'presidential decree' or 'ordinance having the force of law' as was the usual case. By now the BIR, a unit that was established to confront foreign and international enemies became part of the daily routine in Cameroon.<sup>705</sup> I recall an unusual journey between Bafoussam and Yaounde in February 2008. Armed soldiers overwhelmed the road checkpoints, which are usually controlled by the police's civil servants. Travellers were requested to leave their buses or their personal cars. In return the armed soldiers, armed with metal detectors, searched the vehicles and travellers' luggage for something that they did not communicate. Even though the structures of the state remained in place, even though the law had never been formally subject to suspension, the actual legal mechanisms of protection and human rights were in force, but without significance. These events clearly attest to the exceptional atmosphere and the state of physical and psychological fear that surrounds the country and its citizens. Whether it is about the right to life, freedom of expression or movement, the president's BIR remains one of its main negations. Unlike the comment in an international magazine arguing that the BIR has a good reputation among Cameroonians,<sup>706</sup> this is

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<sup>704</sup> United Nations, Economic and Social Council (note 328).

<sup>705</sup> Recently, at a checkpoint a soldier of this unit opened fire on a bus full of passengers and wounded one person on the basis that the driver had not parked properly. A few days later in an area called Song Mahop in the city of Douala, another soldier of the BIR, who had deprived someone of his money, was gunned down by the police. Available at <http://cameroonwebnews.com/2010/08/17/regions/exaction-un-element-du-bir-tire-sur-un-bus-a-douala/> (accessed 11 February 2014).

<sup>706</sup> Dougueli, G. Jeune Afrique 'Cameroun La politique du BIR'. Available at <http://www.jeuneafrique.com/Article/JA2728p024-031.xml3/> (accessed 4 September 2013).

according to me an artificial statement. I was born in Cameroon, grew up there, and is familiar with the local realities. Therefore, I strongly deny such allegation and attest that locally, the BIR, which is considered more as a private militia in charge of protecting the regime than a national force, incarnates the negation of democracy and human rights and is without a doubt one of the most hated units in Cameroon.

Secondly, a Cameroon institution that can also be considered a hallmark of the modern expression of emergency regimes is the *Commandement Opérationnel*. By a decree of 16 May 1991, President Biya imposed the CO in seven of the ten provinces (currently regions) of Cameroon. Nearly a decade later, in 2000, the President enforced by decree<sup>707</sup> a new CO to fight large-scale banditry (*grand banditisme*) in the city of Douala. At this level, I must stress that in the Operational Commands of both 1991 and 2000, the presidential decision transferred responsibility for the security of these cities from administrative authorities (governor, prefect, sub-prefect, mayor, etc.) to a special unit, one that has never been trained to execute such tasks. Technically and legally speaking this was no more than the implementation of a state of siege in the true sense of the word. Yet officially a state of siege has never been imposed in the country, which is to say, to date a presidential decree has never been formally issued in terms of the provisions of Section 9(2) of the Constitution. However, drastic measures have been taken in an implicit and hypocritical enforcement of a state of siege. As I will show in the next chapter of the study, the effect of such a transfer on the human rights of Douala's inhabitants will probably last for decades. On the police machine in the country, Owona Nguini observes that the history of Cameroon is filled with brutal confrontations between the army and the population, whether it refers to the most recent history of shooting people with live ammunition in 2008, or that of 2001 with 'the operational command' in Douala, or the history of 1997. In each of these cases, the national army intervened disproportionately against the population, plunging several families into

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<sup>707</sup> 2000/0027 of 24 February 2000.

mourning.<sup>708</sup> It is evident that in Cameroon there is a clear distinction between the national army that depends on the ministry of defence and other types of armies attached to the presidency of the republic. The latter, who are not far removed from a private militia, are at the heart of the modern expression of emergency regimes and thus implementation of the implicit exception since essentially they aim to protect the regime in place against its own people.

### 5.3.2 The space of exception

*Il n'y a pas Dieu ici.*<sup>709</sup>

There is no God here.

In my opinion the space of exception is an important sign of recognition of the modern expression of emergency regimes in Cameroon. In a previous chapter, I have showed that a formal declaration of a state of emergency, a state of exception, or a state of siege results in the suspension of law within the area of their enforcement. This explains why the decree of proclamation or notification must specify the area, the time, and the duration of the implementation of emergency regimes. *A contrario*, the space of exception as I am about to show, is a space established within the sphere of law but not subject to the law. The space of exception comes into being in a society where the pre-established norm remains in force but is emptied of its content. In this space, life and death, living men and human remains, soldiers and civilians, young and old, men and women, convicted and unconvicted people co-exist.

From a historical perspective, the first space of exception was established in Cameroon by the French during their colonial enterprises. France experienced one of the techniques of the revolutionary war when establishing a *zone d'exception* [zone of exception]<sup>710</sup> and a

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<sup>708</sup> Owona N. '*Le Commandement Opérationnel: solution durable à l'insécurité ou régulation passagère ?*' *Enjeux* (2000) Cote d'Ivoire, N°3, 12-16.

<sup>709</sup> Mukong A. *Un prisonnier sans crime* (2001) Bamenda, Copy Printing Technology 33.

<sup>710</sup> Deltombe & al. (note 60) 356.

*zone interdite* [prohibited zone].<sup>711</sup> These expressions have been used to conceal the true nature of what they represented: the camps. In Algeria from 1957, these policies have already established approximately four hundred camps led by the prefect Maurice Papon, who proscribed the use of the word ‘camp’ to avoid criticism.<sup>712</sup> In Cameroon, the establishment of the camps, or what I refer to as a space of exception, aimed at countering the independence’s struggle led by the UPC movement. The first constitution of a space of exception appeared under the acronym ZOPAC which stands for *Zone de pacification de la Sanaga Maritime*, literally meaning pacification’s zone of the Sanaga Maritime. From 26 December 1957, the population of the Sanaga Maritime division were forcefully deported from their villages and gathered in a single space under the control of armed soldiers while their farms and houses were destroyed. The purpose of the French acting this way was to isolate the *maquisards* who had been living and hiding in the forest while taking advantage of being informed and supplied by their families and friends who still remained in the villages.<sup>713</sup> Within the ZOPAC, the law was no longer applicable, except the one issued by the soldiers. The implicit exception in this space was real, owing to the fact that the people living there were no longer entitled to anything, the law being reduced to the zero point of its own content as the soldiers took control and designed a parallel legislation. As observed by Alphonse Boog, former sympathiser of the UPC movement working for the administration at the time, when the colonial troops found you with your wife, if one or many of them liked her, they simply got undressed without acknowledging her. If you looked at them or attempted to protest, they assaulted you in the face with a rifle butt.<sup>714</sup> The space of exception in the colonial period was established to ‘welcome’ rebels and people who did not deserve to live in a saintly society. As Um Nyobè, the secretary general of the UPC, came from the Bassa tribe that were and are still the predominant inhabitants of the Sanaga Maritime division, people from this tribe who have been living outside the

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<sup>711</sup> As above 279.

<sup>712</sup> As above 264.

<sup>713</sup> As above 265.

<sup>714</sup> As above 266.

division for instance in the capital city Yaounde, were hunted and forcefully returned to their home village that had become a space where the law in force was no longer applicable.<sup>715</sup> Additionally, when the entire population of the Sanaga Maritime division was gathered in the camps, the remaining part of the region characterised by unoccupied houses, markets, and farms became a *zone interdite* [prohibited zone], meaning that people who were found in this prohibited area or in their houses or farms were automatically ‘*hors-la-loi*’ [outlawed] and became targets and mercilessly treated.<sup>716</sup>

ZOPAC appeared to be successful in the Sanaga Maritime division. But after Um Nyobè was assassinated in a cowardly manner on 13 September 1958, the fight for independence escalated in the Bamiléké region of the country. The French then attempted to reproduce the ZOPAC in that area. On 12 December 1958, a space of exception was established under the name *Création de la Zone d’Insécurité des Frontières Occidentales du Cameroun* (ZIFOC), literally meaning Insecured Zone of the Borders of the Western Cameroon.<sup>717</sup> However, unlike ZOPAC in Sanaga Maritime, ZIFOC was a failure in Bamiléké. Yet despite such failure, a space of exception was established forcefully in the region with the blessing of the new president, Ahmadou Ahidjo, between 1962 and 1963. As reported by Deltombe and others, ‘in the Bamiléké region, the heart of the device’s control remains the ‘gathering camps’ [*camps de regroupement*] of populations which increase and consolidate the isolation of ‘sane’ populations from the populations ‘contaminated’ by the rebellion.’<sup>718</sup> To achieve such a task without any opposition, hundreds of thousands of people lived behind a barbed wire fence and in the shadow of watchtowers under the implacable surveillance of politico-military authorities.<sup>719</sup> Deltombe and others observe that these camps were qualified by

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<sup>715</sup> As above.

<sup>716</sup> As above 279.

<sup>717</sup> As above 356.

<sup>718</sup> As above 543.

<sup>719</sup> As above.



many as ‘concentration’ camps where the living conditions were appalling.<sup>720</sup> By May 1962, eighty-five camps were established in the Bamiléké region and held ‘the entire population of the five departments of that region.’<sup>721</sup> The population had to remain in those camps against their will, and when people tried to flee to return to their homes to escape repression and disease, they were hunted down by soldiers. By February 1964, the politico-military authorities of the western region were formally requested to use all means at their disposal to return those who had fled to the camps.<sup>722</sup>

Establishing a space of exception in the Cameroon context entails some serious implications. It brought the idea of a double space of exception across the society. The first one was located inside the camps where people were at the mercy of soldiers. The second space was located outside the camps since the remaining portions of the departments from which people had been forcefully removed became a prohibited area [*zone interdite*]. Accordingly, anyone found in that prohibited space was automatically outlawed and therefore not protected by law. In the Cameroon space of exception, human beings have been merely banned from society, whether they found themselves inside or outside the camps. In this double space, the borders of the camps have irremediably merged with those of the entire region.

After the alleged independence, the idea of a space of exception via ZOPAC and ZIFOC was soon substituted by DIRDOC which stands for *Direction des Etudes et de Documentation* [office of studies and documentation] and the BMM which means *Brigade Mixte Mobile* [Mobil Mixed Brigade]. These institutions were established by the regime to ‘take care’ of political opponents. The DIRDOC were the political police that controlled the head office in

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<sup>720</sup> As above.

<sup>721</sup> As above 544.

<sup>722</sup> As above 544-545.

Yaounde, which was a genuine centre of torture according to the former police commissioner Pierre Ela.<sup>723</sup> The BMM unit's premises were located within areas that were hostile to the regime, and responsibility for the unit was assumed by the police commissioner.<sup>724</sup> I could have thoroughly examined these two intelligence services under the above sub-section devoted to the police machine. The DIRDOC and the BMM's infamy in Cameroon owes much to the atrocities that unfolded in their premises. They are then to be perceived through the lens of a space of exception rather than through that of the police machine. Emmanuel Bityéki, a former victim of torture, reveals that the accused people were transferred to the BMM in Yaounde by 'Air-BM', a sinister aircraft notorious for dropping prisoners without a parachute from high altitude during night flights.<sup>725</sup> Most Cameroonians have been perceived by the ruling class not as human beings endowed with rights and dignity but as a permanent potential threat to be eliminated. During a conversation with his nephew Frederic Fenkam, the late Jean Fochive, head of the intelligence services under the presidencies of Ahmadou Ahidjo and Paul Biya argues:

*La police politique est l'une des rares structures armées qui est en état permanent de guerre, une guerre de l'ombre qui consiste à soumettre l'ennemi sans combattre. Encore que le mot ennemi ne soit pas celui qui convient. En fait, nous combattons le gêneur.*<sup>726</sup>

The political police are one of the rare armed units, who are in a state of permanent war, a war in the shade aiming at overcoming the enemy without fighting. Besides, the word enemy is inappropriate. In fact, we fight the intruder.

The DIRDOC and the BMM were cruelly coupled in the art of torturing people in general and political opponents in particular. The personnel of these units were irregular since they consisted of civilians, soldiers, and/or police officers disseminated from across the territory. Whereas a famous magazine considers the DIRDOC to be the embodiment of a state of emergency in Cameroon that had a direct, particular, and hierarchical relationship

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<sup>723</sup> As quoted by Tsala (note 554) 142.

<sup>724</sup> As above 143.

<sup>725</sup> Bityeki E. *Tcholliré : la colline aux oiseaux* (1991) Yaoundé, le Combattant 31.

<sup>726</sup> Fenkam (note 381)163-164.

with the BMM, which were its repressive units,<sup>727</sup> in 1970 Bishop Albert Ndogmo qualified the BMM to be a satanic, diabolical, and infernal institution.<sup>728</sup> Similarly, former police commissioner Biloa Ayissi stresses that the BMM operated like secret organisations and other crime syndicates from which one can never depart. Its members were operational everywhere and at all times; they were entitled to change their uniforms, but not to quit their jobs.<sup>729</sup>

Even though the rule of law in Cameroon has not been formally subjected to suspension, it remained inapplicable inside the premises of the DIRDOC and BMM. As spaces of exception, people who were brought to this area were exposed to various kinds of torture and death. Their state of physical and mental health changed during their occupation in that space. As argued by Fochive, at the BMM's premises, the most current tortures, even though outdated owing to the growing influence of the press, are spectacular examples of ill-treatment that leave no incriminating traces. According to Fochive, the accused's head is covered with a hood, his clothes are removed, he is stretched out on a table, soaked with water and subjected to electrical torture and/or sodomised with a truncheon. Acid, even though it is diluted is used to inflict pain; some drops discharged on the sex organs inflict an intense pain, which makes screaming uncontrollable.<sup>730</sup> While this confession by the head of the intelligence services induces shivers, it remains a reality in the Cameroon society. In emphasising the scale of torture experienced within the premises of the DIRDOC and BMM, Fochive also describes the *Viêt-Cong* clubbing as follows:

*Il s'agit d'un passage à tabac ou café comme vous l'appeliez ici, qui ne laisse aucune trace; une matraque n'est pas nécessaire. Un journal plié d'une certaine façon et frappé à certains points précis de l'organisme inflige une douleur humainement insupportable. Tous les experts et procureurs de la république n'y voient que du feu. Certaines polices ont fait tellement des recherches qu'elles ont amélioré les techniques du matraquage Viêt-Cong au point où le fleuron en est simplement l'isolement sensoriel: il*

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<sup>727</sup> *Jeune Afrique Economie* N° 240, 5 Mai 1997, 46.

<sup>728</sup> As quoted by Tsala (Note 554) 147.

<sup>729</sup> As above.

<sup>730</sup> Fenkam (note 381) 166.

*suffit ici de placer le détenu au centre d'une cellule obscure et insonorisée ; il ne voit rien, n'entend rien, ne touche à rien, il verse rapidement dans une folie plus destructrice que n'importe quel supplice corporel. La souffrance physique étant alors inexistante, il ne poussera aucun cri, en proie simplement à une souffrance psychique si insupportable qu'il dira n'importe quoi pour que cesse son tourment.*<sup>731</sup>

It is a way of beating up that leaves no trace at all; a truncheon is not necessary. A newspaper folded up in a particular way and strikes in specific areas of the body, inflicts an inhuman, unendurable pain. All experts and public prosecutors are blinded. Some police have extensively researched and improved the techniques of Vietcong clubbing to the extent that the peak is simply sensory isolation. All that needs to be done is to move the detainee to the centre of an obscure and soundproofed cell; he sees nothing, hears nothing, touches nothing, and quickly falls into a madness more destructive than any physical torture. Because physical pain is non-existent, he will not scream, instead, racked with a psychic pain so unbearable, he will say anything to halt his torment.

Located within a sphere of law in force that did not apply to them, the premises of DIRDOC and BMM appear to be a real space of exception where the law of the strongest transcends everything. In this space, the suspect was at the mercy of the regime that sees an enemy in every citizen.<sup>732</sup>

As portrayed by Fochive, the torture of individuals could last for weeks, as was experienced by Hubert Noah, member of an opposition party (PDC) who questioned the legitimacy of President Ahidjo in 1964.<sup>733</sup> It was also the case of Gaspard Mouen, local leader of a political party (MANIDEM). Author, Nouk Bassomb, pictures the situation of Mouen as follows:

*[...] De retour de la cellule, il n'avait plus de peau ni sur le dos, ni autour des poignets, ni autour de ses chevilles. Le dos parce qu'on y avait frappé à répétition des centaines de fois, les poignets et les chevilles parce qu'on l'avait attaché et suspendu par-là, et le poids de son corps avait fait action sur les cordes qui avaient mordu la peau et entamé la chair.*

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<sup>731</sup> As above 166-167.

<sup>732</sup> As quoted by Tsala (note 554) 165.

<sup>733</sup> As above 160.

*Il fallait alors que je mette de la vaseline sur sa chair nue, sachant bien que c'était peine perdue car demain, aux premières heures, ça recommençait. Un mois après, la peau du dos de Mouen Gaspard se serait confondue à celle d'un crocodile.*<sup>734</sup>

[...] Upon his return from the cell, there was no longer skin on his back, nor around his wrists or his ankles. The back because he was repeatedly struck there hundreds of times, the wrists and ankles because he was tied and suspended from them, and the weight of his body has rubbed against the ropes that removed the flesh.

I had to put some Vaseline on the naked flesh knowing that such effort was in vain because in the early hours of the following day, it was to start again. A month later, the skin on Mouen Gaspard's back was similar to that of a crocodile.

Worse than concentration camps, these spaces of non-law (the premises of DIRDOC and BMM) were characterised by the coexistence of life and death that could then be brutally shifted from one to another within a very short amount of time. Mongo Beti asserts that in the DIRDOC premises, a perfect killing machine was built in the cellar with lifts of death. Some cellars were built in such a way that it was not possible to identify them as cellars or wells, and it was the final destination of the lifts.<sup>735</sup> The author went on to explain how the undesirable and intruders to the regime were eliminated:

*On introduit les victimes dans l'ascenseur-suicide qu'on referme sur elles. On active le bouton et l'engin les précipite au fond des puits où elles meurent par noyade. Les corps des suppliciés sont ensuite retirés et conduits dans d'autres fosses où ils sont détruits. Au village ou en ville, les parents angoissés attendent vainement le retour des leurs, qui finissent par être portés disparus. Il y a les puits de torture et des puits de mort, destinés à différentes catégories de clients, suivant le sort réservé à chacun d'eux.*<sup>736</sup>

Victims are pushed into the suicide-lift that is soon locked. A button is activated and the lift throws them into the depths of the well where they drown. The remains of the tortured victims are soon withdrawn and thrown in others pits where they are destroyed. In the village or in town, anxious parents vainly expect the return of their family members, who end up missing. There are wells of torture and wells of death, intended for different categories of clients, according to their fate.

