AN ANALYSIS OF DECENTRALISATION UNDER THE 1996 CONSTITUTION OF CAMEROON

by

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Declaration of originality

I, the undersigned, hereby declare that this thesis, which I submit for the degree Doctor Legum (LLD) in the Faculty of Law at the University of Pretoria, is my own work and has not been submitted previously for a degree at another university. I have cited and acknowledged all my sources correctly.

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Dedication

I dedicate this thesis to my parents, Mr Chofor Ndimofor and Mrs Florence Bih Yaih Epse Chofor,

my wife, Delphine Mankah Angwafor Epse Chofor,

and

my son, Chofor Che Chi Ervin.

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Acronyms and abbreviations

ACHPR	African Charter on Human and Peoples' Rights
African Commission	African Commission on Human and Peoples' Rights
African Court	African Court on Human and Peoples' Rights
ANC	African National Congress
CAC	Centimes Additionnels Communaux (Additional Council Tax levy)
CRM	Cameroon Renaissance Movement
CCJA	Common Court of Justice and Arbitration
CEFAM	Local Government Training Centre
CNU	Cameroonian National Union
CONAC	National Anti Corruption Agency
CPDM	Cameroon Peoples' Democratic Movement
CPP	Convention Peoples' Party
CPSJ	Cameroon Party for Social Justice
CSO	Civil society organisation
DO	Divisional Officer
DRC	Democratic Republic of Congo
ELECAM	Elections Cameroon
EMB	Elections Management Body

ENAM	Ecole Nationale de l'Administration et de la Magistrature (National School of Administration and Magistracy)
FEICOM	Special Council Fund for Mutual Assistance
FPTP	First Past the Post
GDP	Gross Domestic Product
ICCPR	International Covenant on Civil and Political Rights
IMF	International Monetary Fund
KNDP	Kamerun National Democratic Party
MDB	Municipal Demarcation Board
MINAT	Minister of Territorial Administration
MMPR	Mixed Member PR system
NCHRF	National Commission for Human Rights and Freedoms
NCPBM	National Commission on the Promotion of Bilingualism and Multiculturalism
NEO	National Electoral Observatory
NGO	Non-governmental organisation
NLM	National Liberation Movement
OHADA	Organisation for the Harmonisation of Business Law in Africa
PanSALB	Pan South African Language Board
PNDP	Programme National de Développment Participatif (National Programme on Participative Development)
PR	Proportional Representation
SCACUF	Southern Cameroons Ambazonia Consortium United Front
SCAPO	Southern Cameroons People's Organisation
SCNC	Southern Cameroons National Council

SDF	Social Democratic Front
SDO	Senior Divisional Officer
TCCM	Technical Committee on Constitutional Matters
UCCC	United Councils and Cities of Cameroon
UDHR	Universal Declaration of Human Rights
UK	United Kingdom
UN	United Nations
UNDP	United Nations Development Programme
URC	United Republic of Cameroon
US	United States of America
VAT	Value-added tax

Abstract

Cameroon's Constitution of 1996 sought to put in place a decentralised system of government that would accommodate a diversity of communities, but the country faces a range of serious governance challenges today which the Constitution so far has not succeeded in addressing. These include difficulties in dealing with the country's dual-state colonial heritage, particularly the perception of marginalisation by the Anglophone community. Other challenges include embracing constitutionalism, tackling minority concerns such as the rights of women and indigenous people, curbing ethnic tensions, and managing the transition from authoritarian to democratic governance.

An examination of the constitutional and legal framework of decentralisation under the 1996 Constitution shows that these issues have not been adequately addressed under the current arrangement. There is thus need for a fundamental constitutional overhaul that would provide a more effective decentralised framework for administrative, political and fiscal decentralisation. The new framework should entrench basic elements of constitutionalism such as upholding human rights, the separation of powers and judicial independence, and limiting the ease with which the Constitution can be amended.

This thesis concludes that there is a need for legal safeguards, such as a constitutional court, to ward against the usurpation and centralisation of powers by the central government. Only elements such as these can advance decentralisation in Cameroon and thus facilitate the accommodation of diversity, enhance development and democracy, and manage conflict.

Keywords: Decentralisation, federalism, constitutionalism, democracy, human rights, diversity management

Nota

Cameroon's parliament enacted further legislation bearing on decentralisation in March 2019. The first legislation stipulates that all regions have equal importance and fixes the number of regional councillors per region at 90. It specifies that there are two categories of councillors, one being representatives of traditional rulers and the other, delegates of divisions. The second legislation, the bill to amend and supplement some provisions of Law No. 2012/1 of 19 April 2012 states that delegates of divisions shall be elected through indirect universal suffrage. This means that candidates representing divisions shall be nominated by political parties while representatives of traditional rulers shall be elected by their peers.

The above mentioned legislation was adopted after the completion and submission of this thesis and had not yet been published in the official gazette and therefore not yet accessible. In such circumstances it was not possible to ascertain the extent to which the legislation has implications, if any, for the description and analysis of Cameroon's decentralisation process as analysed in this thesis.

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CHAPTER ONE

INTRODUCTION AND BACKGROUND

1.1 Introduction

The elaborate entrenchment of provisions on decentralisation in African constitutions is usually associated with Anglophone African countries such as South Africa and Kenya.[1] Nonetheless, this is gradually being adopted in civilian-style or Francophone constitutions like those of Cameroon and the Democratic Republic of Congo (DRC).[2] Entrenching decentralisation in constitutions, especially that of Cameroon, is important in peace-building and development efforts. To appreciate the present system of decentralisation under the 1996 Constitution of Cameroon (the Constitution), it is necessary to briefly look at the historical background of how the system was established and how it has evolved. A more detailed historical background is done in chapter 2.

The present-day Cameroon as well as some parts of its neighbours, was a result of the Berlin Conference of 1884, when it was declared a colony of Germany with the name "Kamerun." It was a German colony until a combined French and British military contingent conquered the German army in Cameroon in 1916 during the First World War and carved out the territory into two. The French took the larger part made up of about four-fifths of the territory, while the British took two small-disconnected parts, which they labelled Southern and Northern Cameroon respectively. This partition was later on acknowledged by the League of Nations and its successor the United Nations (UN). The French administered its position via direct rule while Britain effectively governed its two disconnected segments as simply parts of its next door Nigerian colony. However, under a plebiscite which was conducted by the UN on 11 February 1961, the Northern Cameroons decided to remain and is today part of the Federation of Nigeria, while the Southern Cameroons voted in favour of joining the former French Cameroon which had already gained its independence as the Republic of Cameroon on 1 January 1960.

[1] South Africa has elaborately entrenched decentralisation in its 1996 Constitution, sections 103-164. Kenya has equally elaborately entrenched decentralisation in the 2010 Constitution, in articles 174-200.
[2] 'Civilian-style constitutions' and 'French constitutions' in this context refer to French-speaking Africa in general as well as Hispanophone and Lusophone African countries that have opted for the continental civil law constitutional model.

After the plebiscite which took place in Southern Cameroons, the Southern Cameroonian delegation, struggled to arrive at a new constitutional arrangement with Ahmadou Ahidjo, the then President of the Republic of Cameroon. This constitutional arrangement was to put in place a fairly loose and decentralised federation. The negotiating power of the Southern Cameroonians may have been very weak which led President Ahidjo to make some concessions from their proposals by simply amending the 1960 Constitution by an annexure termed 'transitional and special dispositions'. This happened because the Southern Cameroonian delegation may have been politically inexperienced as compared to their francophone counterparts who had the assistance from French constitutional law experts. In actual fact what became the Federal Constitution of the Federal Republic of Cameroon was simply a law revising the Republic of Cameroon's Constitution of 4 March 1960. The reunification did not only bring together people of different backgrounds inherited from the English and the French but also a multitude of about 250 ethnic groups with over 270 various languages.[1] Faced with such a mixture of cultural, ethnic and linguistic groups having various aspirations and interests, at independence, the then government needed to set up an institutional framework to manage diversity under an umbrella of unity, particularly between Anglophone and Francophone Cameroonians. Apparently diversity was not adequately managed under the 1961 Federal Constitution as well as under the 1972 Unitary Constitution. Anglophone Cameroonians have not again adequately benefited from the autonomy which was envisaged under this unity under the Constitution.[2] It was expected that the Constitution would furnish a much-needed

[1] The plebiscites took place in February 1961. The population of Northern Cameroons voted as follows: For joining the Federation of Nigeria-146,296; For joining the Republic of Cameroon-97,659. Southern Cameroon voted as follows: For joining the Federation of Nigeria-97,741; For joining the Republic of Cameroon-233,571. Also see Encyclopaedia of the Nations, available at <http://www.nationsencyclopedia.com/index.html> (accessed 20 August 2017).

[2] The Federal Constitution of 1961, created a two-state federation made up of East Cameroon, corresponding with the former French Cameroun and West Cameroon, made up of the former British Cameroons. Remarkably, the Federal Constitution of 1961 made no major alterations to the formal government arrangements that had existed separately in East and West Cameroon before reunification. On the important aspect of the division of powers between the spheres of government, article 5 of the 1961 Federal Constitution gave the central government responsibility over issues such as national defence, border disputes between federated states, press and broadcasting, regulation as to procedure and otherwise of the Federal Court of Justice, nationality issues, rules governing the conflict of laws, higher education and scientific research amongst several pertinent issues. Article 6 (1) of the Federal Constitution also accorded central government powers over issues such as criminal law, human rights, prison administration, law of persons and property, labour law, public health as well as secondary and technical education amongst several important competencies. This means that the Central government was domineering over the affairs of the two federated states of East and West Cameroon. For instance, although Article 4 of the Federal Constitution bestowed federal authority in both the President and the Federal Assembly, the President eventually obtained wide-ranging powers which made him dominate and control all national institutions, such moves definitely made the federal arrangement a sham ab initio. For a history of the origin of the problem also see AS Caxton 'The Anglophone Dilemma in Cameroon' 2017 *Conflict Trends* 2, 21 July 2017, available at <http://www.accord.org.za/conflict-trends/anglophone-dilemma-cameroon/> (accessed 30 August 2018). Also

framework for promoting the rule of law and constitutionalism by enhancing good governance and democracy, curbing ethnic tensions, and finding a solution to the Anglophone problem,[3] amongst other things. Most research that has compared the Cameroon Constitution to recently revised constitutions or new ones clearly shows, however, that it has done nothing more than simply strengthen the philosophy of the original 1972 Constitution as well as several of its underlying principles.[4] There are several reasons that attest to this.

First, the highly centralised pre-1996 autocratic state system, with the President holding extensive powers, was strengthened, whilst the already restricted powers of the legislature were further reduced. The extensive powers of the President enables him to appoint and dismiss at will the head of government or Prime Minister, as well as the cabinet members, generals, judges, provincial governors, prefects (Senior Divisional Officers), sub-prefects (Divisional Officers) and the heads of parastatals. The President can also veto or approve newly enacted laws, authorise public expenditure, and even declare a state of emergency. Although several innovations are ushered in by the Constitution, these are yet to go operational. The ushering in of bicameralism, with a Senate to act as an upper house or second chamber to the National Assembly, is seriously compromised by the fact that this institution is subservient to the executive and has little power to influence or initiate the content and substance of legislative acts. Additionally, the Constitutional Council (the Council), which is supposed to have exclusive jurisdiction over constitutional matters, only became operational in February 2018.

Secondly, on the important matter of decentralisation, the Constitution, whilst maintaining the centralised system, makes provision for a type of deconcentration of powers via the creation of regional and local authorities. Nonetheless, the vague language of the Constitution leaves the implementation of the provisions on decentralisation completely at the discretion of the President. Furthermore, the country is divided into ten regions with appointed governors at the helm who coordinate the activities of Senior Divisional Officers (SDOs) or prefects and

see *Kevin Mgwanga Gunme et al v Cameroon Communication 266/2003* available at <http://www.achpr.org/english/Decison _Communication/Cameroon/Comm.266-03.pdf> (accessed 8 June 2017).

[3] FE Anye *Issues of minority in the context of political liberalisation: The case of Anglophone Cameroon* (unpublished PhD thesis, School of Social Sciences, Faculty of Arts, University of the Witwatersrand, 2008) 166. There are about four factions in the SCNC, with each group claiming to be the authentic SCNC. Some SCNC activists are for secession, while others are for federalism. Infighting within the SCNC and with other Anglophone movements has weakened the quest of the Anglophone struggle for self-determination. However, although there is infighting within the ranks of the SCNC, the nationalist struggle is far from over.

[4] See, for instance, CM Fombad 'Post 1990 Constitutional Reforms in Africa: A Preliminary Assessment of the Prospects for Constitutional Governance and Constitutionalism' in AG Nhema & PT Zelza *The Revolution of African Conflicts* (2008) 179-199.

Divisional Officers (DOs) or sub-prefects. Though the Constitution stipulates that regions are to be ruled by regional councils with control over social, economic and developmental issues, they are yet to go operational. Not only does the President have the powers to decide when, if at all, the regional and local authorities come into being, he also possesses the right to determine their powers and can abolish them when he deems it necessary.

1.2 Problem statement, objectives and justification of the study

1.2.1 Problem statement

A strongly centralised system of government has been a major factor in the governance and service delivery shortcomings witnessed in Cameroon. A major consequence of a strongly centralised system of government is that the lower spheres of government, especially the local councils, remain poor and underdeveloped. There is also an atmosphere of discontentment in the two English-speaking regions of the country, the North West and South West regions, which is evident in claims of limited political, administrative and financial autonomy in the management of their own affairs. This has fuelled wishes for secession and/or federalism.

To attempt to curb the mounting ethnic, linguistic as well as developmental and diversity issues affecting Cameroonians, the government of Cameroon decided to include provisions for decentralisation in the Constitution.[5] A crucial goal in attaining this vision was to develop legislation and institutions for adequate administrative and financial decentralisation to lower spheres of government. The government has made some progress in the creation of structures such as the National Commission for the Promotion of Bilingualism and Multiculturalism (NCPBM) and the Council. However, while policies and legislations are in place, progress on the ground seems to be slow, as shall be seen.

While the Constitution, alongside other legislation, provides for decentralisation, the process for managing minority, ethnic and diversity issues, promoting the rule of law, enhancing constitutionalism, promoting democratic elections, and enhancing self-rule and local democracy calls for further examination. Presently, there is an impressive array of legislative instruments which, arguably, provide the guidelines for decentralisation. The main laws include the 2004 Decentralisation Orientation Law,[6] the 2004 Law on Regions,[7] and the 2004

[5] See articles 55 and 56 of the 1996 Constitution of Cameroon (the Constitution).
[6] Law No. 2004/17 of 22 July 2004 to lay down the Orientation of Decentralisation (hereinafter Decentralisation Orientation Law).
[7] Law No 2004/019 of 22 July 2004 to lay down the laws on the Regions (hereinafter Law on Regions).

Law on Councils[8]. It is important, though, to examine these laws as well as other legislation to identify reforms and measures that could aid policy actors in better tackling the various problems faced by the country.

The institutional framework is premised on central and deconcentrated authority at the regional level, on the one hand, and elected mayors and appointed government delegates at the level of rural and urban municipalities, on the other. An examination of whether these local authorities do indeed have sufficient political, administrative and financial autonomy may be necessary. There is also a Senate, which is an important body for shared rule in the decentralisation process. It is equally important to see if the executive branch of government overrides the decisions of this institution or not.

Similarly, several organs exist for facilitating financial decentralisation. Investigating the allocation of financial resources to councils would thus be necessary, since finances play a key role in a decentralisation process. Equally, there are bodies which are supposed to supervise and monitor the decentralisation process. It is important again to examine the impact of these supervisory and monitoring organs on the decentralisation process. Additionally, traditional authorities are regarded as part of the decentralisation machinery, albeit that their duties and functions are not clearly defined. It is thus vital to consider the role of traditional authorities in the decentralisation process.

Issues of implementation and enforcement of the decentralisation process in Cameroon will thus be examined, as it is insufficient to advocate for a particular approach to attaining decentralisation without considering the workability of existing legal texts and instruments.

1.2.2 Objectives and justification of the study

To date there is little scholarship on the decentralisation process under the Constitution. The main objective of this study therefore is to critically assess the role of decentralisation in addressing issues such as diversity, conflict and service delivery in Cameroon. In so doing, this research aims to analyse the constitutional and legal framework of decentralisation under the Constitution. It argues that in spite of the presence of constitutional as well as legislative and institutional measures for decentralisation, the government of Cameroon needs to put in place an adequate constitutional and legal framework to manage minority, ethnic and diversity issues, promote the rule of law, promote democratic elections, and enhance constitutionalism, self-

[8] Law No 2004/018 of 22 July 2004 to lay down the laws on Council (hereinafter Law on Councils).

rule and local democracy. The experiences of various decentralised states, especially those in Africa with similar legal systems, cultures and historical backgrounds, will be referred to for the purpose of drawing lessons for Cameroon.

This research also seeks to examine the implications of the current design for the management of minority, ethnic and diversity issues, the promotion of the rule of law, the promotion of democratic elections, and the enhancement of constitutionalism, self-rule and local democracy. On this basis, the research aims to make suggestions on how the current constitutional and legal decentralisation framework could be improved upon so as to better achieve its objectives. This study thus contends that for decentralisation to be adequately attained in Cameroon, there is a need for sectorial and institutional reforms. Above all, Cameroonians must be involved in the decentralisation process.

1.3 Research question

The main question this study seeks to answer is: How can decentralisation be effectively achieved under the 1996 Constitution of Cameroon? In answering it, the study addresses the following sub-questions:

1. What are the issues decentralisation was supposed to address?
2. How is the current institutional framework composed and operating?
3. What is the constitutional and legal framework of decentralisation in Cameroon?
4. Has the current framework succeeded in dealing with the problems in the country?
5. How can the weaknesses of the present constitutional and legal framework be ameliorated?
6. What are the prospects for the future?

1.4 Methodology

This inquiry is library-based. It includes analyses of primary sources such as laws, regulations, case law, as well as soft law. The research also includes secondary sources found in books, research publications, credible internet sources, published and unpublished papers, reports and theses as well as law reviews. This study relies too, where necessary, on informal sources such as newspaper articles. These various sources enable an identification of the strengths,

weaknesses and extent of the Cameroon's decentralisation of some power and authority to subnational governments and of ways in which the situation can be ameliorated.

1.5 Literature review

Considerable research has been carried out in the fields of political science and development studies on decentralisation of power and authority to local government on Cameroon. However, literature that focuses on constitutional and legal analysis of decentralisation, especially under the Constitution, is scanty. The literature review in this thesis examines the state of knowledge on the legal analysis of decentralisation in Cameroon.

One of the issues identified by authors who have written on decentralisation in Cameroon concerns the nature, scope and *raison d'être* of decentralisation. The World Bank has carried out such a study.[9] It is contended in this research that decentralisation, especially fiscal decentralisation, is very limited, which is a reason why regions and councils remain poor and underdeveloped.

Still on the important issue on the nature and *raison d'être* of decentralisation, many authors have written on federalism in Cameroon, especially with respect to how it tackles diversity, ethnic tension and underdevelopment. The author Asuagbor contends that federalism can be used to accommodate the numerous differences, for example in language, culture, legal and education systems between Anglophone and Francophone Cameroonians.[10] According to Asuagbor, if federalism is to be used satisfactorily in this regard, the Anglophone community must be given equal opportunities to participate in state affairs, which to him is not the case.[11] Other scholars, such as Benjamin,[12] Gonidec[13] and Stark,[14] have written on federalism as a means of accommodating diverse communities in Cameroon. Bongfen is an author who is of the view that Anglophone Cameroonians were marginalised, especially in the public sphere, under the 1961 federal system that led to underdevelopment of the Anglophone regions.

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[9] World Bank, Report No. 63369-CM. 'Cameroon: The path to fiscal decentralization. Opportunities and Challenges,' Document of the World Bank, September 2012, available at <http://documents.worldbank.org/curated/en/685841468239367086/pdf/633690ESW0Gray0disclosed01105020120.pdf> (accessed January 2017).

[10] G Asuagbor 'Is Federalism the answer?' in J Takougang & JM Mbaku (eds) *The leadership challenge in Africa: Cameroon under Paul Biya* (2004) 497.

[11] Asuagbor (n 10 above) 497.

[12] Benjamin (1987) in NF Awasom 'Negotiating federalism: How ready were Cameroonian leaders before the February 1961 United Nations Plebiscites?' (2002) 36 *Canadian Journal of African Studies* 427.

[13] Gonidec (1957) in Awasom (n 12 above) 427.

[14] FM Starks 'Federalism in Cameroon: The shadow and the reality' (1976) 3 *Canadian Journal of African Studies* 429.

In addition to this marginalisation of Anglophone Cameroonians, ethnic tensions have arisen between tribes in the country.[15] According to McHenry, the Cameroonian experience with federalism was not intended as a means of overcoming ethnic problems but rather as a way of easing the integration of Anglophone and Francophone Cameroon at independence. McHenry adds that there is no clear evidence to show that an increase or decrease of tensions between Anglophone and Francophone Cameroonians resulted from the establishment or demise of the federation.[16]

According to Dent, President Ahidjo abolished the Federal status to establish a closer union of all Cameroonians. This change was 'legitimised' in a referendum accepted by both Anglophone and Francophone Cameroonians. Dent adds that, although West Cameroonians tolerated the unitary status, there is little doubt that if they were given the choice they would gladly return to federalism.[17] Authors like Kamto contend that Anglophone Cameroonians have been clamouring for federalism since the 1990s because of the economic viability of Anglophone Cameroon, which is endowed with natural resources like oil. Kamto adds that Anglophone Cameroonians are simply taking advantage of the political liberalisation introduced in Cameroon in the 1990s to seek total control of these natural resources.[18] Sindjourn[19], and Kom[20] share Kamto's view. They contend that agitation for federalism by Anglophone Cameroonians since 1990s amounts simply to secessionists manoeuvres motivated by the economic viability of Anglophone Cameroon, particularly with respect to its rich oil wells.

Another issue identified by Cameroonian authors is the importance of decentralisation in fostering national unity. Yusimbom[21] submits that the government of Cameroon has not been able to consolidate national unity through the current decentralisation process. He argues that a major reason for the failure of Cameroon's decentralisation process to harness national unity is excessive centralisation of power by the central government.

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[15] CL Bongfen 'The Road to the Unitary State of Cameroon 1959-1972' (1995) 41*Paideuma*, 22.
[16] Jr. DE McHenry, 'Federalism in Africa: Is it a solution to, or a cause of ethnic problems?' Paper presented at the annual meeting of the African Studies Association in Columbus Ohio (November 1997) available at <http://www.federo.com/pages/Federalism_in_Africa.htm#_edn3> (accessed on 12 February 2017).
[17] M Dent 'Federalism in Africa, with special reference to Nigeria' in M Forsyth (ed) *Federalism and nationalism* (1989) 172.
[18] M Kamto 'La montée des séparatismes au Cameroun' (1995) *Génération* hors-série 001 10-11.
[19] L Sindjoun 'La Cour Suprême, la compétition électorale et la continuité politique au Cameroun' (1994) 2 *Africa Development* XIX 12-44.
[20] A Kom 'Conflits interculturels et tentatives séparatistes au Cameroun' (1995) 5-6 *Cahier Francophone d'Europe-Centrale Orientale* tome 1 143-152.
[21] RE Yusimbom *Breaking to Build: Decentralisation as an efficient mechanism for achieving National Unity in Cameroon* (unpublished Master's thesis, Faculty of Law, University of the Western Cape, 2010).

The problem of an inadequate framework for decentralisation has also been commented upon. According to Ndiva,[22] Oyono,[23] and Fombad[24] Cameroon, like several other African states, is currently in the process of decentralising major duties and finances to councils and regions formerly managed by the central government. These authors are of the view that the Cameroonian framework of decentralisation is composed of political devolution with a mixture of strong administrative deconcentration, a design they consider a false version of devolution. To them, the central government still has a grip on functions and finances that are supposed to be managed by regions and councils, and such a design cannot be effective in the country's decentralisation efforts.

Other research undertakes a legal analysis of major laws on decentralisation in Cameroon. Kuate, for instance, examines the juridical and moral personality of territorial collectivities in Cameroon, the transfer of new competencies to regions and councils, the transfer of financial resources to territorial collectivities, and Law No. 2009/019 of the 15 of December 2009 on local finance modified by law no 2010/015 of the 21 December 2010. To him, these transfers remain inadequate for enabling lower spheres of government to participate effectively in the decentralisation process. He also examines financial transfers from the central government to local councils in Cameroon. Kuate then focuses the monitoring and supervisory organs in charge of the decentralisation process. He concludes with a synopsis of the preparatory and the operational phases of decentralisation in Cameroon, and includes several texts related to decentralisation.[25]

Fiscal decentralisation is also covered in other research. For example, Fru examines Cameroon's experience of fiscal decentralisation, the difficulties encountered, and ways of addressing weaknesses.[26] In research covering the period 2009–2013, she contends that fiscal decentralisation is fraught with difficulties, such as the inadequate transfer of revenue to local government, poor fiscal coordination by the central government, and budgeting and accounting

[22] KK Ndiva 'Local governance under Cameroon's decentralisation regime: Is it all sound and fury signifying nothing? (2011) 37 *Commonwealth Law Bulletin* 3 513–530.
[23] RR Oyono *Communes et Regions du Cameroun: la Décentralisation* (2011) 1-415.
[24] CM Fombad 'Constitutional Entrenchment of Decentralisation in Africa: An Overview of Trends and Tendencies' (2018) 62 *Journal of African Law* 2, 175-199. Also see CM Fombad & N Steytler (eds) *Decentralisation and Constitutionalism in Africa* (forthcoming).
[25] JP Kuate *Les Collectivités territoriales décentralisées au Cameroun: Recueil de textes* (6ed) (2013)10.
[26] SA Fru *An evaluation of the process of fiscal decentralisation to the local government of Cameroon: Case of selected councils in the South region* (Unpublished Master of Science in Accounting and Finance, Department of Business Studies, Pan African Institute for Development, West Africa, Buea, 2016).

constraints. She therefore underlines the need to train personnel adequately and set up a well-monitored framework for tracking fiscal operations in councils.

Other literature links decentralisation to the dominance of the central government over the common law system in Cameroon. Yanou, for instance, examines decentralisation and governance in the context of the attempt by the central government to dominate over the common law system that English-speaking Cameroon inherited from Britain. He contends that although the 1996 Constitution makes provision for decentralised structures of governance at local levels, the continued non-enforcement of these constitutional provisions has made it impossible for the local populace to be effectively involved in the development of their own communities. Yanou examines the Cameroonian idea of devolution of powers to local levels of administration and criticises it for being incapable of leading to accountability by administrators and good governance. Making reference to section 40 of the Constitution, which vests powers of judicial review of the acts of state officials in the Supreme Court – based in the political capital of Cameroon, Yaoundé – Yanou argues that such a state of affairs cannot lead to a climate of adequate decentralisation and good governance. The authour concludes that the existence of nationwide local courts with powers to act as a restraint on the executive imperative for the emergence of decentralisation and constitutionalism in Cameroon.[27]

The importance of non-state actors, especially civil society, in the decentralisation process in Cameroon is explored in other literature. Njoh, for example, examines the role of municipal councils, international non-governmental organisations (INGOs) and citizen participation in public infrastructure development in rural settlements in Cameroon. According to Njoh, for several years following independence in 1960, Cameroon operated under a highly centralised government structure, but the government has still not adequately allowed civil society to play an important role in the decentralisation process.

This research thus seeks to fill the gaps in the literature by examining the issues that decentralisation was supposed to address. An analysis of the constitutional and legal framework of decentralisation in Cameroon is undertaken. This research also analyses the weaknesses in the current framework and how they can be strengthened to deal with the problems in the country. The research thus intends to build on the discussion of different aspects of

[27] MA Yanou 'The local courts, decentralisation and good governance: the case of the English speaking provinces of Cameroon' (2009)13 *The International Journal of Human Rights* 5 689–696.

decentralisation under the 1996 Constitution and provide a more comprehensive analysis that hopes to guide future developments and changes to the law.

1.6 Organisation of chapters

Chapter 1 starts with an introduction and background to the study, and sets out the problem statement and the objective of the study. The chapter also reviews literature on existing scholarship on decentralisation in Cameroon.

Chapter 2 traces the historical background and governance challenges in Cameroon. Colonial governance and post-colonial governance until 1996 are then examined. Finally, the chapter provides an overview of the 1996 Constitution and how it has dealt with the challenges to governance.

Chapter 3 focuses on the nature, scope and *raison d'être* of decentralisation. After an overview of the forms and substance of decentralisation as well as a definition of federalism, this chapter examines the purposes and rationale of decentralisation, as well as challenges that may arise if decentralisation is not well designed. The issues covered in this section concern the importance of decentralisation in the management of minority, ethnic and diversity issues, in the promotion of the rule of law and constitutionalism, in the promotion of democratic elections, as well as in the enhancement of self-rule and local democracy in states.

Chapter 4 makes an overview of the structure and operation of the current decentralisation framework. An overview is also offered of the governance architecture, especially the various levels of government. This is followed by an exposure of how shared rule operates in the country, particularly of the way the National Assembly and Senate are organised and function. The composition and functioning of regional councils, urban and local councils which constitute the self-rule component of governance are also examined. An overview is also provided of the composition of traditional leadership in the current governance structure. This is followed by an examination of structures that supervise and monitor the decentralisation process as well as organs which guarantee financial decentralisation. Organised local government is examined, as well as the role played by other institutions involved in the decentralisation process, such as Elections Cameroon (ELECAM) and the National Commission on the Promotion of Bilingualism and Multiculturalism (NCPBM). The role played by civil society groups, non-governmental organisations (NGOs) and international NGOs in the decentralisation framework is also examined. The composition and role of the Constitutional Council in the decentralisation architecture is also examined.

Chapter 5 is a critical assessment of the constitutional and legal framework of decentralisation under the Constitution. The complexity of administrative de-concentration and political decentralisation is explored. This includes the dominant role of the executive in the demarcation of boundaries, the existence of regions and municipal councils without well-defined powers and responsibilities, the weak administrative autonomy of local government, as well as unresolved diversity, ethnic and minority issues. The consequences of the advancement towards democratic consolidation as well as the confused status and role of traditional authorities are also examined under this section. The next section then offers a critique of shared rule which entails examining the weak role of the second chamber in the bicameral legislature. Section four focuses on weak intergovernmental relations and cooperation. Cameroon's fiscal decentralisation agenda is then analysed in section five of this chapter. Issues such as the lack of adequate mechanisms for local government self-financing as well as the distorted role of FEICOM in the centralisation and allocation of resources are examined in the fiscal decentralisation section. The confusing role of the Constitutional Council is then examined in section six.

Chapter 6 deals with measures for effective decentralisation in Cameroon. Drawing lessons from developing countries such as South Africa, Kenya and Zimbabwe that have opted for decentralisation under the framework of a unitary state frame, this chapter proposes a constitutional and legal framework for effective decentralisation in Cameroon. Suggestions are also made for reinforcing the role played by traditional authorities, women and minority groups.

Chapter 7 concludes this research by discussing major findings and making recommendations for adequate decentralisation in Cameroon.

CHAPTER 2

The Historical Background and Governance Challenges in Cameroon

2.1 Introductory remarks

This chapter examines Cameroon's historical background and governance challenges. Governance in Cameroon can be divided into three major eras. The first era is that of German colonial rule, dating from 1884 until 1916 when the Germans were defeated in the First World War by the French and British. The second era was colonial governance under the British and French, which ended in 1961 when the country gained independence. The third era includes all events that occurred since independence and the reunification of the French- and British-administered or -governed parts of the territory to create what is today called the Republic of Cameroon.

Examining these three eras gives one an informed understanding of the context of governance in Cameroon. This chapter also provides an overview of the 1996 Constitution (the Constitution) and how it has dealt with challenges to governance, which includes efforts to unify Cameroon's dual heritage, particularly in addressing the Anglophone problem. Other challenges include tackling minority concerns such as the rights of women and indigenous people, embracing constitutionalism, incorporating the traditional system of governance, and managing the transition from authoritarian to democratic governance.

2.2 Colonial governance

An analysis of colonial governance is important in understanding governance challenges under the Constitution. This section examines governance under German rule, in particular the manner in which the territory was organised, as well as governance under joint British and French rule.

2.2.1 Colonial governance under German rule

The British were a significant presence in the Cameroonian territory before the Congress of Berlin in 1884 to 1885, but because of their indecisive stance on whether to govern Cameroon or not, the Germans, equally present in the territory, started negotiating treaties with traditional authorities. Subsequently, the Germans made up their minds to govern Cameroon, outsmarted the British, and created a protectorate in Cameroon in July 1884.

At first, the Germans hesitated to colonise Cameroon due to the fact that they saw it as an expensive and cumbersome administrative venture. All the same, they did colonise the country,

doing so to expand the scope of their business activities as well as to ensure that the British did not do same. The Germans were the first Europeans to bring together inland and coastal ethnic groups in the territory into a single modern governable entity. In order to unite these groups, they had to attack and conquer inland groups as well as cajole traditional authorities via pacts of friendship. During the German period, measures were taken to create an environment for business operations through the construction of railways and roads. It was also during the German colonial era that the country's international borders were defined.

Colonial governance under the Germans was conducted in terms of law, issued in the Reichstag in 1886, that bestowed substantial powers on the Kaiser to govern by decree in the newly acquired territory.[1] In order to better govern the territory, it was divided into numerous administrative units. Those in the interior were administered by top-ranking military officials, while those around the coast were governed by civil administrators. Authors such as Le Vine posit that 'Germany badly administered its colonies and brutally repressed the revolts of the colonised peoples'.[2] Although it was strict, German rule was also considered fair.

2.2.2 Colonial governance under joint British and French rule

The Germans were defeated by the British and French during the First World War when its last grasp on the territory at Mora fell on 20 February 1916. The British and French then went ahead to sign an agreement on 4 March 1916 formally dividing the country into two unequal portions, with the British taking just one-fifth of the territory and the French the larger portion. An Anglo-French agreement partitioning the country was signed by both M. Simon (for the French) and Viscount Milner (for the British) in Paris on 10 July 1919, which legally confirmed the boundaries as carved out on 4 March 1916.

It seems the British opted to obtain just one-fifth of the territory because it was administratively and financially cumbersome for them to govern another colonial territory over and above Nigeria. They thus wanted a small portion of the Cameroonian territory as it would allow them to better administer their vast Nigerian colony. This partitioning was confirmed in article 119 of the Treaty of Versailles and under articles 22 and 23 of the League of Nations Covenant, in which the Anglo-French declaration in regard to the former German protectorate of Cameroon was formally recognised. The British and French colonial administrators were thus mandated

[1] N Rubin *Cameroun: An African federation* (1971) 33. The Kaiser 'Governor' was the head of the colonial administration and had the power to control the military forces. He could also collect and levy taxes.
[2] VT Le Vine *The Cameroon: From mandate to independence* (1964) 37.

through a trust agreement to administer and improve the way of life of the people on the territories and furnish periodic reports to the League of Nations.

The partitioning of Cameroon between the French and British colonial administrators provided the foundation for the creation of two distinct and often conflicting legal, political and cultural traditions which continue to have a significant effect on the country today, especially its governance *modus operandi*. In order to understand governance in the country today it is necessary to examine the various constitutional developments that occurred in the two parts of Cameroon when they were governed separately by the French and British from 1916 to 1961.

The British and French were called upon to govern their parts of the country as class B mandates. According to article 2 of the Mandate Agreements, both colonial masters were supposed to maintain 'peace, order and good government of the territory and moral well-being and the social progress of its inhabitants'. Article 9 provided that the British and the French would have full legislative and administrative powers in the territory subject to the mandate. The mandated territories were to be governed with respect to the laws of the mandatory power as part and parcel of its territory. The mandatory power was thus at liberty to apply its laws to the territory under the mandate, subject to the modifications necessitated by local realities, and to constitute the territory into fiscal, administrative or customs unions or a federation with the adjacent territories under its control or sovereignty, provided always that the conditions put in place to that end did not go against the provisions of the mandate.

The territory governed by the British colonial administrators was composed of two narrow non-contiguous parts. Britain decided to administer its part of the territory as part of its Nigerian colony, due to the lack of a communication and transportation network, and relied on article 9 of the Mandate Agreement. The British Cameroons Order-in-Council came into existence on 26 June 1923 and provided that the southern part was to be administered as part of the Southern Provinces of Nigeria and the northern portion, as part of the Northern Provinces of Nigeria. The former came to be known as Southern Cameroons and the latter as Northern Cameroons. Later, in 1939, when the southern provinces of Nigeria were carved out into Eastern and Southern Nigeria, Southern Cameroons became part of the Eastern provinces. Although the British Cameroons was administered as an integral part of Nigeria, this did not mean either incorporation or fusion. All the same, the territory was for all practical reasons administered as if it had been incorporated into Nigeria.

The Clifford Constitution, which operated in Nigeria in 1923 and also became operational in Cameroon, allowed for an Executive Council, which functioned as an advisory organ to the Governor of Nigeria. During the trusteeship period, the Richards Constitution replaced the Clifford Constitution. The 1947 Richards Constitution provided for two Cameroonians to be elected into the Eastern Regional Assembly, but did not give regional and budgetary autonomy to Southern Cameroonians. No representation was given to Northern Cameroons. The Macpherson Constitution replaced the Richards Constitution in 1951. Although Southern Cameroons remained part and parcel of the Eastern Region of Nigeria under the Macpherson Constitution and had no real budgetary autonomy, it now had representation at both the regional and central levels of the legislature and administration.

Following a resolution by the Southern Cameroons House of Assembly asking for a full regional status, a constitutional conference was organised on the issue in London. After the demands by the people had been tested in elections held in 1959, their request was accepted. This was carried out by the Southern Cameroons (Constitution) Order-in-Council, which became operational on 1 October 1960. Northern Cameroons, on the other hand, became a self-governing region within the Nigerian Federation. The new Constitution ushered in Southern Cameroons structures that were similar to those in Britain, comprising a British Commissioner who represented the Queen, a parliamentary system with a bicameral legislature consisting of the House of Assembly and the House of Chiefs, and an Executive Council with ministers and a Premier.

In 1958, the French government made it clear that French Cameroon would become independent on 1 January 1960, with the British announcing that Nigeria was also to become independent, on 1 October 1960. It was therefore necessary to determine the future of Southern Cameroons. On 13 March 1959, the United Nations (UN) General Assembly, in Resolution 1350 (XIII), requested, inter alia, that Britain ensure that it organise, under the supervision of the UN, separate plebiscites in Southern and Northern Cameroons to determine the wishes of the inhabitants of the territory with respect to their future. In the same period, in a separate plebiscite on 7 November 1959, the people of Northern Cameroons, who were asked to decide whether they wanted to form part of the Northern Region of Nigeria when Nigeria became independent or to decide their future at a later date, chose to be part of Nigeria. Later, in 1959, the UN General Assembly agreed, in separate resolutions, upon the two plebiscites to be held in Southern and Northern Cameroons. While Southern Cameroons decided to join the Republic

of Cameroon, which had become independent already on 1 January 1960, Northern Cameroons decided to join the Nigerian Federation.[3]

The UN General Assembly adopted Resolution 1608 (XV) on 21 April 1961. This ended the trusteeship agreement with Britain in relation to Northern Cameroons, when on 1 June 1961 it became a separate province of the Northern Region of Nigeria, and in relation to Southern Cameroons, when on 1 October 1961 united with the Republic of Cameroon. With respect to French Cameroon, the conditions of the mandatory agreement and the later trusteeship agreement between the League of Nations and its successor, the UN, as well as with France concerning Cameroon, were similar to those concluded with the British. A Commissioner for Cameroon was appointed by France, with powers similar to those of other French colonial governors. Nonetheless, at no point did France seek to incorporate the territory into its existing colonies; instead, it maintained a formal distinction between the status of Cameroon and that of the rest of French Africa, furnishing Cameroon with a distinct administrative structure outside the two large complexes of French Equatorial Africa and French West Africa.

Cameroon was proclaimed an 'Associated Territory' of the French Union, owing to the promulgation on 27 October 1946 of the Constitution of the Fourth Republic. Cameroon then went ahead to elect five senators and four deputies, three of them Cameroonians, to the Assembly of the French Union. At the local level, French Cameroun had a Representative Assembly constituted of both Cameroonians and Frenchmen.

In response to criticism of its composition and limited powers, the Assembly was enlarged and had more powers given to it. Moreover, the passing of French Law No. 56/619 of 23 June 1956, the so-called Loi-cadre, led to important institutional reforms. These culminated in the enactment on 16 April 1957 of a new statute allowing for greater internal constitutional autonomy. Although France remained responsible for matters concerning currency, civil liberties, defence, external affairs, security, education and the courts, the powers of Cameroon's Legislative Assembly were considerably increased. The High Commissioner was given the power to appoint a Prime Minister with the approval of the Legislative Assembly. Consequently, André Marie Mbida was designated in May 1957 as Prime Minister. He was

[3] The plebiscites took place in February 1961. The population of Northern Cameroons voted as follows: for joining the Federation of Nigeria – 146,296; for joining the Republic of Cameroon – 97,659. Southern Cameroon voted as follows: for joining the Federation of Nigeria – 97,741; for joining the Republic of Cameroon – 233,571.

replaced by Ahmadou Ahidjo on 19 February 1958, after having lost a vote of confidence in the Legislative Assembly in 1958.

In May 1958, there was a call by the Legislative Assembly, via a government-sponsored resolution, for the termination of the trusteeship arrangement and the reunification of the two parts of Cameroon. A new statute, one giving greater powers than before to the Cabinet and the Legislative Assembly, took effect in a French Ordinance of 30 December 1958. The government was given the go-ahead to legislate by ordinance and to draft a new constitution, which was to be submitted for approval. The draft constitution that was adopted in effect mirrored the French Fifth Republic Constitution and provided for a highly centralised system of government with a robust executive. Although opposition parties campaigned for the rejection of this constitution, it was narrowly approved on 20 February 1960 in a national referendum. This was the constitution that was operational when the French and British territories were reunited on 1 October 1961.

As mentioned in chapter 1 and worth repeating, after the plebiscite in Southern Cameroons, its Prime Minister, Dr John Ngu Foncha, who led the Southern Cameroonian delegation, struggled to negotiate a new constitutional arrangement with Ahmadou Ahidjo, the President of the Republic of Cameroon. This constitutional arrangement was to put in place a fairly loose and decentralised federation. The negotiating power of the Southern Cameroonians may have been weak, with the result that President Ahidjo conceded to certain of their proposals simply by amending the 1960 Constitution through an annexure entitled 'Transitional and Special Dispositions'. This came about because the Southern Cameroonian delegation may have been politically inexperienced compared to their Francophone counterparts, who had the assistance of French constitutional law experts. Indeed, what became the Federal Constitution of the Federal Republic of Cameroon was simply a law revising the Republic of Cameroon's Constitution of 4 March 1960.

The reunification brought together not only people of English and French background but a multitude of about 250 ethnic groups and more than 270 different languages.[4] Faced at independence with such a mixture of cultural, ethnic and linguistic groups, each with varying aspirations and interests, the government had to establish an institutional framework to manage

[4] Encyclopaedia of the Nations, available at <http://www.nationsencyclopedia.com/index.html> (accessed 7 February 2017).

diversity under the umbrella of unity, particularly so with regard to Anglophone and Francophone Cameroonians.

2.3 Post-colonial governance until 1996

This section examines governance under the 1961 Constitution, in which period Cameroon was a federal entity; under the 1972 Constitution, in terms of which it became a unitary state; and under the unitary 1996 Constitution.

2.3.1 Governance under the 1961 Federal Constitution

A key aspect of governance under the 1961 Federal Constitution was territorial organisation and the corresponding division of power between central and local government. Such division of power and financial resources came with challenges. Before analysing such challenges it is necessary to examine the organisation of the territory under this 1961 Federal Constitution.

2.3.1.1 Organisation of the territory under the 1961 Federal Constitution

Immediately after reunification, President Ahidjo, by decree no. 61/DF of 15 December 1961, formed a system of regional administration in which West Cameroon was made one of six administrative regions, thereby in effect ignoring the 'federal' nature of the country. Apart from being carved into these administrative regions, the country was also demarcated into 39 divisions.[5]

The 1961 Federal Constitution made no significant changes to the formal government arrangements that had operated separately in British and Francophone Cameroon before reunification. Francophone Cameroon maintained its ministerial system of a Prime Minister and Secretaries of State (Ministers). Equally, it retained its own legislature, unaltered save in name (changed from 'National Assembly' to 'East Cameroon Legislative Assembly'). West Cameroon maintained its ministerial system, complete with a Prime Minister and cabinet. Its House of Chiefs and its House of Assembly (renamed the West Cameroon Legislative Assembly) were also retained.[6]

[5] AJ Njoh 'Municipal councils, international NGOs and citizen participation in public infrastructure development in rural settlements in Cameroon' 35 (2011) *Habitat International* 101.
[6] P Konings & FB Nyamnjoh 'The Anglophone problem in Cameroon' (1997) 35 *The Journal of Modern* African *Studies* 47.

2.3.1.2 The genesis of centralisation of powers under the 1961 Federal Constitution

The Federal Constitution of 1961[7] provided a roadmap for the country's governance. Against the exclusive list of the federal responsibilities was placed that of the regional governments or federated states. Article 38(1) of the Federal Constitution stated as follows:

> Any subject not listed in articles 5 and 6, and whose regulation is not specifically entrusted by the Constitution to a federal law shall be the exclusive jurisdiction of the federated states, which within these limits may adopt their own constitution.[8]

In terms of article 5 of the 1961 Federal Constitution, the central government was responsible for matters such as national defence, border disputes between federated states, the press and broadcasting, regulating the Federal Court of Justice, nationality issues, rules governing the conflict of laws, and higher education and scientific research.[9] Article 6(1) also accorded it powers over criminal law, human rights, prison administration, the law of persons and property, labour law, public health, and secondary and technical education, amongst other important competencies. Article 6(3) of the Federal Constitution further provided that '[t]he executive or legislative authorities as the case may be of the Federated States shall cease to have jurisdiction over any such subject of which the Federal authorities shall have taken charge'.

The cumulative effect of these constitutional provisions was that the central or federal government had wide-ranging competences over all the main areas of governance; conversely, the federated states could exercise responsibility in an area of governance only if the federal government so allowed.

With regard to local government, in March 1961 two types of councils were created: councils with full autonomy with special status [*communes de plein exercice à régime spécial*] and councils with partial autonomy [*communes de moyen exercice*]. The head of the councils with full autonomy was a government delegate appointed by the President, contrary to the situation that applied to councils with partial autonomy, where the mayor was elected. The powers of the councils were also weak, given that the central government took over the running of major issues, including local development.

[7] See articles 5 and 6 of the Federal Constitution of Cameroon.
[8] See article 1 of the Federal Constitution of Cameroon.
[9] See article 5 of the Federal Constitution of Cameroon.

President Ahidjo, in October 1969, initiated several constitutional amendments to be carried out by the National Assembly. He introduced a law to allow Parliament to prolong its term of office on the recommendation of the President. This gave him the power both to designate the Prime Ministers of the regional governments or federated states as well as to legislate.[10] Ahidjo informed the National Assembly that he wanted to transform the Federal Republic into a unitary state, provided the electorate agreed to this in a referendum that was to take place in May 1972.

This proposed change was, however, in violation of article 47(1) of the 1961 Federal Constitution, which stated, 'Any proposal for the revision of the present constitution, which impairs the unity and integration of the Federation, shall be inadmissible.'[11] This vital provision had been inserted into the Federal Constitution to guarantee the federated state of West Cameroon that the form of the federation could not be easily changed via a constitutional amendment. Even so, if important provisions such as article 47(1) of the Federal Constitution were to be amended, it was not to be done via a referendum, seeing as article 47(3) stipulated that 'proposals for revision shall be adopted by simple majority vote of the members of the Federal Assembly, provided that such majority includes a majority of the representatives of each of the Federated States'.[12] Nevertheless, the guarantees contained in article 47(1) and 47(3) did not prevent Ahidjo from unilaterally amending the 1961 Federal Constitution. He did not need to depend on a supermajority procedure before a bill concerning an amendment of the Federal Constitution took effect.

2.3.1.3 Governance challenges under the 1961 Federal Constitution

Under the 1961 Federal Constitution, the central government appointed Federal Inspectors to protect its interest and oversee the activities of regional governments. As a result, however, the regional government of West Cameroon was undermined by these Federal Inspectors, who in several instances took over duties meant to be carried out by its civil servants.[13] This led to protests by the civil servants, and a complaint was sent to President Ahidjo, requesting that the

[10] FM Stark 'Federalism in Cameroon: The shadow and the reality' (1976) 10 *Canadian Journal of African Studies* 3 438.
[11] See article 47 (1) of the Federal Constitution of Cameroon.
[12] See article 47 (3) of the Federal Constitution of Cameroon. Also see P Konnings & FB Nyamnjoh *Negotiating an anglophone identity: A study of the politics of recognition and representation in Cameroon* (2003) 64.
[13] T Ngomba 'The federal system in west and east Cameroon' in VJ Ngoh (ed) *Cameroon from a federal to a unitary state 1961-1972* (2004) 89. Also see Konings & Nyamnjoh (n 12 above) 53.

Prime Minister of West Cameroon be the sole representative of the President in this regional state.[14]

By 1965, the central government, dominated by Francophone Cameroonians, had assumed most of the functions and responsibilities supposed to be under the jurisdiction of the regional governments, including internal trade, local government, social affairs, primary education and agriculture.[15] In the area of local government, a highly centralised bureaucratic system was put in place whereby the Minister of Territorial Administration received directives from the President of the Federation and relayed them to a Federal Inspector. The Federal Inspector, without engaging in any dialogue whatsoever with the regional governments, had to impose such directives on the divisions, sub-divisions and districts.[16]

The President was thus all-powerful. Although article 4 of the Federal Constitution bestowed federal authority on both the President and Federal Assembly, the President eventually obtained wide-ranging powers that enabled him to dominate and control all national institutions – developments that made the federal arrangement virtually a sham *ab initio.*

Under the 1961 Federal Constitution, democracy was thus not adequately guaranteed. There was minimal freedom of the press, for instance, and the federal government seemed unaccountable to the people. President Ahidjo dissolved political parties at will, or weakened the powers of political parties in West Cameroon and forced them to accept his idea of a single national party. Barely a month after reunification, in November 1961, the President first mooted the creation of a single national party, which he saw as a crucial step towards his goal of setting up a unitary state.[17]

Moreover, in December 1961, elections to a new enlarged West Cameroon Legislative Assembly favoured the ruling Kamerun National Democratic Party (KNDP), giving it 24 seats out of 37.[18] Although the elections were held under the auspices of the 1961 Federal Constitution, they were not considered free and fair due to the lack of an Elections Management Body (EMB) to guide the process. The elections were organised instead by the Ministry of

[14] J Benjamin *Les Camerounais Occidentaux- La minorité dans un Etat bicommunautaire* [translated by J Jotanga *West Cameroonians: The minority in a bi-cultural state*] (1987) 55.
[15] M Atanga *The Anglophone Cameroon predicament* 61.
[16] Atanga (n 15 above) 62.
[17] JM Mbaku *Institutions and reform in Africa: The public choice perspective* (1997) 80.
[18] E Ardener 'The political history of Cameroon' (1962) 18 *The World Today* 341 349.

Territorial Administration and appointed administrative authorities, all of whom were accountable to the President.[19]

In overview, then, although the 1961 Constitution created a federal system, the result in practice was a largely centralised system in which the central government dominated almost all the affairs of local government – the latter could only intervene in governance if the central government so allowed. The West Cameroon government could hardly operate properly, since it depended entirely on subventions from the federal government, which had a say over the main sources of revenue. All in all, President Ahidjo in effect put in place a parallel, centrally controlled administrative system that overshadowed the West Cameroon state government. All of this emboldened his long-term ambitions to transform the federal state to a unitary state.

2.3.2 Personalisation and further recentralisation of power under the 1972 Constitution

Between 1969 and 1971 President Ahidjo intensified his plans to transform the federal state into a unitary one. In his view, it was to promote national unity as well as peace and development; in turn, he regarded the federal system as expensive and as hampering the country's developmental and peace efforts. In 1972, he succeeded in his plans[20] with the promulgation of the Unitary Constitution of 1972 (the 1972 Constitution).

2.3.2.1 Organisation of the territory under the 1972 Constitution

A dominant central government and presidential system was created under the 1972 Constitution. The June 1972 Decree creating the United Republic of Cameroon increased the administrative regions from six to seven and renamed them as provinces.[21] Divisions, sub-divisions and districts were also redemarcated. Appointed governors were placed at the helm of these provinces, and were answerable to the President. Senior Divisional Officers (SDOs) headed the divisions, divisional officers (DOs) headed sub divisions, and district officers, the districts. More widely, the former Federated State of West Cameroon was split into the North West and South West provinces.

2.3.2.2 Reinforced central domination of local government powers

Decentralisation efforts in post-reunification Cameroon are reflected in law N°74/23 of December 5, 1974, relating to local government or local council reform (the 1974 local

[19] Stark (n 10 above) 437- 439.
[20] CL Bongfen 'The road to the unitary state of Cameroon 1959-1972' (1995) 41 *Paideuma Bd* 23-24.
[21] AJ Njoh 'Municipal councils, international NGOs and citizen participation in public infrastructure development in rural settlements in Cameroon' 35 (2011) *Habitat International* 101.

government law). This law was complemented by Decree N° 77/91 of March 25, 1977, which lays out conditions for the exercise of supervisory powers over councils. The unification of Cameroon through the constitutional reform of 1972 necessitated uniform local government legislation for the former French and English Cameroon.

Under the 1974 local government law, there were two kinds of executive councils. One was considered democratic, with the population participating in forming it. The executive council then elected the mayor and his or her assistants.[22] Under this system, which existed in France, the central administration controlled the affairs of the council, especially as the elected mayors belonged to the party in power, the Cameroonian National Union (CNU). The central administration could thus influence the decisions of councils.

In the other kind of executive council, municipal administrators were appointed for rural councils, while in councils with special status or urban councils, government delegates were appointed by the President of the Republic. The President had the discretion to create councils falling under the special regime. He could rely on factors such as economic importance to create such 'special' councils. The urban councils of Ebolowa, Bafoussam, Edea, Kumba, Garoua, Maroua and Limbe thus became 'special' councils alongside Douala, Yaoundé and Nkongsamba as a result of the passing of Decree No. 93/322 of 25 November 1993.[23]

In councils falling under the special regime, the appointed government delegate was powerful. The government delegates of Douala, Nkongsamba and Yaoundé were in charge of civil status matters and controlled the affairs of the councils, security in the councils, as well as the execution of the budget in the councils. They eventually took over nearly all the functions of mayors, whose territorial units or councils fell under the ambit of the urban council.

The municipal council as well as the urban council had a president, apart from the mayor or government delegate. The president of the municipal council was assisted by a vice-president, with both of them chosen by members of the municipal council under the same conditions which the mayor or government delegate and his assistants were elected or appointed. In effect, the duties of the president of the municipal council were honorary, and his or her action was limited to convoking the municipal council, presiding over meetings and ensuring that there was order during meetings. Article 174 of the 1974 local government law limited the role of

[22] EE Atangana 'L'institution communale de 1974 a nos jours au Cameroun', presentation given at the National School of Administration and Magistracy, (ENAM), Cameroon. Accessed on 15 September 2017.
[23] RR Oyono *Communes et Regions du Cameroun: la Décentralisation* (2011) 7-8.

the president of the municipal council to that of assisting the government delegate or mayor via consultations.

The central government ensured that a municipal administrator, answerable to the central government, was appointed to oversee the affairs of the rural councils. Such an appointee did not need to be selected from the municipal council by the central government. This mirrored the system of *sous préfet maire* (divisional officer-mayor) in sixteenth-century France, where municipal administrators were appointed and answerable to executive at the central level.

The 1974 local government law empowered the municipal council to handle all council business and to take decisions as regards political, economic, budgetary and taxation issues falling within its jurisdiction. These included drawing up the council budget, the election of mayors and their deputies, approving the management of administrative accounts of the council treasurer, approving loan agreements and the acceptance of gifts and legacies, drawing up master plans for urban or city development, as well as approving and adopting names for streets and public squares.

The most important body in the council was the executive organ. According to article 55(1) of the 1974 local government law, it was made up of a mayor assisted by deputies, whose number was determined by law and depended on the number of inhabitants in the given council area. The mayor was vested with executive authority and played an important role in policy formulation and implementation in the council. The powers and duties of the mayor included the maintenance of public law and order within the council area of jurisdiction; the maintenance of council infrastructure; and managing the implementation of decisions by the municipal council.

Two types of intercommunal cooperation existed under the 1974 local government law. The first took place through the creation of a syndicate for councils; the second type was supra-communal cooperation, which was facilitated through the Special Council Fund for Mutual Assistance (known by the French acronym, FEICOM).

The syndicate for councils was created in a bid to build harmony between the councils and promote development on the basis of common interests. Councils in divisions could undertake joint projects, upon the request of the supervisory authority (the state representative), or through joint deliberations by their executive councils. Projects included the construction of rural roads, buying equipment for public works, and delivering other local services of importance. An assistant SDO was designated as president of the syndicate for councils.

As for FEICOM, it was established by Decree No. 77/85 of 22 of March 1977. It had a major role in giving grants to councils. These grants were weighted according to a council's population, surface area and other considerations. FEICOM also authorised loans for revenue and capital spending. Similarly, it funded capital projects of social value, including schools, utilities, health care and transport infrastructure. Loans were for a maximum of two years. The proportion of loans to be granted depended on the type of project being funded. Top priorities for FEICOM's own resources included utilities and urban development. Funding was available for the training of council staff. FEICOM also provided councils other forms of non-financial support, including technical assistance and project evaluation. This was a vital role, given the lack of technical competence in many councils. FEICOM thus operated as a regulator of the management of the affairs of councils as well as a major promoter of solidarity and cooperation between councils.

As a result of the 1974 reforms, Cameroon had 174 councils, 22 of which were urban councils and 152, rural councils. In 1982, 18 new rural councils were created on the basis of the country's new sub-divisions and districts, thereby increasing the number of councils from 174 to 192.

President Paul Biya, Ahidjo's successor, inherited the highly centralised system in 1982. Through Law No. 84/001 of 1984, he expunged what many saw as one of the last symbols of the 1961 union, abolishing the appellation 'United Republic of Cameroon' and changing it to 'Republic of Cameroon', the name the French-governed part of the country adopted when it became independent in 1960.

Accordingly, the number of provinces was increased to ten. Furthermore, the urban councils of Douala and Yaoundé were transformed to urban communities by a law of 15 July 1987. Subsequently, four sub-divisional urban councils were created in the urban communities of Douala and Yaoundé (with each having two councils). The number of councils thus increased from 194 to 200.

There thus existed five types of councils under the decentralisation reforms that took place from 1982 to 1992. The first were *communes de plein exercice à regime special* (autonomous councils under the special regime). Three councils fell under this category: Douala, Yaoundé and Nkongsamba. The second type of councils were *communes de plein exercice à regime normal* (autonomous councils with normal status): 15 councils fell under this regime type. The third were mixed rural councils, with 84 councils falling into this category. The fourth type

were *communes rurales de moyen exercice* (rural councils with limited autonomy), and the fifth, *gouvernements locaux de l'ex-Cameroun Occidental* (local government areas which fell under former British Cameroon).

In Cameroon before 1992, DOs were given the powers of collecting taxes '*impot forfaitaire'*. This duty became the full competence of the mayors. DOs therefore became supervisory authorities in the collection of taxes, and not tax collectors. New taxes were introduced at the level of councils, thus increasing their tax base. These included taxes deducted at source, especially on revenue earned in councils, taxes on firearms, and part of the taxes levied on the exploitation of council forests. Taxes were also levied on natural persons, businesses, land, and games and entertainment.

Ambiguity in key provisions of the 1974 local government law enabled central government officials known as supervisory authorities, such as the SDOs and DOs, to encroach on the powers and prerogatives of local government officials such as mayors. These supervisory authorities effectively transformed their authority merely to 'supervise' into an authority to command, issue orders, give instructions, and exercise formal control over local government resources. Even in those limited matters where powers were expressly devolved by law to local authorities, such powers meant little in practice because their implementation was subject to stringent central government controls. As a result, there was no effective participation and representation because there was scant room for participation and representation at local level.

The circumstances under which the country gained independence and evolved its political and administrative institutions were thus not favourable for decentralisation. Moreover, since independence Cameroon has been ruled by a regime whose governing elite has a strong propensity for rent-seeking and influence-peddling. This elite can neither tolerate nor conceive of any centres of decision-making other than the central state apparatus.

Furthermore, the key provisions of the 1974 local government law, especially those concerning central-local relations, were ambiguous with regard to decentralisation. This incompatibility provided an inroad for the decentralisation process to be hijacked or distorted at the level of implementation. Instead of fostering democracy, decentralisation led to greater corruption and élite capture. The first-generation leadership thus opted for the construction of a strong state with an all-powerful central government. The conversion of the state into a mode of production, a practice whose genesis can be traced back to the colonial state, also served as a *raison d'être* for the creation of a strong state.

Intensifying state centralisation was accompanied by increased repression, economic mismanagement and the exclusion of opposing voices. By the late 1980s, a steep decline in the Cameroonian economy, coupled with dissatisfaction with chronic corruption and frustration at the defects of the authoritarian state, led to a grave political crisis fraught with riots, strikes and demands for constitutional change.[24]

The political environment which was characterised by several changes through increasing demands for political liberalisation, was spearheaded by the Anglophone minority that had since independence witnessed increased marginalisation, with respect to insufficient representation in public administration and poor socio-economic development.[25] These demands were met with a lot of resistance from the regime in power. In February 1990, a group of Anglophone elites were arrested for organising meetings concerning the declining political and economic conditions and the possibility of creating another political party apart from the ruling Cameroon Peoples' Democratic Movement (CPDM). They were also accused of instigating secession. This incident sparked more tension as it had become obvious that the government in power was not ready for any democratic changes.[26] The regime in power argued that the country was not ready for multiparty politics for it would lead to instability and ethnic division. The government's position instead fuelled more resentment and in May 1990 the Social Democratic Front (SDF), the main opposition party was created,[27] which led to more government resistance alongside civil disobedience. In an attempt to ease the political tension, the regime in power made some reforms by allowing for some limited degree of press freedom and the creation of political parties. The opposition continued to request for a sovereign national conference for issues such as decentralisation to be discussed, but the government continued to resist to such demands. International donors such as the World Bank and the International Monetary Fund (IMF) added pressure to the regime in power for a constitutional revision which would include most importantly decentralisation amongst other constitutional reforms. [28]

[24] CM Fombad 'Cameroon's constitutional conundrum: Reconciling unity with diversity' in the Kenyan section of the International Commission of Jurists *Ethnicity, human rights and constitutionalism in Africa* (2008) 133.
[25] Konings 'The Anglophone Struggle for Federalism in Cameroon' in L Basta & J Ibrahim (eds) *Federalism and Decentralisation in Africa: The Multicultural Challenge* (1999) 305-307.
[26] J Takougang & M Krieger *An African State and Society in the 1990s: Cameroon's Political Crossroads* (1998) 105.
[27] Konings (n 25 above) 307.
[28] V Ngoh 'Biya and the Transition to Democracy' in J Mbaku & J Takougang (eds) *The Leadership Challenge in Africa: Cameroon under Paul Biya* (2004) 432-437.

In reaction to demands for a sovereign national conference, President Biya finally gave in and in October-November 1991 organised, on his own terms, what was called a 'Tripartite Conference', one composed mainly of his appointees and functioning within a limited agenda. The Technical Committee on Constitutional Matters (TCCM) he appointed was made up of four Anglophone and seven Francophone Cameroonians, tasked with the job of coming up with the outlines of a 'new' constitution. This conference eventually led to the entrenchment of decentralisation in the oddly labelled 1996 'amendment to the 1972' constitution.[29] To understand the challenges facing governance today, it is important to grasp the major features of this constitution.

2.4 An overview of the main features of the 1996 Constitution

The Constitution begins with a preamble that describes Cameroonian linguistic and cultural diversity as integral to the country but which expresses the desire to create a unitary government. It outlines the ideals upon which the country is built as 'fraternity, justice and progress.' The preamble asserts equally that the Cameroonian people shall advance 'ever-growing bonds of solidarity among African Peoples' and shall respect the 'principles enshrined in the UN Charter'.

The Cameroonian political system, although principally presidentialist, is a hybrid of the United States' (US) system of semi-rigid separation of powers and the French system of limited separation of powers. In this respect, the 1996 Constitution acknowledges the principle of separation of powers. It covers what is considered as 'executive power' in Part II, 'legislative power' in Part III, and 'judicial power' in Part V. Three sections of the Cameroonian Penal Code, namely sections 125, 126, and 127, furnish penal sanctions against any persons who violate the principle of separation of powers. The provisions are as follows:

> **Section 125:**
>
> Any public servant who –
>
> (a) Assumes the exercise of legislative power; or
>
> (b) Refuses to enforce any provisions of law –
>
> shall be punished with detention for from six months to five years.

[29] Fombad (n 24 above) 133.

Section 126:

Whoever –

(a) Being the representative of the executive authority, issues any

order or prohibition to any court; or

(b) Being a legal or judicial officer, issues any order or prohibition

to any executive or administrative authority –

shall be punished with detention for from six months to five years.

Section 127: Any judicial, legal or investigating police officer who contrary to any law conferring immunity prosecutes, arrests or tries a member of the federal or federated Government or of the federal or federated Assembly, shall be punished with detention for from one to five years.

These provisions, along with various modifications, attempt to usher into the Cameroonian constitutional system the original French approach to separation of powers. The French Basic Laws of August 1790 laid emphasis on the separation of judicial and administrative functions. The Cameroonian Penal Code goes a step further than the French law, which penalises judges only with forfeiture, in that the Cameroonian judge is not only liable to forfeiture but can also be detained.[30]

However, scrutiny of the Constitution reveals that although it advocates for the separation of powers based on collaboration and cooperation between the three organs of power, the exorbitant powers bestowed on the executive, enables it to dominate the legislative and judicial organs entirely.

2.4.1 The Executive

The Constitution both consolidates and increases the already-extensive powers bestowed on the President under the 1972 Constitution. This is evident in many ways. For instance, according to article 5(1), he is to be considered a symbol of national unity, which implies he has regal status of some kind. He is required to give policy direction to the nation, to ensure

[30] See, for instance, HNA Enonchong *Cameroon Constitutional Law: Federalism in a Mixed Common Law and Civil Law System* 103-104.

the Constitution is respected, and to ensure via arbitration that public authorities function properly. He is also required to act as a guarantor of the nation, its territorial integrity, its permanency and continuity, and its international agreements and treaties. In a nutshell, the President incarnates the Cameroonian state. Considering his dominant position *vis-à-vis* not only the judicial and legislative power but within the executive, it can be argued that he has been given the power not only to rule but to reign.

The President nominates all senior officials in the public service, including general managers of para-public institutions, as well as ministers. Although article 12(1) of the Constitution declares the Prime Minister as the head of government who 'shall direct its action', in actuality he, like the other members of government, is appointed and can be dismissed at the whim and caprice of the President. The dominant position of the President is underscored in article 11, which stipulates that 'the Government shall implement the policy of the nation as defined by the President'. As such, the head of government (the Prime Minister) seems to do no more than play the role of a coordinator of the actions of the members of government, particularly since his precise duties depend on what is delegated to him by the President.

One may imagine that the relationship between parliament and the executive is one founded on separation of powers and mutual collaboration; it is, in fact, ultimately based on the domination of the former by the latter. For instance, in terms of article 8(12) of the Constitution, where the President deems it 'necessary', 'after consultation with the Government, the Bureau of the National Assembly and the Senate', he may dissolve Parliament. Equally, under article 15(4), he may, in scenarios of 'serious crisis', demand, by law, that the National Assembly abridge or extend its term of office.

The Constitution thus gives exclusive powers of law-making to the government or, more precisely, the President. It also gives him quasi-judicial powers in at least three respects. First, article 8(8) confers on him 'statutory authority'. It is on this basis that he makes presidential decrees. Secondly, article 27 states that issues not reserved to the legislative authority shall fall under the jurisdiction of the power with authority to issue rules and regulations. Finally, the President may also exercise his regulatory power in the domain usually reserved to the legislative arm of government. Such regulations are called ordinances, and need to adhere to the procedure laid down in article 28.

The President, as the incarnation of the power and authority of the state, is endowed with several powers *vis-à-vis* the judiciary. He has to ensure that the Constitution is respected as

well as act as the guarantor of the independence of the judiciary. The effect the President's power has on the judiciary is analysed below.

2.4.2 The Parliament

One of the innovations of the Constitution was its bicameral parliamentary architecture. Under article 14, legislative power is conferred on Parliament, which is constituted of two Houses: the National Assembly and the Senate. Before 1996, the former West Cameroon had a bicameral system inherited from the colonial era: just prior to reunification and until 1972, there existed the West Cameroon House of Chiefs, functioning as a second chamber to the West Cameroon House of Assembly.[31]

Notwithstanding that article 14(2) stipulates that both the National Assembly and the Senate, acting as Parliament, 'shall legislate and control government action', they do not operate on an equal basis as they do not possess the same powers: the Senate has less influence and powers than the National Assembly. This is comprehensible, since the senators represent only the regional and local authorities and are either elected by indirect universal suffrage or appointed by the President,[32] whereas all the members of the National Assembly are elected via direct and secret universal suffrage and represent the entire country.[33]

Though the principle of bicameralism was introduced in the Constitution, the Senate became operational only in 2013. The Cameroonian Parliament is regarded as an organ that simply rubber-stamps what the government tables before it and thus of little importance to the daily concerns of the ordinary populace. The reintroduction of multipartyism has not changed the *status quo* significantly, especially as several of the rules and regulations utilised by the National Assembly were introduced during the era of one-party rule. Another reason for this situation is that the ruling Cameroon People's Democratic Movement (CPDM) has a substantial majority over opposition parties and has prevented any serious alteration to parliamentary procedure.

Thus, the Senate as a second chamber is still to produce the results for which it was intended. Presently, it is considered an additional financial burden to the state at a time of severe

[31] Section 236 of the Nigerian (Constitutional) Order in Council 1954 provided for the West Cameroon House of Chiefs. Article 38(2) of the 1961 Federal Constitution of Cameroon retained the West Cameroon House of Chiefs. At the same time, the West Cameroon Legislature was defined under section 5 of the West Cameroon Constitution as being composed of the head of State, the House of Chiefs and the House of Assembly.
[32] See article 20(1) and (2) of the Constitution.
[33] See article 15(1) and (2) of the Constitution.

economic crisis, with no major gains in view. Besides, the very process of the selection of its members – the senators – is seen as undemocratic, especially as the President has the discretion to appoint 30 of the 100. The 180 places in Parliament are divided among 58 constituencies utilising a complicated mix of single- and multiple-number constituencies involving a combination of proportional representation and winner-take-all majoritarianism. The term of office of Members of Parliament of both Houses is five years. Both the Senate and National Assembly are expected to hold, as of right, three ordinary sessions every year, with each of such sessions lasting not more than 30 days, along with extraordinary sessions if need be.

Article 14(1) of the Constitution stipulates that legislative power is to be exercised by the National Assembly and the Senate. The legislative procedure is only complete when the President enacts laws passed by the National Assembly and the Senate. With Parliament composed mostly of the ruling CPDM, little meaningful challenge takes place during parliamentary committee debates. According to article 11 of the 1996 Constitution, the government shall 'be responsible to the National Assembly'. However, the various ways furnished for controlling and supervising the government have not been as efficient as in a normal democracy. It was understandable that under the one-party system no parliamentarian could go against the position of the government, given that his or her seat would have depended on loyalty to the CPDM and the government, but although the country has operated under multipartyism since 1992, the conspicuous dominance of the ruling party, in addition to the weakness of and division among the opposition parties, has made it extremely difficult all the same for Parliament to exercise effective and meaningful supervision and control over the government.

2.4.3 The Judiciary

A notable change ushered in by the Constitution, particularly its article 37, is the replacement of the appellation 'judicial authority' with 'judicial power'. This has led to doubts over whether the appellation 'judicial power' has made any difference to the judiciary, especially in relation to the separation of power.[34] The new appellation should be viewed with skepticism, because, as shall soon be seen, the judiciary is controlled by the President in various ways.

[34] See LS E Enonchong *The Problem of Systemic Violation of Civil and Political Rights in Cameroon: Towards a Contextualised Conception of Constitutionalism* (unpublished PhD thesis, School of Law, University of Warwick, 2013) 188-193. Enonchong argues that many a time court orders against the government are not enforced because judges and law enforcement officers a bound to abide to instructions from the executive and most especially the Minister of Justice. This makes the 'judicial power' of the judiciary weak. Also see *Nji Ignatius*

Simply utilising the appellation 'judicial power' cannot on its own transform the judiciary into a separate branch of government *stricto sensu.* All the same, judicial power lies strictly in the courts, although the judges exercise it. The design and functioning of the courts in any country usually reflect how independent and powerful the judiciary is *vis-à-vis* the legislature and the executive. At the helm of the judiciary in Cameroon is the Supreme Court which, as in the case of the Constitution of the US, is the only court mentioned in any detail in the Cameroonian Constitution. As for the design and *modus operandi* of other courts referred to in Part V of the Constitution, this is left to the whim and caprice of subsequent legislators.

Currently, the structure and organisation of courts is based on Law No. 2006/015 of 29 December 2006 on Judicial Organisation. The organisation of the courts, according to section 3 of this law, is as follows:

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

The Supreme Court is at the top of the judicial ladder in the Cameroonian legal system. However, since the advent of the Organisation for the Harmonisation of Business Law in Africa (OHADA) Treaty, the Common Court of Justice and Arbitration (CCJA) in Abidjan is the highest court with respect to commercial matters. All the same, it can be said that, based on the 1996 Constitution and the 2006 law, the courts in Cameroon are of three types: courts of ordinary jurisdiction; administrative courts; and courts with special jurisdiction.

The first category, known as courts of ordinary jurisdiction, are those with the competence to hear and determine actions of every nature, be it criminal or civil. Such courts include Courts of First Instance, Customary Law Courts, High Courts, Courts of Appeals, and the Supreme Court. But for the Supreme Court, which has competence all over the national territory, all the

v The People, HCF/22M/03-04 (where security officers refused to release confiscated property following a court order).

other courts are highly decentralised. Two fundamental innovations were ushered in by the Constitution. The first is to do with provisions regarding the creation of decentralised 'courts' to deal with audit matters; the second relates to the decentralisation of administrative matters, which previously fell exclusively within the Supreme Court.

The Constitution brought in another innovation by providing for a decentralised procedure for the handling of administrative disputes or conflicts, thus replicating the French system in which a separate system of administrative courts handles such issues. Before then, the Supreme Court, acting as both the appellate and original jurisdiction, handled all administrative matters. This innovation was significant, since now minor cases of administrative conflicts can be handled by separate administrative courts, thus saving costs for litigants who previously had to go to the Supreme Court in Yaoundé.

However, despite such innovation, the administrative courts remained dormant for more than ten years, especially as cases were not brought before this jurisdiction. It was only in 2006 that laws to regulate the *modus operandi* of these courts were adopted, thus taking an important step in rendering them functional. There are two main categories of administrative courts in Cameroon: the specialised courts and the ordinary administrative courts. Of the several specialised administrative courts in the country, the Audit Courts happen to be the only ones that are formally regulated. These administrative courts share two major features in common with the ordinary courts: first, they all have the Supreme Court as the final court; secondly, they are decentralised courts and function within a hierarchy.

Though article 37(2) makes mention of an independent judiciary, the extent of such independence is provided for in article 37(3), which stipulates that the President shall guarantee the independence of the judicial power. He shall appoint members of the bench and of the legal department. He shall be assisted in this task by the Higher Judicial Council, which shall give him its opinion on all nominations for the bench and on disciplinary action against judicial and legal officers. The organisation and functioning of the Higher Judicial Council shall be defined by law.

The Constitution also brought in a new institution, the Constitutional Council (the Council), which is tasked with the responsibility of overseeing issues involving the constitutionality of the law.[35] Another important task of this organ is to regulate conflict of powers between the

[35] Article 46 of the Constitution.

central government and regions, between state institutions, and between regions.[36] Entrenched in the Constitution in 1996, this institution only went fully functional in 2018. In the interim, the Supreme Court thus sat in for it on matters concerning the mitigation of conflict between state organs responsible for decentralisation and the constitutionality of the law.[37]

2.5 Challenges to governance today

Contemporary Cameroon faces a variety of governance challenges. These include difficulties in addressing the country's dual heritage, particularly so in finding a solution to the Anglophone problem. Other challenges are embracing constitutionalism; tackling minority concerns, such as the rights of women and indigenous people; incorporating traditional systems of governance; and managing the transition from authoritarian to democratic governance.

2.5.1 Uniting Cameroon's dual heritage: Perceptions of Anglophone marginalisation

One of the vital concerns the Constitution sought to address is the bi-cultural nature of the country, specifically as manifested in the Anglophone problem.[38] The concerns of Anglophone Cameroonians are threefold.

First, having lost the very minimal regional autonomy they enjoyed under the 1961 Constitution in 1972, most Anglophones have been relegated to inconsequential and inferior positions in the national decision-making agenda.[39] Under the 1961 Federal Constitution, the Vice-President was the second-most important person in state protocol. Though this is not constitutionally entrenched, today the Prime Minister, an appointed Anglophone, is the fourth-most important person in state protocol, after the President of the Senate and the President of the National Assembly. Other government-appointed officials such as the SDOs, the DOs and the forces of law and order are disproportionately Francophone; similarly, magistrates in the Anglophone regions are disproportionately Francophone. The majority of principals in

[36] Article 47(1) of the Constitution.
[37] Article 67(4) of the Constitution.
[38] See, for instance, FB Nyamnjoh Cameroon: A Country United by Ethnic Ambition and Difference (1999) 98 *African Affairs* 101. See also E Lyombe ' The English-Language Press and the 'Anglophone Problem' in Cameroon: Group Identity, Culture and the Politics of Nostalgia' <https://bit.ly/2Rla6KH> (accessed 20 April 2017).
[39] P Konings & FB Nyamjoh ' President Paul Biya and the 'Anglophone Problem' in Cameroon' in JM Mbaku & J Takougang (eds) *The Leadership Challenge in Africa: Cameroon Under Paul Biya* (2004) 192.

Anglophone schools are Francophone, and those heading hospitals, major banks and mobile telephone companies are predominantly Francophone.[40]

As of October 2017, there were five Ministers in charge of education, none of whom was Anglophone. Of the 36 Ministers who defended the budgets for the Ministries in 2017, only one was Anglophone. Most of the military tribunals in the North West and South West regions conduct their sessions in French.

Secondly, since 1961 there has been a perception that the South West and North West regions are economically underdeveloped compared to the other eight regions. As of October 2017, the major road linking the West region to the North West remained dilapidated. In fact, in yesteryears passengers used to take about 30 minutes from the West to the North West via this road; today it takes four hours to get to Bamenda, the headquarters of the North West. Roads linking other divisional headquarters in the region are also in a deplorable state, in addition to which the region lacks basic social amenities such as health facilities, water and electricity.

Thirdly, allegations have been made of an intentional policy of assimilation of Anglophones into French culture and tradition. The prioritisation of the French language over the English adds to the marginalisation problem, especially in state institutions. The latter present documents and public notices in French, with little or no English-language translations. Most of the heads of government offices speak only French, even in English-speaking regions. Visitors and clients to government offices are then expected to reply in French.

Most senior administrators and members of the forces of law and order in the North West and South West regions are French-speaking and make little effort to demonstrate an understanding of Anglophone culture. Members of inspection teams, missions and facilitators for seminars sent from the Ministries in Yaoundé to the Anglophone regions are mostly French-speaking, and the English-speaking audience is required to understand them. The national entrance examinations into schools such as the National School of Administration and Magistracy (with French acronym ENAM) are set by the French Subsystem of Education. This makes it difficult for Anglophones and Francophones to compete on an equal playing field. The examination board members are mostly Francophone, which makes bias against Anglophone candidates a real possibility.

[40] See *Kevin Mgwanga Gunme et al v Cameroon Communication 266/2003* available at <http://www.achpr.org/english/Decison _Communication/Cameroon/Comm.266-03.pdf> (accessed 8 June 2017).

2.5.2 Weak framework for constitutionalism

Constitutionalism has no universal meaning. As such it has been ascribed a multiplicity of meanings and interpretations.[41] Some authors consider two perspectives as important in the understanding of constitutionalism.

The first perspective considered as a historical purport of constitutionalism, is that it focuses on the limitation of governmental power.[42] This perspective was seriously contested for it tended to consider constitutionalism simply as centred just on limiting the powers of government.[43] According to the author Backer, constitutionalism focused only on the idea of limiting government power and not on the ends of the limitation.[44] This first perspective has thus evolved to include the importance to better organise and control governmental power to include the enhancement of effective and good governance objectives.[45] For instance the promotion and protection of fundamental rights is essential for good governance[46] and has increasingly become fundamental in defining constitutionalism.[47] Authors such as Squires therefore opine that constitutionalism should comprise of two elements namely, the structural provisions for controlling and regulating governmental power and the rights provisions which are seen as providing constraints on the political process.[48]

The second perspective considers constitutionalism as a process through which governmental powers and citizens articulate competing interests and mediate conflict.[49] It underscores the role of participation and deliberation in decision making processes. Supporters of this perspective concur that the articulation of competing interests and the mediation of conflict should be carried out through institutional structures and pre-established processes, governed by a normative standpoint, usually the constitution.[50] The constitution should therefore prescribe guidelines such as the form of participation of different stakeholders, the method of

[41] L Henkin 'A New Birth of Constitutionalism : Genetic Influences and Genetic Defects in M Rosenfeld (ed) *Constitutionalism, Identity , Difference and Legitimacy : Theoretical Perspectives* (1994) 40.
[42] C Mcllwain *Constitutionalism: Ancient and Modern* (1940) 24.
[43] L Backer 'From Constitution to Constitutionalism: A Global Framework for Legitimate Public Power Systems' 113 (2009) *Penn State Law Review* 3, 101, 103, 115.
[44] Backer (n 43 above) 115.
[45] J Hatchard et al (eds) *Comparative Constitutionalism and Good Governance in the Commonwealth : An Eastern and Southern Perspective* (2004)7.
[46] United Nations Development Programme 'Governance for Sustainable Human Development' (UNDP policy document, New York, 1997) <http://mirror.undp.org/magnet/policy/> (accessed 20 May 2019).
[47] I Shivj 'State and Constitutionalism: A New Democratic Perspective' in I Shivj (ed) State and Constitutionalism in Africa (2000) *Centre for Democracy and Development Occasional Series Paper* No. 413, 13.
[48] J Squires 'Liberal Constitutionalism, Identity and Difference' in Bellamy & Castiglione (eds) *Constitutionalism in Transformation: European and Theoretical Perspectives* (1996) 209.
[49] A An-Na'im *African Constitutionalism and the Role of Islam* (2006) 4-5.
[50] An-Na'im (n 49 above) 4-5.

accountability and the allocation of powers.[51] This perspective equally gives importance to the promotion and protection of fundamental human rights.[52]

Both perspectives appear to give importance to governmental powers and the exercise of those powers. Both perspectives equally focus on how citizens interact with government institutions and powers to achieve certain objectives, most especially the promotion and protection of fundamental rights.