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<sup>734</sup> Bassomb N. *Le quartier spécial : détenu sans procès au Cameroun* (1992) Paris, L'harmattan 28.

<sup>735</sup> Mongo Beti. *Main basse sur le Cameroun* (1984) Rouen, Peuples Noirs 110.

<sup>736</sup> As above.

Most of the time, the death was considered a release from this space since the victims were subjected to the worst inhumane treatment by the people who embodied the authority. In the name of their interests, the French interests and the safety of the regime, many Cameroon nationals suffered in the premises of DIRDOC and BMM for real or alleged causes. A former victim describes the atrocities he experienced at the BMM to Abel Eyinga. For days and nights during weeks and months he witnessed the torture of people tied up by arms or toes in the ceiling of a room nicknamed the 'chapel' by Abdoulaye Mouyakan, the head of the BMM. According to this victim, the picture of wrecked humans who came out of the chapel, with body and clothes scattered smelled strongly of a mixture of urine, saliva, excrement, and blood, fully attesting to the screaming he heard.<sup>737</sup>

The victims were tortured since they were suspected of having information against the regime. If, after all the above torture procedures, the suspect kept resisting, he or she was to be removed from the BMM and DIRDOC premises and transferred to a new space of exception called a 'safe-house.' The safe houses were the secret interrogatory premises without legal existence in Cameroon. These premises were the presidential residences across the country and the houses of the leaders of the regime, such as the house of Theodore Bella.<sup>738</sup> One of the techniques experienced in those premises was to bring a detainee (sometimes sentenced to capital punishment) and shoot him in the calf in front of a suspect who was about to be interrogated. Such a practice resulted in a detailed confession from the suspect who acknowledged everything, even the crimes that no one asked him about.<sup>739</sup> Joseph Ngonu Mvogo observes that if after this show, for one reason or another, the suspect kept resisting, then the torturer hanged a very heavy weight on his testicles and forced him to drink a considerable amount of salted water or inserted pencils

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<sup>737</sup> Eyinga (note 149) 37.

<sup>738</sup> As quoted by Tsala (note 554) 156.

<sup>739</sup> Bityeke (note 725) 37-38. As reported by Tsala in his thesis on page 166 (see Tsala (note 554)), the information was confirmed by the non-commissioned officer of gendarmerie, Yaya Menouga, in Yaounde on 8 September 2003, who mentioned that such practice is still applied in Cameroon.

or sticks between his finger webbing and stepped on them.<sup>740</sup> Yana Menounga also reported that the suspect's nails and teeth were removed with pincers without anaesthesia.<sup>741</sup> And if the suspect still did not want to talk after witnessing this level of the techniques of torture, Alphonse Cedna, the infamous Minister of Death was called in. He placed the man who had been sentenced to death on the table, placed his penis on the table and cut it off with a machete. After his death, the man's remains were burned or thrown into the river being witnessed by the suspect.<sup>742</sup> Bassomb describes the agents of the BMM as 'wild animals in human shape' because not only did they lock up prisoners in a box with very small breathing holes, they sometimes inserted their truncheons, bottles and other objects into their rectums,<sup>743</sup> and also struck prisoners on their tongues and/or on their sex organs.<sup>744</sup> This kind of treatment led to the death of many people and some of them even died without being tortured. In 1970 Georges Alfred Belinga witnessed a series of torture, he was even released but four days later, still emotionally shocked, he fell into a coma and never regained consciousness.<sup>745</sup>

The DIRDOC and BMM agents were entitled to various advantages and bonuses in addition to their salary when the president was convinced of the 'good job' they did. These advantages, not provided for by law, were bank transfers, monthly bonuses, and annual year-end gifts granted by President Ahidjo.<sup>746</sup> According to Eyinga, it was the responsibility of the president to list the agents who excelled at torturing people. Such a list was regularly amended to subtract or add the names of agents. This process aimed at motivating various agents who had yet to substantially improve their technical skills in the techniques of

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<sup>740</sup> Tsala (note 554) 167.

<sup>741</sup> As above.

<sup>742</sup> As above.

<sup>743</sup> As above 167-168.

<sup>744</sup> As above.

<sup>745</sup> As above.

<sup>746</sup> Eyinga (note 149) 33-34.

torture in order to be part of the presidential list and earn rewards.<sup>747</sup> The first list was released by President Ahidjo on 1 July 1960 and contained seven names.<sup>748</sup> The second one, issued in 1962, also contained seven names, including Jean Fochive and Abdoulaye Mouyakan.<sup>749</sup> As time went by the president issued new lists, such as the one published in August 1966 by decree N° 131, and another one a year later in August 1967 that contained twenty names.<sup>750</sup>

At the end of the torturous procedure the surviving victims were removed from the DIRDOC or BMM premises or the safe houses and transferred to a new space of exception called *Centre de rééducation Civic* (CRC) [Civic re-education centre] or *Centre secrets d'internement administratif et de rééducation civic* [Secret administrative internment centre and civic re-education].<sup>751</sup> As explained by Sadou Daoudou, former Minister of the Armed Forces under the Ahidjo regime in 1960-1961, to fight against 'subversion', the Cameroon government limited the movement of citizens by requesting passes, authorising searches in houses, and monitoring meetings through the so-called SEDOC, which was the intelligence services headed by the fearsome Jean Fochive.<sup>752</sup> At this stage, it is important to observe the establishment of a security arsenal that paralyse all the national and international instruments of human rights protection. Yet such draconian measures were not the result of a formal declaration of a state of exception. Among such security arsenals, the main one was the establishment of detention camps, which, according to Daoudou, aimed to facilitate the 'internment of suspicious individuals against who there were not yet

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<sup>747</sup> As above 33.

<sup>748</sup> Journal Officiel du Cameroun 1961 Yaoundé 61-62. These names include Abdel Krim Youssef, André Gérolami, Maurice Odent, Martin Bissenguele, Léonce Dassaly, and Robert Endem Bekolo.

<sup>749</sup> Arrêté N° 13 du 22 Janvier 1962, Journal Officiel du Cameroun 1962 Yaoundé 61-62.

<sup>750</sup> Eyinga (note 142) 33-34.

<sup>751</sup> Tsala (note 554, 211.) refers to these camps as *Centre de rééducation Civic* whereas Deltombe & al. (note 60, 496.) called them *Centre secrets d'internement administratif et de rééducation civic*. They are in fact the same thing.

<sup>752</sup> Deltombe & al. (note 60) 496.



sufficient evidences to take them to court.’<sup>753</sup> The practice, which was inspired by the Vietminh during the Indochinese war had been experienced a few years earlier by French agents, especially Maurice Delauney, when Pierre Messmer was still the French High Commissioner in Cameroon.<sup>754</sup> Indeed in the recent past, Delauney had established a secret internment camp in an area called Bangou, to ‘incapacitate dangerous individuals protected by an unsuited judicial formalism.’<sup>755</sup> One of the masterminds of the detention camps called *centre d'internement administratif* [administrative internment centres] was Samuel Kame, who at the time was a key leader of the ruling class. On 23 August 1961, while leading a coordination meeting on that issue, he argued that the administrative internment centres were intended to welcome non-convicted people, but that the withdrawal from sane society could be justified by the requirements of order and public security.<sup>756</sup> On 4 October 1961, these camps were legalised by a presidential ordinance and one year later their construction was launched.<sup>757</sup> On 11 January 1962 a representative of the Cameroon Minister of Justice, Louis Marie Pouka, emphasised the illegal, anti-democratic, and unconstitutional character of these centres that infringed upon citizens’ fundamental freedoms. According to him, the administrative internment camps were genuine concentration camps for prisoners of war, whereas Cameroon was not in a state of war.<sup>758</sup> Following this criticism, Mapouka was dismissed by the regime owing to insanity.<sup>759</sup> If it was admitted that these camps were supposed to detain people for three months, from 1962 to 1970, thousands of Cameroonians deemed ‘harmful’ by the regime and never convicted by a judgement ‘will then be missing’ temporarily, or for good.<sup>760</sup> It can then be said that in the space of exception one of the fundamental principles of law is reversed,

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<sup>753</sup> As above.

<sup>754</sup> As above 496-497.

<sup>755</sup> As above.

<sup>756</sup> As above 497.

<sup>757</sup> As above.

<sup>758</sup> As above 498.

<sup>759</sup> As above.

<sup>760</sup> As above.

namely that the preventive detention becomes automatic and everyone is presumed guilty until shown proof to the contrary.

The *Centre de rééducation civique* (CRC) [centre of civic re-education] was a type of military compound where political opponents were held. The name CRC means that they were not to be considered as prisons in the classical meaning of the word. In this space, people needed to be ‘re-educated’, not punished. The premises contained two categories of prisoners, namely those who had been sentenced by a court and those who had been sent there without inculcation or judgement. In both cases, the detainees were subjected to similar treatment.<sup>761</sup> Three CRCs, real spaces of exception were established to ‘welcome’ these peoples. The first was located in Tchollire, an isolated area in the northern part of the country. This space of exception was built on what appears to be an island since it is surrounded by water that is also the shelter of crocodiles and snakes. Accordingly any prisoner attempting to escape from this space should know how to swim, but should be especially prepared to swim at his own risk. In case of a miraculous hypothesis of success, the fugitive should also be prepared to face lions, rhinoceros, buffalos, and stray bullets since the CRC was part of the reserve of Boubou Ndiaye and eighteen hunting zones crowded with a high variety of wild animals.<sup>762</sup> The second CRC was located in Yoko an isolated area that required twenty four hours trip from the most skilled driver to cover the three hundred and two kilometers which separate the capital city Yaounde to that area. Such duration could substantially vary depending on whether the trip happened during the dry or rainy season.<sup>763</sup> The third CRC was located in the depths of the western province in a village called Mantum, another isolated area surrounded by the Noun and the Mbam rivers and inhabited by wild animals and dangerous snakes.<sup>764</sup> These CRC were also the final resting places of the prisoners. Once dead, they were buried there in the yard, their graves

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<sup>761</sup> Tsala (note 554) 211.

<sup>762</sup> As above 205.

<sup>763</sup> As above 208.

<sup>764</sup> As above 209.

indicated by a clump and stones gathered in the premises of each of the prisons.<sup>765</sup> It is the graveyard of the detainees. The graves were not marked by crucifixes, not even the Christian ones. In these spaces of exception, the burial remained the same for Christians, Muslims, and heathens who were summarily buried without mass, investigation, or funeral oration. Sometimes the family was not even informed.<sup>766</sup> Jacques Vergès, the late French lawyer, describes the true nature of these spaces where the rule of law had no effect:

*Les CRC étaient des mouiroirs où les gens étaient traités pires que des animaux. C'étaient des sites génocidaires.*<sup>767</sup>

The CRCs were a space of death where people were treated worse than animals. They were genocidal sites.

The regime has since changed in Cameroon and the development of spaces of exception were expanded by the new regime. By two orders on 25 May 2012 the Minister of Justice established 'the secondary prisons' in Yaounde XVI and Douala I. The second order appointed the directors of these secondary prisons. In alignment with the idea of secondary prisons, there have been some special spaces in the country where some categories of prisoners, including political opponents, are currently incarcerated. One example of such space is the *secrétariat d'état à la défense* (SED) [secretariat of state defence], which is located within the headquarters of a military compound in the capital city, Yaounde. This space is under military control and not the usual staff of prison guards. These premises, like those of the DIRDOC and BMM, is considered as a space of exception. As is the case of the latter institutions, the rule of law is not enforceable within the SED since detainees remain subject to torture. On 8 September 2003 Yana Menounga, a non-commissioned officer of the gendarmerie observed that torture, such as the removal of teeth and nails with pincers and without anesthesia, were practiced within the premises of the SED.<sup>768</sup>

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<sup>765</sup> As above 225.

<sup>766</sup> As above.

<sup>767</sup> 'La Tribune de l'Histoire' Canal 2 International 03 Mars 2007.

<sup>768</sup> Tsala (note 554) 167.

One of the peculiarities of the new secondary prisons in Cameroon is that their physical locality remains unknown. In the course of an interview, Dieudonné Engonga Mintsang, Director of the New Bell Prison in Douala and director of the new secondary prison in the same city, acknowledged that he still ignored the geographic localisation of the secondary prison.<sup>769</sup> The idea of a secondary prison espouses the idea of a space of exception. Like the CRC, this space cannot be considered a prison according to the usual meaning of the word. The media refers to the secondary prisons as ‘fictitious prisons’<sup>770</sup> or ‘Cameroon Guantanamo’<sup>771</sup> in reference to the American prison on Cuba’s island under the auspices of the army and where ‘terrorist suspects’ are subject to indefinite detention without judgement and are constantly tortured. Yet the reality in Cameroon is that no one has realised the close proximity of such secondary prisons with a space devoid of law. Contrary to the previous spaces of exception that were confined to camps and areas with barbed wire fences, the new secondary prisons appear to be more lethal for Cameroon inhabitants since their location is not mentioned by the orders which brought them into being. In refraining from specifying their physical locality, the ministerial orders of creation of secondary prisons have removed the barbed wire fences and the walls of the camps that delineated the former space of exception from the space of law. In Cameroon both spaces are now merged into each other and expand themselves across the private and political spheres. Cameroon citizens and inhabitants could be (legally) withdrawn from the sphere of law at any time and any place, such as their houses or in a bus or in the street. Through the orders that established the secondary prisons on unknown sites, Cameroon has become a wide space of exception not subject to the law.

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<sup>769</sup> Tagne J.B. ‘Justice: Laurent Ezzo crée des prisons fictives’. Available at <http://www.cameroon-info.net/stories/0,34746,@,justice-laurent-esso-cree-des-prisons-fictives.html> (accessed 29 September 2012).

<sup>770</sup> As above.

<sup>771</sup> ‘Le Cameroun a désormais son Guantanamo’. Available at <http://camer.be/index1.php?art=19549&rub=11:1> (accessed on 29 September 2012).

### 5.3.3 Judicial militarisation

In this section, I show that the implicit exception within the Cameroon context also materialises through the process of judicial militarisation. This process is the result of presidential decrees and not the law enacted by a parliamentary assembly. Between independence and 1982 in addition to the permanent emergencies that were in force, local authorities enacted several measures characterised by a growing militarisation of justice and their exceptionality. In a study titled *Les lois d'exception dans la République Fédérale du Cameroun*, [Exceptional laws in the Federal Republic of Cameroon] released in September 1964, experts of the International Commission of Jurists raised the issue regarding the means through which President Ahidjo eradicated opposition in the country. They observed that the president essentially relied on three documents: firstly Ordinance N° 61/OF/4 of 4 October 1961 that established a permanent military tribunal across the country. Secondly, Ahidjo relied on Ordinance N° 62/OF/18 of 12 March 1962 to suppress subversion that was enacted a few months after the first one. Thirdly, the president relied on the Federal Law N° 63/30 of 25 October 1963 that transferred political infraction to the military tribunals.<sup>772</sup> According to Deltombe and others, assuming that the Ordinance of 1962 against subversion was too 'liberal' the Executive sought to strengthen it by transferring the cases of 'subversion' (for instance the potentially extended offence of 'undermining respect for authorities') from the magistrate's courts to the military courts so that the judgements with retroactive effect were not subject to any sort of appeal from convicted people.<sup>773</sup> In other words, the law gave competence to military tribunals to judge civilians. In the meantime, judges had to pronounce the confiscation of the current and future heritage of the condemned in case of doubt concerning the legal origin of such heritage. Moreover, in case of dissatisfaction only the government was entitled to refer the case to the Supreme Court for a new trial by another military court.<sup>774</sup> Some provisions of the Federal Law of 25 October 1963 entitled the president of the republic to establish, by a

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<sup>772</sup> Eyinga (note 149) 22.

<sup>773</sup> Deltombe & *al.* (note 60) 498-499.

<sup>774</sup> As above.

simple decree, temporary military tribunals near the permanent ones already established by the Ordinance of 4 October 1961. Two days prior to the vote of this bill, Francis Clair, a French judge and legal adviser in Cameroon who until then had agreed with all the measures issued by the regime, discreetly expressed his disagreement. In a letter to his immediate superior he observed that this new measure infringed ‘the generally recognised principles of law’ on the appeal, the retroactivity, the separation of powers, etc.<sup>775</sup> According to him, these measures were an ‘obvious violation not only of the constitution, but also the basic principles of any democracy, no matter how authoritarian they are.’<sup>776</sup> The Cameroon regime issued numerous provisions that substantially reinforced the judicial militarisation in the country. The most important are the following:

- Ordinance N° 59/91 of 31 December 1959 relating to the organisation, the competence, and the functioning of military courts.<sup>777</sup>
- Ordinance N° 60/52 of 7 May 1960 regarding the organic law on the state of emergency. Section 7 of this ordinance extends the competence of military courts to common crimes in the area subject to a state of emergency.<sup>778</sup>
- Ordinance N° 60/53 of 7 May 1960 to amend Sections 4, 6, 7, and 8 of Ordinance N° 59/91 of 31 December 1959 relating to the organisation, competence, and functioning of military courts. Section 1 of this text reads:
  - Section 4(2) of Ordinance N° 59 of 31 December is amended as follows: in time of war, the competence of the permanent military courts is extended to all matters in which a military or related person is involved, and to the whole crimes and offences set out in Section 7 of Ordinance N° 60/52 of 7 May 1960 regarding the state of emergency.<sup>779</sup>

Similarly, Section 2 of the above Ordinance N° 60/53 of 7 May 1960 provides as follows:

- Temporary military courts can be established in peacetime in the same process and with the same composition within the departments where a state of emergency has been declared

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<sup>775</sup> As above 499.

<sup>776</sup> As above.

<sup>777</sup> Official Gazette of the Republic of Cameroon 12 May 1960, 276.

<sup>778</sup> *Journal Officiel de la République du Cameroun* 12 Mai 1960, 679-680.