The author An Na'im argues that these experiences and practices are useful, but should not be used as a conventional model for constitutionalism especially in Africa. Under different country contexts, other mechanisms of political and legal accountability may be appropriate for constitutionalism to prevail. Therefore universal principles and institutions of constitutionalism should be adapted to social, political and economic realities of each country.[53]

The modern concept thus rests on two pillars: first, the existence of certain limitations imposed on the state, especially in its relations with citizens, and on the basis of clearly defined fundamental principles; secondly, the existence of a clearly defined *modus operandi* for making sure that the limitations on the government are legally enforceable. In this perspective, modern constitutionalism has six elements: the review of the constitutionality of laws; the recognition and protection of fundamental rights and freedoms; an independent judiciary; the separation of powers; the control of the amendment of the constitution; and institutions that support democracy.

Three key points can be derived from this definition. First, the presence and institutionalisation of these major ingredients do not necessarily guarantee constitutionalism. Nevertheless, their presence creates room for the enhancement of constitutionalism. In the absence of such elements, the chances of constitutionalism prevailing are bleak. Secondly, it is the cumulative effect of these principles that enhances the prospects for constitutionalism. Finally,

[51] An-Na'im (n 49 above) 4-5.
[52] An-Na'im (n 49 above) 5.
[53] A An-Na'im 'The National Question: Secession and constitutionalism: The mediation of competing claims to self determination' in D Greenburg et al (eds), *Constitutionalism and Democracy: Transitions in the Contemporary World* (1993) 106.

constitutionalism is by no means a static doctrine: its underlying principles are bound to change as better methods are devised to protect citizens and limit government.[54]

The notion of constitutionalism as understood today can be said to embrace the idea that a government should not only be adequately limited in a manner that protects its citizens from arbitrary rule but be capable of operating efficiently and effectively within its constitutional limitations. In other words, constitutionalism embodies the idea of a government limited in its action and accountable to its citizens for that action.

A constitution is only as good as the *modus operandi* put in place for ensuring that its provisions are respected by all citizens and violations of it promptly sanctioned. An independent judiciary is made mention in articles 37 to 42 of the Constitution. The notion of judicial independence is expressly stated in article 37(2) of the same, which provides that 'the judicial power shall be independent of the Executive and Legislative power'.[55]

However, by way of example, in *The People v Nya Henry*,[56] the magistrate could not conceal the fact that he was under coercion from the executive. He could see that at the very least his career would be jeopardised if he decided the case in a manner that went against its directives; indeed, within months of the decision in *Nya Henry,* which did go against the directives of the executive, the magistrate was sacked from his position.[57]

Another case worth mentioning of lack of judicial independence is the case of *Wakai v The People*, [58] which concerns a bail application made to the Mezam High Court in the North West region. The applicants, supporters of the major opposition party, the Social Democratic Front

[54] CM Fombad 'Challenges to constitutionalism and constitutional rights in Africa and the enabling role of political parties: Lessons and perspectives from Southern Africa' (2007) 55 *The American Journal of Comparative Law* 1, 7-8.

[55] Although there is no universally accepted definition of what an independent judiciary is, as shall be examined in chapter 3, section 3.3.2.2, an independent judiciary may be considered as one free to render justice all issues of constitutional and substantial legal importance, without fear of reprisal, intimidation or threat from the executive. Other aspects may include the mode of appointment of judges, promotion, transfers, discipline and remuneration of judges. See CM Fombad 'Some perspectives on the prospects for judicial independence in post-1990 African Constitutions' (2007) Public Law 233-57. For more discussions on judicial independence in Cameroon, see E Enonchong (n 34 above) 147-198.

[56] *The People v Nya Henry & Others* (2005) AHRLR 101 (CafI 2001).

[57] N Enonchong 'The African Charter on Human and Peoples' Rights: Effective remedies in domestic law? (2002) 46 *Journal of African Law* 197 215.

[58] *Wakai v The People,* 1997 (ICCLR) 127. Other cases of lack of judicial independence include *Me Eyoum et Cie v Etat du Cameroun,* Ordonnance N0 33/HC/TGI, Mfoundi of 27 2010. Also see S.*D.O v Shey & Oku Rural Radio Association,* Suit No.HCB/05M/2003-2004, affd (2005) BCA/17/2005 (unreported) (where the S.D.O refused to appear in court after being summoned on several occasions for restricting a radio station to operate). Also see DS Oyebowale v Company Commander Fako, Suit No. HCF/0040/HB/09 (unreported) (where a Nigerian arrested on the high seas was found innocent by the courts , but refused to be released despite his ill health.

(SDF), were arrested following demonstrations against the results of the 1992 Presidential elections which were allegedly rigged by the incumbent, President Paul Biya. The court noting the manner in which the applicants were arrested and detained in poor conditions, granted them bail. The government refused to set them free and instead transferred them to a political capital, Yaoundé. The lead judge was transferred to a different jurisdiction and the other judges equally sanctioned with punitive transfers to remote areas.

The lack of an efficient and effective system of judicial review is also one of the principal deficiencies of the 1996 constitutional framework.[59] Judicial review may operate in terms of the review of the legality of administrative acts (administrative review), the review of legislation for compatibility with the Constitution (constitutional review) and review of legislation for compatibility with international instruments (conventional view).[60] With regard to constitutional review, Articles 46 and 47 of the Constitution give the Constitutional Council (the Council) the latitude to regulate the way institutions operate and to mediate any 'conflicts between the state and the Regions, and between the Regions'. However, only the Presidents of regional executives may bring conflict-related concerns to this organ 'whenever the interests of their Regions are at stake'. This is undoubtedly a retrogressive move in bringing about the democracy envisioned in the Constitution. The Council scarcely provides a rational method for solving the many disputes that emanate from intra-local government relations or local government interactions with central government. Moreover, there are serious concerns about the effectiveness of such a dispute-resolution organ *per se*.[61]

To begin with, there is no clarity as to the meaning of the sentence in article 46 that the Council is to operate as the 'organ regulating the functioning of the institutions'. Furthermore, the Council was created only in 2018, 22 years after the Constitution came into being. Before then, its functions were 'temporarily' carried out by the Supreme Court, with the legality of its having done so remaining highly questionable.[62] Additionally, apart from conflicts regarding disputed parliamentary and presidential elections, the ordinary citizen cannot bring any cases

[59] See CM Fombad 'The new Cameroonian Constitutional Council in a comparative perspective: Progress or retrogression?' (1998) 42 *Journal of African Law* 172-186.
[60] Enonchong (n 34 above) 199-244.
[61] It is important to note that the functions of the Constitutional Council as a dispute resolution mechanism is clearly distinct from its function as a constitutional review institution. As shall be examined in Chapter 5, section 5.6, the framework provided for constitutional review is so inadequate that, it undermines effective constitutional review in Cameroon. The weaknesses relate to the effect of decisions on the constitutionality of a law, the limited scope of review and the limitation of the of the category of persons that have access to the Constitutional Court.
[62] See CM Fombad ' The Cameroonian Constitutional Council: Faithful servant of an unaccountable system in CM Fombad (ed) *Constitutional Adjudication in Africa* (2017).

before the Council. Finally, as mentioned, article 47 (2) limits the competence to forward cases before the Council to only the Presidents of the regional executives. There is indeed no efficient and effective system for constitutional review under the Constitution.

As regards the promotion and protection of human rights, the Constitution, unlike most post-1990 constitutions, lays emphasis almost entirely on civil and political rights, although some mention is made of certain social and economic rights.[63] Almost all the fundamental rights outlined in the Constitution are found only in the preamble.[64]

Some major UN treaties have been signed by Cameroon.[65] Equally, it has signed and ratified the African Charter on Human and Peoples' Rights (the ACHPR).[66] The country has opted for a monistic system with respect to international law: all international treaties Cameroon has approved and duly ratified and published are supposed to become part of domestic law.[67] International law does not necessarily need to be domesticated into national law by another legal instrument, since the act of ratifying immediately converts the treaty into domestic law. Furthermore, article 45 of the Constitution confers a higher normative status on such agreements or treaties that enables them to trump any domestic legislation that goes against them, not excluding the Constitution.[68]

While article 65 asserts that the preamble is an integral part of the Constitution, the non-provision for an enforcement mechanism for human rights portrays the bad faith of the constitutional architect. By implication human rights are thus not justiciable in Cameroon. Additionally, in Cameroon, socio-economic rights for instance may be considered as simply state directive principles without any signs of future commitment to their justiciability in post-

[63] The preamble to the Constitution.
[64] Among them are the right to equality and non-discrimination (this includes the rights of the aged, the rights of persons with disabilities, and the rights of women); freedom of opinion and expression (including freedom of the press); freedom of movement (including freedom of choice of residence); the right to privacy; rights relating to property; the right to a fair trial (including the right of access to justice); rights related to liberty and security of the person; freedom of association (including the right to form unions); freedom of thought, conscience, and religion; freedom from torture and cruel, inhuman and degrading treatment or punishment; freedom of assembly; the right to work (including the right to strike); the right to education; the right to participation in government and to vote; the right to protection of the family (including the rights of children); rights to the environment; and rights of minorities.
[65] See the Office of the High Commissioner for Human rights (OHCHR) available at <http://www2.ohchr.org/english/law/index.htm#core> (accessed 6 October 2017).
[66] See Okafor OC *The African Human Rights System, activist forces and international institutions* (2007) 248. See also C Diwouta 'The impact of the African Charter and Women's Protocol in Cameroon' in The Centre for Human Rights, University of Pretoria *The impact of the African Charter and Women's Protocol in selected African states* (2012) 21. Cameroon signed the African Charter on Human and Peoples' Rights of 1981 (ACHPR) on 23 July 1987 and ratified it on 20 June 1989.
[67] Article 45 of the Constitution.
[68] Article 45 of the Constitution.

independence Cameroon.[69] This makes the inclusion of Article 65 in the 1996 Constitution a possible excuse for the executive arm of government to avoid criticism, responsibility, or better still, government merely wants to demonstrate its commitment in principle to the UN's human rights treaties to which it is party, while in practice the situation remains precarious.[70]

Enforcing fundamental rights entrenched in a constitution is vital to their effectiveness. Constitutionally promoting and protecting human rights under the Constitution remains a serious hurdle, especially due to the lack of adequate enforcement measures for upholding these rights.[71] Exhaustively mentioning rights in a constitution does not suffice. It is important to make sure that any violations of human rights are quickly attended to: the lack of adequate enforcement bodies makes a constitution a valueless instrument.

The scope of application and enforceability of human rights under the Constitution are thus limited. Instead of having these rights enshrined in a well-structured bill of rights, they are set

[69] See JN Wanki 'Convergence or divergence in text and context? Reflections on Constitutional Preambles in the Constitution-making exercises of post-independence Cameroon and post-apartheid South Africa' (2018) 33 *South African Public Law* 2, 12-14. Also see J Frosini 'Constitutional preambles: More than just a narration of history' (2017) *University of Illinois Law Review* 603 604-605. While many so-called former colonies or overseas French territories such as francophone Africa adhered to their new institutions; such as the *Conseil constitutionnel* of France; this institution's power of '*regulateur de l'activité des pouvoirs publics'* is neutralized or absent in the *Conseil constitutionnel* of Cameroon. France's preamble enshrining of declarations such as the Declaration of the rights of man and Citizens of 1789 and other human rights charters which have been made justiciable by virtue of the *Conseil Constitutionnel* judgments of DC 70-39 and DC 71-44 is evidence of French constitutional exceptionalism. The Cameroon constitution in adopting this same French approach does so in bad faith. The human rights in the French constitutional preamble are justiciable by virtue of the fact that the terms of the preamble could be used in judicial review by the *Conseil Constitutionnel*. This means that the human rights enshrined in the French preamble are on a par with the rest of the constitution and therefore justiciable. This is however not the case with the Cameroonian Constitution which takes its cue from the French constitution of 1958.

[70] Though the Cameroonian Courts have enforced human rights and sometimes referred to the Preamble in doing so as in the case of *The People v Nya Henry,* the promotion and protection in the case of Cameroon remains wanting. Owing to the fact that Cameroon and South Africa have gone through common historical experiences and currently have similar legal systems, a juxtaposition of the two constitutional preambles vividly exposes the lapses in the Cameroon constitutional preamble. For instance Para 2 of the Preamble of the South African Constitution recognises the injustices of the past, injustices such as the dispossession of African's peoples' land. Such injustice can be recognised by restituting the land back to them without any condition. The preamble of the South African Constitution indirectly highlights the need for the justiciability of socio-economic rights. Also see Para 7 of preamble states '...heal the divisions of the past and establish a society based on democratic values, social justice and fundamental human rights.' The preamble progresses to expressly highlight the protection of human rights which include socio-economic rights. These declarations are reaffirmed in articled provisions of the Constitution, particularly in the Bill of Rights. See Article 8 of the South African Constitution. In the case of Cameroon, the Constitution does noting more that simply stating in Article 65 that the preamble is an integral part of the Constitution without further providing sufficient modalities and avenues where a case can be made for their justiciability.

[71] NN Nkumbe 'The effectiveness of domestic complaint mechanisms in the protection of human rights in Cameroon' (2011) 5 *Cameroon Journal of Democracy and Human Rights* 2 30-50. An assessment of enforcement mechanisms for upholding human rights in Cameroon reveals that the institutions tasked with the promotion and protection of human rights are inadequate. For example, though the administrative and ordinary courts are charged with making sure that the rights of individuals are upheld, individuals still do not benefit from sufficient protection and promotion of their rights. This is especially true of the National Commission on Human Rights and Freedoms, which is yet to protect and promote the human rights of Cameroonians adequately.

out in the preamble of the Constitution. One may argue that this simply relegates fundamental rights to mere aspirations. The enforceability of human rights under the Constitution is definitely wanting.

On the important issue of its amendment, the Constitution provides two ways in which this can be initiated. Article 63(1) stipulates that amendments to the Constitution may be proposed by the President or by Parliament and, in either event, shall be signed by at least one-third of the members of the House of Assembly.[72] Article 63(3) states as follows:

> Parliament shall meet in congress when called upon to examine a draft or proposed amendment. The amendment shall be adopted by majority of the members of Parliament. The President of the Republic may request a second reading; in which case the amendment shall be adopted by a two-third Majority of the members of Parliament.[73]

Article 63(4) goes further to state that the President may decide to submit any Bill to amend the Constitution to a referendum. An amendment may be adopted only if a simple majority of the votes cast in the referendum are in favour of it.

In April 2008, the Cameroon National Assembly accepted a revision of article 6(2) which, while maintaining the seven-year tenure of the President, removed the two-term limit.[74] Although opposition parties protested against this controversial amendment, the CPDM, with its overwhelming parliamentary majority of 116 seats out of 180, readily approved it. In the months following the vote, there was widespread rioting in the country, but the protests were suppressed.

It is thus easy for amendments of the Constitution to be approved by Parliament, which prior to 2013 was composed solely of the National Assembly. The latter has no measures in place for other political parties, such as the Social Democratic Front (SDF), to veto amendments. Unlike the case in South Africa, where one level of government cannot unilaterally amend the constitution to its advantage,[75] before 2013 Cameroon's 1996 Constitution allowed for precisely such amendments by the executive. Although the Senate is now operational, the executive retains considerable power over final decisions regarding amendments before

[72] Article 63(2) of the Constitution.
[73] Article 63(3) of the Constitution.
[74] Article 6(2) new of Law No. 2008/001 of 14 April 2008 to amend and supplement some provisions of Law No. 96/6 of 18 January 1996 to amend the Constitution of 2 June 1972.
[75] N Steytler 'Republic of South Africa' in Kincaid J & Tarr G A *Constitutional origins, structure and change in federal countries: A global dialogue on federalism vol. 1* (2005) 340.

Parliament. This is a weakness in Cameroon's system of governance and a notable deficiency in the light of the principles of constitutionalism.

It is important to note that the Constitution of Cameroon is closer to the French constitutional exceptionalism model, though in many ways inadequately so, and represents 'Jacobin constitutionalism.' Comparatively, the South African model is compatible with the preamble of the United States of America representing 'Anglo-Saxon style constitutionalism.'[76]

2.5.3 Addressing minority concerns: Women and indigenous groups

The status of women and their active involvement in governance and development are other important issues that were meant to have been addressed by the Constitution. Cameroonian women face various cultural barriers to their participation in development and politics. One such barrier is that men are given preference when it comes to higher education opportunities and thus receive preparation for administrative duties, whereas the main preparation women receive, even those who go to school, is to be better housewives.[77]

For women to assume decision-making positions as well as participate actively in politics, they would need to play a much stronger role in the country's electoral process. There is no doubt that they outnumber men in the population statistics, but while this stands to their advantage they are less than active in the political domain.[78] Women's underrepresentation in governance at both the national and lower levels is likely to worsen unless measures similar to those in Kenya and Zimbabwe[79] are taken for the constitutional entrenchment of their role in these spheres.

Another major challenge the Constitution was supposed to address is the role of indigenous groups in the governance affairs of the country. For instance, the Mbororos, an indigenous group of pastoralists found in the North West, Adamawa, North and East regions, have been marginalised from participating actively in governance. Similarly, the Bakola, the Bgyeli and the Baka (collectively known as the Pygmies), who are mainly found in East and South regions, principally the forested parts of the country, have not been involved in governance affairs either. For many years now, the central government has extracted large amounts of timber from

[76] Frosini (n 69 above) 603 604-605.
[77] JF Mufua**,** Women's Participation in Governance in Cameroon Improves March 8, 2014 <http://www.asianpressinstitute.org/?p=852> (accessed 27 August 2017).
[78] Mufua (n 77 above).
[79] See sections 3,13, 14, 17, 24, 56, 68, 80, 124, 157, 194 and 269 of the 2013 Zimbabwean Constitution. See also articles 21, 27, 97, 98, 100, 127, and 232 of the 2010 Kenyan Constitution.

this part of the country to the detriment of the Pygmies, given that there is little or no development in the areas they inhabit. Although many of them have participated in elections over the years, they are not represented in Parliament, nor do they hold any senior posts in government.

2.5.4 Incorporating the traditional system of governance

Long before the arrival of the Europeans, African traditional rulers were considered the indisputable custodians of tradition and culture. They were seen as embodiments of wisdom and character, discharging their functions and delivering judgment with neither fear nor favour. Those days are gone. Since independence, traditional rulers have helplessly watched their power decline. In Cameroon, traditional rulers are often ridiculed. Some are openly challenged by their subjects, or arrested and jailed for murder, theft, embezzlement and illicit land sales; others gain notoriety for drunken bar fights over women and drink. In cases yet, irate subjects protesting against corruption have set their palaces ablaze, as in the cases of Big Babanki and Bamali in the North West region.[80]

The role traditional authorities play in Cameroon's governance architecture is contained in decree No. 77/245 of 15 July 1977 to organise chiefdoms (the 1977 decree on chiefdoms). In terms of this decree, traditional chiefdoms are organised on a territorial basis and fall into one of three classes. A first-class chiefdom covers at least two second-class chiefdoms, and the territorial boundaries in principle do not exceed those of a division. The jurisdiction of a second-class chiefdom covers that of at least two third-class chiefdoms. The boundaries there shall in principle not exceed those of a sub-division. Meanwhile, a third-class chiefdom corresponds to a village or quarter in the rural areas and to a quarter in urban areas.

Chiefdoms are classified as first- or second-class on the basis of population size and economic importance. They bear the names given to them by tradition, but the 1977 decree on chiefdoms empowers the competent authority to confer a new name on them if need be. Chiefdoms are placed under the authority of chiefs, assisted by elders in a council set up in accordance with local tradition. The chief is mandated to appoint one of the elders to represent him or her when he or she is absent or unable to perform his or her functions. This appointment can be terminated at any time by the chief. First-class chiefdoms are set up by the order of the Prime

[80] Big Babanki and Bamali are villages in the North West regions of Cameroon.

Minister, the second-class, by the Minister of Territorial Administration (MINAT), and the third-class, by the SDO.

Chiefs are in principle chosen from families called upon to exercise traditional customary authority. The candidates for chieftaincy must be physically and morally fit and must as far as possible be literate. The position of a chief becomes vacant upon the death or deposition due to permanent physical or mental disability of its occupant duly recorded by a medical officer appointed for that purpose. When there is a vacancy, the competent administrative authority shall make the necessary consultations without delay to designate a new chief. The competent elders are obliged to be consulted before a chief is appointed. Nevertheless, a chief may abdicate if he or she so desires, and the abdication shall be accepted by the authority vested with the power of appointment. The consultation talks are made during a public meeting presided over by the SDO in the case of first- and second-class chiefdoms and by the DO in the case of a third-class chiefdom. The conduct of the consultations is registered in a report signed by the chairman of the meeting. After the consultation talks, the SDO forwards the report to the MINAT accompanied by the following items:

- a medical certificate of physical fitness issued by a medical officer;
- a certificate of non-conviction;
- a copy where applicable of the official document (death certificate, letter of abdication or deposition, medical report) showing that there is a vacancy;
- a copy of the birth certificate of the person concerned or a birth declaratory judgment in lieu thereof.

In the case of a third-class chiefdom, the DO forwards these documents to the SDO.

First-class chiefs are appointed by the Prime Minister, second-class by MINAT, and third-class by the SDO. Objections that arise during the appointment of chiefs are brought before the authority mandated to appoint and that authority has the last say on the issue. The decision taken by this authority may be reversed if it is proven that he or she was misled. Chiefs are supposed to reside in their chiefdoms, and their duties are incompatible with any other public duty, provided that the authority vested with the power of appointment authorises these traditional rulers to hold other functions. What is noticeable in actuality, though, is that many chiefs do not reside in their chiefdoms and that they do hold other public offices.

Chiefs are auxiliaries of the administration, and as such are called upon to transmit the directives of administrative authorities to their people and ensure they are implemented. Chiefs

are also called upon to assist in the maintenance of law and order and contribute to the economic, social and cultural development of the areas under them. They are equally called upon to assist taxation officials in collecting taxes and fees for the state and local authorities such as councils. In addition, chiefs must carry out any other mission that may be assigned to them by the local administrative authority. They may settle disputes or arbitrate in matters arising between their subjects, with the exception of criminal matters.

The first- and second-class chiefs receive fixed monthly allowance calculated on the basis of the size of their population and an allowance for special responsibilities. Both allowances are determined by an order of MINAT and the Minister of Finance. The fixed allowance is taxable and is not lower than the wage of a worker of the first incremental position of category 1 of the public sector in the zone where the chiefdom is located. The 1977 decree on chiefdoms stipulates (prior to the revocation of the poll tax) that chiefs may be entitled to a rebate on the poll tax collected, in accordance with the conditions laid down by the General Tax Code of Cameroon.

Chiefs are also entitled to efficiency bonuses, granted by an order of MINAT on the suggestion of the administrative authorities, on the basis of their dynamism and efficiency in the nation's economic and social development drive. The rate of such bonus is fixed under the same conditions as the rate of fixed allowance and the allowance of special responsibilities.

Some chiefs are exempted from receiving these allowances: these are chiefs who are civil servants, parliamentarians or employees in a public office. Chiefs who are authorised to hold cumulative functions must, prior to their appointment by the competent authority, opt either to retain their salaries or wages, or to receive the emolument due to chiefs. A chief who suffers from a permanent disability attributable to his or her duties may benefit from a periodic payment, if such incapacity leads to his or her removal from duty. The amount of the allowance is determined by joint order of the Minister of Finance and MINAT.

Chiefs are mandated to wear special attire as well as a distinctive badge. The design of the attire is determined by MINAT. The acquisition of such attire is the responsibility of the chiefs. Considering the fact that chiefs are important actors in a democratic process, it is important to focus on the role traditional rulers play in this process.

The role traditional rulers should play in a democracy has been the subject of intensive debate. While some Cameroonians have called for the abolition of traditional institutions, others are of the view that traditional rulers should be incorporated into the governance system. Three

decades ago, the Cameroon government granted a number of chiefs some recognition for helping to safeguard culture and tradition, for assisting in socio-economic development, and for curbing tribal conflict and enforcing customary laws. However, the more governance structures that were created, the more traditional rulers complained that the recognition accorded them was only notional and that they were sidelined from decision-making. Many protested in vain about their eroding powers and lack of government stipends. Things changed in the early 1990s with the return of multiparty politics. Traditional rulers seized the opportunity, assuming the role of political power-brokers and forcing their subjects to vote as they did or face banishment from their chiefdoms. Across the country, tension mounted as respect for the chiefs plummeted.

In recent years, traditional rulers have set up regional and ethnic associations, such as The South West Chiefs Conference and The North West Chiefs Conference, to defend their collective interests, lobby for development and recover lost respect. But most of these structures have crumbled from lack of support, embezzlement of funds, and their continuous interference from politicians. When the Cameroon National Council of Traditional Rulers was created, observers thought the rulers were turning a new page to abstain from partisan politics and push for effective participation in governance. However, the conclave ended with calls for the support of the CPDM dominated government, and many in Cameroon expressed disappointment.

Incorporating the traditional system of governance into Cameroon's administrative architecture may be vital. As shall be examined in chapter 3, Botswana, Africa's beacon of democracy, is clear proof that chieftaincy, with its functions clearly defined by the state, could be used effectively in the delivery of customary and common laws. For the sake of its own survival, chieftaincy in Cameroon may have to emulate Botswana's example. Even the US, a superpower with all its musings about democracy, had to come to grips with the traditional values of the Native American population, allowing them to retain the chiefs who are the custodians of their traditional practices. Redefining the relationship between chieftaincy and the central government remains an issue which the Constitution was supposed to address.

2.5.5 Faltering transition to democracy

Several international indicators of good governance and democracy show that Cameroon is far from democratic. Ever since Freedom House began its Freedom in the World survey in 1973, it has remained one of the few African states never to have been classified as a 'free' zone,

even in the 1990s when countries across the continent began to democratise themselves by instituting strong constitutions.[81] It has lagged behind other African states in establishing a system of government which is transparent, devoid of corruption and accountable to its people.[82]

Whilst several African states continue to make progress towards good governance and multiparty democracy, it is argued here that although Cameroon has about 300 registered political parties, its only genuine effort in conducting transparent, free and fair elections began and ended in 1992. Since then, elections in the country have been tainted by serious fraud and election-rigging, as international and national election observers have contended. Tables 1 and 2 below provide an indication of the frailty of Cameroon's faltering democratic transition.

Table 1: Cameroon's presidential election results since 1992 (percentage of votes cast)

Year	Results of incumbent (Paul Biya)	Results of the first losing candidate
11 October 1992	39.98%	35.97% (John Fru Ndi of SDF))
12 October 1997	92.57%	2.5% (Hogbe Nlend of Union of Cameroon Population)
11 October 2004	70.92%	17.40% (John Fru Ndi of SDF)
9 October 2011	77.99%	10.71% (John Fru Ndi of SDF)

[81] Conducted by the US-based NGO Freedom House, Freedom in the World is an annual survey that measures the degree of civil liberty and political rights in every country in the world, including disputed territories. These rights and liberties are presented in the form of a score of 1 (most free) to 7 (least free). Depending on the rankings, the countries are classified as 'free', 'part(ial)ly' free' or 'not free'. The Freedom House rankings are widely used by researchers and the media to measure democracy. For more detail, see Individual Country Ratings and Status FIW 1973-2015 <https://bit.ly/2Rla6KH> (accessed September 2017).

[82] See 2015 Ibrahim Index of African Governance, Country Insights: Cameroon <https://bit.ly/2FYaGwH> (accessed August 2017).

Table 2: Cameroon's parliamentary election results since 1992 (out of 180 seats)

Year	Results of ruling CPDM party	Results of the first losing party
1 March 1992	88 (48.8%)	68 (National Union for Democracy and Progress)
17 May 1997	109 (60.5%)	43 (SDF)
30 June 2002	149 (82.7%)	22 (SDF)
22 July 2007	153 (85%)	16 (SDF)
17 October 2013	148 ((82%)	18 (SDF)

In the first and, arguably, only credible transparent and competitive presidential elections, held in 1992, the Supreme Court declared Paul Biya the winner, though many considered his opponent, John Fru Ndi, to have won them. The ruling political party, the CPDM, has always emerged victorious in local government, parliamentary and presidential elections held since 1992. The way in which the administrative and political architecture is designed and functions has not been instrumental in facilitating multiparty elections.

Worldwide, opposition political parties are regarded as a major structural component of any democratic society. The more the opposition has the opportunity to participate in the affairs of state, the more the country is viewed as democratic. The situation in Cameroon is that, since the 1980s, the opposition has not made any real impact on the lives of ordinary citizens. Several reasons account for this. A major one is that the CPDM-dominated government has succeeded in inducing members of the opposition to abandon their parties by co-opting them into positions of responsibility in government. Little tolerance has been shown towards political opposition. In fact, opponents of the ruling party who refuse to be co-opted are often vilified as 'merchants of illusion', 'hooligans', 'outlaws', and 'self-seeking political opportunists'.[83]

[83] See CM Fombad & JB Fonyam, 'The Social Democratic Front, the opposition, and political transition in Cameroon,' in JM Mbaku & J Takougang (ed) *The leadership challenge in Africa. Cameroon under Paul Biya* (2004) 473.

2.5.6 Containing Cameroon's ethnic diversity

Ethnic parochialism is acute in Cameroon and presents one of the main hurdles to governance, as it does in Africa as a whole. Chapter 1 of this thesis took note of Cameroon's remarkable ethnic mélange. Since the advent of multipartyism, the dynamics of the various ethnic divides and their conflicts have fuelled Cameroon's socio-political polarisation and fragmentation.

A complicating factor adding to these tensions, as perceived by many Cameroonians, is that the President's ethnic group, the Beti/Bulu, who are part of the southern tropical forest peoples and constitute about 18 percent of the population,[84] continue to dominate all aspects of public life, including the mismanagement and plunder of natural resources at the detriment of other ethnic groups. Though a few personalities from other ethnic groups have been brought on board, their power and influence is inconsequential relative to the influence wielded by the Beti/Bulu ethnic group. In the growing discrimination witnessed in Cameroon since 1992 whereby certain ethnic groups reap almost all the country's the political, social and economic benefits to the exclusion of others, room is being created for potential disintegration and conflict.

2.6 Concluding remarks

After the era of German governance and dual French and British rule, Cameroon – independent and reunified – was regarded until about 1990 as one of the few peaceful and stable countries in Africa. However, the waves of change that blew over Africa in the 1990s almost tore the country apart. Until the 1990s Cameroon had narrowly escaped the cycles of economic and political turmoil that plagued other African countries. This was impressive for a country with such linguistic and ethnic diversity. In addition, the union between the Anglophone minority and the dominant Francophone majority, despite its imperfections *ab initio*, remained intact, albeit mainly as a result of a highly centralised and repressive regime that has been in power since independence.

In the early 1990s, due to much discontent coupled with economic recession, the government of Cameroon was forced to introduce a form of multiparty democracy. Nevertheless, the

[84] According to the 2017 revision of the World Population Prospects, Cameroon's population stood at 23,439,189 as of 2016. The southern tropical forest peoples include the Beti-Pahuin, Bulu (a sub-group of Beti-Pahuin), Fang (a sub-group of Beti-Pahuim), Maka, Njem, and Baka pygmies. See Wikipedia, Demographics of Cameroon, available at <https://en.m.wikipedia.org/wiki/Demographics_of_Cameroon> (accessed 17 October 2017).

tentative democratic measures to date have been little more than a political masquerade in which the CPDM has always emerged victorious.

Strong demands for crucial constitutional reforms led to the 1996 amendment to the 1972 Constitution, but resulted instead in the incumbent tightening his grip on power and reinforcing the already centralised Gaullist system of government. The complete rejection of a federalist system of government and the labelling of its proponents as agents of division or secession – happening at a time of rising tension between Francophone and Anglophone Cameroonians, and combined with serious doubts being cast on the value of democracy as an instrument of peaceful change – have made one to reminisce over Cameroon's position as the only bi-cultural and bilingual country.

In addition to the rising tensions between Anglophone and Francophone Cameroonians, the country faces challenges that were meant to have been addressed by the Constitution but which remain unresolved: minority concerns such as the rights of women and indigenous people, the incorporation of the traditional system of governance, and managing the transition from authoritarian to democratic governance.

The courts have been instrumental in making it clear that a constitution is not a lifeless museum object but a living document that needs to be designed in such a way that it both reflects and embodies the desires and aspirations as well as the fears of the people.[85] This assertion is in line with Tom Paine's view that a constitution is an act not only of government but of the populace composing a government.[86] Taking these standards into consideration, however, the process that resulted in the amendment of the Constitution was indeed not citizen-driven. It is no surprise that more than twenty years after the Constitution came into force, some of its important provisions, have not been implemented.

The Constitution may thus be regarded as an instrument that caused more governance problems than it solved. The next chapter, chapter 3, examines the nature, scope and *raison d'être* of decentralisation, especially with regard to the management of minority, ethnic and diversity issues. It also considers the importance of decentralisation in promoting the rule of law, democratic elections, self-rule and democracy among federated state.

[85] See Aguda CJ in the Botswana case of *Attorney- General v Dow* [1992] BLR 119 at 166.
[86] Mcllwain (n 24 above) 234.

CHAPTER THREE

THE NATURE, SCOPE AND RAISON D'ÊTRE OF DECENTRALISATION

3.1 Introductory remarks

This chapter focuses on the nature, scope and *raison d'être* of decentralisation. After an overview of the concept of decentralisation, it explores its purposes and rationale as well as the challenges that can arise if it is not well designed. The chapter considers, among other things, the importance of decentralisation in the management of diversity and minority issues and the enhancement of constitutionalism; the possibility of using it to incorporate traditional systems, promote democracy, improve development, and manage ethnic conflicts in states; and the challenges it poses to governance, such as inequalities, corruption and capture, increased ethnic conflict and secession, a weak macro-economic environment, and lack of respect for the rule of law.

3.2 An overview of the concept of decentralisation

There is no universally accepted definition of the concept of decentralisation: it has been ascribed different meanings in federal and unitary states. This section examines these definitions as well as various forms of decentralisation, such as federalism, devolution, deconcentration, delegation and divestment or market privatisation.

3.2.1 Decentralisation: An evolving concept

Decentralisation is a concept that describes types of governmental power distribution. It is defined by Rondinelli as the transfer or apportioning of responsibility for planning, management, and the raising and distribution of resources from the central government and its agencies to field units of governmental agencies, lower levels of government, corporations, semi-autonomous public authorities, voluntary organisations, regional or functional authorities as well as non-governmental organisations.[1] According to Mawhood, decentralisation 'occurs when national government shares some of its power with other groups, particularly those that are either geographically dispersed, or are responsible for specific functions, or are given jurisdiction over specified physical locations'.[2]

On the basis of the principle of subsidiarity, decentralisation facilitates the delivery of services closer to the populace for reasons of accountability and efficiency. The principle of subsidiarity warrants that services that can be effectively rendered by lower spheres of government should

[1] DA Rondinelli et al *Decentralisation in Developing Countries: A Review of Recent Experience* (1984) 9.
[2] P Mawhood *Local government in the Third World: The Experience of Tropical Africa* (1984) 4.

be carried out by them. This allows for a broad distribution of public power so as to attain more responsive and effective government. It also widens access to economic resources and government services. Likewise, the principle of subsidiarity encourages public participation in government.[3]

3.2.2 Local government as an aspect of decentralisation

Local or subnational government may be defined as a type of public administration found at the lower, and usually the lowest, sphere of the administration within a country or state. Conceptually, it is distinct from local offices of the central government, that is, of the national government or, in other circumstances, federal government. Local governments typically operate within powers devolved or delegated to them via directives or legislation from the higher sphere of government.[4] In a unitary state, local government is usually positioned as the second or third sphere of government, whereas in a federal state it is usually the third (and sometimes the fourth).[5]

Local government is composed differently in several states, particularly in terms of its form and structure. The relevant terminology also varies from country to country. 'Local government' may refer to a state, as in the case of the United States of America (US), or, in other countries, a region province, department, county, prefecture, sub-prefecture or district. Equally, it could refer to a township, city, town, parish, shire, village, municipality, borough or even local service district.[6]

African states have long adopted the British and French models of local government. Most former British colonies, including the US, adopted the British system of local government. This system of local government, which was overhauled in the nineteenth century and modified again in the 1970s, gives substance to local government autonomy via elected councils at local-level government, be they counties, sub-counties, municipalities or districts. In such a system there is more local budgetary authority and less central government interference than in other

[3] WE Oates 'An Essay on Fiscal Federalism' (1999) 33 *Journal on Economic Literature* 3, 1121-1122.

[4] See A Shah & S Shah 'The New Vision of Local Governance and the Evolving Roles of Local Government' in A Shah (eds) *Local Governance in Developing Countries* (2006) 1-7. See also A ul Haque 'Theoretical Perspective of Local Government- Literature Review' (2012) 46301 *Munich Personal RePEc Archive.*

[5] N Steytler *The place and role of local government in federal systems* Konrad Adenauer Stiftung Occasional Papers (2005) 1.

[6] See ME Libonati 'State constitutions and local government in the United States' in Steytler (n 5 above) 11-23.

local-government systems. A distinctive element of the British model is its use of an efficient committee system, rather than a robust executive, in the supervision of public services.[7]

In turn, the French model is among the most non-representative local-government systems in the world. The aim of its architecture, as formulated by Napoleon I, was to curb the power of local authorities while enabling the central government to assert and strengthen its own. This form of local government sets forth well-defined avenues of authority, commencing from the central government's ministry of territorial administration or interior and proceeding via the centrally appointed Senior Divisional Officer (SDO) or Prefect of the division or department to the municipality, which has a municipal council and a locally elected mayor at its helm. The SDO or Prefect, being both the central government's representative and the chief executive of the department, has enormous authority to supervise local expenditures as well as the power to overrule the decisions of local councils.[8] In Africa, vestiges of this model of local government are found in former French colonies such Chad, Gabon and Togo.

3.2.3 Federalism as a form of decentralisation

Federalism has no universal definition and the term may be used normatively or descriptively. Federalism as a normative notion is composed of two main issues: union and autonomy. As a descriptive notion, federalism refers to a 'certain category of political institutions'.[9] The 'union' aspect of federalism refers to the co-management of society in general and the will of the people to bond together for the achievement of common purposes. The 'self-government' aspect entails creating room for the possibility of self-rule for constituent units. Federalism is thus 'self-rule plus shared rule'.[10] In a genuine system of sharing power, constitutionalised power is distributed between the central government as well as the constituent governments such that they all participate in the system's decision-making and execution processes.[11]

Federalism is thus a form of decentralisation in that a central government and a number of regions (or provinces or states) exist, each with its own functions, powers and resources

[7] See N Steytler 'Local government in South Africa: Entrenching decentralised government' in Steytler (n 5 above) 183-209. See also M Sandford 'local government in England: Structures' (2017) 07104, *Briefing Paper, House of Commons Library* 4.
[8] See generally H Reigner 'The transformations of local government in France: towards a co-administration model between local authorities and state field services' Paper prepared for presentation at ECPR Joint sessions of workshops, Mannheim 26-31 March 1999. Workshop 1: Politicians, Bureaucrats and Institutional reform.
[9] RL Watts *Comparing Federal Systems* (2008) 8.
[10] RL Watts 'Federal co-existence in the Near East: General Introduction' in T Fleiner (ed) Federalism: a Tool for Conflict Management in Multicultural Societies in the Near East (1999) 26.
[11] DJ Elazar 'Federalism vs. Decentralization: The Drift from Authenticity' (1976) 6 *Publius*: *The Journal of Federalism* 4, 12.

institutionalised and protected mostly in a constitution. In general, federalism entails that all the regions relate to the centre and may have the same powers, if not necessarily the same internal structure. In other words, though the relationship between the centre and regions is usually symmetrical, there are circumstances which warrant an asymmetrical arrangement.[12]

3.2.4 Other forms of decentralisation

Central governments in states have opted to utilise other ways to disperse political, administrative and financial powers to subnational governments. This section looks at forms of decentralisation other than federalism, such as devolution, deconcentration, delegation as well as divestment or market privatisation.

3.2.4.1 Devolution

Devolution is the most powerful form of decentralisation and involves the transfer of power and authority from the central government to the regional and/or local sphere of government.[13] Devolution comes in various forms. For instance, in an arrangement closely resembling self-governance, it can entail allowing the lower spheres of government to exercise legislative powers, such that these sub-units adopt norms and rules as well as devise strategies and policies. Equally, it may involve the central government's giving limited political powers to lower spheres of government to implement a set of national laws relating to a specific area, with the lower spheres potentially having significant discretion as to how the laws are implemented.[14]

Devolution needs to be accompanied by a certain degree of administrative and political decentralisation, considering the fact that central governments can no longer hold lower spheres of government completely responsible for bad governance; the electorate needs to assume that responsibility via voting in popular elections.[15]

3.2.4.2 Deconcentration

Deconcentration is defined by Manor as a kind of decentralisation which 'disperses agents of higher levels of government into lower level arenas. The agents remain accountable only to

[12] Ghai YP 'South African and Kenyan Systems of Devolution: A Comparison' in N Steytler & G Yash Pal (eds) *Kenyan-South African Dialogue on Devolution* (2015) 5.
[13] Rondinelli et al (n 1 above) 9-10. See also Litvack et al *Rethinking Decentralisation in Developing Countries* (1998) 4-6.
[14] A Oloo Devolution and Democratic Governance: Options for Kenya' in TN Kibua & G Mwambu (eds) *Decentralisation and Devolution in Kenya: New Approaches* (2008) 109.
[15] Oloo (n 14 above) 109.

persons higher up in the system. The central government is not giving up any authority but simply relocating its offices at different levels or points in the national territory'.[16]

Deconcentration thus pertains to the dynamics of the power relationship within the same organisation or institution.[17] It entails the transfer of authority, power and resources from one part of an organisation to another; those who receive this power and authority are generally accountable to the centre, although they may have a small degree of discretion.