<sup>779</sup> As above 680-681.

following the conditions provided by Ordinance N° 60/52 of 7 May 1960 on the organic law on the state of emergency. In this case, the temporary military courts acquire the competence provided for the permanent military court in wartime by Paragraph 2 of Article 4.<sup>780</sup>

- Ordinance N° 61/OF/4 of 4 October 1961 established permanent military courts across the country and extended the competence of the courts toward any adult of eighteen-year-old for the trial of attacks and attempts on the internal and external security of the state punishable by imprisonment of 5 years, or to the heaviest penalty.<sup>781</sup>
- Ordinance N° 62/OF/17 of 12 March 1962 extended certain provisions of Ordinance N° 61/OF/5 of 4 October 1961 on the state of emergency to other parts of the federal territory.<sup>782</sup>
- Ordinance N° 62/OF/18 of 12 March 1962 for repressed subversive activities.<sup>783</sup>
- Ordinance N° 72/5 of August 1972 concerning the jurisdiction of the military court.
- Law N° 90/48 amended Ordinance N° 72/5 of August 1972 concerning the jurisdiction of the military court.<sup>784</sup>
- Law N° 90/60 of 19 December established and organised the state security court.<sup>785</sup>

As a mechanism of implicit exception, it can be observed here that the traditional structures of a democratic society, such as the legislature, the executive, and the judiciary, remain in place. But in paralysing the actual legal order the executive had simply grafted another set of judicial institutions on top of the existing ones without formally annulling or suspending them. In so doing, the president created a situation whereby the soldiers who repressed people in the camps, in the DIRDOC and BMM, were now officially in charge of judging their victims. Subsequently, the phenomenon of judicial militarisation emancipated itself from the wording of the texts as any soldier could implement them according to his own whim. A case in point occurred on 27 August 2012 when Albert Dzungang, a local political leader, was expelled from the courtroom without reason during a trial in a

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<sup>780</sup> *Journal Officiel de la République du Cameroun* 12 Mai 1960. 681.

<sup>781</sup> Official Gazette of the Federal Republic of Cameroon 1 October-6 November 1961, 5-8.

<sup>782</sup> As above 1 April 1962, 232.

<sup>783</sup> As above 232-233.

<sup>784</sup> As above 1 January 1991, 10-11.

<sup>785</sup> As above 52-54.

magistrate court in Yaounde. The peculiarity of this fact is that the order of expulsion was issued neither by the judge nor by the immediate superior of the soldier.<sup>786</sup> A disconcerted Dzungang addressed a letter to the Secretary of State Defence expressing his discontent that the courtroom policing was ensured not by the president of the tribunal as provided by law, but by soldiers.<sup>787</sup> The militarisation of justice that came into being has entered the realm of normality, merged with ordinary laws, integrated behaviours, and is now subject to implementation by any soldier at any time and any place.

Being part of the modern expression of emergency regimes, the judicial militarisation remains an exceptional technique aiming at paralysing the rule of law and various procedures pertaining to the trials. This mechanism is allied to the concept of full powers as previously developed. The judicial power, which is theoretically an important feature of the principle of separation of powers in democracy, is declined jurisdiction over cases to the profit of similar institutions controlled by the executive branch. The establishment of military courts with jurisdiction over civilian offences and the systematic presence of soldiers within the courts are definitely an indication that Cameroon society operates in a state of implicit exception.

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<sup>786</sup> *'Cameroun-procès Marafa: Albert Dzungang expulsé de la salle d'audience'*. Available at <http://www.aeud.fr/Cameroun-proces-Marafa-Albert.html>. Also available at <http://www.cameroon-info.net/stories/0,37109,@,au-tribunal-proces-marafa-amp-cie-albert-dzungang-expulse-de-la-salle-d-audience.html> (accessed 12 September 2012).

<sup>787</sup> *'Albert Dzungang écrit au Secrétaire d'Etat à la Défense'*. Available at <http://www.camer.be/index1.php?art=21329&rub=6:1> (accessed 10 September 2012).



### 5.3.4 The Kafkaesque trials

*Du fond de sa cellule, Claude Mbesso attend depuis 14 ans le verdict de son procès. Accusé de vol aggravé, il est passé plusieurs fois devant le juge 'et puis, plus rien!'*<sup>788</sup>

On the far side of his cell, Claude Mbesso has been waiting for 14 years for sentence to be passed. Accused of aggravated theft, he went before the judge several times 'and then nothing more!'

As defined by the Oxford Advanced Learner's Dictionary, the adjective 'Kafkaesque' is 'used to describe a situation that is confusing and frightening, especially one involving complicated official rules and systems that do not seem to make any sense. In fact the expression 'Kafkaesque trials' refers to *The Trial*, a book by Franz Kafka whose portrayed the mysterious trial of Joseph K; a trial that appears to be a trap scattered with mazes through which the only exit is death. In *The Trial* it is almost impossible to distinguish between the life of Joseph K and the trial itself as the two elements blend into each other. The implicit exception within the Cameroon context also materialises through these kinds of trials. In this section I do not intend to dwell at length on the executive abuse of power and control over the judiciary, especially during political trials.<sup>789</sup> My main concern is to show how the environment of the courtrooms and prisons in Cameroon is subjugated to the pure form of law and procedures, which despite being in force, remain without significance. The situation of some people involved in trials across the country is

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<sup>788</sup> Tatchuam H. 'Cameroun, Après des années de prison: Ces détenus attendent le verdict du tribunal.' Available at <http://camer.be/index1.php?art=17864&rub=11:1> See also <http://www.cameroon-info.net/stories/0.32849.@.apres-des-annees-de-prison-ces-detenus-attendent-le-verdict-du-tribunal.html> (accessed 29 September 2011).

<sup>789</sup> For instance in 1962, former Prime Minister Andre-Marie Mbida and his friends were sentenced to thirty-six months in prison and a fine of two hundred fifty thousand francs cfa for each of them by the Court of Appeal in Yaounde. Once at the Supreme Court, the case was handed over to Mr. Starter, a French judge who nullified the judgment owing to various irregularities. Having being informed of such decision, which was about to be published, President Ahidjo requested and obtained the entire file and evidence in the presidential palace. As a result, the condemned were compelled to spend three years in prison. Thereafter, the president issued an ordinance stating that sentences passed by his military courts could not be subject to any sort of appeal. Eyinga (note 149) 26.

unenviable compared to the case of Joseph K. The idea I want to emphasise is not about being innocent or guilty but the mere fact that being involved in a trial more or less resembles the pieces of a puzzle the accused has to make sense of. In Cameroon, having entered the judicial trap, it is almost impossible to understand its operational modes; even when instructions are given by judges, they are not always subject to implementation and remain in the immaterial sphere of language. The rule of law and procedure that governs the trials are in force but have reached a certain stage of unrealisability. For example, there are reported cases of people who after standing their trials several times, are still awaiting pronouncement of their sentences. Such is the case of Claude Mbesso who has been waiting for more than fourteen years to hear his sentence, which is yet to be pronounced.<sup>790</sup> It is also the case of Elvis Lakeu Djeuka, who, following several appearances before the judge, the court adjourned for further deliberation, and he has been awaiting sentence for four years.<sup>791</sup> A similar situation is applicable to his cellmate Jacques-Yves who appeared before the judge three years ago and since then, nothing more has happened.<sup>792</sup> Another detainee, Siebetcheu Barthelemy, is convinced that going before the judge several times is not the benchmark of good progress of a trial. Following seventeen appearances in the courtroom, he has been awaiting for his sentence to be pronounced for three years.<sup>793</sup>

The Cameroon judicial institution operates in a state of suspension. Some people accused of crimes and offences cannot be condemned or freed since the judicial machine is unable (event after long adjournments) to find an appropriate remedy to the situation. Despite a various set of legal and procedural codes (penal code, criminal procedure code, civil code, etc.) the judicial authorities in the country regularly find themselves in a complete legal *vacuum*. The exception is about this legal void and the implicit exception manifests through the ignorance of the pre-established rules and the artificial establishment of legal voids.

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<sup>790</sup> Tatchuam (note 788).

<sup>791</sup> As above.

<sup>792</sup> As above.

<sup>793</sup> As above.

The trial in Cameroon is an infernal machine that one must do whatever it takes to stay away from. It may happen that after its adjournment, a court finally rules a case and pronounces a sentence which unfortunately might not be implemented. This happened to Georges Endene Endene, a sixty-four-year-old fisherman who was unlawfully detained for three years. Following the habeas corpus procedure, he was cleared and formally freed by a release order issued by the judge. Despite these developments, Georges remains incarcerated and his lawyer had to follow some obscure procedures in order for him to effectively be released.<sup>794</sup> This situation is similar to the case of Elvis Fonuy Luma who was incarcerated in April 2004 and kept in detention awaiting trial. Seven years later when he appeared in front of the judge on 21 October 2011, he realised that he had been released from prison in 2007 owing to lack of evidence. However, the Chairman of the Court, Colonel Kengne adjourned the case until 23 January 2012 for new preliminary investigations. Elvis Fonus Luma remains in prison in the city of Bafoussam.<sup>795</sup> This is the classic case of a Kafkaesque trial where the role of the judge is to keep judging, not to pronounce any judgment. It is also the case of Eric Simen Kemadjou, Armel Kentsop, Félix Talla, and Odette Seko who have been in detention awaiting trial for more than four years since 2007, and are still waiting to appear before a judge.<sup>796</sup> The case of Joshua Mbah who has been in custody for three years without judgement<sup>797</sup> can also be considered as a benchmark of the state of suspension surrounding the judicial apparatus in Cameroon. Indeed as provided for by the Cameroon Criminal Procedure Code in its Section 218, the

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<sup>794</sup> Matho A. *'Interpellation et détention arbitraires: Torturé et détenu sans motif pendant trois ans.'* Available at <http://camer.be/index1.php?art=20027&rub=11:1>. See also <http://www.cameroon-info.net/stories/0,35492,@,les-droits-humains-en-milieu-carceral-torture-et-detenu-sans-motif-pendant-trois.html> (accessed 10 September 2011).

<sup>795</sup> *'Plus de 80 mois derrière les barreaux: Relaxé en 2007, Elvis est toujours en prison en 2012.'* Available at [http://www.camerounlink.net/news/?bnid=2&ukat=&sid=&rub=&kid=&tid=&an\\_userid=&SessionID=T8ZX3IKJ8FSZK5NIRIU3CEZUNC3DLD&nid=64800&cat=&kat=&profile=&searchstring=&c1=5&c2=48&t\\_id=&wid=&sid1=&code=&thisid=&this\\_id=&ville=&land=](http://www.camerounlink.net/news/?bnid=2&ukat=&sid=&rub=&kid=&tid=&an_userid=&SessionID=T8ZX3IKJ8FSZK5NIRIU3CEZUNC3DLD&nid=64800&cat=&kat=&profile=&searchstring=&c1=5&c2=48&t_id=&wid=&sid1=&code=&thisid=&this_id=&ville=&land=) (accessed 10 September 2011).

<sup>796</sup> As above.

<sup>797</sup> *'Les droits humains en milieu carcéral: Plus de trois ans en prison sans jugement.'* Available at <http://camer.be/index1.php?art=16466&rub=11:1> (accessed 10 September 2011).

duration of provisional detention cannot exceed six months in the case of crime. This duration is renewable only once. In addition, in the country's legislation there is a special procedure against arbitrary arrests and abusive detention provided by Section 588 of the Criminal Procedure Code. The administration of justice and law applicable to the accused are not operational at all. It would appear that the law applicable to the institution is overwhelmed by a mysterious legal void that prevents them from being operational.

Another example includes the plight of prisoners who have to pay for transport to court for themselves and their jailers. In the penitentiary of Foumban in the western region of Cameroon, there is no vehicle to transport prisoners to court. If the trial has to be conducted in a court that is not too far from the prison, then prisoners are tied together and walk there. If the trial has to be conducted at a higher level, such as a case of appeal, then it can only be held in the main city of the region, which is currently Bafoussam. In this case the prisoners should be prepared to pay for tickets for themselves and their jailers; if they fail to do so and do not appear in court, the case is likely to be postponed over and over again.<sup>798</sup>

### **5.3.5 The permanent parliamentary function of the executive: the supremacy of ordinances having the force of law**

The supremacy of ordinance having the force of law has become one of the most efficient mechanisms of enforcement of emergency regimes without any formal declaration or notification. From a historical perspective, the ordinance was established during the third French republic. After the First World War, the European parliamentary system was under pressure since they could no longer undertake efficient measures timeously. This is the origin of a system of delegation where the assemblies delegated their legislative function to the government through the so-called decree-law. Indeed Section 13 of the French Constitution of 1946 provides that 'only the national assembly can vote the law. It may not delegate this right.' However the hierarchy of legal norms was overturned by the French

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<sup>798</sup> Matho (note 794).

law of 8 December 1939 that made the decree-laws a regular governmental tool between 1934 and 1940. Since then it has become the ordinance, and upon the return of General de Gaulle to power in June 1958, he was entitled to rule the country by ordinance for a period of six months.

The ordinance was introduced to Cameroon institutions in 1959. As reported by the newspaper *La presse du Cameroun* on 22 October 1959, President Ahidjo requested from the Legislative Assembly ‘the possibility for the executive to take all necessary measures by ordinance for the preparation of independence following the parliamentary session on the basis of “exceptional situation which requires exceptional solutions.”’ In Chapter 2 of this study, I have reviewed the heated debate on full powers that took place during the parliamentary session of October 1959. It is during this session that the ordinance formally came into being within the Cameroon context. Section 1 of this legislation already provides for a detailed description of the ordinance. After its incorporation into its political apparatus, Cameroon was to constitutionalise the ordinance into its subsequent constitutions. Section 25 of the Constitution of 4 March 1960 reads:

*Le premier ministre peut, après accord formel du président de la république, pour l'exécution de son programme, demander à l'Assemblée l'autorisation de prendre par ordonnances, pendant un délai limité, des mesures qui relèvent normalement du domaine de la loi [...]*

The Prime Minister may, after the formal consent of the president of the republic, for the execution of his programme request from the Assembly the authorisation to rule by ordinances for a limited period on matters that normally belong to the field of law [...]

In light of the above provisions, it is evident that by March 1960, the ordinance had become a sort of royal prerogative in Cameroon in the hands of the president who, entitled to it, could authorise the prime minister to request authorisation from parliament to use it. To execute his programme, the prime minister could resort to measures that normally belonged to the Assembly. But to obtain such measures he first had to rely on the president

and if he agreed, then rely on parliament. Similarly, Section 50 of the Federal Constitution of 1 September 1961 refers to the ordinance as follows:

*A titre exceptionnel, pendant une durée de six mois, à compter du 1<sup>er</sup> Octobre 1961, les textes législatifs nécessaires à la mise en place des institutions et, jusqu'à cette mise en place, au fonctionnement des pouvoirs publics et à la vie de l'Etat Fédéral seront pris par le président de la république fédérale sous forme d'ordonnances ayant force de loi.*

Exceptionally, and for a period of six months from 1 October 1961, the legislative measures necessary for the setting up of institutions, and until their establishment, for the functioning of public powers and life of the Federal State, shall be issued by the president of the federal republic in the form of ordinances having the force of law.

The above provisions of Section 50 that did not provide for any deadline emphasised the transitional character of the Federal State. In fact with its institutions in a state of permanent suspension, the Federal Republic of Cameroon lasted for a decade. With the publication of a new constitution on 2 June 1972, it was confirmation that the ordinance had become a major instrument of presidential legislation. Section 21 of this constitution reads:

Provided that with regard to the subjects listed in Article 20<sup>799</sup> the National Assembly may empower the president of the republic to legislate by way of ordinance for a limited period and for given purposes.

Such Ordinances shall enter into force on the date of their publication. They shall be tabled before the National Assembly for purposes of ratification within the time limit fixed by the enabling law.

They shall remain in force as long as the Assembly has not refused to ratify them.

The important place of the ordinance having the force of law within the Cameroon context is evident regarding the amount of legislation with presidential origins. The idea of separation of powers and democracy in the country remains an illusion. The implicit

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<sup>799</sup> These subjects listed in paragraphs a, b, c, d, e, and f of Section 21 include the fundamental rights and duties of the citizen, the law of persons and property, the political, administrative, and judicial system, matters of finance, and public property, the long-term commitments to economic and social policy, and the educational system.

exception powerfully materialises, owing to the fact that all structures of the state remain in place, except that the constant enactment of new measures by the executive prevent their functionality. The supremacy of ordinances having the force of law was coined by Jacques Derrida in a lecture at the Cardozo law school in 1989. The lecture bears the significant title '*Force de loi le fondement mystique de l'autorité*', which literally means 'force of law the mystical foundation of the authority.'<sup>800</sup> The expression 'force of law' is to be understood as referring not only to the law but also to those decrees that the executive in Roma was entitled to issue, especially in time of emergency. Therefore, 'force of law' espouses the idea of the sacred character of the institutions in Rome. The reality is different in contemporary states where numerous decrees and ordinances having the full force of law are issued by the executive power even in the absence of a national emergency. The authority of such ordinance acquiring full force of law is far from being rational since it contains something of a mystical element.

The origin of the idea of ordinance was an emergency remedy for a particular situation. Cameroon experience confirms that this tool, which has been constitutionalised and overused under normal circumstances, has become a major sign of the modern expression of emergency regimes. In 1962, Ordinance N° 62/OF/18 of 12 March suppressing subversion<sup>801</sup> was issued by President Ahidjo and was soon implemented across the country. Arrests, trials, and imprisonment of people criticising the regime became routine. This ordinance, which contained only six sections, sought to deploy draconian and exceptional measures even though the ordinance had never expressly referred to its emergency character. Following a mechanism of implicit exception, the ordinance emerged under the appearance of a mere ordinary law, which was to become exceptional regarding gross human rights violation and the suspension of law. A reading of Section 3 gives an idea of the true nature of this document:

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<sup>800</sup> Derrida (note 622), also Agamben (note 42) 37-38.

<sup>801</sup> Official Gazette of the Federal Republic of Cameroon 1 April 1962, 232-233.

*Quiconque aura soit émis ou propagé des bruits, nouvelles ou rumeurs mensongères, soit assorti de commentaires tendancieux des nouvelles exactes lorsque ces bruits, nouvelles, rumeurs ou commentaires sont susceptibles de nuire aux autorités publiques sera puni des peines prévues à l'article 2.*

Whoever might have either expressed or spread rumours, information, or false rumours, or added misleading comments of genuine information when these rumours, information, or comments arose are likely to harm public authorities and shall be subject to the penalties provided in Section 2.

These provisions prevent freedom of expression and prohibit criticism against public officials. Authorities appear to be deified since any criticism against them would be considered sacrilegious and subject to the heaviest punishment. It is not clear whether at the time when issuing this ordinance President Ahidjo was aware of the concepts of *odium religiosum* and *odium theologicum* developed by Immanuel Kant. I have found a very close connection between the provisions of the ordinance of 1962 suppressing subversion in Cameroon with these concepts. On the one hand, Kant defines *odium theologicum* as a hatred peculiar to the clergy, which occurs when the theologian turns some conceit of his own into a matter of divine concern, and conceives a hatred that is founded on pride, and believes that because he is a minister of God, he can claim to be a person empowered by God, whom the latter has sent as a deputy, vested with authority, to rule men in his name.<sup>802</sup> On the other hand, Kant argues that *Odium religiosum* is directed upon a person when his errors are thought to be high treason against divinity, and the defects of his religion are declared to be *crimina laesae majestatis divinae*.<sup>803</sup> Accordingly, he who distorts and misrepresents the views of another, and draws many conclusions from that, so as to declare them *crimina laesae majestatis divinae*, is venting an *odium religiosum* upon him. One who does this is a *consequentarius*, in that he infers from the other's opinion, what the latter never imagined; for if he gives him a name and says, for example, he is an atheist, then the other opens his eyes wide and says: 'What? An atheist? I would like to know anyone who looks like an atheist'; by using such a name the accuser becomes hated and

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<sup>802</sup> Kant (note 456) 208.

<sup>803</sup> As above.



insufferable to everyone.<sup>804</sup> Through the ordinance of 1962 suppressing subversion, Ahidjo and his public authorities shifted their human nature to a divine one and would no longer tolerate any blasphemous thoughts or words.

The influence of the ordinance of 12 March 1962 on democracy has been considerable. On 23 June 1962, three months after its enforcement, many political leaders released a letter challenging Ahidjo of instituting a single party system that would lead the country toward a fascist dictatorship.<sup>805</sup> On 11 July of the same year these political leaders were arrested and sentenced to thirty months imprisonment with a fine of twenty-five thousand francs CFA (around fifty US dollars).<sup>806</sup>

The supremacy of ordinance having the force of law and the consolidation of implicit exception was reaffirmed a few years later in 1972 as President Ahidjo enacted a new ordinance. It was ordinance N° 72/16 of 28 September 1972 ‘to fight large scale banditry’ [*Ordonnance de lute contre le grand banditisme*]. As with the previous ordinance, the exceptional character of the ordinance on banditry was never formally emphasised. In fact, one of the major principles of the law in general and penal law in particular is their non-retroactivity. Hence, the 1972 ordinance explicitly underlines its retroactive character. In other words, those who committed offences and crimes prior to the enforcement of the ordinance of 1972 were punished according to the new legislation. Even in the cases of classic emergencies, states have to comply with the principle of non-retroactivity. Ahidjo’s bypassing such requirement under normal circumstances is a signal that the implicit exception has become the main operational mechanism, reducing the actual legal order to

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<sup>804</sup> As above.

<sup>805</sup> Gonidec P.F & Breton J.M *La République du Cameroun* (1976) Paris, éditions Berger-Levrault, 29-30.

<sup>806</sup> These leaders include Andre Marie Mbida, former Prime Minister and leader of the *Parti des Démocrates Camerounais*, Charles Rene Okala, former Minister of Foreign Affairs and leader of the *Parti Socialiste Camerounais*, Theodore Mayi Matip of the *Union des Populations du Cameroun*, and Bebey Eyidi, leader of the *Union Nationale des Etudiants du Kamerun*. See Kom D. *Le Cameroun, essai d'analyse économique et politique*. (2003) Paris, L'harmattan 75.

the zero point of its own content. Since the resignation of Ahmadou Ahidjo in 1982, the recorded cases of ordinance having the full force of law in Cameroon has increased.

Since 1982 the current regime in Yaounde has on various occasions recycled and reapplied the pattern of draconian measures experienced before and after 'independence'. Despite an enormous shift in the political context, the repressive arsenal enforced by Ahidjo has remained in place and ceaselessly updated by his successor Paul Biya. In 1984, two years following his resignation from power, Ahidjo was to experience the weight of his legacy. On 28 February 1984, based on the Ordinance of 12 March 1962 suppressing subversion, the former president and his collaborators were sentenced to death. The charges against them included 'incitement of hatred against the government of the republic, involvement to subversion in spreading malicious rumours on the ministerial reshuffle of 18 June 1983 and lastly conspiracy in order to assassinate the head of state and to overthrow the authorities of the republic.'<sup>807</sup> The ordinance of 1962 was very efficient in maintaining a climate of terror within the Cameroon society. Until 1990, the multiparty system was still banned in the country, but the impact of the democracy sweeping across Africa was considerable. During that period some members of civil society and political leaders, which include Yondo Black, a lawyer and former chairman of the Cameroon bar, and political leaders Ekane Anicet and Jean Michel Tekam attempted to launch their own political parties. They were arrested and faced a military tribunal according to stipulations of the ordinance of 1962.

Adhering to the same process, the combination between ordinary laws and extraordinary legislation is a permanent process of governance in Cameroon. If a draconian measure is not the fact of ordinance having the force of law, it may still be validated by law itself. For example, on 04 April 2011 the Cameroon parliament, controlled by the ruling party, passed a bill empowering the president to enact 'ordinances on the security of intelligence

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<sup>807</sup> Sindjoun L. *Le président de la République au Cameroun (1982-1996) les acteurs et leur rôle dans le jeu politique* (1996) Bordeaux, Cean-Talence 28-29.

activities in Cameroon’ and ‘on the use of intelligence’s technologies in the country.’ This legislation which clearly derives from an exceptional sphere strongly allude to Big Brother in 1984; the novel by Georges Orwell has become part of the daily routine in Cameroon. According to this law, the Cameroonian president is entitled to request access to private emails and monitor the telephone traffic of people across the country at any time. Moreover, despite the immunity that characterised their functions until then, the elected members of parliament can, based on this law, be subjected to spy activity and physical searches. While commenting on this law, the local media refer to a veiled state of exception to address popular contestation.<sup>808</sup>

#### 5.4 Concluding remarks

The modern expression of emergency regimes through the implicit exception is the one characterising various contemporary states that resort to autocratic techniques to consolidate their power. Due to underdevelopment, natural cataclysms, foreign attacks, and general insecurity, unlike classic emergencies, the implicit exception in Cameroon is rooted in the will of the ruling class to remain in power via undemocratic means and to control natural resources and human lives. The modern expression of emergency regimes in itself contains the germs of dictatorship, totalitarianism, and is aimed at distracting the vigilance of the national and international community. Like formal emergency regimes, it is a genuine mechanism of control and subjugation of people. By establishing a space of exception, police machine, judicial militarisation, Kafkaesque trials, and the supremacy of ordinances having the full force of law, the existing legal order is disabled whereas torture and killing are merged with normal life. This regime does not aim to officially suspend the rule of law, but initiates a set of legal arsenal that reduce the existing structures to the zero point of their own content to the extent that they remain in force without significance. The implicit exception shapes an intersecting point between the three essential systems of government, namely the authoritarian regimes, the totalitarian regimes, and the

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<sup>808</sup> ‘Cameroun-Pouvoir : Le régime renforce les services de ses barbouzes.’ Available at <http://camerounmonpays.over-blog.com/article-cameroun-pouvoir-le-regime-renforce-les-services-de-ses-barbouzes-71054773.html> (accessed 7 May 2011).

constitutional democracy. The normalisation of draconian measures in Cameroon irremediably led to a variety of consequences, especially the disintegration of the state, which is the main concern of the next chapter.

## CHAPTER 6 CONSEQUENCES OF THE NORMALISATION OF EMERGENCY REGIMES: THE DECLINE OF CAMEROON STATE

### 6.1 Introduction

What makes the concept of emergency regimes an exceptional phenomenon is first of all its temporary character. As previously portrayed in Chapter 4 when analysing the maxim *necessitas legem non habet*, at their very origin emergency regimes were a circumstantial remedy to a particular case. These regimes suspend the application of the pre-existing rule and as such give its stamp of legality to situations that are fundamentally illegal. When they lose their exceptional character and enter the sphere of normality, when their enforcement is no longer subject to time limits and tend to become a lasting political system, such as in Cameroon, then politics becomes the continuation of war by other means.<sup>809</sup> The war that it is about is the prevailing situation prior to the constitution of the state that is the state of nature or the war of all against all.<sup>810</sup> In his works on governmentality, Foucault argues that ‘while it is true that political power puts an end to war and establishes or attempts to establish the reign of peace in civil society, it certainly does not do so in order to suspend the effects of power or to neutralise the disequilibrium revealed by the last battle of the war.’<sup>811</sup> He went on to argue that power is essentially that which represses nature, instincts, a class, or individuals.<sup>812</sup> I have previously explained how the Cameroon ruling class relies on draconian measures to paralyse democracy and retain control of political power. Emergency regimes are designed mainly to protect and take care of a regime in which the void of legitimacy is constantly filled up by the military’s repression. In the local

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<sup>809</sup> Foucault M. *Society must be defended* Lecture at the College de France, 1975-1976 (2003) New York, Picador edited by Mauro Bertani and Alessandro Fontana, translated by David Macey 48.

<sup>810</sup> As argued by Foucault ‘power relations, as they function in a society like ours, are essentially anchored in a certain relationship of force that was established in and through war at a given historical moment that can be historically specified.’ As above 15.

<sup>811</sup> As above.

<sup>812</sup> As above.

perception, the state in Cameroon is perceived less as a community of common interests than an apparatus of social exploitation and distribution of violence.<sup>813</sup> The relationship between the ruling class and population in the country is in Foucault's words, 'a relationship of domination.'<sup>814</sup> Hence when a regime is more inclined to exist only for itself and not for the community, it is the very foundation of the society that is at stake. Indeed as it is currently argued:

Where there is power, there is resistance, and yet, or rather consequently, this resistance is never in a position of exteriority in relation to power.<sup>815</sup>

The state's deployment of emergency regimes on a permanent basis in Cameroon, rather than bringing peace and stability has pushed the society into a disintegrated process of statehood. Surrounded by a climate of fear in a society subject to growing militarisation, the permanent deployment of emergency measures is proof enough that life in Cameroon is grounded not on 'the system of Law-and-Sovereign'<sup>816</sup> but on that of 'force relations.'<sup>817</sup> This situation irremediably launches some process of resistance that appears to be the foremost consequence of the actual suspension of law by public officials. What are the consequences of the excessive normalisation of emergency regimes in Cameroon? How do they manifest, and what is their impact on civil society's life? State's gangsterism, generalised corruption, and the escalation of insecurity are currently the main concerns

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<sup>813</sup> Delancey M.W. & Delancey M.D. while examining the political system of the country observe that a government arose that was cut off from the public, a public that could not communicate with its government. The bureaucracy became the predominant force after the president and his small group of top officials. It was by satisfying the needs of these groups (and their military counterparts) that the political elite stayed in power. Only minimal attention needed to be paid to the majority of the population. Delancey M.W. & Delancey M.D. World Bibliographical Series, Vol. 63. Cameroon revised edition (1999) England Oxford, California Santa Barbara, Colorado Denver, Clio Press xxiv.

<sup>814</sup> Foucault (note 809) 17.

<sup>815</sup> Foucault (note 3 above) 95.

<sup>816</sup> As above 97.

<sup>817</sup> As above.

across the country. To properly understand this chapter, it is important not to consider these plagues as a mere violation of pre-established social and ethical values, but as new mechanisms of political expression and resistance to the current order. In an environment of scarcities characterised by injustice and social inequality, the majority of Cameroon population has come to the critical point of denial of authority. As I shall soon portray, public authorities and state's symbols have become the target of a population who is now familiar with violence as a new mode of socio-political contestation. At the heart of the current decline of Cameroon state, prerogatives that in essence exclusively belonged to the sphere of law and sovereignty are now exercised by other components in the society. In the course of this chapter, while reviewing the consequences of the normalisation of draconian measures across the country, I will develop three arguments: the first one is the case of an implicit and hypocritical enforcement of a state of siege under the guise of *Commandement Opérationnel*. The second argument explains how violence has become an act of resistance and a mode of political expression against the legal order. The third argument focuses on the logic to exit the state.

## **6.2 The case of an implicit and hypocritical enforcement of a state of siege under the guise of *Commandement Opérationnel***

In a previous chapter, I have referred to the institution of *Commandement Opérationnel* (CO) [Operational command] initiated by a presidential decree. After it was established by a decree on 16 May 1991 amidst political contestations resulting from the democratisation wind across Africa, the CO was later enforced in the year 2000 by decree N° 2000/0027 of 24 February 2000 to fight large scale banditry [*grand banditisme*] in the city of Douala. The peculiarity of this institution is that it has transferred responsibility for the security of the city of Douala from administrative authorities (governor, prefect, sub-prefect, mayor, etc.) to the army. From a legal and technical point of view, this was an implementation of a state of siege in the true sense of the word. Yet officially a state of siege has never been formally declared in terms of the provisions of Section 9(2) of the constitution. This explains why its implementation is qualified as 'hypocritical.' The consequences of this state of siege appear

to have been a disaster for the rule of law and human rights. When the CO appointed soldiers to deal with theft in the city of Douala, it implicitly silenced the law and suspended the provisions of Cameroon Penal Code<sup>818</sup> on theft. Consequently, most people who were found guilty of theft were tortured and then executed without judgement.

On 23 January 2001, nine people went missing<sup>819</sup> after being arrested by Captain Jean Jacques Aba Nzengue. This launched what is known today in Cameroon as *l'affaire des neuf disparus de Bepanda* [the case of the nine Bepanda missing], Bepanda being the name of the area where these people were living. They had officially been accused of stealing a gas cylinder and were then executed without trial, and their bodies have never been found.<sup>820</sup> The first consequence of this institution was that since the provisions of Cameroon Penal Code on theft had been implicitly suspended, the army in charge of the CO had been transformed into a clandestine lawmaker and the current democracy had degenerated into 'a degeneracy of *droit* and violence of *droit*.'<sup>821</sup> In his study on martial law and state of siege, Max Radin argues that 'the vital point is that the state of siege is not a condition in which law is temporarily abrogated, and the arbitrary fiat of a "commander" takes its place.'<sup>822</sup> The appointment of the CO in Douala, or rather the implementation of a state of siege in this part of the country, led to daily and nightly searches, curfews, arrests without warrants, tortures and extrajudicial executions by the commandos of death [*les commandos*

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<sup>818</sup> Law 67/LF/1 12 June 1967.

<sup>819</sup> These include Chia Efficence, Kuete Jean Charly, Ngouoffo Frédéric, Kouatou Charles Ruben, Kuate Fabrice, Etaha Marc, Kouatou Elysée Herbert, Tchiwan Jean Roger, and Chia Nain.

<sup>820</sup> See documentary on *Commandement Opérationnel in Douala*, directed by Oswald Lewat, 2006.

<sup>821</sup> It is possible to understand the word '*droit*' as meaning 'law' in this sentence. However, the Cardozo law review that published both the French and English versions of the chapter kept the term '*droit*' in both versions. The explanation could be as follows: as French author Derrida uses the term '*droit*' it might be because in this context, the word '*droit*' translated into English would mean at the same time 'Law' and 'Right'; Probably 'Right' from the idea of human rights. So maybe the term '*droit*' could refer to a system where human rights are destroyed with the help of a law that has become violent. So degeneracy of *droit* could mean degeneracy of rights (human rights). It could also mean degeneracy of law (rule of law). Derrida (note 622) 1013.

<sup>822</sup> Radin M. 'Martial law and state of siege' *California Law Review* (1942) Vol.30, 637.



*de la mort*].<sup>823</sup> Many people were termed *grand bandits* [big thieves] and arrested after denunciation through free phone calls. The case of a young man named Ngue Bissog, whose girlfriend was the daughter of the chief of the neighbourhood, is an example in point. The chief, who was opposed to the relationship, took revenge by identifying the teenager to the soldiers in charge of the CO as *un très grand bandit* [a very big thief].<sup>824</sup> It was only through a powerful intervention that Ngue Bissog was freed.<sup>825</sup> The police machine is at the heart of the implementation of emergency regimes in Cameroon. The law's failure to define and frame emergency institutions inevitably leads to a concept of the police as a 'faceless figure, a violence without form.'<sup>826</sup> For example, confronted by the army, Billong Bell Jean-Claude who was also a victim of denunciation via phone calls was not as fortunate as Ngue Bissog was. Billong, a businessperson and father of three children was arrested, decried on television as a *grand bandit*, and then gunned down by soldiers.<sup>827</sup> Even the oldest emergency regimes, such as a state of siege that had been imposed in war time in France and inspired Cameroon institutions, had never entitled the army to arbitrarily kill members of the society that it was supposed to protect.

Following the devastating effects of the CO in the city of Douala, Christian Cardinal Tumi, the first Cardinal of Cameroon and an eminent religious authority in the country, addressed a letter to the governor of the Littoral province denouncing the inhuman treatment and extra-judicial executions of men, women, girls, and boys there.<sup>828</sup> He asked the authorities whether it was not possible to fight theft without killing 'thieves.'<sup>829</sup> Following the

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<sup>823</sup> This was how the army was nicknamed by the local population, *les commandos de la mort*.

<sup>824</sup> Balla B. 'Commandement opérationnel ou machine à exécutions sommaires?' Available at <http://www.cameroon-info.net/stories/0,5377,@commandement-operationnel-ou-machine-a-executions-sommaires.html> (accessed 31 October 2012).

<sup>825</sup> As above.

<sup>826</sup> Derrida (note 622) 1011.

<sup>827</sup> Balla (note 824)

<sup>828</sup> 'Au Cameroun: Forces de l'ordre hors contrôle?' Available at [http://www.wagne.net/csp/csp2003/cahier\\_animation/ec2.htm](http://www.wagne.net/csp/csp2003/cahier_animation/ec2.htm) (accessed 31 October 2012).

<sup>829</sup> As above.

summary execution of more than a thousand people, on 23 November 2000, the UN Committee Against Torture urged the government of Cameroon 'to consider dismantling the special forces set up in the framework of the fight against large-scale banditry, to strongly continue the investigations about gross human rights violation and to launch immediate and impartial investigations.'<sup>830</sup> Nearly two weeks later, on 4 December 2000, Amnesty International asked whether those responsible for massive violations of human rights and extra-judiciary executions in the city of Douala were to remain unpunished.<sup>831</sup> Similarly, on 17 May 2001, the European Parliament adopted an emergency resolution that strongly condemned the torture, disappearances, and extra-judicial executions taking place at the hands of the special security forces in Cameroon and recommended the establishment of an independent commission of inquiry and the holding of impartial and fair trials.<sup>832</sup> Some months later, against all expectations, Philippe Mpay, the general in charge of the CO was promoted. In addition, the infernal cycle of violence in Cameroon still continues. A decade later, in 2012 another presidential decree launched another CO. What will be the outcome this time? The purpose of emergency regimes in Cameroon can be understood through Foucault concerns regarding power in a society that is subject to a relationship of domination:

The role of political power is perpetually to use a sort of silent war to reinscribe that relationship of force, and to reinscribe it in institutions, economic inequalities, language, and even the bodies of individuals.<sup>833</sup>

The excessive normalisation of draconian measures in Cameroon gives priority to the army, the police, and secret services who wage a sort of silent war against the enemy from within. Taking care of the police, which is the materialisation of state violence is a priority of the ruling class. It is currently reported that, in Cameroon where the number of civil servants was significantly reduced and their salary decreased by up to seventy per cent, only

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<sup>830</sup> As above.