Manor adds that 'deconcentration enables central authority to penetrate more effectively into those arenas without increasing the influence of organised interests'. In practical terms, deconcentration 'tends to constitute centralisation, since in enhances the leverage of those at the apex of the system'.[18]

3.2.4.3 Delegation

In delegation, the central government transfers its administrative and decision-making duties for various public functions to another sphere of government. Delegation entails a principal-agent relationship, with the central government assuming the function of principal and the local institution that of the agent. The central government may give full powers and implementation of policy to sub-units while enforcing adherence to formal guidelines.[19] Alternatively, it could decide to retain substantial central control, thus allowing little discretion at the lower sphere.[20]

3.2.4.4 Divestment or market privatisation

Privatisation is viewed by Manor as a type of decentralisation that 'transfers power from one bureaucratic machinery to another or one that transfers power between two colossal entities'. He adds that 'privatisation cannot be regarded as authentic decentralisation as it does not devolve decision-making powers to the people'.[21] In other words, the government transfers administrative and planning responsibilities or other public functions or duties to private or voluntary non-governmental organisations, with clear benefit to and involvement of the public.

[16] J Manor The Political Economy of Democratic Decentralisation (1999) 5.
[17] G Hyden *No Shortcuts to Progress: African Development Management in Perspective* (1983) 85.
[18] Manor (n 16 above) 5.
[19] J De Visser *Developmental Local Government: A Case Study of South Africa* (2005) 14.
[20] De Visser (n 19 above) 14.
[21] Manor (n 16 above) 4.

In this thesis, the focus is on federalism, deconcentration, delegation and devolution as the major forms of decentralisation; divestment or market privatisation is not accorded importance, given that real decision-making powers are not dispersed to the people.

3.3 The purposes and rationale of decentralisation

Decentralisation has become necessary in addressing governance issues in states. This section examines the importance of decentralisation in the management of diversity; the promotion of constitutionalism; the management of minority issues; facilitating the incorporation of traditional systems; contributing to democracy; the enhancement of development; and the management of ethnic conflicts in states.

3.3.1 Decentralising powers for the management of diversity issues

This section considers the paramountcy of decentralisation in the management of diversity-related issues. It examines the design of the national sphere of government by constitution-builders; the size and structure of lower levels of government; financing; and the determination of the powers and functions to be dispersed across these levels of government.

3.3.1.1 The concept of diversity

The concept of diversity originates from the word 'diverse', meaning 'dissimilar or different'. Originally, 'diversity' referred to people who were 'different from a white, male norm'.[22] The first attempts to address diversity issues, especially those to do with equal opportunities in organisations, focused on gender and racial discrimination. Gradually, in popular usage, the concept came to apply not only to white men and women or men and women of colour but to people and communities of diverse ethnic background, nationality and sexual orientation.[23]

Today, policy actors, as well as academics such as Griggs (cited below), have given greater meaning to the concept of diversity:

> Not only does diversity include differences in age, race, gender, physical ability, sexual orientation, religion, socioeconomic class, education, region of origin, language, and so forth but also differences in life experience, position in the family, personality, job function, rank within a hierarchy, and other such characteristics that go into forming an individual's perspective. Within organisations, diversity encompasses every individual difference that

[22] T Carter 'Diversity and Multiculturalism' *Human Resources and their Development* – Vol II, *Encyclopaedia of Life Support Systems* <http://www.eolss.net/Eolss-sampleAllChapter.aspx> 1-2 (accessed 20 January 2018).
[23] Carter (n 22 above) 2. See also J Wrench 'Diversity management' in S Vertovec (ed) *Routledge International Handbook of Diversity Studies* (2014) 253-256.

> affects a task or relationship. Diversity also has an impact on the products and services developed by its workforce as well as on personal, interpersonal, and organisational activities.[24]

At the core of the nation-building process of states, be it in Europe, Africa, Middle East or Asia, there has been an agenda that prioritises unity to the detriment of diversity. In several instances, the state has vehemently refuted the fact that there are linguistic minorities within its borders. An example worth emulating is that of France which was before a colonial master of countries like Gabon, Chad and Cameroon. France, when signing the European Charter of Regional and Minority Languages, declared that it does not harbour any linguistic minorities.[25] That is to say, it maintained that the only official language for teaching and going about its governmental affairs is, or should be, French.[26] However, efforts to construct a single national identity via large centralised states have not addressed the concerns of national or major groups, nor, in most cases, have they resulted in economic development and political stability.

An-Na'im opines that to think of a 'nation' as a people having one culture and ethnicity, as is often the case, limits our comprehension of what a nation is which defeats the possibility of seriously considering that minorities may well exist within nations. It is indeed difficult to have a nation state composed of just a single nation in this sense. An-Na'im adds that in Africa for instance the population of a nation state is made up of several nations. Nation states tend to assume that total integration and unity is paramount, which may not be desirable to other minorities. The reality is that within a nation state, some groups may dominate or oppress other groups. In such circumstances the so called ideal integration and unity agenda would therefore imply the assimilation of the minority groups into the dominant culture. An-Na'im then asks the question: If mediation and resolution is not possible, would it be acceptable for a minority to seek for secession and the creation of a separate nation state?[27]

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[24] LB Griggs 'Valuing diversity: Where from ... where to?' In LB Griggs & L Louw (eds.) *Valuing diversity: New tools for a new reality* (1995) 1-14 mentioned in Carter (n 22) above.

[25] A Addis 'Cultural integrity and political unity: The politics of language in multilingual states' (2001) 33 *Arizona State Law Journal,* Fall 730.

[26] M Hechter & M Levi 'Ethno–regional movements in the West' in J Hutchinson & AD Smith (eds) *Nationalism* (1993)189.

[27] A An-Na'im 'The National Question: Secession and constitutionalism: The mediation of competing claims to self determination' in D Greenburg et al (eds), *Constitutionalism and Democracy: Transitions in the Contemporary World* (1993) 105. Also see generally F Deng *Identity, diversity and Constitutionalism in Africa* (2008).

It is important to therefore define secession especially in relation to diversity and nation building. To Wood, secession:

> '...represents an instance of political disintegration, wherein political actors in one or more subsystems withdraw their loyalties, expectations, and political activities from a jurisdictional centre and focus them on a centre of their own'.[28]

Secession seems to presume that disgruntled groups within a state want to break away, and form their own state. Yet it is not at all clear if secession is the priority of all communities. Besides, separation may only be a suitable option after investigating on other possibilities and only if there is no possibility of co-existence between different groups in the state.[29] It is therefore suggested in this thesis that secession should only be considered as the final resort and not the primary option where linguistic or minority groups cannot be accommodated in a state.

3.3.1.2 The capacity for a decentralised system to curb diversity issues

In designing the national sphere of government, it is common place that central government institutions provide the bond that holds a state together.[30] However, this can be achieved if central government institutions are effective in promoting political inclusion and reflecting diversity.[31] In many states worldwide, shared rule is effected via a second chamber in the national legislature.[32] The second chamber is thus an important milieu for making central government decisions.

The method of representation in second chambers, however, differs from country to country. For instance, voters in states and regions in the US,[33] Australia and Switzerland directly elect the members of their second chambers,[34] whereas the ruling party appoints members of the

[28] Wood JR 'Secession: A comparative analytical framework' (1981) 14 *Canadian Journal of Political Science* 1 111.
[29] Lowrey FM 'Through the looking glass: Linguistic separatism and national unity' (1992) 41 *Emory Law Journal* (winter) 733.
[30] Watts (n 9 above) 134.
[31] J Siegle and P O'Mahony 'Assessing the merits of decentralisation as a conflict mitigation strategy' (2006) 53.
[32] Watts (n 9 above) 146.
[33] WH Riker 'The Senate and American federalism' (1995) 2 *The American Political Science Review* 452-469.
[34] Watts (n 9 above) 149-151.

Senate in the case of Canada.[35] In South Africa, some members of the second chamber are elected by the provincial executives, while others are elected by their respective regional assemblies.[36] Still in the case of South Africa, the second chamber has a special veto power with respect to laws concerning the decentralised units.[37] Yet although second chambers differ in their roles in various countries, they are essentially all endowed with functions and powers relevant to the protection of the interests of decentralised units.[38]

The number of levels of government is another key factor in accommodating diversity. Spheres of government usually exist symmetrically throughout the country. However, several states have opted for an asymmetrical formal structure by creating more spheres of government in certain parts of the country than in others. In present-day Tanzania, the level of government immediately below the national level covers only part of the territory,[39] as was the case in Sudan between 2005 and 2011;[40] a unique and additional level of government with jurisdiction over just the south of Sudan was created by the Interim Constitution. In the peace agreement that ushered in the new Sudanese Interim Constitution, this level of government was demanded by the southern rebels after years of conflict to obtain a region for the people of Southern Sudan. Similarly, in countries such as Switzerland, an additional level of administration exists in larger territorial subunits. These administrative units assist the government in implementing its policies. The cantons (the Swiss equivalent of provinces, states or regions) are composed of districts serving as administrative units to carry out their policies; smaller cantons, however, do not need districts to do so.[41]

Constitution-builders also face the question of determining the number of administrative or governmental units to adopt at each level of government – matters that may be linked to economic viability or identity-related issues. A choice on the advantages of each option may not become evident because ratification of the constitution may depend on the success of a

[35] K Christensen & DT Studlar 'Is Canada a Westminster or consensus democracy? A brief analysis' (2006) 39 *Political Science and Politics* 839.
[36] YP Ghai 'South African and Kenyan Systems of Devolution: A Comparison' in Steytler & Ghai (n 12 above) 11-12.
[37] See section 76(5)(b)(i) and (ii) of the 1996 Constitution of South Africa.
[38] Watts (n 9 above) 153-154.
[39] See article 2 of the 1977 Constitution of Tanzania.
[40] See article 24 of the 2005 Interim National Constitution of the Republic of Sudan.
[41] The Swiss Constitution does not mention the creation of administrative levels, since each canton's constitution regulates its respective governmental or administrative structure.

peace agreement that itself necessitates the creation of sub-units grounded on identity-based parameters such as in the case of South Africa.[42]

Another challenge faced by constitution-builders is whether the constitution should include an option to change its internal boundaries after its ratification, and if so, which persons or groups may take part in such a process. In the case of Benin, for instance, the legislature is vested with the powers of initiating and deciding on the process of internal boundary demarcation by way of passing an ordinary bill.[43] In the case of Malaysia, the consent of the legislatures of the affected areas is required before taking such a decision.[44] In other countries such as Belgium, a law changing internal boundaries requires not only a majority in the national legislature but a two-thirds majority of the representatives of the affected group.[45]

Fiscal arrangements are another necessary consideration in designing a decentralised system, since without adequate financial resources it is virtually impossible for lower spheres of government to carry out their duties. Fiscal decentralisation refers to the degree of financial autonomy that central executives give lower spheres of government.[46] Delaying or omitting fiscal decentralisation renders political and administrative decentralisation ineffective. It is crucial that the allocation of revenue and expenditure accompany the assignment of competencies and tasks. States such as South Africa and Switzerland even allow lower spheres of government to raise their own finances.[47]

In most decentralised countries, fiscal design options have three main elements. The first is the assignment of responsibility to a level or levels to raise revenue.[48] The second element is the assignment of responsibility for expenditure on services and the like at the different levels. The third concerns intergovernmental transfers and focus on how various tiers of government equalise imbalances and share revenues.

As noted, to ensure that the administration carries out its duties effectively, the assignment of competencies and tasks must be accompanied by the assignment of responsibility for

[42] D Powell "Fudging Federalism": Devolution and Peace-making in South Africa's Transition to Apartheid to a Constitutional Democratic State' in Steytler & Ghai (n 12 above) 32.
[43] See article 150 of the 1990 Constitution of the Republic of Benin.
[44] See article 2 of the 1957 Constitution of Malaysia.
[45] See article 4 of the 1994 Constitution of the Kingdom of Belgium.
[46] G Anderson *Fiscal Federalism: A Comparative Introduction* (2010) 2-5.
[47] Anderson (n 46 above) 21.
[48] Shah *The Reform of Intergovernmental Fiscal Relations in Developing and Emerging Market Economies* (1994) The World Bank: Washington DC 15-18.

expenditure. If all taxing authority is vested in the national government, this may have undesirable consequences.[49] For instance, separating spending powers from revenue-raising authority may obscure the nexus between the benefits of public expenditure and its costs – namely, the taxes consumed in financing them – with the result that the separation does not encourage fiscal responsibility among politicians and their electorate at regional and local levels.[50] Conversely, if the constitution confers the greater responsibility of raising taxes to regional or local governments, the central government may be deficient with respect to the tax instruments needed for macroeconomic development.[51]

It is thus important for constitution-drafters to take two major principles into consideration when deciding whether to give tax-raising and -spending responsibility to local government. First, local government should be allowed to collect from its local residents sub-national revenues that are linked to benefits obtained from local services. Ensuring that the nexus between benefits received and taxes paid is visible fortifies the accountability of local administrators and enhances governmental service delivery.[52] Secondly, revenues allocated to the local governments should be adequate, at least for the wealthier lower spheres of government, for financing all locally provided services that work to the benefit mainly of the local residents.[53]

An imbalance often exists between spending and taxing at the various levels of government, especially so in the lower spheres of government, in that the central government typically collects the greatest share of taxes but assigns enormous spending duties to the local level.[54] Horizontal imbalances are imbalances between sub-national levels;[55] pre-transfer fiscal deficits, or vertical imbalances, also occur.[56] Lower tiers of government are usually not entrusted with the same revenue-raising capabilities as higher ones, given that wealthy

[49] Anderson (n 46 above) 2-3.
[50] Shah (n 48 above) 15-18.
[51] Anderson (n 46 above) 2-3.
[52] Anderson (n 46 above) 41. Property tax is thus described as the ideal local tax. If they are well designed, user charges on trading services such as water, sanitation, electricity and solid waste collection may be interesting local revenue instruments. Equally, benefit taxes such as port tolls and road tolls, as well as various licences, can be good avenues for raising taxes locally.
[53] G Anderson *Federalism: An Introduction* (2008) 35-36.
[54] Anderson (n 46 above) 34.
[55] Anderson (n 46 above) 6.
[56] Anderson (n 46 above) 6.

residents are not found in every region and that regions do not all have the same needs: some regions demand more services, or are more populated, than others.

To adjust for such imbalances, there is thus need for intergovernmental transfers – vertically,[57] if the payments are from the central to lower spheres of government, and horizontally,[58] if these transfers are between sub-national governments. There may equally be grants from the central to lower tiers of government, which can go a long way in making local governments autonomous.[59]

It is also necessary to examine how powers may be dispersed symmetrically and asymmetrically in the country. Symmetric decentralisation entails dispersing the same powers and authorities from the central government equally to all lower spheres of government.[60] Asymmetric decentralisation entails according special autonomy to certain regions or a region within a country.[61]

The latter may be an efficient and effective policy mechanism for ensuring adequate decentralisation, especially in countries plagued with tension between diverse communities, for example Indonesia,[62] Tanzania,[63] Malaysia[64] and Italy.[65] In the Philippines[66] and Indonesia,[67] for instance, the constitution gives some regions autonomy over culture or language, while the rest of the country maintains an otherwise symmetrical structure. Asymmetrical decentralisation that discriminates between lower spheres of government on the basis of culture, religion and ethnicity comes with the risk that it could promote discrimination

[57] See R Bird 'Subnational Taxation in Developing Countries: A Review of the Literature' (2010) *Policy Research Working Paper* 5450 World Bank: Washington, DC 1.

[58] See E Ahmad 'Intergovernmental Transfers: An International Perspective' in E Ahmed (ed.) *Financing Decentralised Expenditures: An International Comparison of Grants* (1997) 6. Transfers may be in the form of either revenue-sharing or surcharges whereby the national government transfers a share of revenues from specific taxes collected within that local government. See also CR Jnr McLure *The Tax Assignment Problem: Conceptual and Administrative Considerations Achieving Subnational Fiscal autonomy* (1999) 12.

[59] Anderson (n 46 above) 58.

[60] Anderson (n 46 above) 54-55.

[61] Anderson (n 46 above) 54-55.

[62] Aceh in Indonesia is accorded some degree of autonomy. See IK Nasution 'The Challenge of Decentralisation in Indonesia: Symmetrical and Asymmetrical Debate' September (2016) 6 *International Journal of Social Science and Humanity* 9, 691.

[63] Zanzibar in Tanzania is accorded some degree of autonomy.

[64] Borneo in Malaysia is accorded some degree of autonomy.

[65] South Tyrol in Italy is accorded some degree of autonomy.

[66] See article X of the 1986 Constitution of the Republic of Philippines.

[67] See article 18 A/B of the 1945 Constitution of the Republic of Indonesia.

and hence lead to more fragmentation.[68] Nevertheless, minority regions that historically have been victims of discrimination and marginalisation often request some degree of autonomy.[69]

Numerous countries have opted, then, for varying forms of asymmetrical decentralisation. The Constitution of Spain, for instance, provides for a mechanism in which provinces and municipalities alike can enjoy a high level of autonomy. Spain is territorially organised into 'municipalities, provinces and any Autonomous Communities that may be constituted'.[70] Gaining autonomy is a voluntary right for provinces and municipalities, and the 1978 Constitution gives directives on how this right may be promoted and protected. The Constitution also gives directives on how the status of an Autonomous Community may be attained.[71] Additionally, the central government may transfer powers from its list to the autonomous communities.[72]

It is crucial, moreover, that constitution-builders consider the kinds of powers dispersed to various levels of governments, as this plays a significant role in determining the degree of autonomy of the different levels of government. Many countries determine the depth of decentralisation and its institutional structure by dispersing power to the three branches of government at the regional and local spheres of government. In so doing, it is important first of all to make a decision as to which branch of government should be instituted in which sphere of government or administration. In the United Kingdom (UK), for instance, Scotland has opted for a design which includes both the legislative and executive branches.[73] Still in the UK, Wales consists of an executive branch of government only.[74]

After deciding on which branch of government should be set up at what level, a second step is to identify the powers and duties that the autonomous branches of government need to carry out at these different levels. Constitution-drafters should opt for a design which has executive, legislative and judicial officials and authorities in the different spheres of government. Dispersing adequate tasks and duties to officials in the lower spheres of government will

[68] Anderson (n 53 above) 26-28.
[69] Anderson (n 53 above) 26-28.
[70] See article 137 of the 1978 Constitution of Spain.
[71] See articles 148 and 149 of the 1978 Constitution of Spain. In Navarre and Basque Country, due to historical factors, these powers are also extended to tax collection and regulation. See F Aldecoa & N Cornago 'Kingdom of Spain' in H Michelmann *A Global Dialogue on Federalism Volume V*: *Foreign Relations in Federal Countries* (2009) 242.
[72] See article 150 of the 1978 Constitution of Spain.
[73] M Bockenforde *A Practical Guide to Constitution Building: Decentralised Forms of Government* (2011) 24-26.
[74] Bockenforde (n 73 above) 24.

depend on the duties concerned and which they are closer to – executing a law, drafting a law or interpreting it.

In decentralising executive powers, constitution-drafters should take into consideration whether the local executive will execute and implement only national law, doing so in the absence of a legislature at the local level of government. They should also consider whether the local executive will execute and implement only regional or local law drafted by the legislature of the concerned regional and local legislature, considering the fact that the administration of the central government will implement national laws only. It is equally important for constitution-drafters to consider whether the regional and local sphere of government will execute and implement substantial parts of national law besides regional or local law, if, for example the local or regional spheres effectively execute, via 'cooperative decentralisation' or 'cooperative federalism,' as the case may be, regulations and laws from the central-government level.[75]

Constitution-builders may also decide that the central government is better placed than the local to furnish certain public services, such as unemployment benefits and old-age pensions. Likewise, countries may decide that, because of its efficiency and closeness to the populace, local government should take care of a primary education curriculum that includes the teaching of local culture and languages.

To avoid budgetary imbalances and economic instability, the central government may retain some expenditure responsibilities that specifically influence aggregate demand or fluctuate with the economic cycle, such as unemployment benefits.[76] With respect to the provision of services such as education and health care, for the purposes of setting minimum standards throughout the country, especially where public demand is high, the central government may need to put in place national regulation measures as parameters for implementation by regional governments.[77]

Concurrent powers can be exercised in different ways. The issue of which regulation prevails will always arise, given that there is a vertical overlap of concurrent powers between the national and regional legislatures. In many countries, the national legislature is given priority over regional legislatures, though critics are not entirely convinced this should always be so.

[75] Oates (n 3 above) 1121-1122.
[76] See generally J De Visser (n 19 above).
[77] See generally J De Visser (n 19 above).

Certain situations do indeed warrant that national legislation be given priority. In Germany, for instance, the Constitution favours national legislation, 'if and to the extent that the establishment of equal living conditions throughout the federal territory or the maintenance of legal or economic unity renders federal regulation necessary in the national interest'.[78]

In turn, the Constitution of South Africa has enshrined detailed provisions on how to settle inevitable conflicts in functional areas where concurrent powers apply.[79] Conditions are given in these provisions that allow national legislation to prevail over provincial legislation. This applies especially in regard to, inter alia, national security, the maintenance of economic unity, and the promotion of economic activities across provincial boundaries.[80] Provisions also refer to circumstances where national legislation in South Africa prevails over provincial legislation if the former is aimed at preventing unreasonable action by a province that 'is prejudicial to the economic, health and security interests of another province or the country as a whole',[81] or 'impedes the implementation on national economic policy'.[82] Legislation from the provincial level 'prevails over national legislation is subsection (2) and (3) of the Constitution of South Africa does not apply'.[83]

3.3.2 Decentralisation as a critical aspect of constitutionalism

This section explores the potential of decentralisation to enhance constitutionalism. The elements of constitutionalism that are examined include the review of the constitutionality of laws, the recognition and protection of fundamental rights and freedoms, an independent judiciary, separation of powers, and the control of the amendment of the constitution.

3.3.2.1 The concept of constitutionalism

The notion of constitutionalism as defined in chapter 2 embraces the idea that a government should not only be adequately restricted in a manner that protects its citizens from arbitrary rule but also that such a government should be in a position of functioning efficiently and in a way that it can be effectively expected to govern within its constitutional limitations. The modern concept is thus composed of two elements. First, the existence of some restrictions imposed on the state especially in its relations with citizens, based on certain well defined major

[78] See article 72 of the 1949 Constitution of Germany.
[79] See article 146 of the 1996 Constitution of South Africa.
[80] See article 146(2) (c) of the 1996 Constitution of South Africa.
[81] See article 146(3)(a) of the 1996 Constitution of South Africa.
[82] See article 146(3)(b) of the 1996 Constitution of South Africa.
[83] See article 146(5) of the 1996 Constitution of South Africa.

principles. Second, the existence of a clearly defined mechanism for making sure that the limitations on the government are legally enforceable.

The author An Na'im asserts that constitutionalism allows for the creation and maintenance of mechanisms and processes of governmental structures, social organisation and economic activities necessary for the preservation and enhancement of life, dignity and liberty of every person, in association with one another as well as individually.[84] An Na'im adds that historically concepts of constitutionalism have their source in the need to limit the powers of leaders and safeguard individuals as well as groups against undemocratic governments. From this perspective, constitutionalism refers to those rules, principles, institutions as well as practices that check the powers of government so as to ensure that human dignity and liberty is upheld. Certain practices and principles, such as the separation of power and constitutional review have been utilised by states in a bid to implement constitutionalism. As asserted by An Na'im, these experiences and practices are useful, but should not be used as a conventional model for constitutionalism especially in Africa. Under different country contexts, other mechanisms of political and legal accountability may be appropriate for constitutionalism to prevail. Therefore universal principles and institutions of constitutionalism should be adapted to social, political and economic realities of each country.[85]

In several states modern constitutionalism may thus be composed of six major elements: the review of the constitutionality of laws, the recognition and protection of fundamental rights and freedoms; an independent judiciary, the separation of powers; the control of the amendment of the constitution; and institutions that support democracy and may be enhanced by adequate decentralisation. There are however three main observations that can be made about this conceptualisation of constitutionalism. First, it is the cumulative effect of these major factors that enhance the chances for constitutionalism to prevail, second the existence and institutionalisation of these major elements do not necessarily mean that constitutionalism will be guaranteed. Nevertheless, their presence creates an environment for the enhancement of constitutionalism. In the absence of such elements, the chances of constitutionalism to prevail

[84] An-Na'im (n 27 above) 106.
[85] An-Na'im (n 27 above) 106. Also see LS E Enonchong *The Problem of Systemic Violation of Civil and Political Rights in Cameroon: Towards a Contextualised Conception of Constitutionalism* (unpublished Ph.D. thesis, School of Law, University of Warwick, 2013) 8-9. Enonchong is of the view that in developing a model of appropriate for a specific country, the socio-political context should be taken into consideration.

remains slim. Finally, it is by no means a static principle and the main elements identified are bound to change as other ways are devised to limit government and protect citizens.[86]

3.3.2.2 The extent to which decentralisation can enhance constitutionalism

Decentralisation has an inextricable link to constitutionalism, especially if powers are adequately devolved, delegated or deconcentrated to other branches of government such as the judiciary and the legislature.[87] Regarding the essential element of an independent judiciary, an independent judiciary is a necessary and logical corollary for adequate decentralisation and constitutionalism. Although there is no consensus among scholars on what exactly an independent judiciary means, it may be defined as one that is free to render justice on all matters of constitutional and substantial legal importance, impartially, fairly, in resonance with the law, and without intimidation or undue influence, fear of reprisal, threat or intimidation, particularly from the executive.[88]

As with the other elements of constitutionalism, especially the separation of powers, judicial independence is not an absolute concept. It does not refer to a particular type of relationship or something that a judicial system 'has' or 'does not have', but rather to whether it has 'more of it' or 'less of it'.[89] Taking this into account, certain conclusions can be drawn.

From the formal point of view, several constitutions in Africa have provisions that, to varying degrees of effectiveness, allow for judicial independence.[90] In decentralised states, fundamental factors of such formal constitutional independence include promotion processes; immunity from civil and criminal suits; vesting judicial functions exclusively in the judiciary; the independence of the appointment process; qualifications for prospective judges; the independence of the Judicial Service Commissions; security of tenure; judicial remuneration;

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[86] CM Fombad 'Challenges to constitutionalism and constitutional rights in Africa and the enabling role of political parties: Lessons and perspectives from Southern Africa' (2007) 55 *The American Journal of Comparative Law* 1, 7-8.

[87] See generally O Hans Bjorn Decentralisation and local Governance, Module 1: Definitions and Concepts, Swiss Confederation Concept Paper on Decentralisation and Local Governance (2007).

[88] See CM Fombad 'Some perspectives on the prospects for judicial independence in post-1990 African constitutions' (2007) *Public Law* 233-57.

[89] See Judicial independence overview and country-level summaries, The Asian Development Bank, Judicial Independence Project, available at <http:www.abd.org/Documents/Events/2003/RETA5987/FinalOverviewReport.pdf> quoted by Fombad (n 86 above) 15.

[90] See articles 120 to 133 of the Constitution of Angola; sections 96 to 104 of the Constitution of Botswana; sections 47, 118 to 33 of the Constitution of Lesotho; articles 97 to 124 of the Constitution of Madagascar; sections 103 to109 of the Constitution of Malawi; sections 76 to 86 of the Constitution of Mauritius; articles 78 to 85 of the Constitution of Namibia, sections 165 to 180 of the Constitution of South Africa; sections 62, 138 to 160 of the Constitution of Swaziland; articles 901 to 198 of the Constitution of Zambia; and sections 79 to 92 of the Constitution of Zimbabwe.

and disciplinary processes. Judicial interference and intimidation in the case of South Africa may seem unusually low, given that this country is highly decentralised and has carefully crafted constitutional provisions on judicial independence.[91]

Concerning the essential element of constitutional review, a constitution is only as good as the *modus operandi* provided within it for ensuring that its provisions are properly implemented and that any violations of these provisions are sanctioned. A vital element of constitutionalism is thus the presence of an effective and efficient body or mechanism for controlling the constitutionality of the law. In the absence of such a mechanism or body, the constitution may be regarded as weak and inefficient.[92]

Three major patterns emerge from an analysis of the mechanism provided for protecting constitutionality and legality in the constitutions of several decentralised African states.[93] The first pattern is of constitutional review by ordinary courts, which is evident in the diverse models under the constitutions of Botswana,[94] Lesotho,[95] Malawi,[96] Mauritius,[97] Namibia,[98] Swaziland[99] and Zimbabwe.[100]

The second pattern is the adoption of a Constitutional Council, a pattern linked mainly with continental Europe and, more particularly, the *Conseil Constiutionnel* of the French Fifth Republic Constitution of 1958, which has been copied in slightly modified form in the

[91] Fombad (n 86 above) 17.
[92] It is important to note that the UK does not have a written constitution and thus no formal system of constitutional review but it is a well known constitutional system. In practice, most constitutional litigation occurs through administrative law disputes, concerning the operation of public bodies, and human rights. The courts have an inherent power of judicial review, to ensure that every institution under law acts according to law. Except for Parliament itself, courts may declare acts of any institution or public figure void, to ensure that discretion is only used reasonably or proportionately. Since the UK joined the European Convention on Human Rights in 1950, and particularly after the Human Rights Act 1998, courts are required to review legislation to be compatible with international human rights norms. These protect everyone's rights against government or corporate power, including liberty against arbitrary arrest or detention, the right to privacy against unlawful surveillance, the right to freedom of expression, freedom of association including joining trade unions and taking strike action, and the freedom of assembly and protest. Every public body, and private bodies that affect people's rights and freedoms, is accountable under the law. See generally LB Trembley 'General Legitimacy of Judicial Review and the Fundamental Basis of Constitutional law (2003) 23 *Oxford Journal of Legal Studies* 4, pp 525-562.
[93] Fombad (n 86 above) 18-20.
[94] See sections 18(1), 105 and 106 of the Constitution of Botswana.
[95] See sections 22 and 129 of the Constitution of Lesotho.
[96] See sections 11(3) and (4), 103(2), and 108(2) of the Constitution of Malawi.
[97] See sections 17 and 83-84 of the Constitution of Mauritius.
[98] See articles 25 and 80(2) of the Constitution of Namibia.
[99] See sections 35, 139(2), and 146(2)(a) of the Constitution of Swaziland.
[100] See section 24 of the Constitution of Zimbabwe. In the case of Zimbabwe, the scope for review of constitutionality appears to be very slim, as section 24 limits it to issues relating to the declaration of the rights provided for in articles 11 to 23.

constitutions of Angola,[101] Madagascar[102] and Mozambique.[103] In the case of Madagascar, the Constitution gives the executive overriding powers in the law-making arena,[104] which makes it easy for the government in this country, as well as in countries like Angola and Mozambique, to enact legislation that entrenches the centralisation of power with little fear of judicial oversight.

Finally, the third pattern, which may be referred to as a hybrid model, is found, for instance, in section 27 of the Zambian constitution, which provides for the creation of ad hoc special tribunals to handle the pre-promulgation preventive review of constitutionality while reserving repressive *a posteriori* review of constitutionality to the High Court.[105]

It is thus argued that 'there can be no constitutionalism, in terms of respect for the constitution and the values and principles that underlie it, if there is no secure review mechanism, whether by ordinary courts or other specialised courts or bodies, that can independently and impartially enforce the provisions of this constitution and check and control any abuses of its provisions'.[106] Therefore, any country that limits decentralisation, especially by allowing the executive to unduly influence constitutional review, reduces the potential for decentralisation to enhance constitutionalism.

Concerning the protection of fundamental human rights and freedoms, all African states have recognised and accepted it as a standard of decentralisation that promotes constitutionalism. In the Constitution of South Africa, this protection is afforded by the Bill of Rights,[107] while in several other African constitutions, human rights are usually found in a section entitled 'Protection of fundamental rights and freedoms'. With respect to the scope of these rights, while older constitutions, such as that of Botswana, refer only to the first two generations of rights, 'most of the recent constitutions, taking the hint from the African Charter on Human and Peoples' Rights (ACHPR) of 1981 cover all three generations of rights'.[108] Indeed, the Constitution of South Africa goes further in its approach in interpreting these rights. For

[101] See articles 134 to157 of the Constitution of Angola. Although these provisions depict it as a 'Constitutional Court', elements such as access to the courts as well as the nature of its jurisdiction clearly indicate that such a court only in name, not in substance.
[102] See articles 105 to 113 of the Constitution of Madagascar. As in the case of Angola, the 'Constitutional Court' of Madagascar is a court in name only, not in the way it operates.
[103] See articles 180 to 184 of the Constitution of Mozambique.
[104] See articles 83 and 157 of the Constitution of Madagascar.
[105] See section 94(1) of the Constitution of Zambia.
[106] See Fombad (n 86 above) 20.
[107] See Chapter 2 of the 1996 Constitution of South Africa.
[108] See Fombad (n 86 above) 20.

instance, its section 39 states that when interpreting the Bill of Rights, the courts have to 'promote the values that underlie an open and democratic society based on human dignity, equality and freedom',[109] in addition which they must take foreign law and international law into consideration. Furthermore, to underscore the importance of the protection and promotion of human rights, most constitutions in Africa contain special procedures for their enforcement by allowing individuals whose rights have been violated to seek redress from the courts.[110]

Decentralisation is also linked to the separation of powers, an essential prerequisite of modern constitutionalism. Due to distrust of power in general and of its concentration in particular, this element of constitutionalism needs to be present in all states. The doctrine of separation of powers, in its simplest form, necessitates that the three branches of government, namely the executive, legislative and judiciary, should be kept separate from each other.[111] In turn, decentralisation is necessary for giving effect to the doctrine of the separation of powers.

For instance, unlike the Constitution of the Kingdom of Lesotho, which expressly states in section 44(1) that 'there shall be a King of Lesotho who shall be a constitutional monarch and Head of State', the Constitution of Swaziland provides for a King who dominates and controls the executive, the legislature and the judiciary.[112] Its section 65(4) states that 'where the King is required by this Constitution to exercise any function after consultation with any person or authority, the King may or may not exercise that function following that consultation'. This means indirectly that, because of the highly centralised nature of Swaziland, the King is under no constitutional obligation to consult any authority or body or, if he does so, to be bound by such consultation.

Concerning constitutional amendments, a constitution in all decentralised states needs to be an enduring instrument. Although the constitution is a law, unlike any other law it is the supreme law of a country and based on the sovereign will of the people. If the Constitution is susceptible to easy amendment or alteration by a few people who hold positions of leadership, it instantly loses its value as the supreme law of that country and the will of the people is subverted.[113]

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[109] See section 39 of the 1996 Constitution of South Africa.
[110] For instance, section 18(1) of the Constitution of Botswana states, inter alia, that 'if any person alleges that any of the provisions of sections 3 to 16 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him, then, without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the High Court for redress ….'
[111] See generally CM Fombad 'The separation of powers and constitutionalism in Africa: The case of Botswana' (2005) *25 B.C. Third World Law Journal* 301-42.
[112] See in general sections 64-78, 79-137, and 136-60, respectively, of the Constitution of Swaziland.
[113] Fombad (n 86 above) 21.

Most African constitutions can be classified into three types: the semi-rigid, the flexible and the semi-flexible. Concerning the first category, the South African Constitution may be classified as a semi-rigid constitution. The alteration of certain constitutional provisions in the case of South Africa necessitates the approval of three-quarters majority in the National Assembly and the supporting vote of at least six of the nine provinces in the National Council of the Provinces. Decentralisation thus plays a vital role in this aspect of constitutionalism in that powers are devolved to the legislative arm of government to play an essential role in constitutional amendments. Other constitutional provisions necessitate the approval of two-thirds majority in the National Assembly, which must be supported by votes from at least six of the nine provinces in the National Council of the Provinces.[114]

Secondly, a majority of Southern African constitutions, namely those of Angola,[115] Lesotho,[116] Madagascar,[117] Malawi,[118] Mozambique,[119] Zambia[120] and Zimbabwe,[121] can be classified as flexible. Due to the growing number of dominant political parties with large parliamentary majorities, these constitutions, in allowing constitutional amendments to be carried out by either two-thirds or simple parliamentary majorities, provide very limited protection against rampant, unpredictable constitutional amendments.[122]

In the case of Botswana and Mauritius, which may be said to have semi-flexible constitutions, there is provision for slightly more restrictions usually necessitating approval by a 'supermajority' in Parliament. These constitutions are all designed in such a manner that any amendments are carefully considered, ample time is given for reflection, in-depth consultations are effected, and the people take part actively and fully in the process.[123] It is therefore argued that a conducive approach for enabling decentralisation to enhance constitutionalism is to strictly control and regulate the way in which constitutional amendments can be carried out to ensure that it is done with prior notification and in-depth deliberation, not negligently and haphazardly. Additionally, it needs to be done in collaboration with the populace to make sure

[114] See section 74 of the 1996 Constitution of South Africa.
[115] See article 158(1) of the Constitution of Angola.
[116] See section 85 of the Constitution of Lesotho.
[117] See articles 138-141 of the Constitution of Madagascar.
[118] See sections 195-197 of the Constitution of Malawi.
[119] See articles 198 and 199 of the Constitution of Mozambique.
[120] See article 79 of the Constitution of Zambia.
[121] See article 52 of the Constitution of Zimbabwe.
[122] See Fombad (n 86 above) 22.
[123] See Fombad (n 86 above) 22.

that the general will of the people is not relegated to the background by a few unscrupulous politicians and administrators in leadership positions.[124]

3.3.3 Decentralising powers as a means to accommodate minority groups

Minorities are usually side-lined in the process of setting up decentralised systems throughout the world. This section examines the extent to which decentralisation can curb discrimination against minority groups, particularly those in Africa and particularly women and indigenous groups.

3.3.3.1 The concept of discrimination against minority groups

The United Nations (UN) has long recognised freedom from discrimination as a fundamental human right. The right to be free from any form of discrimination is explicitly stated as one of the seven references to human rights embodied in the UN Charter.[125] The latter did not spell out the content of human rights, especially as regards discrimination against women and indigenous groups, but left this for later elaboration. What finally emerged was the pace-setting International Bill of Rights,[126] which refers variously to the Universal Declaration of Human Rights (UDHR),[127] the International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocol,[128] and the International Covenant on Economic, Social and Cultural Rights (ICESCR) and its Optional protocol.[129] Other international instruments that protect the rights of minority groups include the Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the Convention on the Rights of the Child (CRC).[130]

[124] See Fombad (n 86 above) 23.
[125] D Sheldon 'Address given at the Fourth Annual International Law Symposium: Improving the status of women through international law' (1987) 9 *Whittier Law Review* 413.
[126] See *The International Bill of rights: the Covenant on Civil and Political Rights*, Preface (Henkin, L ed.,1981) discussing the development of the idea and term 'international bill of rights' in GW Mugwanya 'Equality in Uganda: A case for the domestication of international human rights standards' (2002) 12 *African Journal of international and Comparative Law* 60.
[127] Universal Declaration of Human Rights, adopted 10 Dec1948, GA Res. 217A (III), UN GAOR, 3d Sess. No. 16, at 71, UN Doc.a/810 (1948) [hereinafter UDHR].
[128] See *The International Bill of Rights: the Covenant on Civil and Political Rights*, Preface (Henkin, L ed., 1981) discussing the development of the idea and term 'international bills of rights in Mugwanya (n 121 above). See also PN Forkum 'The impact of the African Charter and the Maputo Protocol in Cameroon in VO Ayeni (ed) The impact of the African Charter and the Maputo Protocol in selected African states (2016) 31-32.
[129] BA Simmons 'Should States ratify the Protocol? Process and Consequences of The Optional Protocol to the ICESCR' (2009) 27 *Norwegian Journal of Human Rights 1*, 64-81.
[130] EM Patel & C Watters *Human Rights Fundamental Instruments and Documents* (1994) 305.

The African Charter on Human and Peoples' Rights (ACHPR) is the regional mechanism for the promotion and protection of human rights on the African continent,[131] and calls upon the African Commission on Human and Peoples' Rights (African Commission)[132] and African Court on Human and Peoples' Rights (African Court)[133] to promote and protect the rights of women and indigenous groups; several treaty bodies also have the same mandate.[134]

Reference to group rights, specifically minority rights, is made in article 27 of the ICCPR:

> In those states in which ethnic or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.[135]

The UN Declaration on Minorities also alludes to group rights, specifically minority rights. For instance, its article 4 states that national minorities are entitled to participation in public life. While this entails that national minorities are therefore to enjoy the right to participate in public affairs without discrimination,[136] it should be noted that article 27 of the ICCPR alludes only to persons belonging to minority groups, not to the groups themselves. This suggests that while individuals or persons belonging to a minority group can invoke that right, the minority group per se cannot invoke an individual right.[137] As Addis argues, persons belonging to such minority groups benefit from an associational right, which happens to be the right to choose with whom to associate and under what circumstances to do so.[138]

As for the ACHPR, it makes no allusion to 'minorities' as such, although it does refer to the principle of non-discrimination.[139] Its articles 19 to 24 set forth the rights of peoples, although 'peoples' is not defined.[140] Article 19 provides that '[a]ll peoples shall be equal; they shall

[131] Therein equally lies special protection to rights such as article 2 (the right against discrimination), and article 3 (the right to equality). Article 18(3) also provides that the state shall ensure the elimination of discrimination against women and as well as the protection of their rights contained in international declarations and conventions.
[132] M Evans & R Murray (ed) *The African Charter on Human and Peoples' Rights: The System in Practice, 1986-2000* (2002) 280.
[133] The African Court on Human and Peoples' Rights was created to complement the African Commission on Human and Peoples' Right's mandate. See article 1 of the 1998 Protocol to the African Charter on Human and Peoples' Rights on the Establishment of the African Court on Human and Peoples' Rights mentioned in VO Ayeni 'introduction and preliminary overview of findings' in Ayeni (n 123 above) 7.
[134] See generally Patel & Watters (n 130 above).
[135] See article 27 of the ICCPR.
[136] See article 4 of the UN Declaration on Minorities.
[137] R Higgins *Problems and process: International law and how we use it* (1994) 127.
[138] Addis (n 25 above) 741.
[139] The principle of non-discrimination is stipulated in article 20 of the ACHPR
[140] See articles 19 to 24 of the ACHPR.

enjoy the same respect and shall have the same rights. Nothing shall justify the domination of a people by another'.[141] This article is yet to be interpreted by the African Commission.

In turn, article 20 of the ACHPR refers to the right of all peoples to existence and proclaims their 'unquestionable and inalienable right to self-determination'.[142] They shall freely determine their political status and pursue their social and economic development with respect to the policy they have chosen.[143] The second paragraph adds that 'colonised or oppressed peoples shall have the right to free themselves from the bonds of domination by resorting to any means recognised by the international community'.[144]

The African Commission considered the right to self-determination in the case of *Katangese Peoples' Congress v Zaire*.[145] In arriving at its decision, it said there were no human rights violations that necessitated the exercise of the right to self-determination in a way that affects the territorial integrity of the Democratic Republic of Congo (DRC). The African Commission thus ruled that, at least in such circumstances, self-determination could not be equated with secession. Although it acknowledged that the Katanga region could utilise institutional means other than secession to achieve self-determination, it did not give further explanation.

African states have ratified and signed most of the abovementioned international instruments in a bid to curb the discrimination faced by minorities, especially women. For many African women, the Beijing Platform[146] and the other such instruments their governments have signed need to be translated into positive change in their daily lives. Women remain at the bottom of the social hierarchy, with poor access to land, credit, health and education. While some of the agreements promote property and inheritance rights for women, in most countries women are denied these very rights, including the right to participate in government.[147]

Indigenous groups also face a great deal of discrimination. For instance, the Mbororos, an indigenous group of pastoralists found throughout Africa, especially in Nigeria, Kenya, Tanzania and Rwanda, have been marginalised from participating in the governance of these

[141] See article 19 of the ACHPR.
[142] See article 20 of the ACHPR
[143] See article 20 of the ACHPR.
[144] See article 20 of the ACHPR.
[145] *Katangese Peoples' Congress v Zaire* (2000) AHRLR 72 (ACHPR 1995).
[146] For information on the Beijing Declaration and Platform for Action see <http://www1.umn.edu/humanrts/instree/bejingmnu.htm> (accessed 26 December 2017)
[147] G Mutume 'African women battle for equality' Africa Renewal 2005 <http://www.un.org/africarenewal/magazine/july-2005/african-women-battle-equality> (accessed 15 December 2017).

countries. Similarly, the Pygmies, found mainly in Cameroon, Gabon, Equatorial Guinea East and the DRC, have not been involved in governance affairs either, as noted in Chapter 2.

3.3.3.2 The extent to which decentralisation remedies minority-group concerns

Decentralisation is considered an appropriate means of accommodating minority groups. In the case of indigenous people and their distinctive cultural and linguistic heritage, it creates territorial enclaves in which cultural and linguistic groups with a defined or definable territorial settlement pattern can promote and protect their cultural identities. In many states, decentralised units are organised accordingly along linguistic, cultural or ethnic lines with a view to preserving the culture of marginalised groups. For example, Nigeria has carved out its territory along linguistic lines to accommodate certain minority groups.[148]

Decentralisation is also regarded as a mode of governance that facilitates the political inclusion of marginalised groups since it entails that there are multiple electoral positions in multiple spheres of government.[149] In addition, it can enhance the inclusion of minority groups by increasing their access to services such as water, education and health care. The assumption is that decentralisation improves the quality of democratic representation and participation of minority groups, leading to efficiency and effectiveness in basic service delivery and thus to greater responsiveness to the needs of marginalised groups.[150] It is thus necessary to examine how states such as South Africa have harnessed decentralisation to accommodate marginalised groups.

The 1996 South African Constitution indirectly protects marginalised cultural and linguistic groups.[151] Recognition is officially accorded to 11 languages: Afrikaans, English, IsiNdebele, IsiXhosa, IsiZulu, Sepedi, Sesotho, Setswana, SiSwati, Tshivenda and Xitsonga.[152] Even though certain languages, among them the Khoi, Nama and San languages, are not officially recognised *per se*, the PanSALB, created under the Constitution, has the duty to promote, and create conditions for, the development and use of these languages.[153]

The South African Constitution also contains the principle of 'the right to self-determination', which allows marginalised cultural and linguistic groups to benefit from a degree of cultural

[148] Z Ayele & P Ntliziywana 'Inclusion of marginalised groups through Devolution in South Africa' in Steytler & Ghai (n 12 above) 344.
[149] Crook 2003 mentioned in Ayele & Ntliziywana (n 148 above) 344.
[150] Lockwood 2007 mentioned in Ayele & Ntliziywana (n 148 above) 345.
[151] Section 9 (3) of the 1996 Constitution of South Africa.
[152] Section 6(1) of the 1996 Constitution of South Africa.
[153] Section 6(5) of the 1996 Constitution of South Africa.

and or territorial autonomy.[154] The national government has the discretion to determine the way in which the principle is actualised.[155]

Although provinces and municipalities in South Africa are not defined along cultural and linguistic lines, as in Ethiopia, the fact is that particular cultural and linguistic groups are concentrated in particular provinces and municipalities. The Constitution thus allows provinces and municipalities to choose at least two working languages 'for the purposes of government'.[156] Additionally, the Official Languages Act 12 of 2012 regulates national official languages. The creation of a number of territorial and non-territorial arrangements between decentralised units and the linguistic and cultural communities plays a vital role in the accommodation of marginalised groups.[157]

The South African Constitution also contains provisions that aim to remedy the historical exclusion of women. In the first place, it prohibits discrimination against women, which it places on the same level as racism.[158] Its section 9 contains an equality clause that prohibits various types of 'unfair' discrimination and creates a presumption of unfairness if women face discrimination on the basis, *inter alia*, of sex, gender, marital status and pregnancy.[159] The Commission on Gender Equality is also established under the Constitution.[160] Most importantly, the equality clause gives directives to all spheres of government to uphold gender equality. The White Paper on Local Government also states that local government needs to improve the quality of life of local communities, particularly that of the most marginalised, including rural women.[161]

3.3.4 Incorporating traditional rule into modern decentralised governance

Incorporating traditional rule into modern decentralised governance is necessary in tackling governance challenges. This section examines the extent to which modern decentralised governance systems can incorporate traditional governance systems. Before such an examination, it is necessary to define the latter, all more so in view of Africa's great diversity of them.

[154] Section 235 of the 1996 Constitution of South Africa.
[155] Steytler and Meyer 2001 mentioned in Ayele & Ntliziywana (n 148 above) 345.
[156] Section 6(3)(a) of the 1996 Constitution of South Africa.
[157] Ayele & Ntliziywana (n 148 above) 345-346.
[158] Section 1(3) of the 1996 Constitution of South Africa.
[159] Section 9 of the 1996 Constitution of South Africa.
[160] Section 187 of the 1996 Constitution of South Africa.
[161] Department of Provincial and Local Government (DPLG) 'The white paper on local government' (1998) 17.

3.3.4.1 The concept of traditional governance systems

Generally, traditional authority refers to an institution or power handed down from generation to generation;[162] traditional authorities are individuals in positions of leadership bestowed on them by their communities and cultures. Their rule is accepted as legitimate on the basis of tradition, that is, on the basis of a way of life, a shared history, an inherited culture, social and moral values, and institutions that serve those values.[163]

The most senior position in a traditional institution, community or village is a chief. He or she is a leader of a particular traditional community who exercises authority over a people in accordance with customary law.[164] In most cases, the chief is assisted by a traditional council made up of elders. Traditional authorities do not have any special training; some obtain their powers through succession, whereas others are appointed, as in the case of Zimbabwe. Furthermore, executive, legislative and judicial powers are not differentiated in traditional systems as they are in modern governance systems.[165]

3.3.4.2 Measures taken to incorporate traditional systems into modern decentralised governance

Scholars such as Daphne and Ntsebeza amongst several others view traditional authorities as oppressive to women's views, undemocratic, patriarchal, corrupt and inefficient.[166] In South Africa as well as in other African countries traditional authorities have been accused by postcolonial governments as well as libertarian movements of collaborating and colluding with colonial governments at the expense of their populace.[167] There is need to take into consideration the precolonial context in which they operated before especially as they were used by the colonial masters to divide and rule colonised people. Mawere and Mayekiso are therefore of the view that though traditional authorities have long been considered as undemocratic, there is need to consider the role they played in the pre-colonial era in order for

[162] This definition is gotten from Max Weber (Extracts: 328) and mentioned in C Checka 'Traditional Authority at the Crossroads of Governance in Republican Cameroon' (2008) 2 *Africa Development* vol XXXIII 72.
[163] TW Bennett *Customary Law in South Africa* (2004) 101.
[164] M Mamdani Citizen and Subject 79-82 in Bennett (n 163 above) 104.
[165] D Bizana-Tutu 'Traditional Leaders in South Africa: Yesterday, today and tomorrow' Unpublished M.Phil. mini thesis submitted at the Faculty of Law, University of the Western Cape (2008) 7. See also generally T Chigwata 'The role of traditional leaders in Zimbabwe: are they still relevant?' (2016) *Law, Democracy and Development* 20.
[166] Daphne (1982) and Ntebeza (2005) mentioned in M Mawere & A Mayekiso 'Traditional leadership, Democracy and Social Equality in Africa: The role of Traditional Leadership in emboldening Social Equality in South Africa (2014) 5 *International Journal of Politics and Good Governance* 5.3, 2. These authors opine that because traditional leadership is undemocratic and do not take women's interest into consideration, it cannot be expected to enhance democracy through decentralisation
[167] Mawhood (1982) and Hammer (2005) mentioned in Mawere & Mayekiso (n 166 above) 2.

their positive aspects to be incorporated into modern decentralised governance.[168] It is thus argued in thus thesis that traditional systems can indeed be incorporated in modern decentralised governance.

In Zimbabwe, traditional authorities play an important role in the delivery of customary and common laws.[169] Traditional authorities are selected by their families through succession[170] and represented in the Senate by a total of 16 chiefs.[171] They are instrumental in facilitating development through structures such as village and ward assemblies.[172] In addition, they play supporting and advisory roles to various agencies and government ministries, especially those at local level,[173] and are also pivotal in dispute resolution.[174] However, despite their role in the country's governance, they are still manipulated by the central government for political aims.[175]

Traditional leadership also forms part of South Africa's decentralised governance structure.[176] Its role is constitutionalised and incorporated in subsequent legislation.[177] Constitutional Principle 13 provides the institution of traditional leaders with a status and role according to indigenous law.[178] The House of Traditional Leaders enables them to participate in law-making processes on issues of custom and traditional authority.[179]

In Ghana, traditional leadership survived after the end of colonial rule as it remained instrumental in linking communities to the state. Ghana continued to use colonial administrative boundaries after independence, with traditional authorities wielding power in rural areas.[180] Although the colonial government had sought to suppress them, it failed in the attempt. Similarly, when the Convention People's Party (CPP) assumed power in the 1950s,

[168] Mawere & Mayekiso (n 166 above) 2.
[169] J Makumbe 'Local authorities and traditional leadership' in J De Visser, N Steytler & N Machingauta (eds) Local government reform in Zimbabwe: A policy dialogue (2010) 88.
[170] O Dodo 2003 mentioned in M Augustine 'The role of Traditional leaders in Post-Independence Countries Botswana, Ghana and Zimbabwe (2016) Helen Suzman Foundation available at <http://hsf.org.za/resource-centre/hsf-brief/the-role-of-tradit...ost-independence-countries-botswana-ghana-and-zimbabwe> 7. (accessed 27 November 2017).
[171] Section 120(1)(b) Constitution of Zimbabwe.
[172] Section 282(1)(c) of the Constitution of Zimbabwe.
[173] S Rugege 'Traditional leadership and its future role in local governance' (2009) *Law, Democracy and Development* 171, 185. See also generally Chigwata (n 165 above).
[174] See generally Makumbe (n 166 above). See also HMG Matondi 'Traditional authority and the fast track land reform: Empirical evidence from Mazowe District' (2010) Zimbabwe Working Paper, Bellville: institute for Poverty, Land and Agrarian Studies, University of Western Cape 2010, 93-95.
[175] Augustine (n 170 above) 6.
[176] See generally Bizana-Tutu (n 165 above).
[177] See sections 211(1) and (2) of 1996 Constitution of South Africa. See also The Traditional Leadership and Governance Framework Act 41 of 2003.
[178] Mabeta mentioned in Bizana-Tutu (n 165 above) 54.
[179] SP Holomisa *Old Traditions: New South Afric*a (2005) 14.
[180] Lentz 2000 mentioned in Augustine (n 170 above) 4.

the Native Courts were expunged in an effort to reform the judicial system, but the opposition National Liberation Movement (NLM) arose in support of traditional authorities.[181] Today they are crucial for dispute resolution in communities and are regarded as key forces in advancing the social development of their people and serving as custodians of natural resources.[182]

In Botswana, traditional authorities are subject to government authority and can be fired at will.[183] Although their powers have been diluted, the state has passed several laws recognising their authority.[184] It remains a bone of contention if these laws really do uphold the role decentralisation plays in incorporating traditional leadership in Botswana. The scholar Good is of the view that traditional leadership has been incorporated into the country's modern governance system, notwithstanding challenges of competence.[185] Ndlela argues likewise that it continues to play an important role in Botswana's governance agenda, especially in handling land disputes.[186]

Generally, despite the role traditional authorities play in Africa, their constitutional guarantees appear to be weakening, as in the case of South Africa, where these seem to have been eroded by amendments in 1995 to the Local Government Transition Act – the latter provide that traditional authorities are only one of four interest groups, together with levy payers, women and farmworkers. Although traditional institutions are regarded as inherently undemocratic, if they are formally recognised and their role defined by the state, then they can be easily incorporated into the modern governance system.

3.3.5 Decentralising power to advance democracy

Several states worldwide have achieved democracy by decentralising powers and financial resources to lower spheres of government. This section examines the relationship between decentralisation and democracy. Elements of democracy thus examined include a political system for replacing and choosing the government through free and fair elections; the active participation of the people in civic and political life; the promotion and protection of human rights of all citizens; and the respect of the rule of law.

[181] Augustine (n 170 above) 4.
[182] Augustine (n 170 above) 5.
[183] Sharma 2003 mentioned in Augustine (n 170 above) 3.
[184] This includes the Chieftaincy Act, Customary Courts Act, Tribal Territories Act, Marriages Act, and House of Chiefs Act.
[185] Good 2002 3 in Augustine (n 170 above) 3.
[186] Ndlela 2007 34 in Augustine (n 170 above) 3.

3.3.5.1 The concept of democracy

The concept of democracy denotes a system of government in which citizens exercise power directly by participating in government affairs or do so indirectly through elected representatives. Democratic governance necessitates both political and legal safeguards. Political safeguards include periodic elections, though they may not be sufficient on their own to prevent powerful interests from exerting excessive influence. Legal safeguards guaranteeing rights as well as limiting governmental power can counter this, as can oversight bodies like courts.[187]

Democracy thus consists of four essential elements: a political system for replacing and choosing the government through free and fair elections; the active participation of the people as citizens in civic and political life; the promotion and protection of the human rights of all citizens; and the rule of law, under which laws and regulations apply equally to all citizens.[188]

3.3.5.2 Promoting democracy through decentralisation

Shared-rule and self-rule arrangements are vital in a decentralisation design that aims to attain democracy, but there are other equally necessary mechanisms and institutions with the capacity to enhance inclusiveness in both national and local decision-making and thereby advance this aim.[189] According to Wolff, it is important to complement shared rule and self-rule arrangements with these processes.[190]

An inclusive electoral system is key for democracy, and considered as 'the most powerful lever of constitutional engineering for accommodation and harmony in severely divided societies'.[191] An electoral system should therefore be designed in such a way as to facilitate interdependence between groups in fragmented societies as well as cross-communal cooperation.[192] There are three main kinds of electoral systems, each with variants: proportional representation (PR) systems, semi-proportional systems, and plurality-majority systems.

Under the PR electoral systems, two sub-types exist.[193] The first and most common kind is the Party List PR system, in which political parties present lists of candidates in order of priority for elections: voters casts votes on the basis of political parties rather than for candidates, and

[187] N Hedling *A Practical Guide to Constitution Building: Principles and Cross-cutting Themes* (2011) 16-17.
[188] L Diamond & L Morlino 'The quality of Democracy' in L Diamond *In Search of Democracy* (2016) 2.
[189] S Wolf 'Post conflict state building: The debate on institutional choice' (2011) 32 *Third World Quarterly* 7.
[190] Wolf terms such arrangements 'complex power-sharing arrangements'. See Wolf (n 189 above) 7.
[191] Wolf (n 189 above) 7.
[192] B Reilly *Democracy in divided societies: Electoral engineering in divided societies* (2004) 2.
[193] Reilly (n 192 above) 15-16.

seats are distributed to each party from their lists in proportion to the votes won.[194] The second type is the Mixed Member PR system (MMP), which combines elements of PR and First Past the Post (FPTP). Some seats are chosen via the FPTP method, while others are allocated to parties.[195] The PR system therefore ensures that votes are not wasted by translating votes into seats won.[196] The Party List PR system is seen as providing a more representative structure than the FPTP system[197] and is therefore preferred as a mechanism for representing the interests of both majorities and minorities in conflict-ridden societies.[198]

Oloo is of the view that the PR system gives politicians the latitude to carry out negotiations beyond their own groups.[199] In the case of Nigeria, the President has to win at least one-quarter of the votes cast in at least two-thirds of the 36 states of the country.[200] The PR system is preferable to others because it prevents a clear majority from emerging, thus facilitating inclusive decision-making and creating room for the creation of coalition governments.[201]

With respect to plurality-majority systems, the First-Past-the-Post (FPTP) system is the simplest of the forms they can take. It focuses on candidates rather than parties, and utilises single-member districts. Candidates are elected by voters, and the candidate with the highest votes, though not necessarily the majority, wins the election.[202] According to Oloo, the FPTP system has the advantage of being simple to operate and of connecting winning candidates to geographical areas.[203] Voters elect candidates and not parties.[204] In this way, voters are able to assess the individual performance and merits of candidates.[205] The run-off or 'two-round' system is the most commonly used majoritarian system. FPTP principles are used in the first round of the 'two-round' system. If there is no majority winner, another election is held between the two candidates with the highest number of votes; the one receiving the most votes,

[194] Reilly (n 192 above) 18.
[195] Reilly (n 192 above) 18.
[196] A Oloo 'Elections, representations and the new Constitution' *Society for International Development (SID) Constitution Working Paper* No. 7 (2011) 3.
[197] Oloo (n 196 above) 2.
[198] Oloo (n 196 above) 2.
[199] Oloo (n 196 above) 3.
[200] See section 133 of the 1999 Constitution of the Federal Republic of Nigeria.
[201] S Wolf 'Electoral-System design and power sharing' in I O' Flynn & D Russell (eds) (2005) *Power Sharing: New Challenges for Divided Societies* 62.
[202] Oloo (n 196 above) 2.
[203] Oloo (n 196 above) 2.
[204] Reilly (n 192 above) 15.
[205] Reilly (n 192 above) 15.

regardless of margin, is elected. If, however, a candidate receives an absolute majority, he or she wins.[206]

Reilly argues that in reality, however, the choice of electoral systems in Africa is a result of factors such as colonialism and efforts to emulate neigbouring countries. Furthermore, once a country decides on a specific electoral model, it tends to stick to it, focusing on the system's benefits rather than its disadvantages.[207] Considering the fact that an inclusive electoral system may not be enough to enhance democracy, an examination of other methods is necessary.

Decentralisation may enhance democracy if the executive as well as administrative structures uphold inclusiveness of participation by making sure that the structures reflect national and local diversity. This is possible via coalition government, proportional public sector employment, and minority vetoes.[208] According to the United Nations Development Programme (UNDP), for decentralisation to facilitate democracy it should enhance inclusiveness or participation as opposed to reinforcing 'social patterns of exclusion and inequity'.[209] The UNDP argues further that since local governments deliver most of the local services, they become a 'point of contestation' in political and economic matters and should therefore be the starting-point in formulating inclusion.[210] Equally, the World Bank advocates the creation of 'inclusive-enough' coalitions that can enhance the representation of diversity at the national and local levels.[211]

Apart from upholding human rights, another vital component of democracy embraced by most states is the rule of law. The rule of law dictates that accessible and comprehensible written laws, be they constitutional or legislative, should guide government actions as well as decisions. Moreover, these laws must be fairly and consistently applied to everybody by government, including government officials, and everyone must have access to justice and the enforcement of the laws. Therefore, a commitment to the rule of law also necessitates vigilance against corruption and the abuse of power.[212]

A common practical, rather than theoretical, conception of the rule of law includes an element of justice. Therefore, in addition to the law being accessible, predictable, universally applicable

[206] Reilly (n 192 above) 15-16.
[207] Reilly (n 192 above) 14.
[208] Wolf (n 201 above) 60.
[209] UNDP 'Local Governance, peace building and state building in post-conflict settings' A UNDP discussion paper (2010) 4.
[210] UNDP (n 209 above) 7.
[211] World Bank *World Development Report 2011: Conflict, Security and Development* (2011) 12-13.
[212] Hedling (n 187 above) 17.

and accessible, the just legal system gives impetus to the rule of law. Apart from merely adhering to the law or the valid enactment of law, it must encompass equality and human rights and must not discriminate unjustifiably among various classes of people.[213]

States may promote the rule of law in several ways, most fundamentally by adopting a coherent legal system. The doctrines of judicial review, constitutional supremacy and independent oversight can solidify such a framework. For instance, both the preamble to, and a separate provision of, the Constitution of Rwanda declare the supremacy of the Constitution and the rule of law.[214] Any conflicting legislation is considered null and void. Supremacy therefore protects and gives apex importance to the rule of law via ample legal structures, checks and balances, and the guarantee of rights.

The judiciary, which applies the law to individual cases, acts as the guarantor and guardian of the rule of law. Therefore, a properly operating and independent judiciary is essential for the rule of law, which, as mentioned, necessitates a legal system that is just and promotes the right to fair hearing and accessibility to justice.[215]

However, inasmuch as decentralisation can serve to promote democracy, this is not necessarily always the case. Eisenmann argues that in a case where autochthonous representations are imposed by the central government at the local government level especially, in municipalities, decentralisation may not necessarily promote democracy. This view is equally shared by Serge Regourd who argues that in a situation where central government imposes autochthonous representations at the local government level, local authorities find it difficult to carry out their duties because of a lot of central government interference. Therefore local authorities are not autonomous.[216] Such autochthons are more liable to serve the central government's political interests and those of its personnel than the interests of the people. In such a situation, decentralisation instead hampers democracy.

3.3.6 Achieving development through decentralisation

This section examines the extent to which development can be achieved through decentralisation. Objectives of development examined in this section include the improvement of efficiency in the provision of public services and the enhancement of the mobilisation of

[213] Hedling (n 187 above) 17.
[214] The Preamble and article 200 of the 2003 Constitution of the Republic of Rwanda.
[215] Hedling (n 187 above) 18.
[216] Eisenmann and Regourd mentioned in P Moudoudou 'Les tendances du droit administratif dans les etats d'Afrique noire francophone 2009 (3) *Annales de l'Universite Marien NGOUABI* 10, 37.

resources. The important factor of experimentation and innovation of policy at local government is also examined.

3.3.6.1 The concept of development

Development has no universally accepted definition. In a broad sense, it is a process that enhances political freedom, civil liberties and equality of opportunity. The overall objective of development is thus to increase political, economic and civil rights of all people across ethnic groups, genders, religions, regions, races and states.[217]

Authors such as De Visser emphasise three major components of the notion of 'development': equity, material element, and choice. The first element, 'equity', refers to collective well-being; that is to say, development should allow everyone to gain equally from redistribution of resources, including the most vulnerable groups in society as well as future generations.[218] The 'material element' relates to tangibles brought about by the development process.[219] 'Choice' refers to the opportunities given to people to take decisions that affect their wellbeing; the underlying assumption is that one's inherent human dignity entitles one to decide on issues that concern one's collective as well as personal development.[220]

3.3.6.2 Attaining development through decentralisation

With regard to the mobilisation of resources, it has been argued that, under a decentralised system of government, local government is better placed to mobilise certain resources than the central government, which otherwise has difficulties in doing so.[221] To generate revenue, central governments mostly utilise tax-raising measures such as company taxes, taxes on goods, and personal taxes. Because of the administrative procedure in collecting these taxes, the central government targets the formal sector. The result is that the informal sector is largely left out of the tax base, leading to a deficit in the mobilisation and collection of national resources.

In this respect, Rwanda is a country which has made progress developmentally because of the role local government plays in mobilising resources such as community health-care schemes

[217] World Bank *World Development Report 1991: The challenge of development* (1991) 31.
[218] De Visser (n 19 above) 10.
[219] De Visser (n 19 above) 10.
[220] De Visser (n 19 above) 10.
[221] D Conyers 'Decentralisation and Development: A framework for analysis' (1986) (2) *Community Development Journal* 21 91.

and property rates.[222] Local government can be instrumental in raising revenue through the utilisation of tax instruments such as business licensing, service charges and property rates which are inclusive of both the informal and formal sectors.[223]

Concerning the efficient provision of public services, most states the world over are composed of heterogeneous communities with varying preferences for local public goods and services.[224] Economic efficiency necessitates that these should be provided to communities in accordance with their preferences and needs.[225] Local governments may better provide local communities with such goods and services because they are closer to them than the central government is. For instance, the central government in Botswana has empowered local government to provide goods and services that match local preferences, which has fostered development in communities.[226] Providing goods and services that closely match local preferences creates more room for efficiency and development than is the case under a centralised system.[227] As such, decentralisation stands to contribute to development.

With respect to development projects, it has been argued that the decentralisation of resources and power to local government brings the people closer to government and creates more opportunities for them to take part in development projects than under a centralised form of government.[228] Involving citizens in project management at the local level may create a greater sense of project responsibility and ownership.[229]

Regarding policy experimentation and innovation, it is unlikely for them to occur under a centralised government,[230] whereas a decentralised system of government may encourage them, given that communities are free to adopt new ways of public policy development and

[222] See The local government system in Rwanda, country profile available at <www.clgf.org.uk/rwanda> 143 accessed I March 2018.
[223] See R Bahl 'Fiscal decentralisation as development policy' (1999) 19 *Public Budgeting and Finance* 2.
[224] Bardhan & Mookherjee 2006 6 in TC Chingwata *The Law and Policy for Provincial and Local Government in Zimbabwe: The Potential to realise Development, Build Democracy and Sustain Peace* (unpublished Ph.D. thesis, Faculty of Law, University of the Western Cape, 2014) 34.
[225] W Oates 'On the welfare gains from fiscal decentralisation' (1997) *Journal of Public Finance and Public Choice* 2-3, 55. Oates in his Decentralisation Theorem in of the view that 'each public service should be provided by the jurisdiction having control over the minimum geographic area that would internalise benefits and costs of such provision'.
[226] See 'The local government system in Botswana', a country profile available at <www.clgf.org.uk/botswana> 34 (accessed 1 March 2018).
[227] Oates (n 225 above).
[228] Manor (n 16 above) 91.
[229] W Kalin 'Decentralisation-why and how? in *Decentralisation and Development SDC Publications on Development Swiss Agency for Development and Cooperation Berne*, January 1999 49.
[230] Bryce 1888 mentioned in Oates (n 225 above) 89.

implementation.[231] Kenya[232] and Uganda[233] have made some progress developmentally by decentralising policy choice to local government. Decentralising policy choice to local government is advantageous in that various policies can be considered simultaneously, thus leading to the discovery of new approaches to policy implementation.[234] New policy approaches can accelerate the attainment of developmental objectives.

3.3.7 Using decentralisation to contain ethnic conflict

This section examines the extent to which ethnic conflict can be curbed through decentralisation. As in the case of diversity conflict, there is no universally accepted decentralisation model in curbing ethnic conflict. This section thus examines how shared rule and self-rule under a decentralisation design may curb ethnic conflict.

3.3.7.1 The nature and scope of ethnic conflict

Conflict along ethnic lines entails rivalry between two or more groups[235] in which ethnicity is a key factor in their group identification and awareness. Such conflict tends to lead to cycles of violence.[236] The distribution of power among ethnic groups, measured by their access to central state power, is a strong predictor of violent conflict at the national level, whether in the form of repression by the state or rebellion against the state. Cross-country statistical analyses using the Ethnic Power Relations data set from 1945 to 2005 indicate that countries that exclude large portions of the population on the basis of ethnic background are more likely than others to experience ethnic conflict.[237] The existence of norms that exclude certain groups, such as minorities and women, from the bargaining arena where disputes are settled tends to fuel power asymmetries and perpetuate inequitable and insecure outcomes.[238]

3.3.7.2 The possibility of decentralised forms of government to contain ethnic conflicts

With respect to shared rule, central representation of devolved units facilitates inclusiveness in central decision-making, which is vital for addressing real or perceived exclusions. In a number

[231] De Visser (n 19 above) 24.
[232] See Department for International Development *Local Government Decision-Making: Citizen Participation and Local Accountability, Examples of Good (and Bad) Practice in Kenya* (2002) 7.
[233] Department for International Development (n 232 above) 4-7.
[234] K Strumpf (2000) 'Does government decentralisation increase policy innovation?' available at http://www.unc.edu/~cigar/papers/fed8.pdf (accessed 20 February 2018) 1.
[235] B Gilley 'Against the concept of ethnic conflict' (2004) 25 *Third World Quarterly* 6, 1160.
[236] Gilley (n 235 above) 1160.
[237] World Bank *World Development Report 2017: Governance and the Law* (2017) 8, 61.
[238] World Bank (n 237 above) 8, 61.

of unitary and federal states, shared rule is attained via a second chamber of the national legislature composed of representatives of decentralised units. The latter may be represented proportionally or equally in the second chamber in relation to criteria such as population and geographical size. However, equal representation is what ensures that the voices of minorities or smaller units are heard. The second chamber reviews national legislation to ensure that unit interests are protected, in addition to which it may perform other functions related to curbing ethnic conflict.

With respect to self-rule, authors like Siegle and O'Mahony opine that 'the greatest threat of ethnic conflict comes from societies where there is a dominant group comprising between 45 to 90 percent of the population'.[239] The probability of ethnic conflict arising is high because the other minority groups are in constant fear of political, social and economic exclusion by the major group. Barkan argues that a state which harbours two to four major ethnic groups that dominate other minority groups politically, economically and socially, creates room for ethnic conflict. Therefore, fractionalising these major groups can go a long way in curbing or preventing ethnic conflict.

However, to ensure equitable development and access to resources, additional measures must accompany such a move.[240] Roeder suggests that it is necessary to split the major ethnic group or groups to lessen the chances of it or them dominating the other weaker groups.[241] This approach was taken in Nigeria, which was first constituted as three large regions carved out mainly along religious and ethnic lines. The central government, which had responsibility for deciding the affairs of the country as a whole, had no powers over the affairs of these regions. They were subsequently subdivided into the current 36 states of today to reduce tensions between ethnic groups.[242]

Nigeria has succeeded to an extent in fractionalising large regions and so curbing the prospects of ethnic conflict.[243] However, some countries have had no choice but to allow large regions to exist. For instance, in the case of Canada, Quebec threatened to secede if its right to national self-determination were not recognised. In a bid to deter secession, the central government had

[239] Siegle & O'Mahony (n 28 above) 6.
[240] JD Barkan 'Ethic fractionalisation and the propensity for conflict in Uganda, Kenya and Tanzania' in Herbst et al (eds) *On the Fault Line: Managing the Tensions and Divisions within Societies* (2012) 150.
[241] PG Roeder 'Ethnofederalism and the mismanagement of conflict nationalism' in J Erk & LM Anderson *The Paradox of Federalism: Does Self-Rule Accommodate or Exacerbate Ethnic Divisions?* (2010) 26.
[242] Roeder (n 241 above) 28.
[243] P Lewis 'Boundaries and bargains: Managing Nigeria's fractious society in Herbst et al (eds) *On the Fault Line: Managing the Tensions and Divisions within Societies* (2012) 19-20.

to allow it to exist as a large region.[244] In other words, the local context of a country matters when considering the option of fractionalising regions.

Siegle and O'Mahony argue too that rather than opting for regional autonomy, it is better to choose a decentralisation design that gives an opportunity for local authorities to be elected and thus plan and manage their respective units without interference.[245] Instituting local-level government may curb secessionist tendencies and is therefore suggested as a strategy for allaying ethnic conflict.[246] As institutions that concentrate on providing local services to communities, local governments are better placed to tackle matters that if not addressed may lead to ethnic conflict.

In the case of South Africa, the country was faced with demands for a strong federal system of government at the end of the apartheid-rule.[247] Right-wing Afrikaners who wanted an Afrikaner Volkstaat or region, as well as Zulu nationalists who wanted a self-governing territory in Kwazulu-Natal province, led the demands for a strong federal system.[248] Both these Afrikaner and Zulu groups were afraid of the creation of a robust centralised government under the African National Congress (ANC).[249] However, lack of basic services, poverty and underdevelopment, which can all be traced to the period under apartheid, required that a strong system of local government be created so as to facilitate development and access to services. A system with 'weak' provinces and powerful local governments with a well-defined mandate for service delivery and conflict management was finally created in South Africa. This proves that the local level can play a crucial role both in development and ethnic conflict management if well designed and allocated with resources for its mandate.

Determining the boundaries of units is also important in curbing ethnic conflict. A country may decide to have either ethnically homogeneous or mixed units. In the case of homogeneous units, the state may create such units where the majority of the people in a unit have a common identity. In the case of mixed units, a country may opt not to have units whose boundaries are not created along the lines of factors such as ethnicity, language or religion. Countries in the

[244] D Cameron 'The Paradox of Federalism: Some Practical Reflections' in Erk & Anderson (n 241 above) 124-125.
[245] Siegle & O'Mahony (n 31 above) 51.
[246] Siegle & O'Mahony (n 31 above) 52.
[247] Powell (n 42 above) 32.
[248] Powell (n 42 above) 32-52.
[249] Powell (n 42 above) 32-52.

developing as well as developed world have opted for these various boundary demarcation methods.

The two methods have their respective advantages and disadvantages as regards curbing ethnic conflict. According to Watts, in countries where there is a major language and religion, ethnic or other divides are not as dominant as they are elsewhere; as in the cases of Brazil, the US, Austria, and Australia, the tendency was to create mixed units.[250] In other states where identity differences such as language, ethnicity and religion are pronounced, as in India[251] and Switzerland, the trend has been to opt for the creation of mixed-unit borders. Having mixed units '[weakens] potentially divisive ethno-nationalism by designing the constituent units [in such a way as] to prevent ethnic, linguistic or religious minorities from becoming majorities within constituent units'.[252] Both mixed and homogenous constituent units can lead to significantly different ends in different settings. Bosire thus argues that 'the most important factor here is the legitimacy, or lack thereof, of the pursuit of an exclusive or mixed territorial unit'.[253]

In this vein, Watts cautions against blindly importing boundary demarcation models, because 'even where similar institutions are adopted, different circumstances may make them operate differently'.[254] Whatever form of boundary demarcation a country opts for, it is important to take contending political interests into consideration. In most developed countries, the constitution guarantees the adjustment of boundaries. Two elements are identified by Watts in a boundary demarcation exercise. First, there must be participation by the concerned population via referenda or other means of making the views of the affected persons heard. Secondly, the process must be objective and transparent.[255] In a country where ethnicity is magnified, it is necessary to use ethnic identity as a main element in carving the borders.[256] In other scenarios, non-identity factors and issues of economic viability are pertinent in demarcating the borders.

[250] Watts (n 9 above) 76.
[251] KM Bakke 'State, Society & separatism in Punjab' in Erk & Anderson (n 241 above) 100-103.
[252] Watts (n 9 above) 76.
[253] CM Bosire *Devolution for development, conflict resolution, and limiting central power: An analysis of the Constitution of Kenya 2010* (unpublished Ph.D. thesis, Faculty of Law, University of the Western Cape, (2013) 54.
[254] Watts (n 9 above) 2.
[255] Watts (n 9 above) 78.
[256] See articles 46 and 47 of the 1995 Constitution of the Federal Democratic Republic of Ethiopia.

It is also prudent for states to entrust boundary demarcation to an autonomous body. In the case of South Africa, it is entrusted to the Municipal Demarcation Board (MDB).[257]

In order to curb ethnic conflict, devolving powers and functions to especially disadvantages groups is important.[258] Where grievances are related to development and resources, effective development and local service delivery may, in the long run, address ethnic conflict.[259] Devolving political power may also quell the efforts of disadvantaged groups to attain power from ethnic groups that dominate affairs at the central-government level.[260] It is thus instructive to examine how ethnic conflict can be curbed in countries richly endowed with natural resources.

The propensity for ethnic conflict to occur in such countries is high,[261] mainly because, as is typically the case, the resources are not equitably shared by all ethnic groups.[262] Although allowing the local level to share in them may curb assuage demands for their redistribution, it is also the case that central governments rely heavily on these resources and cannot risk devolving their control over them.[263] Some developing countries have nevertheless instituted special procedures to satisfy the demands of oil-producing states or regions. For instance, the Democratic Republic of Congo (DRC) has a procedure whereby oil-producing provinces retain 40 percent of proceeds from natural resources, while the remaining 60 percent goes to the central government.[264]

Apart from the ills of natural resources management, the most prominent factor fanning ethnic conflict in developing countries is economic and political exclusion. In Uganda, questions of ethnic identity are often linked to concerns about underdevelopment and poor service delivery.[265] Siegle and O'Mahony argue that in designing decentralisation for ethnic conflict resolution, as in the case of Uganda, factors such as access to basic services and service delivery

[257] Y Fessha & J De Visser 'Drawing Non-Racial, Non-Ethnic Boundaries in South Africa' in Steytler & Ghai (n 12 above) 87.
[258] YP Ghai 'Devolution: restructuring the Kenyan state' (2008) 2 *Journal of Eastern African Studies* 211.
[259] USAID *Democratic Decentralisation Programming Handbook (*2009) available at <http://www.usaid.gov/our_work/democracy_and_governance/publications/pdfs/DDPH_09_22_09_508c.pdf> (accessed 28 November 2017) 5.
[260] Ghai (n 258 above) 215-216.
[261] Siegle & O'Mahony (n 31 above) 5.
[262] RM Bird & RD Ebel 'Fiscal federalism and national unity in E Ahmad & G Brosio (eds) *Handbook of Fiscal Federalism (*2006) 10.
[263] World Bank *World Development Report 1999/2000: Entering the 21st Century* (1999) 117-118.
[264] See article 175 of the 2005 Constitution of the Democratic Republic of Congo.
[265] AK Schelnberger 'Decentralisation as a means of conflict management: A case study of Kibaale district, Uganda' Institute of Development Research and Development Policy, IIE Working Papers, Ruhr University Bochum (2005) 50.

must be taken into account.[266] Accordingly, giving decentralised institutions the mandate to provide access to basic services such as health, local infrastructure and education can facilitate political and economic inclusion. In some countries, ethnic conflict is linked to discrimination in the use of language, especially in the management of some state affairs; here, ethnic conflict may be averted if powers over the use of language are devolved to the local level.

A fiscal model that aims at addressing ethnic conflict is essential especially as most conflicts emanate from real or perceived economic exclusion. This model needs to ensure an equitable distribution of resources and balanced development. A state's main taxes should hence be decided upon at the national level, while the local level, for purposes of local accountability and efficiency, should exact taxes that relate to its sphere of influence. Intergovernmental transfers should be fixed by an independent organisation with respect to stipulated rules and regulations. Moreover, fiscal discipline should be enforced by the central government, particularly in local-level borrowing. These measures may contribute in curbing ethnic conflict.

3.4. The challenges of decentralised governance

Decentralisation has not always been effective in achieving its set objectives, as the experience of numerous states attests. This section examines some of the challenges decentralisation poses to governance – among them being inequalities, corruption and capture, intensified ethnic conflict, secession, and a weak macro-economic environment.

3.4.1 Inequalities

Inequalities may be defined as unfairness and variations in assets, wealth and income between jurisdictions, individuals and groups. Inequalities, particularly those between jurisdictions, are caused by various factors, including, economic activity, geography, variation in resources and population sizes. A decentralised form of government may exacerbate inequalities among jurisdictions if it does not take into consideration such factors as variation in resources and economic activity when distributing powers and resources.[267] Variations in the capacity to mobilise revenue lead to differences in economic and social development across jurisdictions, thereby posing a threat to equity.

[266] Siegle & O'Mahony (n 31 above) 52.
[267] De Visser (n 19 above) 27. R Prud'homme 'The Dangers of Decentralisation' (1995) 10 *The World Bank Observer* 1995 201-3.