<sup>831</sup> As above.

<sup>832</sup> As above.

<sup>833</sup> Foucault (809) 16.

soldiers and the police body remain unaffected.<sup>834</sup> That priority given to the army and the police is an obvious message. In a country where coercion has been the keystone of social and political control exercised by state since its inception, such preferential treatment is a *carte blanche* given to the ‘men in uniform’ to wage a permanent war against Cameroon people.<sup>835</sup> Such situation explains the current decline of Cameroon state where violence has been generalised and constitutes a mode of political expression and resistance to authority.

### **6.3 Violence as a mode of political expression and resistance to authority**

If you want a different reality, a different world, you have to change the one you have.<sup>836</sup>

The current section refers to the analogy of the right of resistance that does not exist within Cameroon institutions. A very few constitutions around the world provide for such a right since it is often argued that it is not possible to include within the sphere of law something that could challenge its existence. An idea of the right of resistance appears in Section 20 of the German Constitution. Following the first three paragraphs of Section 20 that highlight the democratic form of the state and its constitutional principles (separation of powers and constitutional supremacy), Section 20a points out that ‘all Germans have the right to resist any person seeking to abolish this constitutional order, should no other remedy be possible.’ Even though the content of such right remains to be clarified, it is easy to imagine what it entails. For instance, it could challenge the authority or simply no longer comply with the social contract. In the case of Cameroon, I have tried, since the beginning of the study, to show how the enforcement of emergency regimes aims to infringe upon any proper democracy throughout the country. The subsequent developments follow on from the decline of Cameroon society as a result of a normalisation of draconian measures and can be consistently tied to the idea of the people’s right of resistance. In this section of the study, I firstly examine resistance to the state’s authority as a mode of political expression,

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<sup>834</sup> Deltombe & al (note 60) 647.

<sup>835</sup> As above.

<sup>836</sup> Fanon F. *Black Skin, White Masks* (2008) London, Pluto translated by Charles Lam Markmann Press xviii.

secondly consider the appropriation of violence as a symbol of the decline of the state, and thirdly examine the state's prerogatives as a common good.

### **6.3.1 Resistance to the state's authority as mode of political expression**

As a result to the permanent deployment of emergency measures, Cameroon authorities in the country are perceived and judged through a lens of suspicion and rejection. While fight and vandalism against all state's symbols have now become part of daily routine, people have been fragmented into small groups that have nothing in common except their hostility towards the authorities. Compliance with the rule of law being optional, concepts such as 'authority', 'public', and 'common interest' appear to be more and more obsolete. The reason is that these concepts, constantly coined by the ruling class, have been used as a bridge to impoverish the majority and obtain unjustified advantages. The current situation has built up a generalised climate of insecurity that affects institutions, nationals, and foreign citizens in the country. Due to Cameroon state's failure to provide for security, justice, and peace to its inhabitants, due to a permanent deployment of exceptional measures for its own sake, the legitimacy of the state is constantly questioned. The dynamic of contestation and challenge to state's authority has materialised since the colonial era. The civil unrests and rioting that broke out in May 1955 and that set the UPC movement and a major part of the population against the French authorities remains the prelude to all violent resistance that has punctuated life across the country for decades. Following the system of oppression that prevailed, pressure increased against the colonial masters and the country was soon trapped by various kinds of contestations and armed movements, specifically in the Bamiléké and Mungo regions. From the end of April 1959, the union movement was divided between contestation and collaboration with authorities. The uprisings that broke out involved the mechanics of the Suarez Company, the water and electricity company in Yaounde, and the banking sector workers in Yaounde, Douala, Nkongsamba.<sup>837</sup> In the Mungo division, the strike of banana farmers degenerated into a riot.

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<sup>837</sup> Deltombe & *al.* (note 60)168-172.

People in charge of farms were protesting and tons of produce were destroyed.<sup>838</sup> What concerned the French officials was not only sporadic outbreaks of violence, but the fact that these repeated strikes seemed to come from nowhere and that security's officers could not identify their origin.<sup>839</sup> At some point this growing insecurity increased. Despite the fact that leaders of the unions had been cleared, Colonel du Crest de Villeneuve noted with concern that everything happened like if it was rallying cry.<sup>840</sup> Indeed, following classical political contestations such as stoppage or strikes of workers, the military arsenal was deployed by the state as usual. From that moment the process of resistance to power entered a new dimension. Violence as a political mode of expression was to change and turn against the entire society.

In March 1965, the sub-prefect of Bazou, Joseph Mbeng was assassinated.<sup>841</sup> Five months later on 21 August 1965, Roland Valdvogel and Liliane Markoff, two protestant missionaries from Switzerland were murdered in Bagangte in the western region of Cameroon.<sup>842</sup> On the surface these events appear to be isolated incidents, but I will soon show that this was not the case. In reality, it was a sign that nothing was going to be the same in the country. These acts of defiance toward authorities and toward the inhabitants of the country (citizens and foreign nationals) happened outside demonstrations. The protagonists of this climate of terror were to be found everywhere, inside and outside the ruling class. The event that occurred in 1970 at the heart of electoral campaign under Ahmadou Ahidjo's presidency was a prominent sign of the decline that the society was undergoing. A former soldier named Boukar Batinda who witnessed injustices and the decay of institutions decided from within the northern part of the country, the stronghold of president Ahidjo, to heal the evil in his own way: 'sickened by nepotism and

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<sup>838</sup> As above.

<sup>839</sup> As above.

<sup>840</sup> As above.

<sup>841</sup> As above 168-172 & 569.

<sup>842</sup> As above 168-172 & 570.

authoritarianism of the regime, Boukar took up weapons. Leading a gang of desperados, he attacked the gendarmerie of Maroua, which he knows well for having been working there a few years ago, and stole weapons and ammunitions. Once equipped, he ransomed business men of the region and shared his loot with...elderly persons! “Nowhere to be found, arrested then escaped, wreathed with prestige and mystery, having in his record some of the operations worthy of the best tradition of armed robbery”, Boukar was arrested in June 1970 and executed 3 months later.<sup>843</sup>

The fact for a former soldier who used to symbolise state violence, to ransom rich people and share the loot with elderly persons, accounted for the social malaise in the country. If public authorities had succeeded through a strong authoritarian state to establish the reign of oppression and social injustices, Boukar’s wish was to end this situation; to heal such evil not by means of law but by that of violence. In grabbing the means of violence of which the state was deemed the only bearer, Boukar obtained his supplies in weapons and ammunitions inside the warehouse of the state by force. By stealing from wealthy people and benefitting the elderly (poor) ones, he sought to redress social injustice. The former soldier could not be considered a vulgar thief or mentally disabled person, but as a protester of a political system grounded in social inequalities and injustices. The use of weapons is a violent mean that originally belonged to the state, but Boukar succeeded in claiming and using this means to heal the evil in his own way. His execution, that was intended to warn candidates of contestation, had no effect. Quite the contrary, the more the regime radicalised itself, the more acts of explicit resistance occurred on a frequently basis. Accordingly, slogans in favour of the Union of the People of Cameroon, (the banned political party of Um Nyobè and mortal enemy of the administration) were sometimes inscribed on the walls in Douala.<sup>844</sup>

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<sup>843</sup> As above 615. See also Bayart J.F *L’état au Cameroun* (1985) Paris, Presses de la Fondation Nationale des Sciences Politiques, 2<sup>nde</sup> édition 258.

<sup>844</sup> Bayart (note 843) 258.

From Boukar's epic to the growing contestations across Cameroon, uprisings became more and more violent and continued throughout the years. For example, during the epidemic of cholera between 1971 and 1972 in the city of Douala, school pupils striking for access to vaccinations confronted the police and one recalls that the distribution of leaflets during 1976 revealed significant complicity in urban area.<sup>845</sup> The Ahidjo's administration rejected dialogue and increased the gap between it and the ordinary population by enacting unprecedented exceptional measures. Following the above uprisings, on 28 September 1972, president Ahidjo issued a severe ordinance<sup>846</sup> that increased and worsened the penalties on robbery, swindling, possession of stolen goods, sex trafficking, prostitution, homosexuality, and wandering. The ordinance was highly criticised for its specified retroactive character and the capital punishment it introduced for aggravated theft and the unclear criteria regarding certain crimes and offences.<sup>847</sup> The principle of law according to which 'law provides only for the future and not for the past' was merely silenced. In reality, the severity attached to the ordinance of 1972 was rather a scare tactic destined to prevent anyone from challenging his legal order. It is my contention that the purpose of such ordinance was not to protect people against abuses of all kind but rather to institutionalise abuse of power by authorities under the guise of law. Indeed the largest portion of population had come to notice that there was no point complying with rules that had nothing to do with their well-being. The government and police based on the state of emergency that was enforced once again, arrested for a couple of weeks those they refer to as 'leader.'<sup>848</sup> In the same circumstances, the senior divisional officer of the Wouri division suddenly banned three hundred and twenty-three associations that did not comply with the existing regulations (even though some did not working).<sup>849</sup> Bayart observes about the uprisings that 'beyond all these modes of operation such as delinquency, rural exodus and

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<sup>845</sup> As above.

<sup>846</sup> Ordinance N° 72/16 of 28 September 1972 to fight large scale banditry.

<sup>847</sup> Bayart (note 843) 266.

<sup>848</sup> As above 262.

<sup>849</sup> As above 250.

wild strikes there was global resistance more delicate to capture but that it was important to emphasise because it contributed to shape the Cameroon society.<sup>850</sup> The author went on to argue that stoppage were not included in a calculated strategy but they rather expressed the passionate refusal of accumulation of anger and started without warning at the requirements of worker solidarity, on a gesture or a speech of an influential worker.<sup>851</sup> This statement is relevant as it matches Foucault's idea that posits that disobedience by religious fanaticism, resistance to work and theft are the three great transgressions against bourgeois society and the three major offenses against the essential values of such society.<sup>852</sup>

Beyond the strikes that punctuated life in Cameroon and multiple acts of defiance toward authorities, new forms of political contestations emerged. These included disobedience and ignorance of state's instructions, lack of engagement at work, rural exodus and negligence. The decline of the state kept growing as the 'without importance' opposed to the instructions and purposes of authorities, a remarkable impermeability over that the ideological discourse on the regime was not to be misled.<sup>853</sup> What was labelled 'laziness', 'superstition', 'tribalism' was refusal more or less conscious, because more or less blamed by official warnings, of an economic and political development model.<sup>854</sup> In the first place, the refusal to work or to comply with the prescribed economic rules had become systematic. In the city, it was the triumph of absenteeism, slowness, lateness, embezzlement of funds and assets.<sup>855</sup> Resort to alcohol, drugs and other unlawful practices were generalised.<sup>856</sup> Confronted with a relationship of power characterised by domination,

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<sup>850</sup> As above 267.

<sup>851</sup> As above 261.

<sup>852</sup> Foucault M. *Madness and Civilization, a History of Insanity in the Age of Reason* (2006) London, Vintage Books, translated from the French by Richard Howard 268.

<sup>853</sup> Bayart (note 843) 267.

<sup>854</sup> As above.

<sup>855</sup> As above.

<sup>856</sup> As above 257.



the marginalised part of Cameroon society expressed in different ways their hostile feeling about this relationship. It is worth recalling that Ahidjo's presidency was also characterised by a system of single party. Accordingly membership was compulsory and every citizen had to have the card of the party. Following the growing authoritarian scheme of the institutions, the bottom up replied by withdrawing themselves from the said party, held to be the symbol of national unity. As observed by Bayart:

*Sans enfreindre la légalité du régime, il est des moyens discrets de manifester son mécontentement, impunément pourvu que cela soit collectivement. La disgrâce et les difficultés locales de M. Assalé<sup>857</sup> se sont, par exemple, traduites par une chute brutale du nombre des adhésions au parti: la section départementale du Ntem passa de 78000 adhérents, en 1962, à 25628, en 1965, puis à 11190 en 1969; sur des bases de calcul différentes, M. Fouda signalait pour cette même section 43700 cartes placées en 1972, 27600 en 1973, 50.000 en 1974.<sup>858</sup>*

Without infringing the legality of the regime there are discreet means to show with impunity its discontent provided that it is done collectively. The disgrace and local difficulties of M. Assale were for instance materialised by a drastic collapse of the number of membership to the single party: the departmental branch in the Ntem division dropped from 78000 members, in 1962 to 25628 in 1965, then to 11190 in 1969; on a different basis of calculation, M. Fouda noted for this same branch 43700 placed cards in 1972, 27600 in 1973, 50.000 in 1974.

The powerful political machinery of president Ahidjo, though revived by incessant draconian measures appeared to be ceaselessly weakened neither by an army nor by a revolutionary uprising; but by people that it was supposed to serve. These people no longer recognise themselves as part of the community and clearly exhibited their demotivation in participating in such community. M. Tanko Hassan chairman of the Wouri branch of the single political party summarised a feeling shared by many people: 'we still have a fresh memory about the debuts of 'terrorism'<sup>859</sup> within the [Wouri] division. These debuts were

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<sup>857</sup> M. Assale was the henchman and Prime Minister of President Ahidjo.

<sup>858</sup> Bayart (note 843) 259.

<sup>859</sup> The term 'terrorism' is used here in reference to the national struggle for independence led by the UPC party. Such struggle was punctuated by violent attacks and retaliations toward people in favour of colonialism.

the fact of young people.’<sup>860</sup> In this new mode of political expression and challenge to authority, the youth played an essential role by way of discrediting the current regime. For example, it was observed that the juvenile delinquency that operate as a mode of political expression of the *cadets sociaux* and a way out from the modern economic exploitation was quickly repressed by the state that perceived it as a lethal political threat in the continuity of the ‘upeciste’ rebellion.<sup>861</sup>As a result, the commission of social affairs of the party decided ‘after a long deliberation over all the problems that pertain to the depravation of our young (wandering, watching of bad movies, laxity of the authority of parents, growing of the juvenile delinquency) considered that it was immediately necessary and urgent that repression’s campaigns over children and parents be conducted in the big cities.’<sup>862</sup> Parents and children as responsible for delinquency and civil disobedience never led the regime to question itself about its ruling methods. The truth is that it was not just an issue of failed education but the very idea of state’s *raison d’être* that was challenged by both youth and adult. Paradoxically people in power still believed that they were going to request for the support of the ‘major part of population’ to suppress people that position themselves as a challenge to the authority of the state:

*Le gouvernement semble pouvoir s’appuyer sur la grosse majorité de la population pour disloquer les bandes de jeunes qui, en ville, sont comme un défi aux prétentions de l’Etat, au projet de société qu’il incarne, et à l’autorité des aînés.*<sup>863</sup>

The government seems to rely on the major part of the population to dismantle the group of youth who, in town, appear like a challenge to the pretensions of the state, to the society’s project that it incarnates, and to the authority of elders.

As of today, the disintegration’s process of Cameroon society that started during French occupation, intensified under Ahidjo’s tenure of office has reached a critical threshold under Biya’s presidency. Having recycled Ahidjo’s techniques of terror, the current

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<sup>860</sup> Bayart (note 843) 265.

<sup>861</sup> As above.

<sup>862</sup> As above.

<sup>863</sup> As above 267.

president has added his personal touch. One of the signs of the fragmentation recorded over the society at the beginning of Biya's mandate remains the failed *coup d'état* of 6 April 1984 that resulted in imprisonment, torture and execution of many insurgents mainly from the northern region, confiscation of their assets and death sentence in absentia against former President Ahidjo.

### **6.3.2 Appropriation of violence as a symbol of decline of Cameroon state**

Until now I have been reviewing the resistance as a mode of political expression that operate through stoppage, absenteeism and general delinquency. The attempted coup of April 1984 revealed a break with these modes of challenge to state's authority. The current situation has escalated across the country with the 'decentralisation' and 'privatisation' of violence and insecurities that is now clearly exercised by everyone for its own sake. Due to the various protagonists in the sphere of security and insecurity, violence in Cameroon is no longer a monopoly of the state. Having failed to provide for security to its own inhabitants and the abuses committed by authorities, an allergy to the state's ideals is being developed and spread among an important portion of the population. The concept of national community has vanished as the daily life of the inhabitants are constantly filled up by hold-up, robbery, housebreaking, abduction corruption, and killings happening without any consideration of time and space. As I will show shortly, insecurity in Cameroon clearly derives from the relationship of power. As previously mentioned, this power does not rest on the rule of law but it is 'rather the Hobbesian war of all against all that most closely corresponds to Foucaultian power.'<sup>864</sup>

The entrepreneurs of insecurity in Cameroon are everywhere. It can be an ordinary citizen, a soldier, a policeman, and people from rich or poor backgrounds. Violence is distributed through traditional means such as a simple knife or the latest technologies, including

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<sup>864</sup> Kelly M.G.E *The Political Philosophy of Michel Foucault* (2009) New York, Routledge 59.

sophisticated weapons. The use of violence in the country by the oppressed majority or ‘the bottom-up’ has become a way of survival and self-fulfilment against the state and against citizens. The state daily newspaper *Cameroon Tribune* reports that on December 1998 in the city of Douala, a group of thieves broke into a house in an area called Bonaberi. As the owner of the house was not in, they decided to wait for her and then settled in the sitting room and started drinking alcohol found there. At 10 pm, the lady of the house returned and was soon ‘begged’ to surrender money and jewellery. A police source confirmed that the gangsters pocketed one million and hundred thousand francs CFA (around two thousand US dollars). Before leaving the house, the gangsters loaded electronic appliances and number of goods into two cars belonging to the family.<sup>865</sup> On the surface, this robbery appeared to be an isolated occurrence. The following events will soon show that it was not the case. The unconventional techniques from the ‘bottom up’ to challenge the relationship of power and domination are expressed in various ways. In a context characterised by the monopolisation of resources by a minority, the majority of oppressed do not hesitate to find alternative solutions of compensation and survival. What happened recently in the capital city Yaounde, headquarters of institutions, supports this statement. On the night of 29 October 2008, a group of people took control of a portion of the city of Yaounde. In an area called Ahala, a huge roadblock was established on the highway linking the cities of Yaounde and Douala. For more than an hour, the area was sealed off effectively by gangsters who stripped people of money and goods.<sup>866</sup>

In Cameroon, the recurrent deployment of draconian measures rather than inspiring confidence has produced a boomerang effect. The society is similar to a no man’s land where there is neither fear nor respect for authority. Insecurity has fused with the current order and people can be subject to murder at any time and anywhere, such as the 24 women whose mutilated bodies with missing parts were found across the country in 2012.

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<sup>865</sup> Cameroon Tribune N°6752/3041, 6.

<sup>866</sup> Bebe R. *Le Cameroun sur le qui-vive*. Available at <http://cameractu.net/actualites/le-cameroun-sur-le-qui-vive> (accessed 21 June 2011).