3.4.2. Creating room for corruption and capture

Corruption is 'the exercise of official powers against public interest or the abuse of public office for private gain'.[268] It is manifested in many ways, including state capture, grand corruption, patronage and petty corruption. A decentralised form of government creates a sizable number of lower tiers of governments each with the capacity to regulate, spend and tax. The exercise of such powers by local government may 'increase the motivation for corruption among public officials by creating an impression that they are subject to lower monitoring, control and supervision'.[269] Corruption is likely to be acute at the local level since local authorities have more power of discretion than central government officials, creating room for the creation of unethical liaisons.[270] Local authorities may thus abuse their powers to satisfy these interest groups and elites, whose votes and money are decisive.[271]

Furthermore, local authorities tend to be more interested in delivering services through which bribes can be obtained than ones through which they cannot.[272] Corruption also makes it difficult for the poor and vulnerable to benefit from poverty-alleviation measures because they are relegated to the background while money and services meant for them are syphoned off by a few corrupt authorities.[273] Anti-corruption measures with severe jail sentences may go a long way in curbing corruption.

3.4.3 Intensified ethnic conflict and secession

A decentralised system of government, if not well designed, may lead to more ethnic conflict and secession.[274] National unity can also be weakened and existing divisions strengthened under a poorly designed decentralisation system, especially when power and resources are concentrated in one or few ethnic groups to the detriment of the other ethnic groups.[275] Where conflict is perceived as interwoven with identity issues and resources, such elements are

[268] A Shar 'Corruption and decentralised public governance', (January 2006) World Bank Policy Research Working Paper 3824, 2.
[269] Prudhomme (n 267 above) 211.
[270] Manor (n 16 above) 101.
[271] Prudhomme (n 267 above) 211.
[272] Prudhomme (n 267 above) 211.
[273] Doig & Melvor 1999 mentioned in BC Smith *Good governance and development* (2007) 175.
[274] See JR Wood 'Secession: A comparative analytical framework' (1981) 14 *Canadian Journal of Political Science* 1 111. Secession 'represents an instance of political disintegration, wherein political actors in one or more subsystems withdraw their loyalties, expectations, and political activities from a jurisdictional centre and focus them on a centre of their own'.
[275] Siegle & O'Mahony (n 31 above) 163.

'transformed into proximate causes of violence when they are mobilised politically'.[276] Conflict and secession may still occur even after development has commenced, especially due to a lack of viable institutions equipped to manage the challenge and pressure of political opportunists.

A decentralised system of government could lead to the wealthier regions of a country seeking to break away from the authority of the central government and secede as independent states with complete control of their natural resources.[277] Likewise, decentralising fiscal powers may result in competition between the centre and subnational units over the control of resources. This type of competition can provoke demands for secession and autonomy by lower spheres of government with the zeal to pursue such complete control.[278]

3.4.4 A weak macro-economic environment

A decentralised system of government may be detrimental to macro-economic stability, particularly since the autonomy local governments enjoy holds the potential to create room for unwanted competition between subnational governments, creating a scenario where the central government has to shoulder their expenditure burden.[279] In cases where the state continues to bail out subnational governments because of their excessive spending habits, this can lead to inflation particularly if such revenue is obtained from external sources or other regions within the state.[280]

Equally, fiscal decentralisation can weaken the power of the central government to implement fiscal and monetary policies conducive to macro-economic good health.[281] As a result, the taxes and revenue collected by the state may not be enough to enable the central government to step in and cover the over-expenditure of subnational governments.[282]

3.5 Concluding remarks

In this chapter, it has been argued that for the management of diversity issues in a decentralised state, constitution builders should opt for a design that has elements of shared rule and self-rule. Shared rule may be in the form of a senate that represents the interests of diverse

[276] B Wood 'The development dimensions of conflict prevention and peace-building' An independent study prepared for the Emergency Response Division, UNDP (2001) 20.
[277] Siegle & O'Mahony (n 31 above) 140.
[278] D Brancati *Peace by design: Managing intrastate conflict through decentralisation* (2009) 10.
[279] Kalinga 2010 mentioned in Chingwata (n 224 above) 50.
[280] Chingwata (n 224 above) 50-51.
[281] Prud'homme (n 267 above) 205.
[282] Prud'homme (n 267 above) 206.

communities and groups at the central government level. With respect to self-rule, in carving out the various spheres of government, factors such as history, economic activity, geography and language have to be taken into consideration. Likewise, it is important for constitutional drafters to decide on what powers are to be shared with the various levels of government. There is a need to adequately finance these spheres of government.

With respect to a decentralised system capable of enhancing constitutionalism, a state should ensure that the following elements are in place: review of the constitutionality of laws; the recognition and protection of fundamental rights and freedoms; an independent judiciary; the separation of powers; control of the amendment of the constitution; and institutions that support democracy.

For decentralisation to be able to manage minority issues, constitution drafters may opt for a design whereby decentralised units are organised along linguistic, cultural or ethnic lines with a view to preserving the culture of marginalised groups. Political inclusion of marginalised groups is also vital: this entails ensuring that multiple electoral positions exist at multiple levels of government. In addition, a decentralised system of government can enhance the inclusion of minority groups by increasing their access to such services as water, education and health care. The assumption here is that decentralisation improves the quality of democratic representation and participation of minority groups, leading to efficiency and effectiveness in basic service delivery.

Traditional systems may also be incorporated into modern governance systems that have opted for decentralisation, if they are given formal recognition in the constitution. Furthermore, if their roles in conflict management, gender relations and other developmental issues are well defined, this will go a long way to easing their incorporation into modern governance systems.

Democracy can also be promoted in decentralised states if constitution builders take into consideration the design of the electoral system, the active participation of the people as citizens in civic and political life, the promotion and protection of human rights, and instilling respect of the rule of law.

Decentralisation may equally enhance development. On the important aspect of the mobilisation of resources, under a decentralised system of government, local government is better placed to mobilise resources which the central government may have difficulties in mobilising. Local governments may also better provide local communities with goods and services because they are closer to them than central government. Providing goods and services

that closely match local preferences and taxes creates room for more efficiency and development rather than under a centralised system of government. Concerning development projects, the decentralisation of resources and power to local government brings the people closer to government and creates more opportunity for them to take part in development projects than under a centralised form of government. A decentralised system of government may also encourage innovation and experimentation, especially as individual communities are free to adopt new ways of public policy appreciation and implementation.

Ethnic conflict could be curbed or managed through a decentralisation design that takes factors like shared rule and self-rule into consideration. Shared rule may be in the form of a senate that represents the interests of diverse communities and groups at the central government level. With respect to self-rule, as earlier mentioned, in carving out the various spheres of government, factors such as history, economic activity, geography, language and economic activity have to be taken into consideration. Likewise, it is important for constitutional drafters to decide on what powers to be shared to the various levels of government. There is a need to adequately finance these spheres of government. There is equally a need for cooperation between the spheres of government. Supervision of the activities of the spheres of government is also fundamental

A decentralised system of government should have an appropriate mixture of political, administrative and fiscal instruments. These are elements which may lessen challenges such as inequalities, corruption and capture, ethnic conflict and secession, a weak macro-economic environment, and disregard of the rule of law.

Against this backdrop of lessons learnt from the experience of a variety of countries both in Africa and elsewhere, Chapter 4 proceeds to examine the architecture of the current decentralisation framework in Cameroon and how it operates.

CHAPTER 4

An overview of Cameroon's present-day decentralisation framework

4.1 Introductory remarks

This chapter focuses on an overview of the structure and operation of Cameroon's current decentralisation framework. It begins with a synopsis of its multilevel governance architecture, followed by an explanation of how shared rule works in the country, particularly in terms of how the National Assembly and Senate are organised and function. The chapter then explores the composition and functioning of the regional, urban and local councils which constitute the self-rule component of governance, in addition to which it offers an overview of the composition of traditional leadership in the current governance structure. Thereafter the chapter examines the structures that supervise and monitor the decentralisation process as well as the organs that guarantee financial decentralisation. Organised local government is also examined, as well as the role other institutions play in decentralisation, among them Elections Cameroon (ELECAM) and the National Commission on the Promotion of Bilingualism and Multiculturalism. Lastly, the chapter considers the role of civil society groups, non-governmental organisations (NGOs) and international non-governmental organisations (INGOs) in the decentralisation framework. It also examines the composition and role of the Constitutional Council.

4.2 The governance architecture

The governance architecture of a country is formally composed of the various branches of government, including those of local government. This section examines Cameroon's governance architecture under its Constitution of 1996, beginning with an account of the executive, legislature and judiciary and then of the composition and functioning of local government.

4.2.1 Central government: Levels, structure and demarcation

In chapter 2 it was mentioned that the Cameroonian political system, although principally presidentialist, is a hybrid of the US system of semi-rigid separation of powers and the French system of limited separation of powers. In this respect, the 1996 Constitution (the Constitution) acknowledges the principle of separation of powers. It covers what is considered as 'executive power' in Part II, with 'legislative power' in Part III, and 'judicial power' in Part V.[1] It must

[1] See the 1996 Constitution (the Constitution) .

be reiterated that the executive, with its exorbitant powers entirely dominates the judicial and legislative arms of government.[2]

4.2.1.1 The Executive

As mentioned in chapter 2, the Constitution consolidates and somehow increases the already extensive powers that were bestowed on the executive under the original 1972 Constitution. Considering his dominant position *vis-à-vis* not only the judicial and legislative power, but equally within the executive, it can be argued that the President has been given the powers not only to rule but also to reign, especially as he appoints and dismisses all top ranking officials including those of the judiciary.[3] This dominance of the powers of the executive trickles down through the shared rule and self-rule elements of Cameroon's governance architecture.

4.2.1.2 The Parliament

The parliament was also examined in chapter 2. An important issue examined was the bicameral nature of the parliament, particularly the roles played by the Senate and the National Assembly in the decentralisation process in Cameroon.[4] An overview of this institutions depict that the National Assembly and the Senate do not have the same powers. It is expected that the Senate as the main organ of shared rule is still to make an impact in Cameroon's decentralisation process. In all the executive remains dominant over the decisions of the parliament.

4.2.1.3. The Judiciary

The structure and functioning of the Judiciary was also examined in chapter 2. Judicial power lies strictly in the courts, although the judges exercise it. At the helm of the judiciary in Cameroon is the Supreme Court which, like in the case of the Constitution of the United States of America (US), is the only court particularly made mention of in any detail in the Cameroonian Constitution.[5] .

In July 2017 the 2006 law on the Supreme Court was modified by Law No. 2017/014 of July 2017 to Amend and Supplement some Provisions of Law No. 2006/16 of the 29 December to Lay Down the Organisation and Functioning of the Supreme Court (Law 2007 of the Supreme Court). In terms of section 8 (new), a Common Law Division is introduced in response to calls

[2] See Chapter 2.
[3] See Chapter 2, section 4.1.
[4] See Chapter 2, section 4.2.
[5] See Chapter 2, section 4.3 , Also see Law No. 2006/015 of 29 December 2006 on Judicial Organisation.

from Anglophone lawyers regarding the place and importance of common law in the country's legal system. Section 11(3) (also new) stipulates that judicial officers appointed to the Common Law Division must have an Anglo-Saxon legal background. According to section 37 (new), the Judicial Bench shall have competence over final decisions of tribunals and courts on customary, labour, commercial, criminal and civil matters and cases governed by common law. It may also handle all other cases expressly devolved to it by law. It is hoped that the judiciary will play an important role as a mediator in the decentralisation process, especially in enhancing constitutionalism, promoting the rule of law, in resolving issues of diversity, minority and ethnicity.

4.2.2 Local government: Levels, structure and demarcation

Three levels of local governance are provided for, namely, central, regional and local government. At the lowest level are 374 local government units. These consist of 360 councils, 14 city councils and 42 sub-divisional councils within the city councils. Between local government councils and the central government are ten regions, which coincided with the ten administrative regions of the country. Table 3 shows the distribution of councils and regions vis-à-vis the population.

Table 3: Distribution of councils and population

REGION	COUNCILS	CITY COUNCILS	SUB-DIVISIONAL COUNCILS	POPULATION (2014 estimates)
Adamawa	22	1	2	1,095,867
Centre	71	1	7	3,842,031
East	33	1	2	957,259
Far North	48	1	3	3,859,357
Littoral	34	3	9	3,112,175
North	22	1	3	2,092,109
North West	35	1	3	2,133,258
West	41	1	3	1,949,170
South	21	2	4	786,165
South West	33	2	6	1,708,371
TOTAL	**360**	**14**	**42**	**21,535,762**

Source: Ministry of Territorial Administration.[6]

4.3 Shared rule under the present-day governance framework

Shared rule is exercised by the Senate. While parliamentarians represent the interest of the nation, senators represent the interest of regions. To understand how the Senate operates, it is necessary to examine how the National Assembly is constituted and functions; accordingly, this section considers both the National Assembly and Senate in the context of shared rule.

4.3.1 The organisation and functioning of the National Assembly

In examining the organisation and functioning of the National Assembly, this section provides an overview of the election of Members of Parliament (MPs), their mandate, and how the National Assembly relates to the Senate. While Chapter 5 critically examines the role the National Assembly plays in 'shared rule', the present section highlights its relevance to democracy and decentralisation.

[6]See The local government system in Cameroon, country profile, <http://www.clgf.org.uk/default/assets/File/Country_profiles/Cameroon.pdf≥ (accessed in September 2016).

4.3.1.1 The composition of the National Assembly

The rationale for creating the National Assembly in Cameroon was to enable MPs to represent all Cameroonians at the central government level in Parliament so as to influence government policy through the promulgation of laws. In so doing, a forum was created where the concerns of the people of Cameroon could be brought to the attention of the government in a bid to find solutions.[7] This, it can be argued, should include engaging with the Anglophone problem, ensuring that ethnic issues and minority concerns are addressed, enhancing constitutionalism, incorporating the traditional system of governance, and advancing development and democracy. As shall be seen later, these concerns have not been addressed.

The National Assembly is made up of 180 members elected by direct universal suffrage for a period of five years. However, its numbers may be modified by law.[8] As has been observed, each member represents and upholds the interests of the entire nation and not of a particular area.[9] In a crisis or where circumstances so warrant, the President may, after consulting with the Bureau of the Senate and National Assembly and the President of the Constitutional Council, request the National Assembly to decide by law to abridge or extend its term of office. In such a situation, the election of a new Assembly shall occur not less than 40 days and not more than 120 days following the expiry of the abridgment or extension period.[10]

A Secretary-General is also appointed by the President to assist the National Assembly in its technical work. The National Assembly is composed too of staff appointed at the discretion of the President of the National Assembly and the Secretary-General to assist in the technical work of this institution.

4.3.1.2 The functioning of the National Assembly

On the issue of MPs' incompatibility with other posts of responsibility, section 162(2) of Law No. 2012/001 of 19 April 2012 Relating to the Electoral Code (the 2012 Electoral Law) contains the crucial provision that the office of MP is incompatible with that of board chairperson, senator, government delegate of a city council, or any other top-ranking state personnel. However, MPs continue to hold these positions concurrently with their

[7] See SV Ntonga Bomba *La Procédure législative devant l'Assemblée Nationale du Cameroun* (2002) 4.
[8] Article 15(1) of the Constitution.
[9] Article 15(2) of the Constitution.
[10] Article 15(4) of the Constitution.

parliamentary offices, a situation which is inimical to democracy and decentralisation in that it hinders their ability to discharge their duties of office transparently and diligently.

Although the country has operated under a multiparty system since 1992, the conspicuous dominance of the ruling party, along with the weakness and division of the opposition parties, has severely limited the extent to which these latter parties can exercise effective supervision and control of the executive. An institution meant to play a major role in shared rule in the decentralisation process by representing the interests of the people simply functions as a deconcentrated unit of the executive.

4.3.2 The organisation and functioning of the Senate

The second chamber, or the Senate, is an important milieu for making central-government decisions and a key institution specifically for shared rule. Given that the method of representation in second chambers differs from country to country, this section examines how the Senate is organised in contemporary Cameroon.

4.3.2.1 The composition of the Senate

The Senate is meant to represent the regional and local authorities of the country.[11] Each region is represented in the Senate by ten senators, of whom three are appointed by the President of the Republic and seven are elected by indirect universal suffrage on a regional basis.[12] Persons seeking election or appointment as senators by the President must have turned 40 by the date of appointment or election[13] and, on assuming office, are meant to serve a term of five years.[14]

Each region forms a constituency,[15] and senatorial election is by way of the list system.[16] The mixed single ballot system, comprising a proportional majority system and a plurality system, is utilised to elect senators.[17] Every political party contesting an election is supposed to present a full list of seven candidates selected among its members. For each seat, there is a substantive and alternative candidate, both of whom vote at the same time.[18] The composition of each list needs to reflect the sociological components of the region,[19] though as shall be critically

[11] Article 20(1) of the Constitution.
[12] Article 20(2) of the Constitution.
[13] Article 20(3) of the Constitution.
[14] Article 20(4) of the Constitution.
[15] Section 6(1) of the 2006 Law on election of Senators.
[16] Section 6(2) of the 2006 Law on election of Senators.
[17] Section 7(1) of the 2006 Law on election of Senators.
[18] Section 7(2) of the 2006 Law on election of Senators.
[19] Section 7(3) of the 2006 Law on election of Senators.

examined in Chapter 5, such composition is not explained in detail. Where a party list gets an absolute majority of the votes cast, it is declared the winner of the elections and gets all the seven seats.[20] In the case of a tie, the seats are shared equally, and where applicable the remaining seat is awarded to the list with the highest age average.[21] Where no list obtains an absolute majority of votes cast, the list with the relative majority gets four seats.[22] It is evident that the selection of its members is undemocratic, especially as the President has the powers to appoint 30 of the 100 members of this body. There are no clearly defined criteria on how these senators are appointed. This is done at the discretion of the President, who obviously appoints those who are loyal to him. As shall be examined later, in a decentralisation process, the Constitutional Council (the Council) is charged with adjudicating over electoral disputes and the proclamation of senatorial results.[23]

As in the case of the National Assembly, a Secretary-General is appointed by the President to assist the Senate in its technical work. The Senate also has staff appointed at the discretion of the President of the Senate and the Secretary-General to assist in its technical work.

4.3.2.2 The functioning of the Senate

The Senate meets as of right in ordinary session, at the beginning of each legislative year, under the conditions laid down by law.[24] The Senate is supposed to hold three ordinary sessions each year. Each session may not last more than 30 days.[25] The Senate shall meet in extraordinary session for not more than 15 days on a particular agenda and at the request of one-third of its members or at the request of the President. As soon as the agenda for which the extraordinary session was convened is concluded, it shall wind up.[26]

Section 23 of the Constitution stipulates that the agenda of the Senate is drawn up by the Chairmen's conference.[27] The latter is composed of presidents of parliamentary groups, chairmen of committees and members of the Bureau of the Senate. In addition, a member of

[20] Section 7(4) of the 2006 Law on election of Senators.
[21] Section 7(6) of the 2006 Law on election of Senators.
[22] Section 7(5) of the 2006 Law on election of Senators.
[23] Section 23 and 24 of the 2006 Law on the election of Senators.
[24] Article 21(1) of the Constitution.
[25] Article 21(2) of the Constitution.
[26] Article 21(3) of the Constitution.
[27] Article 23(1) of the Constitution.

government participates in the conference meeting.[28] Only bills falling within its area of jurisdiction by virtue of article 26 below may be included in the Senate's agenda.[29]

The Senate, as shall be analysed in Chapter 5, has so far been unable to enhance democracy and hence decentralisation. Its members are undemocratically chosen and it is instead a financial burden to the country. As in the case of the National Assembly, the majority of its members belong to the ruling CPDM. Such a structure cannot go against the wishes of the party in power, the CPDM. Instead of upholding the interests of the people it is called upon to represent, it serves the interests of the CPDM. As such, local government areas, especially in the North West and South West regions, remain underdeveloped and poor.

4.4 Self-rule under the present governance framework

In Cameroon, the major institutions of self-rule are regional and municipal councils. The substantive provisions on self-rule appear under the heading 'regional and local authorities' in part X, articles 55 to 61. The main laws governing regions and councils include the 2004 Decentralisation Orientation Law,[30] the 2004 law on Regions[31] and the 2004 law on Councils.[32] Subsequent legislation on the organisation and functioning of regions and councils includes Law No. 2006/004 of 14 July 2006 to lay down the Conditions Governing the Election of Regional Councillors (law on election of regional councillors) and Law No. 92/002 of 14 August 1992 relative to Conditions for Election of Municipal Councillors (Law on the election of municipal councillors), which have been repealed by s 297 of Law 2012/001 of 19 April 2012 relating to the Electoral Code. (Electoral Code). It should be noted that the election of MPs, Municipal and Regional Councillors is regulated by Parts V, VI and IX of the Electoral Code respectively. This section examines the way in which regional, municipal and urban councils are created and function.

[28] Article 23(2) of the Constitution.
[29] Article 23(3) of the Constitution: '(a) All private members' bills and amendments which, if passed, would result in the reduction of public funds or in an increase of public charges without a corresponding reduction in other expenditure or the grant of equivalent new supply of funds, shall be inadmissible. (b) Any doubt or dispute on the admissibility of a bill shall be referred by the President of the Republic, President of the Senate or one-third of the Senators to the Constitutional Council for a ruling.'
[30] Law No. 2004/17 of 22 July 2004 to lay down the Orientation of Decentralisation (hereinafter Decentralisation Orientation Law).
[31] Law No. 2004/019 of 22 July 2004 to lay down the laws on the (hereinafter Law on Regions).
[32] Law on Councils.

4.4.1 The composition and functioning of regional councils

Article 55(1) states that '[r]egional and local authorities of the Republic shall comprise of Regions and Councils. Any other such authority shall be created by law.'[33] The region shall be the regional authority made up of several divisions.[34] The creation and modification of boundaries are governed by article 61 of the Constitution.[35] There is no clearly defined modality regarding how this should be done: it is left to the discretion of the President of the Republic.

As regards the functioning and responsibilities of regional authorities, they are corporate bodies governed by public law. They are to be endowed with financial and administrative autonomy for the management of regional and local interests. In this respect, the mission of the regional councils is to promote social, economic educational, cultural, health and sports issues, among other developmental issues in their respective areas of jurisdiction.[36] In order to carry out their functions judiciously, they shall be administered freely by elected organs by conditions laid down by law.[37] The regional organs are comprised of the regional council and the president of the regional council.[38]

The president of the regional council shall be the chief executive of the region. He or she shall be assisted by a regional bureau, which reflects the sociological composition of the region, elected alongside with him or her among the regional councillors.[39] There is no further definition of what 'sociological composition' amounts to. The duties of the president of the regional council shall be incompatible with that of members of government and those ranking as such, including administrative authorities, law enforcement officers, directors of the central administration, and employees of the Ministry of Finance, amongst other duties.[40] There is, again, no further definition of what these incompatibilities should amount to.

The president of the regional council is also the spokesman before the state representative in his or her region, represents the region in all matters before law courts, and manages the region's property, as well as preparing and implementing the regional council's deliberations.[41]

[33] Article 55(1) of the Constitution. Also see section 3 of the Decentralisation Orientation Law.
[34] Section 2(1) of the Law on Regions.
[35] Section 2(2) of the Law on Regions
[36] Section 4(1) of the 2004 Decentralisation Orientation Law. Also see Part III on Powers devolved upon regions of the Law on Regions.
[37] Section 4(2) of the 2004 Decentralisation Orientation Law.
[38] Section 25 of the Law on Regions.
[39] Section 60 of the Law on Regions.
[40] Section 64 of the Law on Regions.
[41] Section 65 of the Law on Regions.

The president of the regional council as well as his or her Bureau may be substituted, suspended or terminated. The trend is that if he or she goes against the ideology of the ruling party in the execution of his or her duties, this may lead to his or her suspension or dismissal. He or she may also resign from duty.[42]

A Secretary-General of the regional council is appointed by the President to assist the president of the regional council. Nothing is said of the qualifications of such a person, which means he or she shall be appointed at the discretion of the President. The President may terminate the duties of the Secretary-General in case of ill-health, incompetence or threat to territorial integrity.[43]

Regional councillors are to be composed of representatives of traditional rulers elected by their peers. Again, there are no criteria as to how these traditional authorities are to be elected. The tendency is that traditional authorities loyal to the CPDM are given priority. Regional councils are also composed of delegates of divisions elected by indirect universal suffrage.[44] As shall be shown in Chapter 5, the law is silent on how these traditional authorities or delegates of divisions are to be selected. The term of office of regional councillors is fixed at five years and they are eligible for re-election.[45] The Law on election of regional councilors stipulates that the membership of the regional council must reflect the sociological composition of the region concerned.[46] As before, there is no definition of what 'sociological composition' entails; the President therefore has the discretion to decide what it amounts to. The implication is thus that the process of selecting regional councillors is undemocratic.

With respect to the qualification of candidates as well as incompatibilities, no candidate residing out of the region may stand for election as regional councillor.[47] However, non-residents of a region may stand for election if they are domiciled within the territory of the region concerned.[48] According to section 9 of the Law on the election on regional councillors, the qualification of candidates provided for under sections 17 to 23 of Law No. 91/20 of 16 December 1991 to lay down conditions governing the election of MPs (Law on the election of

[42] See part III , sections 72 to 82 of the Law on Regions.
[43] Section 68 of the Law on Regions.
[44] Section 3(1) of Law No. 2006/004 of 14 July 2006 to lay down the Conditions Governing the Election of Regional Councillors (law on election of Regional Councillors). Also see Section 26 of the Law on Regions.
[45] Section 3(1) of the Law on election of Regional Councilors.
[46] Section 5(2) of the Law on election of Regional Councillors.
[47] Section 8(1) of the Law on election of Regional Councillors.
[48] Section 8(2) of the Law on election of Regional Councillors.

members of Parliament) shall also be applicable to the election of regional councillors.[49] Notwithstanding the provisions of section 10(1) of the Law on the election of MPs, representatives of traditional rulers shall be exempt from the age requirement under section 17 of the said law.[50]

State representatives such as Senior Divisional Officers (SDOs), Divisional Officers (DOs) and their assistants may not stand as candidates for election as regional councillors.[51] Likewise, judicial and legal officers; police; gendarmes and prison administrators; service women and service men, as well as regional administration officials and employees, may not also stand for election as regional councillors.[52] According to section 10(3) of the Law on the election of regional councillors, the incompatibility mentioned in section 10(1) and (2) shall remain in force for a period of one year following the end of their tenure of office. In a situation where a regional councillor is found to be in any of the situations of incompatibility mentioned above, he or she shall be bound, within no more than a period of one month to opt for his or her current post or elective office.[53] No person may be a member of more than one regional council or stand for election on more than one list.[54]

Concerning the preparations for the election of regional councillors, the competent administrative authority shall prepare, in close collaboration with political parties taking part in the election at the sub-divisional levels, an electoral list made up the two electoral colleges provided for under section 17 of the Law on the election of regional councillors.[55]

On the vital matter of the election itself, divisional representatives shall be elected through the mixed single-round ballot constituted of the majority system and the proportional representation system.[56] Representatives of traditional authorities shall be elected through the list constituency plurality system.[57] There is no further modality in place as to how these

[49] Section 9(1) of the Law on election of Regional Councillors.
[50] Section 9(2) of the Law on election of Regional Councillors.
[51] Section 10(1) of the Law on election of Regional Councillors.
[52] Section 10(2) of the Law on election of Regional Councillors.
[53] Section 11(1) of the Law on election of Regional Councillors.
[54] Section 12 of the Law on election of Regional Councillors.
[55] Section 13 of the Law on election of Regional Councillors. Section 17(1) of the Law on election of Regional Councillors states: 'Delegates of divisions shall be elected by an electoral college comprising municipal councillors.' Section 17(2) stipulates that '[r]epresentatives of traditional rulers shall be elected by an electoral college composed of first, second and third class indigenous traditional rulers who have been approved in conformity with the laws in force'. Section 17(3) stipulates that '[t]raditional rulers who are municipal councillors shall cast their votes in only one electoral college'.
[56] Section 19(1) of the Law on election of Regional Councillors.
[57] Section 19(2) of the Law on election of Regional Councillors.

representatives of traditional authorities shall be elected. Notwithstanding the provisions of section 19(1) of the Law on election regional councillors, the election shall be conducted through the single-member constituency plurality system, where there is only one seat to be filled in a division or, where applicable, in a constituency resulting from the grouping or special distribution stipulated under section 7(2) of the Law on election of regional councillors.[58] According to section 23 of the Law on the election of Regional Councillors, a regional supervisory commission will be set up in each region to supervise the election of regional councillors.[59]

In case of electoral malpractice or disputes, a candidate, elector or even the state representative in the region may request that there is a total or partial cancellation of the election in the concerned region by applying to the court with jurisdiction.[60] Where the election is cancelled partially or in full, electors shall be notified no more than 60 days after such cancellation.[61] Any regional councillor who, subsequent to his or her election, finds him- or herself in any one of the positions of incompatibility and/or ineligibility stipulated in the Law on the election of Regional Councillors, shall be declared to have resigned, by order of the state representative in the region.[62]

Sections 48 to 59 of the Law on Regions focuses on the dissolution, suspension, termination of duties and substitution of the regional council. In such a situation, a special body is set up by law to continue with the management of the affairs of the region while awaiting the re-establishment of the regional council.[63] This may happen if it acts unconstitutionally, it threatens the country's territorial integrity, or it cannot perform its duties permanently.[64] Since there is no further definition of 'unconstitutional acts' or 'threat to the country's territorial integrity', it therefore means the regional council may be terminated or dissolved at the discretion of the President of the Republic, which is likely if such a body goes against the wishes of the ruling CPDM. The President may dissolve the regional council upon the

[58] Section 19(3) of the Law on election of Regional Councillors.
[59] See section 23 of the Law on election of Regional Councillors. Section 23(1) states that the regional supervisory commission is hereby set up in each region comprising the following: Chairperson: The president of the Court of Appeal with jurisdiction; Members: - 2 (two) representatives of the administration; - 2 (two) independent personalities appointed by the State representative in the region, in consultation with legally authorised political parties present in the region concerned. - 1 (one) representative of each legally authorised political party participating in elections in the region concerned.
[60] Section 27(1) of the Law on election of Regional Councillors.
[61] Section 29 of the Law on election of Regional Councillors.
[62] Section 31 of the Law on election of Regional Councillors.
[63] Section 51 of the Law on Regions.
[64] Section 48(1) of the 2004 Law on Regions

recommendation of the constitutional council.[65] It is thus clear that the process of dissolving, suspending or terminating the regional council is undemocratic.

As of April 2018, regional councils were still to be created by the state. It is hoped that these units will play a vital role in securing a solution to the Anglophone problem as well as ensuring that ethnic and minority concerns are addressed. It is also hoped that regional councils will enhance constitutionalism and the rule of law, facilitate the incorporation of the traditional system into the governance architecture, promote development and democracy, and hence promote the attainment of adequate decentralisation in the country.

4.4.2 The architecture and functioning of municipal and urban councils

The objective, architecture and functioning of municipal and urban councils is governed by the Constitution as well as the 2004 Decentralisation Law and the 2004 Law on Councils. This section will examine the objective, composition and explore the functioning of municipal and urban councils.

4.4.2.1 The composition and functioning of municipal councils

Municipal councils have a general mission of improving the living conditions of their inhabitants and promoting local development. To supplement their resources, municipal councils may request assistance from civil society organisations, the population, the state, international partners, and regional and local authorities.[66]

The municipal council is set up by a decree by the President and is a basic decentralised local authority. Its name, area of jurisdiction, chief town and boundaries is also determined by a decree of the President.[67] On the proposal of the Minister in charge of regional and local authorities, he or she may by decree regroup a number of councils.[68]

The municipal council is composed of two major organs, the council executive and the council.[69] The Mayor and his or her deputies constitutes the executive organ of the council. He or she is the head of the council executive and assisted by deputy mayors in order of their election. The Mayor may be assisted by as many as six deputy mayors depending on the importance accorded to the council area by the President.[70] The office of Mayor is incompatible

[65] Section 49 of the 2004 Law on Regions.
[66] Section 3(2) of the 2004 Law on Councils.
[67] Section 2 of the 2004 Law on Councils.
[68] Section 4(1) of the 2004 Law on Councils.
[69] Section 23 of the 2004 Law on Councils.
[70] Section 58 of the 2004 Law on Councils.

with certain public functions such as member of government or MP.[71] He or she represents the council in civil matters before the law courts as well as directs council projects, amongst other duties.[72] The Mayor may delegate duties to his or her deputies.[73] He or she may also recruit, suspend or dismiss staff governed by labour and collective agreements.[74]

The council executive is assisted by a Secretary-General who is the main coordinator of council administrative services. He or she thus has the delegation of signature for the smooth accomplishment of his or her duties.[75] The minister in charge of regional and local councils, by order, appoints and dismisses secretaries general of councils.[76]

Other technical and administrative staff of municipal councils are appointed by the Minister of Territorial Administration (MINAT), either from among the local staff of the councils or from relevant ministries in consultation with central authorities. The training institution for all local government officials is the Local Government Training Centre (CEFAM), based in Buea in the South-West Region. CEFAM is subordinate to MINAT and trains both current council personnel and new recruits. There is so far no statutory instrument regulating the career structure and individual status of local government personnel.

The council executive may also be suspended, terminated or replaced by the President in the case of infringement of laws and gross misconduct.[77] The council executive may also be suspended or even terminated if the case of embezzlement of councils funds and corruption is established.[78] Mayors and deputy mayors may also resign if not fit to continue to carry out their duties.[79] It is thus clear that the process of dissolving, suspending or terminating the council executive may be undemocratic, especially in a situation where such an executive goes against the wishes of the CPDM.

The other organ of the council is the council itself. Composed of elected councillors,[80] it is the deliberative organ of the council area.[81] The council meets in ordinary session once every

[71] Section 65 of the 2004 Law on Councils.
[72] Section 71 of the 2004 Law on Councils.
[73] Section 72(1) of the 2004 Law on Councils.
[74] Section 74(1) of the 2004 Law on Councils.
[75] Sections 80(1) and (2) of the 2004 Law on Councils.
[76] Section 80(3) of the 2004 Law on Councils.
[77] Section 94 of the 2004 Law on Councils.
[78] Section 95 of the 2004 Law on Councils.
[79] Section 104 of the 2004 Law on Councils.
[80] Section 24 of the 2004 Law on Councils.
[81] Section 26(1) of the 2004 Law on Councils.

quarterly period not exceeding seven days.[82] The Mayor may convene an extraordinary session whenever it is deemed necessary and also if a request is made by two-thirds of the members of the council.[83] The state representative may also request that the Mayor convene an extraordinary session of the council.[84] The council may be dissolved, suspended or terminated by the President[85] as well as by the minister in charge of regional and local authorities,[86] particularly if a council acts unconstitutionally or threatens the country's territorial integrity. Since there is no further definition of 'unconstitutional acts' or 'threat to the country's territorial integrity', the implication is that a council may be terminated or dissolved at the discretion of the President – an open possibility if it goes against the wishes of the CPDM.

Law No. 92/002 of 14 August 1992 relative to Conditions for Election of Municipal Councillors (Law on the elections of municipal councillors) governs the elections of municipal councillors in Cameroon. The provisions of Law No. 91/20 of 16 December 1991 to lay down the conditions governing the election of MPs is applicable *mutatis mutandis* to the election of municipal councillors, subject to the special provisions set out in this law.[87]

Municipal councillors are elected for a term of five years by universal suffrage and by direct and secret ballot.[88] They are eligible for re-election.[89] Voting is carried out by use of a list of candidates without voters indicating any preference of candidates from one list to another.[90] Each council constitutes one constituency.[91] Municipal councillors are elected through a mixed single- round ballot in a process utilising a combination of a proportional representation system and a majority system.[92] Each list is to take into consideration the different sociological components of the concerned constituency.[93] Again, no further explanation is given as to what these 'sociological components' are, meaning that this is determined once more at the discretion of the President.

The office of municipal councillor is incompatible with the office of administrative officers as well as other positions in the same jurisdiction, such as that of servicemen, police, the secretary-

[82] Section 30(1) of the 2004 Law on Councils.
[83] Section 31(1) of the 2004 Law on Councils.
[84] Section 31(2) of the 2004 Law on Councils.
[85] Section 47(1) of the 2004 Law on Councils.
[86] Section 46(1) of the 2004 Law on Councils.
[87] Section 1 of the Law on Municipal Councillors.
[88] Section 2(1) of the Law on Municipal Councillors.
[89] Section 2(2) of the Law on Municipal Councillors.
[90] Section 2(3) of the Law on Municipal Councillors.
[91] Section 2(4) of the Law on Municipal Councillors.
[92] Section 3(1) of the Law on Municipal Councillors.
[93] Section 3(2) of the Law on Municipal Councillors.

general of the council, and the municipal revenue collector.[94] In a situation where ineligibility is established, the concerned municipal councillor shall have to choose between his or her other official duties and the position of a municipal councillor. Where no choice is made known within 15 days, he or she shall be automatically considered to have resigned.[95] The reality on the ground is that numerous municipal councillors nevertheless hold other positions in the same jurisdiction, rendering them ineligible to be municipal councillors.

A council supervisory commission is constituted in each council and charged with the proper conduct and objectivity and impartiality of elections within the council.[96] Among other things, it shall announce results of elections in the constituency as well as examine disputes concerning candidatures and the comportment of candidates or their representatives during the election period.[97] The council supervisory commission shall be made up of a chairman, in the form of an independent person appointed by the SDO in agreement with all the political parties standing for elections in the constituency. The rest of the members of the commission shall be made up of five representatives of political parties and five representatives of the administration appointed by the SDO.[98]

An elector has the right to contest the council polls before the administrative judge.[99] Notwithstanding the provision of article 12 of Ordinance No. 72/6 of 26 August 1972 to fix the organisation of the Supreme Court, petitions shall be made by simple application to the administrative court.[100] A ruling shall be made within 60 days from the day the matter was referred to the court.[101] Municipal councillors whose election is contested shall stay in office until a final decision has been reached on the complaints.[102] In a case where all or part of the election is finally cancelled, electors shall be convened within 15 days following such cancellation. However, a by-election shall not be held where the cancellation takes place six months before general council elections.[103]

[94] Section 10 of the Law on Municipal Councillors.
[95] Section 11 of the Law on Municipal Councillors.
[96] Section 12(1) of the Law on Municipal Councillors.
[97] Section 12(2) of the Law on Municipal Councillors.
[98] Section 13(1) of the Law on Municipal Councillors.
[99] Section 33 of the Law on Municipal Councillors.
[100] Section 34(1) of the Law on Municipal Councillors.
[101] Section 34(3) of the Law on Municipal Councillors.
[102] Section 35(1) of the Law on Municipal Councillors.
[103] Section 35(2) of the Law on Municipal Councillors.

The State may transfer to the municipal council all or part of its immovable or movable private property.[104] This may be initiated by the municipal council or the state.[105] The municipal council may also be called upon to manage national land[106] as well as public coastland and waterways.[107]

Part III of the 2004 law on Councils focuses on the powers devolved to councils. Matters such as road maintenance, developing touristic sites, cleaning up council areas, protecting underground and surface water resources, and local waste management are the responsibility of the councils.[108] They are equally responsible for planning, rural development, and housing,[109] as they are for, inter alia, education,[110] sports,[111] health,[112] and the development of national languages.[113]

Municipal councils have been unable so far to play a role in effective self-rule. The enhancement of democracy and hence decentralisation remains weak, especially since matters such as planning, rural development, health and housing continue to be substandard. Since the majority of municipal councillors belong to the ruling CPDM, municipal councils generally cannot go against the wishes of the party in power, the CPDM. Instead of advancing the interests of the people they are called upon to represent, these councils serve the interests of the CPDM. As such, local government areas, especially in the South West and North West regions, remain underdeveloped and impoverished.

4.4.2.2 The composition and functioning of urban councils

The main objective of creating urban councils in Cameroon is to promote, inter alia, social, economic, educational, cultural, health and sports development in their respective jurisdictions. Special regulations applicable to urban councils are contained in part V of the 2004 law on Councils. The President has the discretion to elevate an urban centre to a city council or urban

[104] Section 9(1) of the 2004 Law on Councils.
[105] Section 9(2) of the 2004 Law on Councils.
[106] Section 13 of the 2004 Law on Councils.
[107] Section 11 of the 2004 Law on Councils.
[108] Sections 15 and 16 of the 2004 Law on Councils.
[109] Section 17 of the 2004 Law on Councils
[110] Section 20 of the 2004 Law on Councils.
[111] Section 21 of the 2004 Law on Councils.
[112] Section 19 of the 2004 Law on Councils.
[113] Section 22 of the 2004 Law on Councils.

council.[114] City councils do have financial autonomy and a legal personality,[115] and are composed of at least two councils.[116]

The city council is comprised of a government delegate to the city or urban council and the city council itself. [117] The head of the city council is the government delegate, and is appointed by the President of the Republic. The President also appoints assistants to the government delegate of the city council.[118] The government delegate and his or her assistants thus constitute the city council executive.[119] The government delegate has the responsibility to chair city council meetings.[120] He or she is also responsible for organising and managing city services, representing the city at official ceremonies, and preparing and implementing the decisions of the city board, amongst other duties.[121]

As in the case of municipal councils, other technical and administrative staff of urban councils are appointed by MINAT, either from among the local staff of the councils or from relevant ministries in consultation with central authorities. CEFAM trains both existing urban council personnel and new recruits. There is so far no statutory instrument regulating the career structure and individual status of local government personnel at urban councils, which poses a problem of lack of administrative competence.

The city council is comprised of sub-divisional council mayors and representatives chosen within sub divisional councils.[122] Mayors of sub-divisional councils are thus ex officio members of the city council.[123] The term of office of the city council expires at the same time as that of councillors of the sub-divisional councils.[124] Such confusion makes it difficult for sub-divisional councils to carry out their duties effectively.

[114] Section 109(1) of the 2004 Law on Councils.
[115] Section 109(2) of the 2004 Law on Councils.
[116] Section 109(3) of the 2004 Law on Councils.
[117] Section 112 of the 2004 Law on Councils.
[118] Section 115(1) of the 2004 Law on Councils.
[119] Section 115(3) of the 2004 Law on Councils.
[120] Section 115(2) of the 2004 Law on Councils.
[121] Section 116 of the 2004 Law on Councils.
[122] Section 113(1) of the 2004 Law on Councils. Also see sections 120 to 125 of the 2004 Law on councils focusing on sub divisional councils.
[123] Section 121(1) of the 2004 Law on Councils.
[124] Section 114(1) of the 2004 Law on Councils.

The duties of the city council include cleaning city roads and areas, setting up community land reserves, participation in the organisation of community investment plans, and management of industrial refuse.[125]

4.5 Traditional leadership under the current governance framework

Traditional institutions in Cameroon form part of the country's informal governance system. This section examines the composition and functioning of traditional leadership, with the key law in this regard being Decree No. 77/245 of 15 July 1977.

4.5.1 The composition of traditional leadership

The composition of traditional leadership within Cameroon's governance architecture is set out in the 1977 decree on chiefdoms, in terms of which chiefdoms are organised on a territorial basis and comprise a first-, second- and third-class chiefdom.

As examined in chapter 2, a first class chiefdom is made up of at least two second class chiefdoms and the territorial boundaries in principle do not surpass those of a division. The jurisdiction of a second class chiefdom covers that of at least two third class chiefdoms. The boundaries there of shall in principle not exceed those of a sub - division. Meanwhile, a third class chiefdom corresponds to a village or quarter in the rural areas and to a quarter in urban areas.[126]

4.5.2 The functioning of chieftaincy under the current framework

The role traditional rulers should play in a democracy has seriously been debated upon. This role was examined in chapter 2.[127] While there is a call by some Cameroonians for the abolition of traditional institutions, authors like Geschiere are of the view that traditional rulers should be incorporated into the governance system.[128] The role traditional leaders and traditional institutions play remains vague, a situation that seems to be deliberate. They are found at the bottom of the hierarchy of both the deconcentrated administrative and decentralised political units. The present governance disposition is silent on the role traditional leaders and institutions play in the decentralisation process.

[125] Section 110 of the 2004 Law on Councils.
[126] See Chapter 2, section 5.4.
[127] See Chapter 2, section 5.5.
[128] P Geschiere 'Chiefs and Colonial Rule in Cameroon: Inventing Chieftaincy, French and British Style' 63 (1993) *Journal of the International African Institute* 2, 169.

In certain rural areas where the presence of the government is limited, traditional authorities and institutions play the role normally filled by the government. An example of this, which shall be elaborated upon in Chapter 5, is found in the northern part of Cameroon, where certain traditional Fulani rulers continue to exercise significant powers over their subjects.[129]

4.6. The financial decentralisation framework

Finances are a crucial element of any decentralisation process. This section examines the financial decentralisation framework under the Constitution, with the focus placed on local government's own revenue and transfers from the Special Council Support Fund for Mutual Assistance (FEICOM).

4.6.1 Local government's own revenue

In Cameroon, taxes on international transactions, such as customs duties, and a considerable share of income and general sales taxes, such as value-added tax (VAT), are assigned to the central government. In 1998, VAT was introduced. Reforms also established specialised units for the taxation of specific sectors, such as forestry, cattle and fisheries. But coordination and data-sharing between tax, customs and social security authorities have not been successful, albeit that since mid-1996 there have been undeniable improvements, including a steady increase in fiscal revenue figures (excluding oil revenue figures) and in the number of taxpayers. However, these improvements have been judged as insufficient, especially given that the Anglophone regions remain underdeveloped with poor road infrastructure.[130]

The Constitution does not accord financial autonomy to the regions. Financial decisions are taken by the central government and imposed on the regions. The main instrument governing financial issues under the decentralisation architecture is Law No. 2009/011 of 10 July 2009 relating to Financial Regime of Regional and Local Authorities (2009 Decentralisation Law). In section 2, it purports inter alia to give local government authorities 'financial autonomy for the management of regional or local interests'.[131] The regions in Cameroon rely on grants and financial transfers from the central government. There are no mechanisms in place for the regions to be able to draw up their own budgets, nor are the regions consulted in the central

[129] Cameroon 2015 Human Rights Report <http://www.state.gov/documents/organization/252873.pdf> (accessed March 2018).
[130] Muñoz JM 'Business Visibility and Taxation in Northern Cameroon' (2010) 53 *African Studies Review 2* 153.
[131] Section 2 of Law No. 2009/011 of 10 July 2009 relating to Financial Regime of Regional and Local Authorities (2009 Decentralisation Law).

government's budgeting process, on which they consequently remain dependent. Custom duties as well as major taxes are collected by the central government and shared to the regions and councils. Local governments, for instance, are left with little but property tax, business licenses, user charges and market fees. The Constitution therefore provides for a centralised system of government, where funds especially taxes collected are transferred from the central government to regions and councils.

Despite major reforms of the central government tax system during the last two decades, regional and local government tax systems remain largely neglected. The local tax systems are often expensive to administer and serve to aggravate inequity. Generally, there is little coordination in taxation between various spheres of government, which to some extent has to do with lack of capacity and skills. This has led to double-taxation of the same revenue base as well as inconsistencies between local and central-government tax policies.

While the current potential for most rural councils and regions in Cameroon to raise substantial own revenues is limited, the potential for revenue enhancement in urban councils in the administrative capitals of some regions is better. However, one major problem today for many municipalities in regions in Cameroon is their inability to make full collection of revenue due to them, which is evident in the huge gaps between projected and reported revenues. This is due to poor administrative capacity for enforcing the payment of taxes and for assessing the revenue base; corruption, including the embezzlement of revenue; external pressure on local finance departments to furnish optimistic projections; and political pressure on local tax administrations to relax revenue collection, especially so during election periods.

4.6.2 Transfers from FEICOM

Law No. 74/23 of 5 December 1974 to organise councils also created FEICOM. Decree No. 77/85 of 22 March 1977 focused on the organisation of this structure. FEICOM has twice been reorganised by presidential decrees – those of 11 December 2000 and 31 May 2006. Furthermore, Decree No. 2009/248 of 5 August 2009 by the President institutes a Common Decentralisation Fund at the disposal of municipal councils and urban councils.

Local government receives block grant revenue from the central government, which MINAT pays to them via FEICOM. These grants are supposed to be weighted according to the council's population, surface area and other considerations. FEICOM also provides councils with non-financial support, including expert technical assistance and project evaluation.

FEICOM also authorises loans for capital spending and revenue. Its priorities, in keeping with those of similar organisations elsewhere in Africa, centre on capital projects of social value, including health care, utilities, schools and transport infrastructure. Loans are accorded for a maximum of two years. The proportion of loan to grant depends on the type of project to be financed. Top priorities for FEICOM's own resources include urban development and utilities. FEICOM also allocates financing for the training of council staff.

FEICOM's major revenue role is the centralised collection and redistribution of the Additional Council Tax levy (*Centimes Additionnels Communaux,* or CAC). CAC is a 10 percent levy on certain types of national taxation which is apportioned for the financing of council activities. Taxes to which this levy is applied include entertainment tax, general income tax, business tax and VAT.

CAC revenue is allocated as follows: 10 percent is attributed to the central government, 20 percent remains with FEICOM, and 70 percent goes to councils. Of the total allocated to councils, 20 percent goes to Douala, the economic capital of Cameroon; 40 percent goes to Yaoundé and 36 percent to other councils. The remaining 4 percent is retained by FEICOM and utilised for various activities, for instance to support infrastructure projects in border councils, to help councils affected by natural disaster, or to compensate councils for revenue paid beyond their borders. In addition, 40 percent of forestry royalties are allocated to councils on a per capita basis. The confused manner of revenue allocation, along with the widely varying circumstances of individual councils, has led to significant inequalities in the manner in which resources are distributed.

Structures such as the audit unit of MINAT, the Directorate General (DG) of Taxation, the DG of Treasury and the DG of the Budget help FEICOM in the collection, centralisation and redistribution of taxes. Other structures such as the Ministry of Supreme State Control and the National Anti-Corruption Commission are likewise meant to assist FEICOM in ensuring that taxes are used judiciously in the decentralisation process. However, as we shall see in Chapter 5, these structures have not been able to assist FEICOM adequately in ensuring that resources are distributed equitably among local governments. In addition to this inequitable allocation of resources, corruption and embezzlement remain acute.

4.7 Supervision and monitoring of local government

An efficient decentralisation system needs mechanisms for the supervision and monitoring of subnational units. In Cameroon, these are provided for in particular by the 2004 Decentralisation Orientation Law.

4.7.1 Supervision

Under the directives of the President, the minister in charge of regional and local authorities, as well as the state representative in the concerned region or division, shall supervise the decentralisation process therein.[132] The appointed Governor is the main supervisory authority in the region. The SDO exercises the state's supervisory authority over councils.[133] The President is thus represented by the Governors and SDOs in their respective administrative units.[134] In a case where a Governor or SDO is unavoidably absent, a representative may be designated to speak on behalf of the state before councils or boards of the council or region, respectively.[135]

Instruments issued by regional and local authorities such as the president of the regional council and the Mayor are forwarded to the state representative for his or her approval. Such instruments include deliberations over issues such as land matters and the awarding of public service contracts.[136] In the case where the state representative unjustifiably rejects an instrument from the president of the regional council or the Mayor, such an authority may, on the grounds of abuse of power, challenge such an administrative authority before a competent administrative court.[137] Likewise, any corporate body or person within interest in an instrument unjustifiably challenged by a state representative may also challenge such an authority before the competent administrative court.[138]

4.7.2 Monitoring organs

Monitoring a decentralisation process is important for the efficient and effective realisation of objectives such as development, democracy, and the management of diversity issues and ethnic conflicts. The main law on monitoring decentralisation is the 2004 Decentralisation Orientation

[132] Section 66(2) of the 2004 Decentralisation Orientation Law.
[133] Section 67(2) of the 2004 Decentralisation Orientation Law.
[134] Section 67(3) of the 2004 Decentralisation Orientation Law.
[135] Section 67(5) of the 2004 Decentralisation Orientation Law.
[136] See Sections 68 to 70 of the 2004 Decentralisation Orientation Law.
[137] Section 73(1) of the 2004 Decentralisation Orientation Law.
[138] Section 74 of the 2004 Decentralisation Orientation Law.

Law. Other legal instruments that focus on such monitoring include Decree No. 2008/013 of 17 January 2008 on the Composition and Functioning of the National Decentralisation Board (2008 Decree of the Decentralisation Board) and Decree No. 2008/014 of 11 January 2008 on the Composition and Functioning of the Inter-ministerial Committee on Local Services (2008 Decree on the Inter-ministerial Committee). This section provides an overview of how these bodies operate, as a prelude to a critical analysis in Chapter 5.

4.7.2.1 The National Decentralisation Board

The National Decentralisation Board (the Board) is charged with the follow-up and evaluation of the decentralisation process. In particular, it is tasked with forwarding an annual report on the state of progress of the decentralisation process and the functioning of local services to the President. It is required, furthermore, to make recommendations on the annual transfer of resources and competences to decentralised local collectivities.[139]

The Board is headed by the Prime Minister, who is Chairman. The Vice-President is the minister in charge of regional and local authorities. Some members of government are also members of the Board, among whom are the Ministers of Basic Education, Water and Energy, Justice and Finance. The Senate is also represented by two senators, while the National Assembly is represented by two parliamentarians. Two representatives of the Economic and Social Council are also on the Board.[140] Moreover, the Chairman may invite competent persons to take part in Board deliberations.[141] A Permanent Secretariat assists the Board in carrying out its duties, especially so the preparation of reports on the progress of decentralisation in the country.[142] This Permanent Secretariat is coordinated by a Permanent Secretary.[143]

4.7.2.2 The Inter-Ministerial Committee on Local Services

The Inter-ministerial Committee on Local Services (the Committee) is under the authority of the minister in charge of regional and local authorities. Its mission is to ensure the preparation and follow-up of competences and the utilisation of resources to be transferred to decentralised local collectivities.[144]

[139] Section 2 of the 2008 Decree of the Decentralisation Board.
[140] Section 3(1) of the 2008 Decree of the Decentralisation Board.
[141] Section 3(2) of the 2008 Decree of the Decentralisation Board.
[142] Section 4(1) of the 2008 Decree of the Decentralisation Board.
[143] Section 5(1) of the 2008 Decree of the Decentralisation Board.
[144] Section 2 of the 2008 Decree on the Inter-ministerial Committee.

The Chairman of the Committee is the minister in charge of regional and local authorities. Members include representatives from the Presidency, the Prime Ministry and all ministerial departments. Included in the Committee are two representatives chosen from the city councils, four from municipal councils, two from regions and two from civil society. No modality is specified for selecting members from city councils, municipal councils, regions or civil society: this is at the discretion of the Chairman. He or she may also invite any competent persons to take part in deliberations of the Committee.[145] A Technical Secretariat assists the Committee in carrying out its duties, especially the preparation of reports on the progress of decentralisation in the country.[146] This Technical Secretariat is coordinated by the director in charge of decentralised local collectivities at the ministry in charge of regional and local authorities.[147]

It is crucial to note that both the Board and the Committee are supposed to ensure that decentralisation is carried out effectively, especially in terms of its supporting the equitable development of impoverished areas. These bodies are also responsible for ensuring that issues such as minority, ethnic, diversity concerns and the incorporation of traditional governance into the decentralisation agenda are addressed. However, as shall be shown in Chapter 5, they merely extend the powers of the executive and operate as deconcentrated units.

4.7.3 Organised local government

Part IV of the 2004 Law on Councils focuses on inter-council cooperation and solidarity. The latter obtains where there is agreement between two or more councils to merge their resources to achieve common objectives.[148] Such a cooperation may exist between Cameroonian councils or between Cameroonian councils and councils of foreign states.[149]

In a bid to achieve inter-council cooperation, councils of the same division or region may, by at least two-thirds majority of the decision of each council, create a union.[150] Such a council union shall be set up by agreement by the mayors of the concerned councils.[151] The bodies of the council union shall be constituted of a union board and a union chairman.[152]

[145] Section 3 of the 2008 Decree on the Inter-ministerial Committee.
[146] Section 7 of the 2008 Decree on the Inter-ministerial Committee.
[147] Section 8(1) of the 2008 Decree on the Inter-ministerial Committee.
[148] Section 131 of the 2004 Law on Councils.
[149] Section 131(2) of the 2004 Law on Councils.
[150] Section 133(1) of the 2004 Law on Councils.
[151] Section 133(2) of the 2004 Law on Councils.
[152] Section 135(1) of the 2004 Law on Councils.

The United Councils and Cities of Cameroon (UCCC) is an association created by the councils and cities in Cameroon. The UCCC was formed in 2003 from the merger of the Cameroon Union of Towns and Councils and the Cameroon Association of Towns.[153] As its appellation makes clear, city councils and councils constitute the membership of the UCCC; they are represented therein by government delegates, in the case of city councils, and Mayors in the case of councils. These members together constitute the UCCC assemblies at national, regional and divisional levels, from which the executive bureaux for the respective levels are elected.

The UCCC aims to create harmony between councils and promote development to serve their common interest. In this respect, councils in divisions may realise joint projects, upon the request of the supervisory authority (the state representative), or owing to joint deliberations from their respective executive councils. This includes the construction of rural roads and other local services of importance. In reality, the UCCC has not been effective in promoting harmony and equitable development, given the serious developmental disparities that continue to exist between the jurisdictions of the various councils.

4.7.4 Other institutions involved in decentralisation

A number of other central-government bodies are involved in decentralisation. Elections Cameroon (ELECAM) is a body that supervises the election of parliamentarians, senators and regional as well as municipal councillors. The National Commission on the Promotion of Bilingualism and Multiculturalism (NCPBM), created in 2017, also has a role to play in the decentralisation architecture, as have civil society groups and international non-governmental organisations. This section examines these various institutions.

4.7.4.1 Elections Cameroon

Prior to the creation of Cameroon's election-monitoring organ, ELECAM,[154] elections were held and monitored by MINAT. This opened the door to allegations of electoral malpractice. Subsequently, the importance of establishing the Independent Elections Observatory was acknowledged, but this structure came in for criticism too, with its being dismissed as a 'toothless bulldog' in that it was deemed to observe elections rather than actively engage in

[153]See The local government system in Cameroon, country profile, <http://www.clgf.org.uk/default/assets/File/Country_profiles/Cameroon.pdf >39 (accessed in September 2016).
[154] ELECAM was created by virtue of Law No. 2006/11 of the 29 of December 2006 (the 2006 ELECAM law).

their organisation and management.[155] Examining the organisation and functioning of this organ will be helpful in understanding its role in the decentralisation process.

The 2006 ELECAM law provides that ELECAM's members are appointed by presidential decree after consultation with political parties and civil society. No elected official, political party member, traditional ruler or member of the forces of law and order is eligible for appointment as a member; nevertheless, the President makes these appointments at his discretion. ELECAM has regional and divisional representatives, and at divisional level the preparation and conduct of elections is overseen by divisional supervisory commissions.

Since the creation of ELECAM in 2006, there has been criticism, especially from opposition political parties, of the credibility of this body in organising free and fair elections. There is also a problem in how its staff is recruited, since positions are not advertised appropriately. Some of the criticism has led to amendment of provisions of the law creating the body,[156] but it remains the case that ELECAM has not been notably efficient and transparent in its management of elections at the different levels of government – themes explored in depth in Chapter 5.

4.7.4.2 The National Commission on the Promotion of Bilingualism and Multiculturalism

Decree No. 2017/013 of 23 January 2017 focuses on the establishment, organisation and functioning of the NCPBM.[157] The latter is placed under the authority of the President.[158] It may be argued that the objective in creating this body was essentially to address the Anglophone problem and thus enhance decentralisation and, thereby, democracy, but as argued later in Chapter 5, this objective has not been achieved so far.

As its name indicates, the NCPBM is tasked with promoting bilingualism and multiculturalism in Cameroon in order to maintain peace, strengthen the country's unity and ensure that the people remain united.[159] The NCPBM may also be requested by the President to carry out other sensitive tasks, including mediation.[160] There is no explication of what type of mediation it

[155] K Yuh ' The shortcomings and loopholes of Elections Cameroon (ELECAM) within the electoral dispensation of Cameroon (2010) 4 Cameroon Journal on Democracy and Human Rights 74 <http://cjdhr.org/2010-06/Joseph-Yuh.pdf> (accessed 20 March 2018).
[156] Law 2010/005 of 13 April 2010 to amend and supplement certain provisions of Law 2006/11 of 29 December 2006 to set up and law down the organisation and functioning of Elections Cameroon (ELECAM).
[157] The NCPBM was created by virtue of Decree No. 2017/013 of 23 January 2017.
[158] Section 1(2) of 2017 Decree of the NCPBM.
[159] Section 3(1) of 2017 Decree of the NCPBM.
[160] Section 3(1) of 2017 Decree of the NCPBM.

may be called on to undertake, but it is assumed to include mediation, especially so in conflicts between ethnic, religious and linguistic groups.

The NCPBM is composed of 15 members, including a Chairperson and Vice-Chairperson.[161] The Commissioners of the NCPBM are chosen from among persons of Cameroonian nationality with moral rectitude, patriotism, recognised competence, and intellectual honesty.[162] These personality traits are not defined further by the Decree of the NCPBM. The tenure of office of the Commissioners of the NCPBM is for a five-year renewable period.[163] The Chairperson, his or her Vice as well as the rest of the Commissioners, are subject to the incompatibilities and restrictions provided for by the laws in force.[164] Again, there is no elucidation of what these incompatibilities and restrictions are.

4.7.4.3 The place of civil society, NGOs and INGOs in the decentralisation framework

A democratic system allows civil society organisations (CSOs), NGOs and INGOs to participate in its decentralisation processes. In Cameroon, it seems the state is grappling with the emergence of CSOs and NGOs and their role in this regard. African states rarely welcome the idea of CSOs and NGOs assisting in their activities, since it implies an inadequate state machinery and also reduces opportunities for the patronage on which, in the Cameroonian case, the state system is based.[165]

With the enactment of Law No. 90/053 of 19 December 1990 relating to Freedom of Association, as amended by law No. 99/011 of 20 July 1999 (the 1990 law on Freedom of Association), the state created a platform for NGOS to take part in the decentralisation process. In the interim poverty-reduction strategy paper for Cameroon (2000), it was recommended that the alleviation of poverty should include all social agents, among them women, marginalised groups and the poor themselves.[166] However, this can be brought about only through concrete partnerships between the state, development organisations and CSOs.

Law No. 99/014 of 22 December 1999 on the organisation and functioning of Non-Governmental Organisations (the December 1999 NGO law) focuses on the role NGOs are to play in development and hence in the decentralisation process. This law gives some recognition

[161] Section 4(1) of 2017 Decree of the NCPBM.
[162] Section 4(2) of 2017 Decree of the NCPBM.
[163] Section 5 of 2017 Decree of the NCPBM.
[164] Section 9 of 2017 Decree of the NCPBM.
[165] Nyamnjoh (2002) mentioned in PT Tanga & CC Fonchingong 'Non-state interaction and the politics of development in Cameroon in the context of liberalisation 2009 (4) *International NGO Journal 4*, 91.
[166] See generally Tanga & Fonchingong (n 165 above).

to NGOs as partners in development by the state. However, state responsibilities *vis-à-vis* these development partners are not well defined; as a result, there is no effective platform for collaboration with, and direct state assistance for, them.

Concerning the role of INGOs in decentralisation in Cameroon, in 2004, the state, in collaboration with the World Bank and others, formulated the Community Development Programme (*Programme National de Développment Participatif*, or PNDP). The aim of this three-phase programme is to promote sustainable rural development and reduce poverty by strengthening governance at the local level and empowering communities in rural areas, including women and marginalised groups.[167] However, the PNDP has not been efficient in achieving its objectives. Rural areas remain poor, and women and marginalised groups still do not adequately participate in rural development projects.

4.8. The composition and responsibilities of the Constitutional Council

An essential element for the existence of constitutionalism and respect of the rule of law, and hence, by entailment, for adequate decentralisation, is the presence of an umpire, a role usually played by referenda, the courts in general and the constitutional court or council in particular. The latter is entrusted specifically with the duty of upholding the constitution and ruling on disputes between spheres of government.[168] Accordingly, this section examines the composition and functioning of the Constitutional Council (the Council) of Cameroon.

4.8.1 The composition of the Constitutional Council

The procedure for nominating the judges of a constitutional court or constitutional council is probably one of the most strategic avenues a legislature or executive can exploit in order to influence court decisions. These judges have the daunting task of making sure that the other branches of government, notably the executive, do not abuse their powers and that they operate within their constitutional ambit. As such, their decisions can have serious political and social consequences, warranting that caution be taken in nominating them so as to ensure they are impartial and independent in their acts. As such, judges therefore need to be protected from

[167] See generally World Bank, *Cameroon-Third phase of the Community Development Program Support Project* (2015). Also see generally World Bank, *Cameroon Inclusive and Resilient Cities Development Project* (2017) 21-24.
[168] J Kincaid 'Editor's Introduction: Federalism as a Mode of Governance' in J Kincaid (ed) *Federalism*, vol 1 (2011) xxvii.

any risk of being manipulated or threatened such that they act in favour of powerful politicians or the executive.[169]

The issue is whether the mechanisms entrenched in the Constitution create a favourable atmosphere for the appointment of persons based on their professional and technical aptitude as well as their ability to decide cases fairly, independently and objectively. The fact that the functions of constitutional review were carried out until 2018 by the Supreme court instead of the Council, as provided for by the Constitution, had significant implications for the ability of judges to discharge their duties impartially and independently.

It is worth citing the relevant provision regulating the way judges are appointed in the Council. Article 51 of the Constitution states as follows:

> (1) The Constitutional Council shall comprise 11 (eleven) members designated for an eventually renewable term of office of 6 (six) years. These members shall be chosen from among personalities of established professional renown. They must be of high moral integrity and proven competence.
>
> (2) Members of the Constitutional Council shall be appointed by the President of the Republic .
>
> They shall be designated as follow:
>
> - three, including the President of the Council, by the President of the Republic;
>
> - three by the President of the National Assembly after consultation with the Bureau;
>
> - three by the President of the Senate after consultation with the Bureau;
>
> - two by the Higher Judicial Council.
>
> Besides the eleven members provided above, former presidents of the Republic shall be *ex-officio* members of the Constitutional Council for life. In case of a tie, the President of the Constitutional Council shall have the casting vote.

Three observations may be made about these constitutional provisions with respect to who can be nominated, on what basis such appointments are made, and who makes them. First, the competence, effectiveness and independence of a constitutional court judge depend on an

[169] CM Fombad 'The Cameroonian Constitutional Council' in CM Fombad (ed) *Constitutional Adjudication in Africa* (2017) 83.

appointment procedure with transparent criteria, established objectives, and high regard for integrity, qualifications and competence. Adapted from the 1958 design, article 51 of the Constitution simply states that the 'members shall be chosen from among personalities of established professional renown' and 'must be of high moral integrity and proven competence'. This means they need not be jurists to qualify as judges.[170]

Secondly, the original 1996 Constitution formulation of article 51(1) stipulated that members of the Council were to be designated for a 'non-renewable term of office of 9 (nine) years'. This provision was revised in 2008 by the President in favour of an open term when he decided to remove the two-term presidential term limit from the Constitution. This is a shift from the 1958 French design which, at first blush, gives the impression that the general will to expunge term limits from the Constitution is encouraged. In spite of the open term, section 18 of Law No. 2004/004 of 21 April 2004, which lays down the rules and regulations concerning the membership of the Constitutional Council (hereinafter the 2004 Law on membership of the Council), provides that the Council 'by a majority vote of two-thirds of its members may, of its own motion or at the request of the designating authority and following an adversarial procedure, terminate the appointment of a member'. This demonstrates that while it seems the members of the Council have an open term limit, their term limit can be terminated not only by the President but also by the Council.

Thirdly, unlike in several states, all 11 members of the Council are appointed by the President. Although it is stated in the provision that the President directly appoints just three members and that the others are to be 'designated' by other office-holders such as the President of the National Assembly, the President of the Senate and the Higher Judicial Council, the reality is that the President, through the ruling CPDM, influences the appointment of all members of the Council. Similarly, the Higher Judicial Council is chaired by the President and co-chaired by the Minister of Justice. They both decide on its agenda and when it is to meet. In a nutshell, the President ultimately decides on who qualifies as a member of the Council.[171]

Before 2018, the Supreme Court played the role of the Council. As mentioned, the legality of having this body do so was questionable. Article 51(5) of the Constitution expressly states that '[t]he duties of members of the Constitutional Council shall be incompatible with those of members … of the Supreme Court'.[172] However, for 22 years judges of the Supreme Court

[170] Fombad (n 169) 84.
[171] Fombad (n 169) 84.
[172] This is also reflected in section 8(1) the 2004 Law on membership of the Council.

acted as the Council without any consideration to this express prohibition. More difficulties arose from the various ways in which the judges of the Supreme Court were selected.

Generally, the Supreme Court, while it acted as the Council, sat in a panel of joint benches which in principle was composed of at least 19 judges.[173] The way in which the judges were appointed was not based on a transparent and objective criteria that rely on elements such as integrity, competence and qualifications. The appointments were made by the President, supposedly based on recommendations from the Higher Judicial Council – which, as mentioned, is chaired by he himself, with the Minister of Justice as deputy chair.

The judges were usually selected from amongst those who had reached the highest rank in the judiciary (usually from the fourth grade to the exceptional grade). Attaining the grade which qualifies a judge to be appointed to the Supreme Court, however, does not depend on integrity, competence or even proven record but on loyalty to the CPDM, the party in power. Similarly, although senior judges are supposed to retire at the age of 65, this requirement can be waived by the President especially in his favour. Such absolute powers of the President extend to setting the allowances and salaries of judges. As in other states in Africa, the salaries and allowances of judges have been increased unrealistically to influence the decisions of judges with respect to electoral disputes.[174]

The Constitution allows for a situation in which the Council is composed of persons who are appointed in a particular way. Before 2018, the judges of the Supreme Court served virtually at the pleasure of the President and doubled as members of the Council. It could be little predicted who, amongst the many judges, would sit in the panel of joint benches that carried out the duties of the Council, given that the president of the Supreme Court had the free will to appoint whomsoever he wished as a member of any of the divisions and benches. In a state proclaiming to be democratic, it is anomalous that there is no provision that the composition of these bodies should reflect the ethnic, religious and gender diversity of the country.

[173] See section 15(1) of Law No. 2006/016 of 29 December 2006 regulating the organisation and functioning of the Supreme Court, which stipulates that the panel of joint benches is composed of the first president, division presidents, and bench presidents. Generally, the Supreme Court is composed of the administrative bench (made up of five divisions), the judicial bench (composed of five divisions), and the audit bench (also composed of five divisions).

[174] See CM Fombad 'The Dynamics of Record-breaking Endemic Corruption and Political Opportunism in Cameroon' in JM Mbaku & J Takougang (eds) *The Leadership Challenge in Africa: Cameroon under Paul Biya* (2004) 361-397.

4.8.2 The functioning of the Constitutional Council

The following is an overview of the scope of the Council's review powers, its accessibility, and the nature of opinions and decisions. To begin with, one of the major factors in the effectiveness of a system of judicial review is the powers accorded to such a body. The ambit of matters the Council is empowered to handle are regulated by articles 46 to 48 of the Constitution and Law No. 2004/004 of 21 April 2004 on the organisation and functioning of the Constitutional Council (the 2004 Law on the functioning of the Council). The import of these laws is that the Council is accorded jurisdiction over advisory and contentious issues.

The provisions on contentious issues are more elaborate than those on advisory ones, and entitle the Council to conduct reviews in three major areas: first, it can intervene in conflicts of competence between certain state institutions; secondly, it can ensure the periodicity of elections; and, thirdly, it has a general power of review of the constitutionality of laws, agreements and treaties. The Council has not been effective in achieving these objectives.

With respect to access to the Council, the issue of constitutional justice happens to be one of the major setbacks of the French 1958 constitutional council design adopted by Cameroon in all its constitutions.[175] In general, cases may only be referred to the Council by the President of the Republic, the presidents of both the Senate and National Assembly, one-third of members of the Senate or one-third of members of the national assembly. The major exception relates to electoral disputes. Article 48(2) of the Constitution stipulates that disputes about parliamentary or presidential elections may be brought before the Council by 'any candidate, political party that participated in the election in the constituency concerned or any person acting as government agent at the election'.

Concerning the nature of its opinions and decisions, rulings of the Council may take the form of a binding decision or an advisory opinion. However, the way this provision was drafted leaves a lot to be desired. For instance, article 50(1) of the Constitution stipulates that decisions of the Council are not subject to appeal and are binding on all judicial authorities, military officials, administrative officials, public officials as well as all corporate bodies and natural persons'. Article 50(2) further states that 'a provision declared unconstitutional may not be enacted or implemented'. The utilisation of the permissive 'may' appears to mean that the Council is not obliged to nullify legislation which is inconsistent with the Constitution, yet the

[175] See generally CM Fombad 'The New Cameroonian Constitutional Council in a Comparative Perspective: Progress or Retrogression ?' (1998) 42 *Journal of African law* 2 186.

purpose of the whole section is to make sure that any legislation found to be inconsistent with the Constitution is not adopted. Chapter 5 undertakes a critical analysis of the effect on the advice given by the Council and electoral petitions.

4.9 Concluding remarks

It is evident that the President nominates all senior officials in the public service, including general managers of para-public institutions as well as ministers. Although article 12(1) of the Constitution states that the Prime Minister is the head of government who 'shall direct its action', in actual fact he, like the other members of Government, is appointed and can be dismissed at the whim and caprice of the President, who also exercises enormous powers in appointments in the legislature and judiciary.

This dominance of the powers of the executive trickles down through the shared rule and self-rule elements of Cameroon's governance architecture. With respect to shared rule, the President has the discretion of appointing 30 out of the 100 senators in the country. This means his grip on shared rule is very tight and that he can still influence a lot of decisions of senators. Moreover, the Senate is seen by many as undemocratic and an otiose institution in an era of financial crisis.

Likewise, the executive's influence is still very dominant over institutions of self-rule such as the regional councils and municipal councils. For instance, at the level of regional councils, the Secretary-General is appointed by the President, while at the level of municipal councils he or she is appointed by the minister in charge of local and regional authorities. Traditional authorities also seem to have no real say in the decentralisation process.

An overview was also made of Cameroon's fiscal decentralisation agenda. One major administrative problem today for many municipalities in Cameroon is their inability to collect all revenue due to them. It was observed that the fiscal decentralisation agenda is weak and greatly influenced by decisions from the central government.

Though organised local government exists through the organisation and functioning of the UCCC, the latter remains weak with respect to influencing the decentralisation process. Civil society's role in monitoring decentralisation is still to be defined.

Supervisory bodies include the Board and the Committee. ELECAM is another body which supervises the election process of parliamentarians, senators, regional councillors as well as municipal councillors. The NCPBM, though created only recently in 2017, too has a role to

play in the decentralisation architecture. The functioning of these bodies reveals considerable overlap, duplication and confusion in roles.

The Constitution also ushered in a new institution, the Council, which is tasked with the responsibility of overseeing issues involving the constitutionality of the law. An important task of this organ is to regulate conflict of powers between the central government and regions, as well as among regions and among state institutions. Although it was entrenched in the Constitution in 1996, it only went functional in February 2018. In the interim, the Supreme Court sat in for this institution with respect to the mitigation of conflict between state organs responsible for decentralisation and the constitutionality of the law. Cameroonians still expect much from this institution in terms of overseeing the constitutionality of the law. Understanding the *status quo* of the current system was necessary in this chapter before an analysis. Without such an understanding, it will be difficult to examine the *modus operandi* of current legislation as well as institutions piloting Cameroon's decentralisation agenda. Chapter 5 thus proceeds with a critical analysis of the constitutional and legal framework of decentralisation under the Constitution.

CHAPTER 5

A critical analysis of Cameroon's governing framework for decentralisation

5.1 Introductory remarks

This chapter undertakes a critical assessment of the constitutional and legal framework of decentralisation under the 1996 Cameroon Constitution (the Constitution). It begins by looking at the confusing and complex mélange of administrative deconcentration and political decentralisation. The issues examined include the executive's domineering role in boundary demarcation; the lack of well-defined powers and responsibilities for regions and municipal councils; the weak administrative autonomy of local government; and the fact that diversity, ethnic and minority issues go unresolved due to such confusion. The chapter considers the consequences this situation has for democratic governance as well as for the incorporation of traditional authorities into the modern-day state, before proceeding to mount a critique of shared rule in Cameroon, in particular of the weakness of the second chamber in the bicameral legislature.

The chapter then focuses on weak intergovernmental relations and cooperation as well as on the country's fiscal decentralisation agenda, highlighting the lack of adequate mechanisms for local government self-financing and the distorted role of the Special Council Support Fund for Mutual Assistance (FEICOM) in the accumulation and allocation of resources. The chapter also identifies weaknesses in the Constitutional Council's role in safeguarding decentralisation, before making some concluding remarks.

5.2. A mélange of administrative deconcentration and political decentralisation

The implementation of the decentralisation agenda commenced slowly, with the first laws enacted in 2004 – almost nine years after the Constitution became operational. Since then, it has continued to proceed at snail's pace. In 2010, the first transfers of competences and certain resources were effected, by merely nine out of 30 line ministries.[1] In 2011, four ministries joined the trend and three other ministries in 2012.[2]

[1]See Commonwealth of Nations 'Government Ministries in Cameroon' available at <http://www.commonwealthofnations.org/sectors-cameroon/government/government_ministries/> (accessed 16 July 2018). In Cameroon, 'line ministries' refer to government ministries in Cameroon. There are 31 of them following the decision to split the Ministry of Territorial Administration and Decentralisation into two, namely the Ministry of Territorial Administration and the Ministry of Decentralisation and Local Development.

[2] SB Moungou Mbenda & ER Bekono *Gouvernance des collectivités territoriales décentralisées (CTD) et gestion des compétences transférées* (2012) Working Paper available at <http://www.researchgate.net/publication/312969211> (accessed 24 June 2018) 2. The line ministries, which transferred only some but not all competences, include those in sectors such as agriculture and rural development,

Apart from the provisions in the Constitution, an impressive array of laws,[3] presidential[4] and prime ministerial decrees[5] as well as ministerial decisions regulate the totality of the decentralisation process. As we shall see, while the Constitution provides, in minimalist fashion, for powers to be shared between the state and the regions, its leaves the exact form and nature these are to take to subsequent legislation. Indeed, even though the decentralisation provisions are found in only six articles, at least 13 clauses within these articles leave vital issues of the process to be determined by such subsequent legislation. For instance, article 55(1), after stating that the regional and local authorities shall be composed of regions and councils, adds that 'any other such authority shall be created by law'.[6]

In this regard, it needs to be underscored that, as in similar civil law jurisdictions in Africa, in Cameroon laws can be enacted not only by Parliament but the executive (principally the President, Prime Minister and ministers).[7] Fombad opines that in allowing so many substantive issues of decentralisation to be determined by way of ordinary legislation, the entire process is made dependent not only on the goodwill of Parliament but the President and his ministers. He argues that it is naïve to presume that state authorities and policy-makers are supportive of decentralisation and willing to allow it to operate smoothly: the truth is that parliamentary majorities always act in a calculating and opportunistic way. Even more disturbing is the unpredictable and potentially arbitrary way in which the President and his ministers can

urban development and housing, livestock, fishing and animal husbandry, water and energy, public works, public health, women's affairs, culture, commerce, basic education, small- and medium-size enterprises, and tourism.

[3] The main ones are: i) Law No. 2004/17 of 22 July 2004 to lay down the Orientation of Decentralisation (hereinafter Decentralisation Orientation Law); ii) Law No. 2004/018 of 22 July 2004 to lay down the laws on Council (hereinafter Law on Councils); iii) Law No. 2004/019 of 22 July 2004 to lay down the laws on the Regions (hereinafter Law on Regions); iv) Law No. 92/2 of 14 August 1992 to lay down conditions for the election of Municipal Councils, amended and supplemented by Law No. 2006/10 of 29 December 2006; and v) Law No. 2009/011 of 10 July 2009 relating to the Financial Regime of Regional and Local Authorities.

[4] The main ones are: i) Decree No. 2008/14 of 17 January 2008 to lay down the organisation and functioning of the Inter-ministerial Committee on Local Services; ii) Decree No. 2008/013 of 17 January 2008 on the organisation and functioning of the National Decentralisation Council; iii) Decree No. 2008/377 of 12 November 2008 to lay down the powers and duties of heads of administrative sub-units as well as the organisation and functioning of their services; and iv) Decree No. 2009/248 of 5 August 2009 to lay down conditions for the assessment and distribution of the Common Decentralisation Fund.

[5] Some of these decrees are i) Decree No. 2012/0877/PM of 27 March 2012 fixing the modalities on certain competencies transferred by the State to councils in relation to assistance to micro projects which generate revenue and employment; ii) Decree No. 2012/0878/PM of 27 March 2012 on reforestation activities; iii) Decree No. 2012/0879/PM of 27 March 2012 on the creation of urban public places/parks; iv) Decree No. 2012/0882/PM of 27 March 2012 on environment; v) Decree No. 2012/173 of 29 March modifying and completing certain dispositions of Decree No. 2005/239 of 24 June 2005 organising and fixing modalities on the operation of the road fund; and vi) Decree No. 2011/1731/PM fixing the modalities on the centralisation and repartition of proceeds from communal taxes subject to equalisation.

[6] Article 55(1) of the 1996 Constitution.

[7] As regards the law-making powers, see the reserved legislative domain, reserved executive domain and the domain of delegated legislative powers in articles 26, 27 and 28, respectively, of the Constitution.

exercise these wide discretionary powers.

The successful implementation of decentralisation thus hinges on the good graces of the incumbent government, an arrangement all the more precarious because the constitutional provisions give so little guidance to make the process effective and meaningful. Considering that central governments are often reticent to share powers with lower spheres of government, it comes as no surprise, as shall be seen, that the decentralisation process is manipulated by the executive.[8] In fact, despite the existence of laws, there is no effective plan and strategy to enable the process to succeed, especially as line ministries remain reticent to devolve powers to local government.[9]

Along with Fombad, Guimdo too is of the view that although the Constitution has provided the basis for decentralisation in its creation of regions and councils, there are numerous limitations on the functions of the various institutions concerned, among them the President, his representatives at the local level and the Senate. He adds that there are limitations as well on the very objectives of the process.[10] As shall be seen, these limitations add to the reason why the process is seriously dominated by the executive.