In similar circumstances, on 19 August 2013 in the city of Ngaoundere in the northern part of the country, a forty-three-year-old man called Mustapha was murdered near his house by an unidentified person after being struck repeatedly by machete blows to the head.<sup>867</sup> Killings occurred in the same month when a man named Soule, a seventy-year-old imam and father of seventeen children was killed on his farm in Kouoptamo in the western region by an unknown person after repeated machete blows to his body.<sup>868</sup> The scale of insecurity has crossed the critical threshold as people who represent or symbolise authority, whether state's authority or religious authority, are systematically targeted. On 26 October 1988 l'Abbe Joseph Mbassi, former editor of the local Catholic newspaper, *L'Effort Camerounais*, was found death in his bedroom with a bullet in his neck. Similarly, the suspicious death of L'Abbe Barnabe Zambo on 24 March 1989 remains unsolved. A few years later, on 3 September 1991, Bishop Yves Plumey was strangled in his home. After this event, on 2 August 1992, two French religious sisters, Germaine Marie Husband and Marie Léonne Bordy were raped and killed. The same year also witnessed the death of another clergyman, Father Amougou, who was poisoned. Three years later on 23 April 1995, it was Father Englebert Mveng who was strangled in his home. Similarly, during the nights of 20 April 2001, L'Abbe Appolinaire Claude Ndi was murdered in Yaounde. <sup>869</sup> To date, none of these killings have been addressed and popular opinion posits that authorities of the state are the masterminds behind such sinister events.<sup>870</sup>As time progresses, the security *vacuum* increases and civil, religious, or political assassinations merge with daily routine in Cameroon. Year after year the disintegration process of the society gains more efficiency and is about to be completed. In February 2000, a judge called Louis Ndzie was

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<sup>867</sup> *Un quadragénaire tué à coups de machette à Ngaoundéré.* Available at <http://camer.be/index1.php?art=28434&rub=11:1> (accessed 29 October 2013).

<sup>868</sup> *Un Imam assassiné dans son champ.* Available at <http://www.cameroononline.org/2013/08/22/un-imam-assassine-dans-son-champ/>(accessed 29 October 2013).

<sup>869</sup> For more on these events, see *Cameroun: des assassins au service de l'État?* Available at <http://survie.org/billets-d-afrique/2012/216-septembre-2012/article/cameroun-des-assassins-au-service> (accessed 29 October 2013).

<sup>870</sup> As above

assassinated in his home in Yaounde. A few days later, Anatole Bangomb Bangomb, paymaster for the southern region, was also murdered in his home by unidentified armed men. On 8 January 2009, Marthe Moumie, the widow of the late president of the UPC party, Felix Moumie (who died himself in Switzerland in 1960 after been poisoned by William Bechtel, a member of the French intelligence services), was raped and murdered in her home. Recently, during the night of 20 October 2013, Mr. Wandji Jean, a retired police officer, was gunned down in his home in Bafoussam. If I was to account for all the crimes or acts of political challenge taking place in Cameroon on a daily basis, I could well end up with a directory of atrocities. Regarding the multiplicity of insecurity in the country Alexandre Chouala observes the following:

These events constitute in fact the visible part of iceberg that represents the trivial killing of human lives in Cameroon's greatest cities.<sup>871</sup>

The scale of insecurity and criminal activity does not discriminate against the victims. Like nationals, foreign citizens also live in a state of permanent fear and have to be cautious as they move around the country. In 1999, Nourry, a French businessman, was assassinated in Douala. On 20 August 2011, the body of a seventy-one-year-old French citizen, Pierre Jardon, was found in his home in the same city. On 21 August it was the body of Patrick Jean-Philippe Duvold, a French citizen of fifty-eight-year-old that was found lying in a pool of blood in his bathroom.<sup>872</sup>The relationship of force in the country has resulted in a permanent denial of authority and instauration of an unpredictable society rooted in perpetual silent war.

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<sup>871</sup> Chouala Y.A. *Conjoncture sécuritaire, champ étatique et ordre politique au Cameroun: éléments d'analyse anthropo-politiste d'une crise de l'encadrement sécuritaire et d'un encadrement sécuritaire de crise.* Available at <http://www.polis.sciencespobordeaux.fr/vol8ns/chouala.pdf> 9. (accessed 21 October 2013).

<sup>872</sup> *Deux expatriés retrouvés morts à Douala.* Available at <http://camer.be/index1.php?art=28433&rub=11:1> (accessed 22 October 2013).

Within the society, the anxiety holds a place of choice in the mind of the most vulnerable people. Chouala observes that in Cameroon, murder occurs routinely and seems to be responded to by scaremongering, indignation, or a shrug.<sup>873</sup> The social increase of crime is an undisputed fact of the current national insecurity situation as the protagonists of insecurity raise the level of attacks. In an atmosphere where resources and goods are scarce and unfairly distributed, some citizens have reached the point where they have to find these resources by themselves, irrespective of the means. Therefore, the overall increase of large-scale criminality can be interpreted as a way of ‘revenge from the bottom-up’ against state agents who monopolise all the resources for themselves. It is the intervention of the ‘bottom-up’, the ‘marginalised’ within the sphere of public utility through theft, extortion, hold-ups, and murders, etc.<sup>874</sup> Through large-scale banditry, people contest and challenge ‘relative deprivations.’<sup>875</sup> This is perhaps one of the key explanations of the unprecedented rise in the dynamic of political forces of urban juveniles with their martial culture of vulgarity and murder, in sum a negative culture of the civilised values represented by the state.<sup>876</sup> This may justify why public and financial institutions such as banks and other buildings are most often the main targets. On the night of 8 September 2010, the exchange of fire in Douala, Makepe between the police and gangsters resulted in one death and one injured person.<sup>877</sup> The following day, it was the college Chevreuil in the same city that was targeted by intruders who, at 3 o’clock in the morning got away with more than fifteen million francs CFA (around thirty-four thousand US dollars).<sup>878</sup> The scale of insecurity regarding areas where banks are located has become a serious concern for people living in the area. In 1998 Douala witnessed a spectacular hold-up that resulted in the theft of several millions of francs CFA in an area called Ndokoti. As

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<sup>873</sup> Chouala (note 871) 9.

<sup>874</sup> Azam J.P As quoted by Chouala (note 871) 13.

<sup>875</sup> As above.

<sup>876</sup> As above.

<sup>877</sup> Bebe (note 866).

<sup>878</sup> As above.

reported by newspapers, in an operation that lasted only twenty minutes, four gangsters carrying military weapons broke into the local bank BICEC Bassa, overpowered everyone including the military guards and got away with a loaded bag full of money.<sup>879</sup> Similar operations in the same city resulted in the loss of forty million francs CFA (around eighty thousand US dollars) by a local company called ARNO and Co. While newspapers acknowledge the presence of professional gangsters across Cameroon cities, they observe too that acts that occur in private houses, business places, and public buildings, happen in the city of Douala and in most of the central Cameroon areas.<sup>880</sup> It is my contention that these crimes and other acts of insecurity are the expression of discontent and anger against the state, who, by acting only for its own benefit, has failed to provide justice, equality, peace and security. It can then be said that Cameroon society is no longer guided by right or wrong, but by claims and counter-claims. Authorities by using the legal apparatus and monopolising all the resources have constrained the 'bottom up', causing it to resort to alternatives and unconventional solutions. Armed robberies as a mechanism of restoration of social balances has thus lost its criminal character and became a regular mode of political contestation. Foucault stresses that:

The most intense point of a life, the point where life's energy concentrates itself, is where it comes up against power, struggles with it, attempts to use its forces, or to evade its traps.<sup>881</sup>

Sometimes confusion reigns, when robberies are not perpetrated by the 'bottom-up' but by members of the ruling class. The process is similar to an operation of account-settling where members of the same clan rob each other. It is currently believed that the large amount of money misappropriated from financial institutions generally lands in the hands of senior members of the army or officials hidden in the shadows. When this is the case, they handle operations remotely, either directly or indirectly through people subjected to

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<sup>879</sup> Cameroon Tribune N° 6685/2974, 3.

<sup>880</sup> As above.

<sup>881</sup> As quoted by Kelly (note 864) 105.



their orders.<sup>882</sup> Most often hold-ups are characterised by a high level of professionalism with regard to the means and materials deployed. Such was the case on the night of 18 March 2011 in Bonaberi, an urban area in the city of Douala, where the safe of Ecobank was nearly emptied. According to witnesses, the theft was perpetrated by twenty people with uncovered faces. Using explosive devices, they broke into the bank and escaped with bags full of money. Following these events, investigations show that four members of Cameroon navy were involved.<sup>883</sup> In the same vein, during the night of 27 September 2008, similar operations were perpetrated by fifty unidentified men (maybe women) with Kalashnikovs and grenades in four banks located at Down Beach near the sea in the city of Limbe. The operation lasted more than two hours and resulted in one death, several wounded, and hundreds of millions misappropriated.<sup>884</sup>

There is a compelling justification for the severe insecurity across Cameroon that is irretrievably based on political grounds. All these insecurity enterprises should be considered as acts of resistance (or acts with political connotations) and not mere criminal activities. The reason is that the deviation of the state from its function of guarantor of security is at the basis of the logic of 'exit the state' [*sortie de l'Etat*].<sup>885</sup> The discriminatory state, in granting legitimised social benefits, is in some ways 'the dissident state', [*l'Etat dissidence*] or 'the self-managed state' [*l'Etat autogéré*]: 'the idea of self-managed state means that the government is more focused on the well-being of agents of the state rather than that of the population in general.'<sup>886</sup> Amidst the situation of monopolisation and confiscation of livelihoods and pensions by mechanisms deeply embedded within the state apparatus, the marginalised people turn toward non-conventional and prohibited ways to

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<sup>882</sup> Essomba F. 'Cameroun - Insécurité: Ces armes qui alimentent les braquages.' Available at <http://cameroon-info.net/stories/0.50347.@cameroun-insecurite-ces-armes-qui-alimentent-les-braquages.htm> (accessed 21 June 2011).

<sup>883</sup> As above.

<sup>884</sup> As above.

<sup>885</sup> Azam J.P. As quoted by Chouala (note 871) 11.

<sup>886</sup> As above.

access well-being.<sup>887</sup> The idea of crime and robbery as acts of political challenge and no longer as violations of pre-established social and ethical values, is also perceived through the nature of the target of the entrepreneurs of insecurity. Starting from mere citizens and then progressing to local institutions, they also attacked international entities, whether individually or collectively. In July 1999, Siegfried Nagel, the wife of the head of delegation of the European community in Yaounde was subjected to two hold-ups within two weeks. A few months later, the ambassador of the United States in Cameroon was injured by a group of criminals who had tried to hijack his car. In the subsequent days, the ambassador of Netherlands and his wife were also subjected to a hold-up.<sup>888</sup> It is assumed that the attack on international authorities by the protagonists of insecurity, signals that these entities are no longer in a structured or hierarchical environment with a governing body on one side and the governed people on the other. It is the decline of the state and the no man's land that prevails over the society is real and is no longer compatible with any idea of 'authority', whether foreign or local. Cameroon is in a process of disintegration and a perpetual silent war, and in this state, everyone is equally vulnerable and exposed to the same potential threats.

An important aspect to mention is that insecurity activities in the country are difficult to tackle because it is not the activity of unqualified or lazy people. To the contrary, the high professionalism and precision that characterise these acts of resistance show that experts or at least educated people are instigating such activities. Indeed 'a sociological study of the protagonists of crime reveals that "perpetrators of crime" are young, city dwellers, jobless and more or less educated.'<sup>889</sup> In a wealthy Cameroon state endowed with oil and a variety of raw materials and natural resources, more than half of the population is young, jobless, and live in a situation of extreme poverty. Public officials must end the relationship of power and turn toward government and the rule of law. This request is reasonable if the

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<sup>887</sup> As above.

<sup>888</sup> La Nouvelle Expression N° 640, 3.

<sup>889</sup> Mengue M. *Jeunes et violences* Cahiers de L'UCAC. (1998) Yaoundé N°3, 61-74.

appropriation and distribution of violence by people is to be considered no longer as a mere criminal activity by some mentally disturbed people, but also as a political mode of expression. Violence and insecurity do not happen *ex nihilo* since it is the fact for the oppressed majority that expects to be heard. It is an invitation to tender clearly addressed to state's authorities. Chouala points out that large scale banditry, especially in African countries, is proof of the bankruptcy of the state in its function to ensure a fair redistribution of public wealth; it is evidence of the incapacity of the state to reduce youth unemployment.<sup>890</sup> Insecurity issues in Cameroon are then far from being a vague insinuation. In the recent past, the representatives of foreign countries have shown deep concern regarding the climate of terror and the technologies of violence used by 'criminals' in the country. In February 2000, during the welcoming ceremony in the presidential palace in Yaounde, Carlton Alexwyn, the High Commissioner of Liberia in Yaounde, noted with concern the scale of insecurity that members of the diplomatic community in Cameroon are suffering. As recorded by issue N° 629 of *La Nouvelle Expression*, a local newspaper, a few days following this complaint, the heads of diplomatic missions of the European Union met the Cameroon Minister of External Relations to express their concerns regarding the scale of urban insecurity. In the same vein, on 19 October 1998, the Belgian ambassador Baudouin Vanderhulst, and Van Der Shuren, the Honorary Consul of Belgium in Douala, had already expressed their deep concern about the insecurity of Belgian citizens in Douala and the generalisation of corruption in Cameroon to the Chief Public Prosecutor at the Douala Court of Appeal.<sup>891</sup> In a similar circumstance, in a note on August 1999, the delegation of the European Commission in Yaounde also requested Cameroon government to initiate 'measures to fight against growing hold-ups in order to avoid growing insecurity that could only damage security and our cooperation.'<sup>892</sup>

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<sup>890</sup> Chouala (note 871) 13.

<sup>891</sup> As above 24.

<sup>892</sup> As above 24-25.

Following these requests, President Biya by a decree n° 2000/0027 of 24 February 2000 launched the *Commandement Opérationnel contre le grand banditisme* [CO against large-scale banditry] in the city of Douala. I have already presented the consequences of this institution that resulted in extra-judicial executions of people following mere denunciation via phone calls. The CO has succeeded in erasing the frontier that until then separated criminal behaviour from that of state authority. From the moment when people could be arbitrarily executed, by soldiers and special units under the control of the state's apparatus, this stimulated the wild and survival instinct of the 'bottom up.' Therefore, everyone became either authority or gangster, the only criterion of distinction being the capacity of each to control the means of distribution of violence. It is this perpetual confrontation between power and resistance that Foucault in *Society must be defended*, refers to as follows:

The field in which power is deployed is therefore not that of a doleful and stable domination: The struggle is everywhere . . . at every moment, we move from rebellion to domination, from domination to rebellion [...] <sup>893</sup>

Another argument that supports the idea of violence as a mode of rebellion within the Cameroon context is the nature of targets of such violence. Most of the time state symbols and buildings are the main focus of this mechanism of political contestation, which are then expressed through fire and retribution. For example, in March 2000 in Bastos, an area in Yaounde that is usually subject to drastic security measures due to its cosmopolitan aspect with its embassies and diplomatic services, the residence of the then Ministry of Defense, Ahmadou Ali was set in fire.<sup>894</sup> In the same area, on 14 March of the same year, a fire was declared in President Biya's bedroom; he managed to escape fire thanks to a makeshift shelter.<sup>895</sup> Earlier, similar fires were reported to have occurred at Benae Mpecke's residence; Mpecke was the Head of Staff of the president of the republic who live near the

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<sup>893</sup> Foucault (note 809) 280.

<sup>894</sup> La Détente N° 007, 3.

<sup>895</sup> La Nouvelle Expression N° 644, 3.

presidential palace.<sup>896</sup> Although it was difficult to establish the origin of such fires, their occurrences across the region, especially at residences of senior authorities of the regime needed to be questioned. As recorded by *Cameroon Tribune* (the state's newspaper), issue N° 7291, the recurrent events reached a critical threshold on the morning of 18 February 2001 when a fire was declared in the munitions store in the army's headquarter in Yaounde. The event clearly shows that gangsters had reached the point of non-return by defeating authorities on their own terrain. Because all the necessary resources are located within the state warehouses, operating within a military compound was to become a dominant strategy from the bottom-up. As a result, a similar event was repeated on the night of 12 November 2006 when the Bafoussam gendarmerie's munitions store was emptied.<sup>897</sup> After exhibiting such an extreme act of confidence, those referred to as the *malfrats* [gangsters] by local media had successfully reached the point where they sought supplies directly from the state's armory. A similar incident occurred in October 2008 in the Mayo-Kani division, where a considerable quantity of weapons was found in a cabin by a unit of the local gendarmerie. Ezzo Joseph was arrested on the basis of illegal possession of two thousand seven hundred and fifty ammunitions of twelve calibre rifle.<sup>898</sup> On 28 November 2006, Captain Leineuy Tah Félix, Major of the gendarmerie of the Kaélé division was killed by highway robbers. He had attempted to rescue eight hostages abducted three days earlier. The murder of a senior army officer was obviously connected to the fight against the symbols of Cameroon state.

The amount of attacks against authorities and state institutions is a considerable testimony to the level of rejection and denial of the current order. In the course of 2000, state buildings considered as headquarters of the monopoly of violence were subjected to attacks. On the night of 12 January 2000, police headquarters in the capital city were stormed. On the following night of 13 January 2000, the Ministry of Defense headquarters

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<sup>896</sup> As above.

<sup>897</sup> Bebe (note 866).

<sup>898</sup> As above.

were breached.<sup>899</sup> Breaching the headquarters of the police and that of national defence on two subsequent nights appeared to be a considerable warning to the regime in place. More than mere housebreaking, these were acts of political significance. Authorities should remember that their status as ‘authority’ has meaning only to the extent that they must act in such a way that all members of the community recognise themselves in them. In the same week of January 2000, the Chief of Police, Pierre Minlo'o Medjo, was subjected to a hold-up that resulted in a reinforced safe being stolen from him. This kind of safe rarely contains less than fifty million francs CFA (more than one hundred thousand US dollars) and releases tear gas when it is handled by unauthorised people.<sup>900</sup> Following different successful acts of defiance from the ‘bottom-up’ and the permanence of social injustice and inequalities, the fight against state symbols was to intensify. On the night of 31 May 2006, Haman Mamoudou, the Prefect of the Boyo Division, was shot in the head and wounded by the *malfrats* as he was reluctant to cooperate. In similar circumstances, the attack of the office of the Ministry of Finance on the night of 15 July 2010 resulted in twelve bars of gold being stolen from the safe and several billions. Since this robbery, several other state institutions have been breached, including the Ministry of Basic Education and the Tax Directorate.<sup>901</sup> The decay of Cameroon institutions being a fact, people do not hesitate to publicly disregard authority. Recently, on 27 August 2013, in an area in Yaounde called Poste Centrale, a uniformed police officer who had been trying to prevent young offenders from snatching a lady’s handbag was publicly beaten by the delinquents. The life of the policeman was saved by the providential intervention of his colleagues. This event reflects how authorities are generally perceived by the population, not only the police body, but also political leaders and other members of the state’s apparatus.

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<sup>899</sup> Mutations N° 293, 5.

<sup>900</sup> Le Messenger N° 107, 8.

<sup>901</sup> Bebe (note 866).

### 6.3.3 State prerogatives as a common good:

The excessive normalisation of draconian measures coupled with the resignation of the state in its duty to provide justice, security, and well-being of its inhabitants resulted in the development of alternative mechanisms of security and justice from the 'bottom-up.' The argument is that prerogatives, such as ensuring justice and security that until recently exclusively belonged to the state, are currently exercised by a variety of participants. For example, in November 2013, four people died within a week in the western region of Cameroon following mob justice. In the city of Badjoun, a man was apprehended by a crowd on the grounds of assaulting a student. Rather than bringing him to the police, as it had usually been the case, he was set on fire.<sup>902</sup> On 15 November 2013, two men died in the Haut-Nkam division following another operation of mob justice after been accused of theft. One of the men named Melo Kamdjo, was also set on fire.<sup>903</sup> On 17 December 2013 in a Bafoussam area called Carrefour Cami, an unidentified man was beaten to death by the crowd.<sup>904</sup> In the city of Yaounde, I have personally witnessed similar events. When the delinquent was caught and beaten, someone within the crowd screamed that a police car was approaching. Everyone then ran away. However, someone in the crowd grabbed the delinquent's foot and dragged him along the street, escaping from the police with him. When asked why they did not bring the delinquent to the police, they argued that they did not trust the police because the delinquent would be released when he paid a bribe. Accordingly, ordinary Cameroonians apply their own justice that is fair, efficient, and fast. These Cameroon events of mob justice are not trivia or rumour. They have a significant impact, and attest of the level of decline of structures within society. They entail serious consequences at the socio-political level in a framework where the state has resigned from its positions as guarantor of peace and justice. In a context of self-protection and

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<sup>902</sup> 'Cameroun - Justice Populaire : 4 présumés voleurs brûlés vifs en moins d'une semaine à Bandjoun, Bafoussam et Bandja.' Available at <http://camer.be/index1.php?art=30226&rub=11:1> (accessed 12 November 2013).

<sup>903</sup> As above.

<sup>904</sup> As above.

generalised suspicion, the phenomenon of mob justice has become a national concern. The state has lost its monopoly of the use of physical violence and most of the state's institutions are no longer trusted by the major portion of the population. Prohibited acts have become normal without the fear of any consequence. On this account, Chouala brilliantly assesses the causes and efficiency of mob justice in Cameroon. As he argued:

*Suivant une interprétation purement politique, la justice populaire est une défaillance de l'autorité gouvernementale qui n'assure plus la totalité de ses prérogatives judiciaires.*<sup>905</sup>

According to a pure political interpretation, mob justice results from a failure of governmental authority that no longer ensures its judicial prerogatives.

Following the process of disintegration of the state, a new form of organisation is taking place in Cameroon. People no longer rely on the police and justice for their protection as there is a growing phenomenon of *comité d'autodéfense* [self-defence committee]. Basically it is the fact for people living in a common area to organise themselves to provide for security in their area. Most of the time, this results in night watches, patrols, and even arrests of 'suspects.' In March 2000, following the murder of the French businessman Nourry, a '*comité de vigilance des intérêts des Français au Cameroun*', [vigilance committee of French interests in Cameroon] was established in Douala.<sup>906</sup> There is an intrusion into a prerogative that formerly belonged exclusively to the state, namely the security of goods and persons. Issue N<sup>o</sup> 168 of local newspaper *L'action* observes that the state is in some way dismantled, 'disarmed': it is the 'time of self-defence.' The national 'moment' for secure self-defence, it is the conquest of the task of securitisation of persons and goods that the state is no longer able to fulfill alone by a coalition of people. On page 11, this newspaper highlights the comments of the head of the Self-defence Committee established in Bonamoussadi, an area in Yaounde densely occupied by student accommodations. When questioned about the legality of self-defence groups, he argued as follows: 'One should leave us with these arguments about legality. Citizens are raped every day by criminals

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<sup>905</sup> Chouala (note 871) 20.

<sup>906</sup> Soudan F. As quoted in Chouala (note 871) 24.



without people in charge of law enforcing the law. We, in Bonamoussadi have decided to wage war on criminals and other thieves. As we are not protected by the police, there is no solution other than to protect ourselves. And since we have established the Self-defence Committee, thieves no longer dare come to this side.' The newspaper concludes by pointing out that in many areas of Yaounde and Douala, the identity checks and other controls are no longer the function of the police. Self-defence groups have replaced the police that remain very unpopular due to their corruption and inability to cope with violence and generalised insecurity. Like the authorities' rule of law, the self-defence committees' laws are applicable to everyone, whether civilian or authority. On 9 October 2013 for example, twenty-nine-year-old Mr. Mabe, a corporal master of the army, and his accomplice Charlie were caught and beaten to death by members of the Self-defence Committee in Ndogpassi in Douala. They were accused of housebreaking and assault on a motorbike driver early in the morning. The inhabitants of the area were about to set fire to them when the (actual) police intervened.<sup>907</sup> This event accounts for the level of decline of Cameroon institutions where law enforcement has ceded its place to the law of the strongest. The permanent deployment of draconian measures has resulted in establishing a society of fear where the survival instinct has priority against all other considerations. The society resembles a jungle characterised by wild behaviour and the turning in on oneself. Citizens and authorities in the country are confronted by a bizarre atmosphere punctuated by an infernal cycle of domination and resistance. The generalised insecurity has led to a 'decentralisation' and 'privatisation' of security task across the country that is currently exercised by a variety of participants. These include the state itself, self-defence committees, private militia, and private security companies, such as Wackennut or Africa security. As noted by Chouala:

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<sup>907</sup> 'Cameroun - Douala: Un caporal-chef battu à mort - Il est accusé d'avoir cambriolé un domicile.' Available at <http://cameroon-info.net/stories/0,53215,@.cameroun-douala-un-caporal-chef-battu-a-mort-il-est-accuse-d-avoir-cambriole-un-.html> (accessed 17 October 2013).

*La sécurité ne fait plus l'objet d'une simple prérogative des pouvoirs publics. C'est un 'bien commun', un bien social que la majorité sociale tente de conserver.*<sup>908</sup>

Security is no longer a mere prerogative of public powers. It is a 'common good', a social good that the social majority tries to keep.

The excessive normalisation of draconian measures within Cameroon society has led not to peace and stability, but to a general chaos and state decomposition. Following the growing atmosphere of insecurity and the scale of resistance, authorities still do not understand that the situation is rooted in the current relationship of domination that has now turned into a situation of silent war.

In an attempt to repair such situation, President Biya recently issued a decree aimed at reinforcing and tightening the security arsenal through an intensive militarisation of a society where the rule of guns has overtaken the rule of law. Hence, on 29 September 2011, prior to the presidential elections that were to be held the following month, a commando invaded the Wouri Bridge in Douala, blocked the traffic, fired shots in the air, and requested the departure of President Biya, before fading into nothingness.<sup>909</sup> A few months later, by decree N° 2012/539 of 19 December 2012 relating to the special status of police civil servants, the president established hundreds of new police stations across Cameroon. In so doing, he was trying to ignore what a political leader of an opposition party coined more than a decade previously on 26 March 2000 following the critical level of insecurity in the country:

*C'est l'insécurité économique, sociale, sanitaire qui est à l'origine de l'insécurité et du grand banditisme. Le renforcement de la répression ne peut donc pas véritablement venir à bout de ces problèmes. Notre*

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<sup>908</sup> Chouala (note 871) 21.

<sup>909</sup> 'Curieuse revendication des coups de feu sur le pont du Wouri au Cameroun.' Available at <http://www.rfi.fr/afrique/5min/20110930-cameroun-pasteur-revendique-attaque-le-wouri> (accessed 30 September 2011); see also 'Opération kamikaze: Un commando bloque la circulation sur le pont du Wouri.' Available at <http://www.cameroon-info.net/stories/0,29805,@operation-kamikaze-un-commando-bloque-la-circulation-sur-le-pont-du-wouri.html> (accessed 30 September 2011).

*pays a un besoin urgent d'ouverture politique et de relance du processus démocratique, pour libérer des énergies nouvelles pour son développement.*<sup>910</sup>

Large scale banditry and insecurity are rooted in economic, social, and sanitary insecurity. The reinforcement of repression cannot really address these problems. Our country needs an urgent political openness and a revival of the democratic process, to free new energies for its development.

The decline of the state in Cameroon is also evident in the citizens' desire to withdraw from this community. This is the logic behind the exit of the state, characterised by secessionist claims and massive emigration of the citizens, as developed in the following section.

#### **6.4 The logic of exit from the state: secessionist claims and emigration in Cameroon**

In this section, I will examine the claims for secession before looking at the emigration phenomenon in Cameroon.

##### **6.4.1 The claims for secession**

In Cameroon, the claim for secession is currently referred to as the 'Anglophone problem.' In the second chapter of the study, I have reviewed the British and French colonisations of Cameroon. In so doing, I have examined the historical developments that resulted in the reunification of both the English-speaking and French-speaking communities in the country. The English-speaking community represents about twenty per cent of the population. A few times after the reunification of the French and British Cameroons following a curious federal state, some leaders of the English-speaking community rejected being incorporated into the state of Cameroon. Following oppression and social injustices by a dominantly French-speaking government, these Anglophone leaders have on repeated occasions expressed their desire to secede from Cameroon and establish an independent Anglophone state. Delancey argues that:

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<sup>910</sup> Aurore Plus N° 279, 6.

The government's stubborn refusal to move quickly toward a more democratic system and the growing strength of secessionist attitudes in the English-speaking or 'Anglophone' section of this bilingual country are causing any confidence in that stability to decline.<sup>911</sup>

From the relationship of domination established across the country since the French occupation has emerged the idea of self-determination of the oppressed majority. The Anglophone claim of secession that is so manifest today in Cameroon is an old demand. The idea of secession that resulted from the politics of domination under French colonialism had already led Ruben Um Nyobè, the leader of the UPC movement and father of Cameroon nationalism to establish a parallel administration in the country. The issue was raised in 1957 by Daniel Doustin, former French Director of Information in Indochina and mastermind of the doctrine of the French revolutionary war in Cameroun. He observed that he would have preferred a negotiated armistice with the UPC one year earlier in 1956, which would have allowed for 'fully valid' elections, instead of the recourse to force that had been prioritised.<sup>912</sup> He assigns this 'mistake' that 'propelled the UPC toward a violent solution', to the deviations of 'the French interior politics' [*errements de la politique intérieure française*].<sup>913</sup> Doustin went on to argue about the decision of the UPC party to withdraw to the forest rather than accepting the French system of injustices and oppression as follows:

*L'aspiration irrésistible à l'indépendance des upécistes, dont l'amour – propre d'homme est tellement exacerbé qu'ils préfèrent remonter aux cocotiers et être libres que d'avoir des routes bitumées et être traités comme des mineurs.*<sup>914</sup>

The irresistible aspiration to independence of the upcists whose the self-esteem of being human is so exacerbated that they prefer to climb back up coconut palms and remain free instead of having asphalted roads and being treated like minors.

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<sup>911</sup> Delancey (note 813) xiii.

<sup>912</sup> Deltombe & al. (note 60) 257.

<sup>913</sup> As above.

<sup>914</sup> As above.

This statement is relevant because Um Nyobè and his friends have, in the heart of the forest, succeeded in establishing a genuine parallel government that fulfilled prerogatives usually exercised by the state's entity. The Um Nyobè's government within a French Cameroun was real. As reported by Deltombe and others, the UPC denying all legitimacy to colonial authorities, an administrative apparatus that included some eight hundred 'basic committees' and thousands of militants of the nationalist party in the Sanaga-Maritime was joined to the military wing of the party. These two structures, the rebel government and its armed wing, were headed by an 'administrative secretariat and a liaison office' under the authority of Um Nyobè. Using typewriters, they carefully registered births, marriages, and land transactions.<sup>915</sup> The purpose of those that the French authorities labelled *hors-la-loi* (HLL) meaning 'outlawed', was not in fact to defeat the official army militarily but to position themselves as a *de facto* government within a region in a state of secession.<sup>916</sup> Indeed two concurrent authorities confronted themselves in the same geographical space. The nationalist fighters raised taxes that were paid, sometimes even by constraint. Apart from their army and their administrative apparatus they had established a justice system with courts that sanctioned the followers of colonial administration with fines and lashes. When someone was considered a *dikokon* (traitor), the sentence was capital punishment.<sup>917</sup> From these developments, one should keep in mind that a state in which tortures, oppression, domination, insecurity, and injustices constitute its matrix, the prejudiced and marginalised members of this community are left with no choice other than to resist or exit from it. This is how the Um Nyobè parallel government could be justified.

Similar structures arose in the first years of 'independence' in the western region where the rebels succeeded in controlling the major portion of the country, ruling over a terrified population. State authorities were locked up and subjected to constant harassment.<sup>918</sup> By

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<sup>915</sup> As above, 225-226.

<sup>916</sup> As above, 226.

<sup>917</sup> As above.

<sup>918</sup> As above 403.

January 1960 the secession with the French administration was evident as five hundreds thousands people in the Bamiléke division were under the authority of the Armée de Libération National du Kamerun (ALNK). The state police was powerless in front of thousands of men galvanised by their success and backed up by eight tenths of the population.<sup>919</sup> In the Mungo division, under the control of the UPC, the French administration was held at bay and communications with the British Cameroon authorities on the other side of the border were cut off.<sup>920</sup> Moreover, it was not possible to harvest the bananas that constituted the heart of the economy of the region, and schools were empty. A military report observes that within the region, the manoeuvre was more subtle than those of terrorist attacks. As observed by this report, people psychologically escaped from the influence of the government.<sup>921</sup> Whereas the Bamiléke division was subjected to a military secession, the Mungo division was beset by a psychological secession.<sup>922</sup> The claims for secession within the Cameroon context are based on abuse, domination, and social decadence regarding the current political order.

Since the beginning of the eighties, some leaders from the English-speaking region of Cameroon have been fighting for an independent Anglophone state; in other words they have been calling for secession. Their main argument is that the reunification of former Southern Cameroons with the République du Cameroun was a decoy, since the inhabitants of the English portion are being exploited and marginalised by a government with Francophone dominance. The system of oppression and exploitation that characterises the relationships between the ruling class and population is thus at the origin of the Anglophone claims. For instance, regarding the management of oil and gas resources that largely come from the English-speaking areas of the country, it is clear that it does not benefit the inhabitants of these regions. Despite the large amount of such resources,

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<sup>919</sup> As above.

<sup>920</sup> As above.

<sup>921</sup> As above.

<sup>922</sup> As above.

authorities urge people to rely not on natural resources but on agriculture to satisfy their needs. The government spreads the propaganda according to which focusing on oil and gas is wrong and unrealistic since these resources could weaken the citizen labour force. Such approach also justifies the existence in the financial architecture of the country of an off budget account (under the sole control of the presidency) that is loaded with income derived from natural resources. Beyond the social fracture among Cameroon population, unresolved issues of oil and gas are the additional issues that deepen the gap between Anglophone and Francophone communities. Subjected to a politics of 'francisation' since 1961, the English-speaking community has come to realise that oil resources that are their main resources are confiscated by French-speaking 'leaders.'<sup>923</sup> Deltombe and others point out that it is an important consideration because in 1972 when the first exploitable oil field was discovered, a new constitution was imposed on them; a new constitution that abolished the federal system and replaced it with the 'United Republic of Cameroon.'<sup>924</sup> In 1985, many Anglophone leaders, such as the famous lawyer Fon Gorgi Dinka, tired of such a system formally called for independence of the former Southern Cameroons.<sup>925</sup> The new state was to be renamed 'Republic of Ambazonia'. Following the generalised social malaise in the country due to the failures of authorities to adequately comply with their obligations, the Anglophone community seeks to untie from such a state. In 1990, John Ngu Foncha an iconic Anglophone figure and former Deputy President of Cameroon who had strongly advocated for the reunification of the two Cameroons, resigned from his position as Deputy President of the CPDM, the ruling party. In his letter of resignation addressed to the ruling party in June, Foncha clearly explained the reasons of his resignation as follows:

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<sup>923</sup> As above 640.

<sup>924</sup> As above.

<sup>925</sup> The remaining arguments of the section devoted to Anglophone claims for secession in Cameroon are indebted to the works of Piets K. & Nyamnjoh F. 'The Anglophone problem in Cameroon' *The Journal of Modern African Studies* (1997) Vol. 35(2). See also Piets K. & Nyamnjoh F. 'Construction and deconstruction: Anglophones or autochtones?' *The African anthropologist* (2000) Vol.7 (1) & Fonchingong T 'The quest for autonomy: the case of Anglophone Cameroon' *African Journal of Political Science and International Relations*. (2013) Vol.7 (5).

The Anglophone Cameroonians whom I brought into union have been ridiculed and referred to as 'les Biafrais',<sup>926</sup> *'les ennemis dans la maison,'*<sup>927</sup> *'les traîtres,'*<sup>928</sup> etc. And the constitutional provisions, which protected this Anglophone minority, have been suppressed, their voices drowned while the rule of the gun replaced dialogue, which the Anglophones cherish very much.

Three years later in April 1993, a conference that gathered many Anglophones leaders, the All Anglophone Conference (AAC) held in Buea in the south west of Cameroon, requested authorities to return to the federal state. In 1994, still facing a silence from these authorities, a second conference was held with the main resolution that in the absence of the restoration of a federal state within a reasonable amount of time, former Southern Cameroons would secede. In their claim for secession, many Anglophones have built up some groups of pressure to lead the battle. Therefore, the ACC evolved into the Southern Cameroons Peoples Conference (SCPC) and later the Southern Cameroons Peoples Organisation (SCAPO) with an executive body called the Southern Cameroons National Council (SCNC), which remains the main pressure group in the fight for independence. In 1995 a delegation headed by Fontcha was sent to the UN headquarter in New York to denounce the invasion of Southern Cameroons by French Cameroun. During the same year, the SCNC organised an unofficial referendum with thirty one thousand five hundred people. Ninety-nine per cent voted for independence of the former Southern Cameroons.<sup>929</sup> Many pressure groups are now supporting the cause to acquire independence from a state where nothing prevails except marginalisation, exploitation, injustice, and inequality. These organisations include the Cameroon Anglophone Movement (CAM), the Free West Cameroon Movement (FWCM), and the Ambazonia Movement (AM). On 30 December

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<sup>926</sup> The term 'biafrais' designates a Nigerian tribe. Used within the context of Cameroon in reference to a person from the English-speaking area is an insult to this person. It insinuates that Anglophone people are not Cameroonians, but rather Nigerians. As a result, Anglophone people are treated like refugees in their own country and can neither claim nor enjoy the same rights as Cameroonians from other parts of the country.

<sup>927</sup> From French, its means the enemy from within, and again it is an insult and sign of rejection of the Anglophone community.

<sup>928</sup> From French, it means traitors.

<sup>929</sup> Pigeau (note 216) 134.



1999, armed members of the SCNC took control of the broadcasting house in the city of Buea and broadcasted a proclamation of independence read by former judge Ebong Frederic Alobwede. Even though the state of Cameroon had regained control of the situation, the struggle seems to be lasting for quite some time. A few months following the attempt of proclamation of independence, in April 2000, Ebong Frederic Alobwede, who has been imprisoned in Yaounde was appointed as president of the new independent state.

Officials in Cameroon are challenged every day, from every corner of the society. The main reason is the reconstruction of the pattern of oppression, inequality, marginalisation, and domination within the alleged postcolonial Cameroon as was the case during the colonial era. Authorities believe that ruling through terror and militarisation and functioning within a pattern of exceptionalism can solve problems. But in reality, and as previously mentioned, one should keep in mind that ‘where there is power, there is resistance.’ Foucault contends that:

Power and resistance confront each other, and use multiple, mobile, and changing tactics, in a field of relations of force whose logic is not so much the regulated and codified logic of right and sovereignty, as the strategic and warlike logic of struggle.<sup>930</sup>

The *raison d’être* of Cameroon state is incessantly questioned by the inhabitants of the country, local and foreign citizens. The new shapes of resistance through violence, insecurity, and the fight for secession clearly show that the society is caught in the trap of disintegration.

#### **6.4.2 The phenomenon of mass emigration**

Living in the country has caused anxiety and the phenomenon of emigration of nationals from Cameroon can assist in understanding the scale of the situation. In the era of globalisation, many inhabitants of the country seem to have found a way out of this society of violence. My personal opinion is that massive emigration of Cameroon nationals can be

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<sup>930</sup> Foucault (809) 281.

interpreted as a process of withdrawal from this society of injustice and inequality. Recently an official at the Belgian Embassy in Yaounde revealed that Cameroon is among the top ten refugee application countries in the world.<sup>931</sup> During the last Olympic Games in London in 2012, seven athletes from the Cameroon delegation escaped and vanished into the depths of Europe. A similar event was repeated the following year in September 2013 during the games devoted to the French-speaking countries (*the francophonie*) hosted by France. Assessing such events from an outside perspective or from a mere journalistic approach is proof of ignorance of the internal factors. These athletes were objects of mockery, cursed, and condemned by various people and the media. However, it is my contention that the response to massive and illegal emigration by Cameroon nationals emanates from the Cameroon system of governance that lacks democracy, human rights, and the rule of law; a system that most often is established, maintained, and revived for several decades through unorthodox methods and some obscure networks in the name of interests and real politics.<sup>932</sup> I am not advocating for illegal emigration, however, it is important to take into account that more than a mere eccentric desire to settle outside of their country, massive emigration by Cameroon nationals represents an act of political

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<sup>931</sup> Chongwain I. 'Is Cameroon really a country at peace?' Available at <http://camer.be/30969/30:27/cameroun-cameroon-is-cameroon-really-a-country-at-peace-text-and-video-cameroon.html> (accessed 30 December 2013).

<sup>932</sup> A recent TV documentary portrayed the case of the Swiss multinational company Nestle against Codilait, the only local Cameroonian firm that used to produce milk products on a national scale. Following various investigations confirmed by evidence, the multinational company Nestle was accused of tax evasion and unfair competition by Codilait, and was logically condemned by a local court. Then the general manager of Nestle Cameroon and the ambassador of Switzerland in Yaounde paid a visit to President Paul Biya. A short time later, the sentence was overturned by the Court of Appeal in Douala, who this time condemned the firm Codilait and rejected all charges against Nestle; charges previously confirmed during the first trial. The appeal had been initiated by the plaintiff Mr. Pius Bisseck, the manager of Codilait who was unhappy with the insignificant amount of compensation decided during the first trial. The trial, which lasted for more than ten years, is still pending at the Supreme Court, the highest jurisdiction in the state. But while waiting, the firm Codilait went bankrupt and its two hundred employees are currently jobless. Watch *Un empire en Afrique* (2013) a film by Judith Rueff. Also available on YouTube.

resistance, a desperate path out of a society subjected to an unnoticed silent war. In a very recent report, Spanish authorities observed that scores of Cameroonian men were among the over two hundred African migrants that scaled the triple fence surrounding Spain's North African enclave of Melilla.<sup>933</sup> The emigration phenomenon in Cameroon has been of considerable importance and is now part of the most internment programs as it appears in some popular TV shows around the world.<sup>934</sup> Cameroon legislation does not allow for dual citizenship. Yet nationals from the country do not hesitate to swap their citizenship with a foreign one. I see in the phenomenon of emigration a sort of political exile, a self-imposed departure from the homeland owing to the socio-political context. It is evident within the Cameroon context because most of the inhabitants of the country have come to perceive themselves not as human beings endowed with rights and dignity, but as a potential threat to the current political system. As a result, exchanging their citizenship for a foreign one is the ultimate attempt to cut off ties with this exceptional space, subject since its birth to the infernal dynamic between domination and resistance.

## 6.5 Concluding remarks

In this chapter, I have examined the consequences of the normalisation of emergency regimes in Cameroon. The first argument focuses on the consequences following the enforcement of a state of siege under the guise of Operational Command (CO) that resulted in extrajudicial killings and the escalation of insecurity by the army. The second argument portrays violence as a political mode of expression and resistance to authority. The idea

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<sup>933</sup> Mulango V. 'Scores of Cameroonians again scale Spain's enclave of Melilla triple fence.' Available at <http://www.cameroon-info.net/stories/0,59332,@scores-of-cameroonians-again-scale-spain-s-enclave-of-melilla-triple-fence.html> (accessed 4 March 2014).

<sup>934</sup> Zone Interdite, a TV programme by M6, a French television channel broadcasted on 24 November 2013 a documentary bearing the title *Clandestins ils traversent l'enfer pour venir vivre en France*. The programme, which took a year to record, presents among others the journey of three men from Cameroon to France in three significant steps. The first step illustrates the trip throughout the desert in Libya, the second one by sea on a small boat among hundreds of people to the Italian Island of Lampedusa, and the third step shows their bus journey from Italy to France. Also available on YouTube.

here is that within the Cameroon context the distribution of violence is no longer a state monopoly, and insecurity is not to be considered as a mere violation of pre-established social and ethical values, but as challenges to the current political order. The third consequence of the normalisation of emergency measures in Cameroon is the logic of exit from the state. This section examines secessionist claims and massive emigration phenomena across the country. More than a mere eccentric desire, secessionist claims and emigration appear as mechanisms of resistance to the current order aiming at cutting off the ties with this sphere of violence.

## CHAPTER 7 CONCLUSION AND SUGGESTIONS

### 7.1. Introduction

The study aimed to examine emergency regimes in contemporary democracies. While focusing on the case of Cameroon, I have raised some questions that include the features of emergency regimes in the country, the issue of international provisions on these regimes and their compatibility with the Cameroon system, the origin of emergency regimes and the substance of the legal and theoretical discourses on such regimes, the modern expression of emergency regimes in Cameroon notably the implicit exception, and finally the consequences of the normalisation of draconian measures in the country. I have addressed all these questions in the first six chapters of the study. In this final chapter, I intend to provide some suggestions, but I will first summarise the findings.

### 7.2. Summary of findings

The first question, addressed in Chapter 2, related to the features of emergency in Cameroon. I have shown that the country was born in a state of emergency following a *de facto* colonial enterprise by Britain and France and a war of liberation led by the UPC movement. After the German control of Cameroon ended in 1916 during the First World War, the country was handed over to France and Britain through the regime of trust territory under the supervision of the League of Nations. Cameroon was then split into two zones of influence controlled by France and Britain. Unlike the British part that was subject to the politics of indirect rule, the French portion of Cameroon experienced a permanent deployment of the most draconian measures since its inception. From *l'état d'alerte* and *l'état de mise en garde* to a state of emergency and a state of exception, or a state of siege, these emergency mechanisms have become a basic instrument legitimating the control and the subjugation of people and still occupy a central place within the current legal architecture of the country. Emergency regimes in Cameroon remain a legacy of French

colonialism and constitute the most important impediments to human rights, democracy, and the rule of law.

The second major question of the study framed the international provisions on emergency regimes and the scale of compliance of Cameroon emergency regimes with them. These international standards are combined in a set of compulsory international instruments such as the UN charter, the Geneva conventions, the International Covenant on Civil and Political Rights, the International Labour Organisation, and the Convention against Torture. The principles that state parties must comply with include the principle of exceptional threat, the principle of proportionality, the principle of non-discrimination, the principle of good faith motivation, the principle of non-derogable rights, and the principle of proclamation and notification. On the issue of compliance to the Cameroon emergency system with these principles, a significant inadequacy between the two systems emerged.

The third major question of the study is the main concern of Chapter 4 addressing the origin of emergency regimes by reviewing the maxim *necessitas legem non habet*. The chapter also examined the content of the legal and theoretical discourses on these regimes. These discourses were reviewed through two approaches to emergency regimes that include the normative approach and the critical approach. The former is led by Clinton Rossiter, Albert Dicey, and David Dyzenhaus. If Rossiter considers that constitutional democracy was designed to operate under normal circumstances and should be put aside in situation of turmoil, Dicey and Dyzenhaus posit that no matter how serious an emergency situation is, it is possible to address it while remaining inside the legal framework. In so doing they propose a synergy between the three powers that are the executive, the legislature, and the judiciary. The second approach is the critical one under the auspices of Carl Schmitt, Walter Benjamin, and Giorgio Agamben. If for Schmitt, the rule of law is unable to frame the state of exception as this situation reveals the very essence of sovereignty, Benjamin sees in the state of exception a space where human being is guilty by nature owing to the domestication of violence as a means. According to Agamben, a state of

exception expresses a *legal vacuum*, and then a political nihilism par excellence that paradoxically remains linked to the legal order. The phenomenon of emergency regimes originates from the Latin maxim *necessitas non habet legem* that at the time appeared to be an alternative measure to a particular case. However, the meaning of this maxim has considerably shifted over the centuries and has now become the foundation to which the modern state of law owes its survival. Cameroon is an example of such regime, where the practice of emergency regimes is more closely allied to the ideas of critical concept and where the president of the republic symbolises a sovereign located inside and beyond the sphere of law.

The fourth major question of the study was linked to the modern expression of emergency regimes in Cameroon especially the implicit exception that accounts for the implementation of draconian measures without a formal declaration of a state of emergency or a state of exception. The phenomenon materialises through the incorporation within the legal sphere of a set of measures aimed at paralysing the rule of law. The police machine, the space of exception, the militarisation of justice, the supremacy of ordinance having the force of law, and the Kafkaesque trials are the hallmarks of the implicit exception. These features result in the law being suspended in a space not formally subject to emergency regimes.

The fifth question of the study concerned the consequences of normalisation of emergency regimes in Cameroon that result in the decline of the state. The consequences echo negatively on the rule of law and human rights in particular, and on the society in general. Concerning the first point, I have illustrated the ravages of the enforcement of a state of siege under the guise of Operational Command that resulted in extrajudicial killing with the police as the new law-maker, and escalation of insecurity by the army in the city of Douala. The consequences of an excessive deployment of draconian measures within the Cameroon society emphasise the interaction between the politics of domination and resistance among the top-down and the bottom-up. Whereas the politics from the top down entails the

reproduction of colonial patterns essentially based on terror and exploitation of the population by authorities whose ultimate purpose is to remain in power, the politics from the bottom-up aims essentially at challenging and contesting the current political order through secessionist claims, insecurity, and the emigration phenomenon. The main consequence of the failures to integrate the normative approach to emergency regimes within the Cameroon socio-political sphere is the loss of the monopoly of violence by the state. Violence and insecurity are now part of the daily routine and are no longer considered as mere violations of social and pre-established values, but political modes of expression and challenges to authority. Such a situation needs to be addressed, especially through some suggestions.

### **7.3. Suggestions**

Emergency regimes as a legacy of French colonialism in Cameroon remain a key instrument to legalising strategies of control and subjugation of people. Officials in the country have been relying on these regimes not to save the state from a potential threat of war or invasion but to deny a fair democratic game, eliminate political opponents and keep control of power, people and resources. The recurrent reliance on exceptional measures as governmental technique has reduced the law to the zero point of its own content. The draconian measures have been routinised and have successfully moved from the exceptional sphere to that of the normality. But if the exception appears to be the device of control, domination and subjugation of people by the regime in Cameroon, this phenomenon is now opposed to something completely symmetrical, a sort of mirror image that is resistance in the hands of the governed that allows for strategies of control and subjugation not of people but power. The infernal cycle between domination and resistance in Cameroon is evident and the situation has seriously compromised the society's project and negates all idea of social contract. As a result, human rights abuses from the top down and bottom up have merged with daily routine and are now subject not to right and wrong, but claims and counter claims.



To remedy the chaotic situation that prevails in the country, the establishment of democratic institutions is urgent and is possible through the following suggestions: Firstly, it would be an appropriate and a significant step forward to amend the provisions on formal emergency regimes (Section 9 of the Constitution and law N° 90/047 of 19 December 1990 relating to a state of emergency). There is a serious confusion between a state of siege and *l'état d'exception* that differ from each other both technically and legally. The wording of emergency laws in English and French needs to be reviewed and given detailed clarification especially since French and English, the two official languages of the country, have equal authority. France, the state that inspired these institutions in Cameroon, has laws in place governing the state of emergency, the state of siege, and there is a detailed description of a state of exception in its constitution. In Cameroon, the provision of Section 9(1) of the Constitution relating to a state of emergency is backed up by the relatively detailed law of 19 December 1990. One would have expected similar provisions relating to *l'état d'exception* and/or a state of siege (Section 9(2) of the Constitution), but that is not the case.

Secondly, provisions on emergency regimes in Cameroon need to be coupled with some mechanism of checks and balances, such as parliamentary consultation and judicial review. Moreover, the presidential act declaring a state of emergency, a state of exception, or a state of siege should no longer be considered as an act of state not subject to judicial review and parliamentary approval. Such requirement is an echo of the normative approach to emergency regimes as portrayed in the works of Dicey and Dyzenhaus. The request of parliamentary approval is appropriate and possible in Cameroon since in the recent past the country has experienced a similar mechanism by introducing the idea of constitutional guarantees to some prior constitutions, to the effect that the president of the republic was not the only authority involved in the declaration of these regimes. My argument is exemplified by Section 20 of the Constitution of 4 March 1960 that required the president

of the republic to consult the Chairman of the National Assembly prior to the declaration of a state of exception in the Council of Ministers. A similar requirement was repeated in Section 15 of the Federal Constitution of 1 September 1961 that provided for the consultation of the prime ministers of the federated states prior to the enforcement of a state of exception. The most famous example of parliamentary consultation came into being during the parliamentary session of October 1959 regarding the heated debate on *pleins pouvoirs* when Prime Minister Ahidjo, in reaction to the growing struggles for genuine independence led by the UPC movement, requested parliament to grant him full powers and permission to rule the country by decree for six months.

Thirdly, Cameroonians must find a way to acquire genuine independence and emancipate themselves from some foreign countries and their local acolytes, who in the name of interests and *realpolitik*, appear to be one of the main catalysts of authoritarianism and barriers to domestication of constitutional democracy. To do so researches need to be boosted especially in the area of sciences and leading-edge technology. Awareness needs to be increased regarding bilateral relationships and local systems of governance that are instrumental in the country's decline. The state should diversify its relationships with various entities irrespective of their language, culture, or geographical locations, because the balance sheet of more than sixty years of cooperation with the 'traditional partners' is a complete disaster, not only on an economic, politic, cultural, and social level but also on a human rights level, especially the right of self-determination of Cameroon people. Emergency regimes in Cameroon as a legacy of France were and are still used not to deal with natural cataclysms and threats to the life of the nation, but as tools against political contestations and suppression of political challengers. Indeed the current provisions in Cameroon emergency regimes closely resembles those of Section 16 of the Constitution of the Fifth French Republic, except that once incorporated within the Constitution of Cameroon, provisions on human rights protection and constitutional restrictions were soon deleted. These constitutional restrictions, still present in the current Section 16 of the French Constitution, include the president's obligation to formally consult the prime

minister, the presidents of the houses of parliament, and the Constitutional Council, the Council's opinion as to what should be written, justified, and published in the official gazette according to Section 53 of the Ordinance of 7 November 1958. In addition, a state of exception in France should be restricted in time. Section 16 clearly states that after thirty days of a state of exception, the president of the national assembly, the president of the senate, sixty members of the National Assembly or sixty Senators may refer the question as to whether it should be extended or not to the Constitutional Council. With regard to a state of siege, Section L2121-1 of the French defence code provides that it must only be declared by a decree from the Council of Ministers in the event of imminent danger or armed insurrection. This decree has to mention the specific areas in which the state of siege is to be enforced and its duration. Concerning the state of emergency, it is framed by law of 3 April 1955.

Fourthly, the entire Cameroon legal system needs to be reviewed as it is currently centred on the president of the republic who holds all the powers and remains paradoxically responsible for nothing. One should be able to find the right balance between the scale of presidential powers and his responsibility. A separation of power should be made effective and efficient. In this regard there is no need to place the independence of the judiciary in the hands of the president. In addition, a place of choice should be granted to civil society and the media and a system of judicial review needs to be introduced to enhance accountability and the rule of law. There is no need to have a system of ordinance having the force of law as an ordinary and basic governmental tool to exercise prerogatives that normally belong to the deputies. Parliament should be able to exercise its function of representativeness and to make the laws without any presidential interference. A policing oversight mechanism should be established in order to account for gross violation of human rights. Concepts like secondary prisons or courtrooms under the control of the army are not compatible with the idea of democracy, and neither is the phenomenon of implicit exception that is being generalised. These are mere recommendations and it is up to the authorities in Cameroon to consider them. However, one should consider that as long

as a politic of domination is maintained and expanded, it would be irremediably confronted by resistance.

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