A careful analysis of the fairly obscure constitutional provisions, read together with the relevant laws, presidential decrees, prime ministerial decrees and policy documents, brings to light a legal framework for decentralisation that is poorly constructed, complex and, in several instances, contradictory. The decentralisation system created under the Constitution is bound to be dysfunctional owing to cumbersome, overlapping powers and responsibilities and an inefficient distribution of resources. In many respects, this reflects a subtle but clear policy of re-centralisation that commenced soon after the symbolic federal constitution was adopted in 1961 and abandoned in 1972. Cameroon's decentralisation framework is problematic in numerous ways, and a few key such problems are explored in this section as well as later ones. They are, in particular, the enormous potential that has been created for political and administrative structures to be confused with one another; a weak mechanism for shared rule; the lack of certainty regarding the financial resources needed by the authorities at the level of

[8] CM Fombad 'Cameroon and the anomalies of decentralisation with a centralist mindset' in CM Fombad & N Steytler (eds) *Decentralisation and Constitutionalism in Africa* (forthcoming).
[9] World Bank 2012 mentioned in African Research Institute *The Book Lovers, the Mayors and the Citizens* (2012) 10. See also KK Ndiva 'Local governance under Cameroon's decentralisation regime: Is it all sound and fury signifying nothing? (2011) 37 *Commonwealth Law Bulletin* 3 513–530. See also RR Oyono *Communes et Regions du Cameroun: la Décentralisation* (2011) 1-415.
[10] D BR Guimdo 'Les bases constitutionelles de la décentralisation au Cameroun : contribution a l'etude de l'émergence d'un droit constitutionel des collectivités décentralisées' 29 (1998) *Revue Générale de Droit* 1, 80.

local government to sustain the semblance of decentralisation; a weak agenda for intergovernmental relations and cooperation; and weak legal safeguards for the decentralisation process as a whole.

5.2.1 The executive's domineering role in boundary demarcation

The President has the absolute discretion to create, recreate, change, name, re-name and modify the geographical boundaries of all the administrative and political sub-units. Article 61(2) of the Constitution states:

> The President of the Republic may, *as and when necessary*:
>
> (a) Change the names and modify the geographical boundaries of the Regions listed in paragraph (1) above;
> (b) Create other Regions. In this case, he shall give them names and fix their geographical boundaries [emphasis added].

The only qualification to this, if it could be read as one, is article 62(2) of the Constitution, which stipulates that he may 'take into consideration the specificities of certain Regions with regard to their organisation and functioning'.[11] Articles 2 to 5 of the 2004 Law on Councils, article 2 of the 2004 Law on Regions, and section 6 of the 2004 Law on the Orientation of Decentralisation all reaffirm the constitutional rights of the President to create and change administrative and political entities at will without consulting any person or institution.

This explains why there is no rational, legal or logical explanation for the way of distribution of councils *vis-à-vis* the population. The gerrymandering of council and sub-divisional council boundaries is an issue decided upon by the President based purely on political opportunism in which the wishes of the people as well as their welfare is purely incidental. Needless to say, this is an approach that goes against the grain of contemporary trends, particularly as observed in states such as Kenya[12] or Ethiopia – in the latter, ethnicity and ethnic identity are magnified

[11] See Fombad (n 8 above). This provision can be seen as President Biya's concession to the Anglophone members of his hand-picked Technical Committee on Constitutional Matters who were supposed to have drafted the 1996 Constitution and who insisted on a return to the pre-1972 two-state federation.

[12] Compare this with article 188(1) of the 2010 Kenyan constitution, which provides that the boundaries of a county may be altered only by a resolution (a) recommended by an independent commission set up for that purpose by Parliament; and (b) passed by (i) the National Assembly, with the support of at least two-thirds of all of the members of the Assembly; and (ii) the Senate, with the support of at least two-thirds of all of the county delegations. (2) The boundaries of a county may be altered to take into account— (a) population density and demographic trends; (b) physical and human infrastructure; (c) historical and cultural ties; (d) the cost of administration; (e) the views of the communities affected; (f) the objects of devolution of government; and (g)

as the main basis on which the borders of federal sub-units are determined.[13] In other countries, criteria such as economic viability and factors unrelated to identity are what are important in demarcating borders.

It is also prudent for states to entrust an exercise such as boundary demarcation to an autonomous body and not only the President, as is done in Cameroon. As noted before, in the case of South Africa, boundary demarcation is entrusted to the Municipal Demarcation Board.[14] In the case of Benin, the legislature is vested with the powers of deciding on the process of internal boundary demarcation, by initiating and passing a bill.[15]

Additionally, the President's enormous powers to appoint some of the top government officials in the decentralised political administrative units may indeed instigate the decision to create administrative units. In at least two cases, the people have a right to elect authorities to control an administrative unit but the President is given exorbitant powers to appoint, from the centre, heads over these elected authorities. One case is provided for under article 115, which concerns urban councils, the chief executive of which – the government delegate – is appointed by presidential decree. Another instance occurs under articles 61 to 64 of the 2004 Law on Regions, which provides that the President and other executive members of the regional government shall be elected by the members of the Regional Council; however, article 68 of the 2004 Law on Regions stipulates that the President appoints the Secretary-General and his assistant, all of whom are in charge of the day-to-day functioning of the administrative services of the region. The 2004 Law on Councils requires the mayors to be elected with respect to the sub-divisional councils, but then article 80 authorises the Minister of Territorial Administration (MINAT) to appoint the Secretary-General, who as in the case of the regions, is responsible for the day-to-day running of the administration of the council.

Likewise, under section 58 of Law No. 2009/011 of 10 July 2009 relating to Financial Regime of Regional and Local Authorities (Financial Regime Law), the regional revenue officers and council revenue officers, who act as accounting officers, are appointed by various ministers from the central government. In the appointment of these officials and authorities, the President

geographical features. See also AR Muriu 'Number, Size an Character of Counties in Kenya' in N Steytler & YP Ghai (eds) *Kenyan-South African Dialogue on Devolution* (2015) 105.

[13] See articles 46 and 47 of the 1995 Constitution of the Federal Democratic Republic of Ethiopia.

[14] Y Fessha & J De Visser 'Drawing Non-Racial, Non-Ethnic Boundaries in South Africa' in Steytler & Ghai (n 12 above) 87.

[15] See article 150 of the 1990 Constitution of the Republic of Benin.

or his ministers have no obligation to consult anybody or consider the political composition of the local government area.

The consequence is that the people of an administrative unit or council area may vote for one party but the President and his ministers may appoint members from the ruling party, the Cameroon Peoples' Democratic Movement (CPDM), to act as general managers or executive heads of the local government executive as well as accounting officers even in local government areas controlled by opposition parties.[16]

This is worth comparing with a country such as Zambia, which has made significant strides in reducing the influence the ruling party and central government have over local government administration. Through the Local Government Act of 1991 and the Public Sector Reform Programme of 1993, the country has opted for local governments' choosing competent managers rather than relying on political appointments from the central government.[17] Amadou thus argues that appointing executive heads, particularly government delegates in local government areas, as in Cameroon, is a regression from the principle of democracy.[18]

Another issue triggered by the superimposition of deconcentrated administrative areas over decentralised political sub-units is the extraordinarily wide powers given to the President to suspend the local government areas as well as their officials. No clear mechanisms are in place to control these wide-ranging powers of the President, other than a requirement that in certain cases he exercise a power only after consulting the Constitutional Council (the Council).[19] The instances in which such powers may be exercised are specified very vaguely and there is barely any recourse open to those who may be affected by the misuse of these exorbitant powers. For instance, article 59 (1) of the Constitution states:

> The Regional Council may be suspended by the President of the Republic where such organ:
>
> – carries out activities contrary to the constitution;
>
> – undermines the security of the state or public law and order;

[16] Fombad (n 8 above).
[17] BC Chikulo 'Local governance in Zambia' 10 (2008) *Local Government Bulletin* 3, 1.
[18] Amadou H, *Rapport d'étude Sectorielle du projet de promotion de la gouvernance locale (PDG/OL) décentralisation* (2011) 16. See also Division for Public Administration and Development Management and UN Department of Economic and Social Affairs 'The Republic of Cameroon, Public Administration Country Profile' (2004) 5-6.
[19] See article 59(2) of the Constitution. In as much as this provision necessitates the President to consult the Constitutional Council, he may or may not follow such advice.

– endangers the state's territorial integrity'.[20]

There is no elucidation of vague statements such as those to do with undermining 'public law and order' and 'the security of the state'. This leaves the President with enormous powers to decide when and how local government areas can be created. Although the creation, merging and abolition of boundaries is supposed to be carried out in conformity with the Constitution, all such powers ultimately reside in the President.[21]

5.2.2 Regions and municipal councils lack well defined powers and responsibilities

Another disturbing aspect of decentralisation in Cameroon is the potentially diluting consequences flowing from the co-existence, within the same geographical area, of a hierarchy of deconcentrated administrative functions that overlaps with a similar hierarchy of decentralised political areas – both of which are under the control of the former.[22] Such a compromising and diluting effect may well have to do with the objectives of the decentralisation process. In this respect, the objectives of Cameroon's decentralisation process are, by the standards of most contemporary good practices, limited and modest. Article 55(2) of the Constitution simply stipulates that 'the duty of the councils of regional and local authorities shall be to promote the economic, social, health, educational, cultural and sports development of the said authorities'. It is rather disturbing for decentralisation to focus only on promoting the development of the 'said authorities' and not also the development of local communities. The 2004 Orientation of Decentralisation Law adds to the conservative objectives of decentralisation by outlining in section 2(2) that 'decentralisation shall constitute the basic driving force for promotion of development, democracy and good governance at the local level'. This position on the objectives of decentralisation in Cameroon is echoed by authors like Moungou Mbenda and Bekono.[23] This makes sense but as opined by Fombad, the imperatives of modern constitutionalism and the trends in Africa necessitates more.[24]

[20] See also article 60 of the Constitution, articles 48-59 of the 2004 Law on Regions and articles 94-108 of the 2004 on Councils.
[21] See D Soren 'Local government and decentralisation in Cameroon' 9 (2007) *Local Government Bulletin* 2, 26.
[22] See Decree No. 2008/377 of 12 November 2008 to lay down the powers and duties of heads of administrative units as well as the organization and functioning of their services.
[23] Moungou Mbenda & Bekono (n 2 above) 2.
[24] See Fombad (n 8 above). It also is worthwhile comparing this with some good practices on the continent. For instance, the Kenyan 2010 Constitution in article 174 defines the objectives of the country's decentralisation process (or what it refers to as 'the objects of the devolution of government') as being '(a) to promote democratic and accountable exercise of power; (b) to foster national unity by recognising diversity; (c) to give powers of self-governance to the people and enhance the participation of the people in the exercise of the powers of the State and in making decisions affecting them; (d) to recognise the right of communities to manage their own affairs and to further their development; (e) to protect and promote the interests and rights of minorities and marginalised

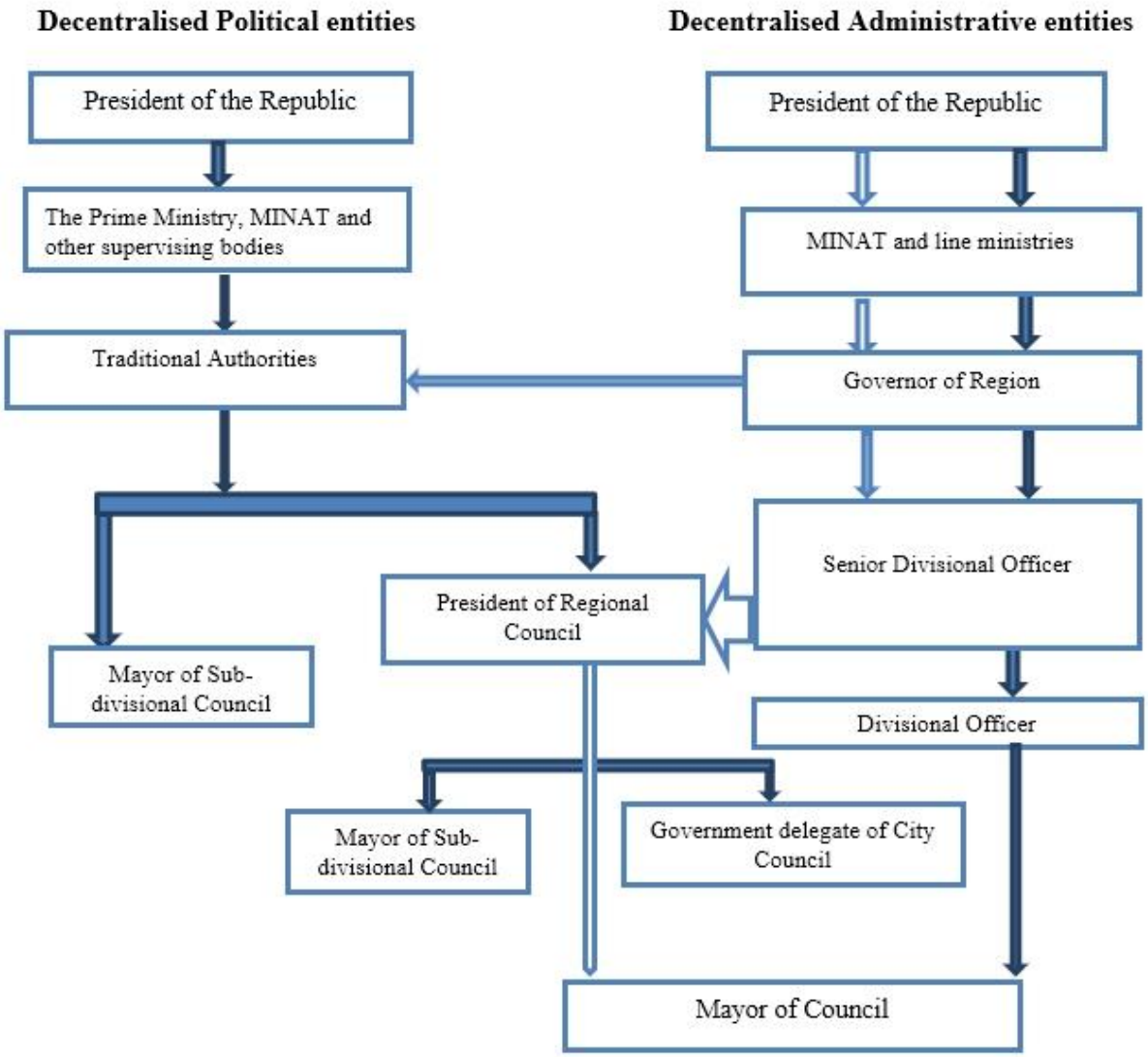
The ambiguity of key provisions of the 2004 Orientation of Decentralisation law, the 2004 Law on Regions and the 2004 Law on Councils enables central government officials such as the Senior Divisional Officers (SDOs) and Divisional Officers (DOs) to encroach on the powers and prerogatives of local government officials such as mayors. These administrative authorities have effectively transformed their authority into an authority to command, issue orders, give instructions, direct and to exercise formalised control over local government resources. Even in those limited matters in which powers are expressly devolved to local authorities by the law, such powers amount to nothing in practice because their implementation is subject to stringent central government controls. As a result, there is no real participation and representation because there is in effect little room for participation and representation at the local level.

Cameroon is still ruled by a regime whose governing elite has a high propensity for rent-seeking and influence-peddling. This governing elite cannot tolerate or conceive of any centres for decision-making other than in the central state apparatus. The key provisions of the 2004 Orientation of Decentralisation law, the 2004 Law on Regions and the 2004 on Councils, especially those governing central/local relations, are ambiguous about decentralisation. This ambiguity provides an inroad for the decentralisation process to be hijacked or distorted at the level of implementation. Instead of fostering democracy, decentralisation has led to more corruption and élite capture.

The co-existence of political decentralisation and administrative deconcentration of powers is not in itself necessary detrimental. What is problematic, though, is the potential it creates for deconcentrated officials to abuse the excessive top-down power they have been given. Figure 1 shows the relationship between the two hierarchies.

communities; (f) to promote social and economic development and the provision of proximate, easily accessible services throughout Kenya; (g) to ensure equitable sharing of national and local resources throughout Kenya; (h) to facilitate the decentralisation of State organs, their functions and services, from the capital of Kenya; and (i) to enhance checks and balances and the separation of powers'. See similar approaches under section 264(2) of the 2013 Zimbabwean Constitution and section 152 of the 1996 Constitution of South Africa. See also YP Ghai 'Devolution in Kenya: Background and Objectives' in Steytler & Ghai (n 12 above) 56-79.

Figure 1: Political decentralisation v administrative deconcentration



Source: Adapted from Fombad (n 8 above)

At the epicentre of the highly flawed decentralisation architecture is the President, who understandably is head of the hierarchy of deconcentrated administrative units and directly or indirectly appoints all the top-ranking authorities who staff these units. But the President also exercises powers over the hierarchy of decentralised political areas that are so excessive that they call into question the *raison d'être* for their creation on grounds of wasteful duplication of services. This view is corroborated by Moungou Mbenda and Bekono, who argue that having a multiplicity of actors in the decentralisation process in Cameroon entails a duplication of services that makes local government inefficient and ineffective.[25]

[25] Moungou Mbenda & Bekono (n 2 above) 5-9.

5.2.3 Usurpation of local government power rather than executive supervision

A further problem with the legal framework of Cameroon's decentralisation agenda is the choking, stultifying effect that the supervisory powers provided for under article 55 (3) of the Constitution and other pieces of legislation have on councils and regions. Section 66(1) of the 2004 Orientation of Decentralisation law stipulates that 'the state shall ensure the supervision of regional and local authorities in accordance with the provisions of this law'. Section 66(2) goes further to state: 'Under the authority of the President of the Republic, the minister in charge of regional and local authorities and the representative of the state in the regional and local authority shall ensure the supervision of such authorities'.

Generally, the local representatives of the state is the governor of the region (in the case of regional authorities) and the SDO (for the councils within his or her territorial area of jurisdiction). The basis of the wide-ranging powers conferred on the local representatives resides in section 15(2) of the 2004 Law on the Orientation of Decentralisation, which states: 'The powers devolved upon regional and local authorities by the state *shall not be exclusive*. They shall be *exercised concurrently by the state and the authorities*, under terms and conditions provided by law' (emphasis added).

Since there are no matters over which local governments have exclusive or primary competence, all the duties they discharge are ones devolved to them by the administrative authorities; furthermore, they carry out these duties under the close and regular scrutiny of these authorities. An examination of the relevant texts reveals three main types of supervision. One of these types requires that certain of the devolved powers can be exercised only with the prior approval of the supervisory authorities.[26] In other cases, the local authorities are called upon to communicate their decisions or proposed cause of action to administrative authorities or involve them in the decision-making of councils.[27] This is where the principle of subsidiarity, which warrants that governance should take place as close as possible to the local populace, becomes important. The principle also entails a preference to locate functions and

[26] See the creation of a local police force under article 86 of the 2004 Law on Councils. See also, for instance, the purchase of shares or bond issues by companies under section 35(1) and (3) of the 2004 Orientation of Decentralisation Law as well as the exercise of powers under sections 69 and 70 of the same law.

[27] For instance, under article 79 of the 2004 Law on Councils, the administrative authorities not only attend council meetings but express their opinions on the agenda and participate in discussion, even though they have no right to vote. For other instances where the so-called supervisory powers are meant to be exercised, see articles 84-86 of the 2004 Law on Councils, articles 41(2), 42(1) and 46 of the Law on Regions, and sections 43, 56, 69, 78 and 85 on the 2004 Orientation of Decentralisation Law.

powers at lower levels of government where possible, and necessitates that lower levels of government are protected from undue influence, as in the case of South Africa.[28]

Fombad argues that in Cameroon, the principle of concurrency of powers clashes with and overrides the principle of subsidiarity in a manner that creates considerable scope for confusion and uncertainty.[29] He adds that nowhere is this as flagrant as it is in articles 86 to 90 of the 2004 Law on Councils. After enumerating a few competences that have been devolved to the local authorities, and adding that these shall all be discharged under state supervision, articles 88 and 91 state that this does not prevent the administrative authorities from taking over and exercising these competences. Amadou regards this control as necessary and respects legality, especially in circumstances where local authorities may abuse powers.[30] According to Moungou Mbenda and Bekono, through the notion and mechanism of *tutelage* (supervisory control), the general interest of the citizens is protected. To these authors, administrative authorities such as the SDOs regulate activities at the local level and at the same time act as advisors to the mayors.[31] According to Fombad, though, this indeed is where the Constitution appears to have stretched the French notion of *tutelage* to absurd limits.[32]

Yusimbom is equally of the view that the notion of *tutelage* is absurd and restricts the powers of local authorities.[33] If powers conferring meaningful authority were to be devolved to local government, this would enable it to have some influence over external decisions and put local preferences and needs on the agenda more visibly. Unfortunately, the decentralisation framework under the Constitution leaves little room for the exercise of any discretion regarding what emanates from the central government. For instance, as seen in Chapter 3, countries may decide that, because of its efficiency and closeness to the populace, local government should take care of issues such as setting the primary education curriculum and ensuring that it

[28] J De Visser 'Subsidiarity in the Constitution' 10 (2009) *Local Government Bulletin* 4, 1. The principle of subsidiarity allows for autonomy, which is essential for curbing conflict between deconcentrated and decentralised governance units. When council areas have autonomy, they can contribute effectively to development and democracy. See also JT Hond. 'La prévention et la résolution des conflits dans un systeme décentralisé: l'experience du Cameroun', La Gouvenance de la Décentralisation, Un séminaire de haut niveau sur les stratégies et politiques innovantes de décentralisation dans les pays africains, 27-29 January 2014, Tanger Morroco, 7-8.

[29] For examples of the overlapping and broad competences given to different levels of local government, see articles 18-24 of the Law on Regions and articles 15-22 of the 2004 Law on Councils.

[30] Amadou (n 18 above) 15.

[31] Moungou Mbenda & Bekono (n 2 above) 13-15.

[32] See also Fombad (n 8 above). As in many areas of law, the Cameroonian legislator is content to copy French law of the past. The *tutelage* system has undergone significant reform in France since the 1980s and limited the competencies and powers of deconcentrated officials, such as SDOs, to interfere in local government.

[33] RE Yusimbom *Breaking to Build: Decentralisation as an efficient mechanism for achieving National Unity in Cameroon* (2010) 37-38.

includes the teaching of local culture and languages. Accordingly, on the strength of a 2010 directive to devolve some of the powers listed in article 56(1) of the Constitution, the Cameroonian Ministry of Basic Education elected to devolve the construction of additional classrooms to local government. There was some protest from local authorities because local priorities 'were not accurately gauged or elicited'.[34]

Generally, the central government's supervisory powers over local government are complex and ill-defined and allow considerable leeway for frequent arbitrary interference by administrative authorities, amongst others. However, due to the efficiency and closeness to the populace noted above, local government should be able take care of some duties without unnecessary, cumbersome supervision from central government, while citizens ought to be able to participate in decision-making processes that affect their lives: because they are closer to citizens than other public institutions, local authorities 'hold responsibility in mobilising local societies' opinions while acting as catalysts of change'.[35]

Under a decentralised form of government, the distribution of powers and functions to subnational units does not imply that these operate as independent governments or entities. As seen in Chapter 3, while they exercise a degree of autonomy, lower spheres of government remain accountable to the central government, which has the obligation to oversee their activities. Central-government powers of intervention in local government are thus not only necessary but understandable. Local authorities may abuse their power and mismanage the affairs of the community; if the central government fails to intervene timeously, this can lead to serious problems such as embezzlement and corruption.

However, most well-designed frameworks, such as those of Zimbabwe[36] and South Africa,[37] provide a balanced method that builds in measures to ensure that the central government cannot abuse its powers to intervene and wrest control of local government authorities from its political opponents. This is also the case with Kenya, which has instituted mechanisms to allow

[34] Report No. 63369-CM. 'Cameroon: The path to fiscal decentralization. Opportunities and Challenges,' Document of the World Bank, September 2012, available at <http://documents.worldbank.org/curated/en/685841468239367086/pdf/633690ESW0Gray0disclosed01105020120.pdf > (accessed 19 May 2018) 31.
[35] Communication from the European Commission to the European Parliament, 15 May 2013 mentioned in African Research Institute (n 9 above).
[36] See section 278 of the Zimbabwe Constitution of 2013.
[37] See section 100 of the 1996 South African Constitution.

central government to oversee the activities of local government without weakening local government autonomy.[38]

The Cameroonian legal framework, unlike the cases of South Africa, Kenya and Zimbabwe, simply gives the President as well as the minister in charge of local and regional authorities exorbitant powers to dilute the autonomy of local government. There are no detailed provisions in the Constitution to give direction on how central government is to oversee the activities of local government without abusing such powers. In addition, the United Councils and Cities in Cameroon (UCCC), the body created to enhance cooperation between local government, has remained silent on the issue of the weak administrative autonomy of local government. This leaves local government with little or no powers, especially with respect to deciding on development projects and the recruitment of staff.

5.2.4 Unresolved diversity, minority and ethnic issues

Section 2(2) of the 2004 Orientation of Decentralisation Law states that the Cameroonian decentralisation framework is designed to act as a major leitmotif in the promotion of diversity issues at the local level. The question is whether the legal framework can achieve this purpose.

A 2012 World Bank Report on Cameroon notes: 'Despite the good intentions in the Constitution and subsequent legislation, Cameroon lacks an effective strategy and an operational plan for decentralization. Indeed, line ministries appear to regard decentralization as a threat to their control over resources and influence.'[39] Even assuming that the Cameroonian draftsman had any such 'good intentions,' it is argued that the scope for the decentralisation framework under the Constitution to serve as a platform from which to resolve diversity, ethnic and minority issues is quite limited.

In opting for a top-down, centralised symmetrical decentralisation design, the Cameroonian legislator unwisely turned a deaf ear and blind eye to the country's deeply rooted and ever-

[38] Article 190 of the Kenyan 2010 constitution states, inter alia: ' (3) Parliament shall, by legislation, provide for intervention by the national government if a county government – (a) is unable to perform its functions; or (b) does not operate a financial management system that complies with the requirements prescribed by national legislation. (4) Legislation under clause (3) may, in particular, authorise the national government – (a) to take appropriate steps to ensure that the county government's functions are performed and that it operates a financial management system that complies with the prescribed requirements; and (b) if necessary, to assume responsibility for the relevant functions. (5) The legislation under clause (3) shall – (a) require notice to be given to a county government of any measures that the national government intends to take; (b) permit the national government to take only measures that are necessary; (c) require the national government, when it intervenes, to take measures that will assist the county government to resume full responsibility for its functions; and (d) provide for a process by which the Senate may bring the intervention by the national government to an end.'

[39] 2012 World Bank report (n 34 above).

simmering diversity, minority and ethnic issues, particularly the Anglophone problem and the discrimination faced by the disabled, by indigenous people, and by women and the youth. An important aim of a good constitutional system, especially so in the design of its decentralisation framework, is to ensure that the equity, inclusion, diversity, equality and differentiation of all citizens are catered for.[40] The 1996 South African Constitution, for instance, indirectly protects marginalised cultural and linguistic groups.[41] As noted previously, recognition is officially accorded to 11 languages.[42] Even though some other languages are not officially recognised per se, the PanSALB created under the South African Constitution has the duty to promote, and create conditions for the development and use of these languages, such as Khoi, Nama and San languages.[43]

By contrast, the Constitution of Cameroon is weak in several respects in how it addresses these issues; in the main, though, it simply ignores them entirely, presumably in the hopes that they will resolve themselves by a stroke of luck. The preamble to the Constitution stipulates, inter alia, that 'the State shall ensure the protection of minorities and shall preserve the rights of indigenous populations in accordance with the law'. In article 1 (3), it states:

> The official languages of the Republic of Cameroon shall be English and French, both languages having the same status. The State shall guarantee the promotion of bilingualism throughout the country. It shall endeavour to protect and promote national languages.

In the section dealing with decentralisation, the Constitution introduces a number of obscure principles. For instance, article 57(2) states, inter alia, that 'the Regional Council shall reflect the various sociological components of the Region', and in clause 3 that 'the Regional Council shall be headed by an indigene of the Region elected from among its members …' As observed in Chapter 4, the regional bureau is also supposed to reflect the 'sociological components of the region'. This is reiterated in articles 26(2) and 61(2) of the Law on Regions. Once again, the Constitution and the relevant laws contain glaring contradictions and anomalies.

First, the requirement of respecting the sociological composition of the regional council as well as who qualifies to be an indigene applies only to regions and not councils. How can this be

[40] See article 197 of the Kenyan 2010 Constitution, which states: '(1) Not more than two-thirds of the members of any county assembly or county executive committee shall be of the same gender. (2) Parliament shall enact legislation to – (a) ensure that the community and cultural diversity of a county is reflected in its county assembly and county executive committee; and (b) prescribe mechanisms to protect minorities within counties.'
[41] Section 9(3) of the 1996 Constitution of South Africa.
[42] Section 6(1) of the 1996 Constitution of South Africa. These languages are Afrikaans, English, IsiNdebele, IsiXhosa, IsiZulu, Sepedi, Sesotho, Setswana, SiSwati, Tshivenda and Xitsonga.
[43] Section 6(5) of the 1996 Constitution of South Africa.

upheld when a similar condition is not imposed on councils, particularly since it is from the council membership that the regional council is indirectly elected?

Secondly, the Constitution and subsequent legislation offer no explanation of what is meant by the 'sociological component of a region' or of who an 'indigene' is (*autochthony* is the word utilised in the French texts). There are further questions as well. Who, and in what way, determines whether or not the composition of the regional council is a fair and true reflection of the sociological components of the region? Who, and in what way, determines if a person is an indigene or not?

The latter question is raised by Guimdo, among other authors.[44] Questions of autochthony, in the form of the politics of place, belonging and identity, open the floodgates to some of the most controversial issues in Africa in that they mostly favour exclusion rather than inclusion. Such exclusion in fact leads to fragmentation and polarisation rather than fostering national consciousness and unity.[45] In cases where autochthonous representations are imposed by the central government at the local-government level, especially in municipalities, decentralisation may not necessarily promote democracy.[46] Autochthony has thus been utilised by the government of Cameroon to manipulate ethnic sentiments in the main towns and villages; in many respects this has been a way of diverting attention from the government's reluctance to transfer effective financial powers and decision-making from the central to local government.

Thirdly, a far more disturbing issue is why the Cameroonian draftsman should be bothered about having persons and indigenes reflect the 'sociological components of the region' where decentralised political areas are concerned but sets no such condition when referring to the origins of office-holders such as administrative authorities (SDOs and DOs), who hold far more essential posts in the deconcentrated administrative areas and who predominantly control and supervise the activities of decentralised areas.

The administrative authorities of deconcentrated administrative areas have been the main reason for tensions over the years between the Francophone and Anglophone communities in the country. Francophones who speak and understand very little English and lack a grasp of its associated culture are routinely appointed in Anglophone areas as officials from the lowest to highest of ranks. With little understanding of the working environment, these authorities have

[44] Kamto also ponders the issue of who an indigene is. Mentioned in Guimodo (n 10 above) 90 .
[45] Morten Boas mentioned in Fombad (n 8 above).
[46] P Moudoudou 'Les tendances du droit administratif dans les etats d'Afrique noire francophone 2009 (3) *Annales de l'Université Marien NGOUABI* 10, 37.

loyally carried out political instructions from the central government as well as served their own interests. Indeed, they have done next to nothing to address the needs of the communities they are called upon to serve. Over time, this has generated complaints and raised suspicion of a policy of imposing Francophone culture and eradicating Anglophone culture.

Although the official policy of bilingualism for some time now has entailed nothing more than a type of 'bilingualism in French,' in the last decade many Francophone Cameroonians have made vital strides not only in learning English but undergoing their secondary education in the Anglophone regions. Nevertheless, concerns about a deliberate policy of assimilation and 'de-identification' have gained ground, especially as Francophone prosecutors and judges with little to scant knowledge of the English legal system have been appointed to serve in the Anglophone regions.[47] The threatened elimination of the English legal system, widely regarded as among the last vestiges of inherited English culture, appears to be one of the clearest signs that the overriding policy objective is one of unity founded on the suppression of differences rather than their accommodation.

There is need for more sustainable measures to address the Anglophone problem. Asymmetric options may also be required to quell separatist tendencies or the demands for a return to a two-state federation by many quasi-political associations that were born immediately after the Constitution was adopted. The threat of ethnic violence or separation is very real: the consequences of the invasion of Iraq and Afghanistan by the United States of America (USA) have demonstrated that disgruntled guerrilla groups may pose a greater danger than a conventional army. In fact, the Boko Haram insurgency in Nigeria and Northern Cameroon is an indication of the consequences of marginalisation and exclusion, whether actual or perceived.[48] It is thus imperative to cater for the concerns of disgruntled and marginalised groups in a more inclusive and elaborate constitutional design.

An asymmetrical decentralised framework may go a long way in addressing the Anglophone problem in that such a design will recognise and protect the two English-speaking regions'

[47] See Cameroon 2015 Human Rights Report, available at <http://www.state.gov/documents/organization/252873.pdf> (accessed May 2018) 37. See also Spécial réaménagement du Gouvernement *L'Essentiel du Cameroun* No. 141, Monday 05 March 2018. During the March 2018 cabinet reshuffle, out of a totality of 69 Ministers appointed, 4 where from the South west region and 6 from the North West region. For the first time in the history of Cameroon, an Anglophone, Paul Atanga Nji, from the North West, was appointed to the strategic post of Minister of Territorial Administration.

[48] Fombad (n 8 above). See also D Torbjornsson 'Explaining the differences in al-Shabaab expansion into Ethiopia and Kenya' (2017) *Studies in African Security* 1-4. The al-Shabaab insurgency in Ethiopia and Kenya is equally an indication of consequences of marginalisation and exclusion, whether perceived or actual.

autonomy. It may also go a long way in constitutionally entrenching a right to a continuation of their legal system, culture, language and other issues such as education. In the current dispensation, the decentralisation design has reinforced a dispensation in which Anglophone Cameroonians feel they are second-class citizens with very limited chances of entering the deconcentrated administrative system; where Anglophones are appointed, it is as assistants to Francophone bosses.[49] In such a decentralisation framework, Anglophone Cameroonians lack any autonomy whatsoever; conversely, as a result of poor governance and indifference by the central government on which they are dependent, development in the two Anglophone regions has lagged behind than in the other eight regions of the country.

Ethnicity and ethnic parochialism are equally acute matters, standing as one of the main hurdles to governance not only in Cameroon but Africa as a whole. In the introductory chapter and in Chapter 2, Cameroon's diverse ethnic mélange was acknowledged. Since the advent of multipartyism, the dynamics of the different ethnic divides have fuelled the growing socio-political polarisation and fragmentation in the Cameroon.

In May 2018, the National Commission of the Promotion of Bilingualism and Multiculturalism (NCPBM) undertook missions in the Anglophone regions and held workshops with civil society groups and administrative officials. The aim was to listen to the concerns of the people with respect to the Anglophone problem and other ethnic as well as minority issues. Concerns such as employment opportunities, underdevelopment, poor service delivery and the use of English as one of the national languages were raised. The NCPBM made a vague promise to communicate these problems up the hierarchy to achieve lasting solutions.[50] It is feared that if some of these concerns are not taken seriously and incorporated into the decentralisation framework through constitutional means, the country will remain encumbered with the Anglophone problem as well as ethnic and minority problems.

5.2.5 A fragile foundation for constitutionalism

The notion of constitutionalism was examined chapter 2.[51] From all indications, the Constitution is grounded on a weak foundation for constitutionalism in that the review of the constitutionality of laws may be weak; the recognition and protection of fundamental rights and freedoms is wanting; the judiciary is not considered independent; the separation of powers

[49] Yusimbom (n 33 above) 27.
[50] See PM Musonge, NCPBM, *Final Communique, Listen to the People's Mission, Launching of the Mission in Bamenda, Headquarters of the North West Region*, 1st June 2018.
[51] See Chapter 2, section 5.2.

is illusory; the control of the amendment of the constitution is weak; and institutions that support democracy are equally weak. [52]

Concerning human rights, Cameroon has a National Commission for Human Rights and Freedoms (the NCHRF).[53] The NCHRF, which is vested with financial autonomy and legal status, is charged with the promotion and protection of human rights including those of women, indigenous people and the disabled. This institution has also not been able to promote and protect human rights effectively because of its lack of independence.

As was underscored in chapter 2, the mechanism for the amendment of the constitution is equally fundamental for constitutionalism.[54] An analysis of the mechanism for the amendment of the constitution shows that the executive is greatly influential over the amendment procedure.[55]

Concerning elections, Elections Cameroon (ELECAM), which conducts and supervises elections in the country, has not been especially instrumental in ensuring that elections at all levels are free and fair.[56] The legal framework laying down how ELECAM is constituted has not been helpful in enabling it to discharge its crucial functions satisfactorily.

5.2.6 The confused status and role of traditional authorities

Traditional authorities in Cameroon are classified under the existing legal framework into three categories: first-degree chiefs, second-degree chiefs and third-degree chiefs. Generally considered as auxiliaries of the administration, they are not attributed any particular functions or duties by any of the legal instruments regulating the decentralised system. The lone reference to traditional authorities is found in article 26(1) of the 2004 law on Regions, which stipulates that the traditional authorities in every region constitute an electoral college that elects some of their members to represent them in the Regional Council.[57] This raises pertinent issues. First, what is the role of traditional authorities in the governance framework? Considering the large number of traditional authorities and their various classifications, it will be a complicated task

[52] See CM Fombad 'An Overview of Contemporary Models of Constitutional Review in Africa' in CM Fombad(ed) *Constitutional Adjudication in Africa* (2017) 17-47. See also CM Fombad 'Problematising the issue of constitutional implementation in Africa' in CM Fombad (ed) *The implementation of modern African Constitutions: Challenges and Prospects* (2016) 12.
[53] The NHRC was set up by Decree No. 90/1459 of 8 November 1990.
[54] See Chapter 2, section 5.2.
[55] See Chapter 2, section 5.2.
[56] See chapter 2, section 5.2.
[57] Article 26(1) of 2004 Law on Regions.

to decipher who will be a member of the Regional Council and on what basis. Will such participation take place at the divisional or sub-divisional level?[58]

The role of traditional rulers and traditional institutions in governance in general and the decentralised constitutional and legal framework in particular thus remains unclear, and this seems to be intentional. They are at the bottom of the hierarchy of both the deconcentrated administrative and decentralised political units. With one rather odd exception, the legal framework is mute on the role of traditional authorities and institutions in governance. The question remains moot whether they are partners in local governance and local authority or represent competition for local authority with either the deconcentrated administrative entities and/or the decentralised political areas. There are good reasons for this.

On the one hand, where traditional rulers serve as a contributing component to local institutions and authorities, they can impact positively on democracy and pluralism. However, the chances of this occurring are slim because these institutions are considered inherently undemocratic. On the other hand, in several rural areas where government presence is minimal, traditional authorities and traditional institutions discharge functions usually carried out by government. A case where traditional rulers continue to wield considerable powers over their subjects is found in northern Cameroon. In a territory with a large Fulani population, ethnic groups such as the Kirdi are still subjected to forced labour and inhumane treatment by traditional rulers.[59]

In a study conducted in Ngalmou, a village in Nkongsamba I in the Littoral region of Cameroon, and in Bamessingue in Mbouda and Bangoulap in Bangangte, both in the West region, an examination of the role of traditional authorities in the modern governance system found that these auxiliaries are hardly used in the decentralisation process.[60] Most of the traditional authorities said that they had no knowledge of the role they are supposed to play in the decentralisation process, especially with respect to development.

The undefined role of traditional authorities and institutions has more often than not been exploited by the government when it suits it, particularly in rural areas where, as a result of the lack of an efficient governance framework, many people have been reduced to subjects with limited rights and freedoms who are forced to obey their traditional authorities. In this manner, the ruling party, the CPDM, has often been victorious in elections in these parts of the country

[58] Fombad (n 8 above).
[59] Cameroon 2015 Human Rights Report, available at <http://www.state.gov/documents/organization/252873.pdf> (accessed June 2018).
[60] Amadou (n 18 above) 52-61.

while the citizens have remained under the domination of traditional authorities and with very little access to the gains that trickle down from adequate decentralisation, such as development, accountability and peace.[61]

There is no gainsaying that traditional authorities have an important role to play in accelerating the decentralisation process. A reform of traditional chiefdoms is under way in Cameroon. According to a report from Josué**,** on 25 April, 2018 there was a cabinet meeting presided over by the Prime Minister, the head of government.[62] As part of the agenda of this working session, a presentation was made by the Minister of Territorial Administration on traditional chiefdoms with respect to the role they have to play in the decentralisation process. According to the communiqué issued after this cabinet meeting, the current reform of traditional chiefdoms aims to confer on the traditional chiefs a status compatible with the specific nature of their missions and adapted to the institutional evolution of the country.[63] The Minister of Territorial Administration, Paul Atanga Nji, reiterated that the decentralisation process, spearheaded by President Paul Biya, includes a reorganisation of traditional chieftaincies. He added that as a result of the recognition of traditional values, chieftaincies are taken into account within the ambit of powers and resources transferred to the councils. In fact, 15 percent of current senators are traditional leaders.[64]

The reform of the traditional chieftaincy in Cameroon will have to rely on a reliable and controlled screening of files by administrative authorities, the Ministry of Territorial Administration, the Prime Ministry and the Presidency of the Republic. A census carried out in 2018 has already made it possible to recreate 79 chiefdoms of the first degree, 875 chiefdoms of second degree, and 12,582 chiefdoms of the third. Traditional authorities will henceforth be important vectors in the supervision of the socio-economic and developmental activities of the populations, under the supervision of the administrative authorities.[65]

It is worth noting an example of the importance of constitutionally recognising traditional authorities in decentralisation processes, especially those in Africa. Zimbabwe is proof that chieftaincy, with its functions clearly constitutionalised and defined by the state, could be used

[61] Fombad (n 8 above).
[62] B Josué 'Les chefs traditionnels au cœur de la décentralisation du président Biya', posted on 29 avril 2018, Cameroon-Report.com, L'essentiel de l'info au Cameroun available at <https://cameroon-report.com/politique/decentralisation-les-chefs-traditionnels-au-coeur-de-la-politique-de-paul-biya/> (accessed on 27 June 2018).
[63] Josué (n 62 above).
[64] Josué (n 62 above).
[65] Josué (n 62 above).

effectively in the delivery of customary and common laws.[66] If the role of traditional authorities in Cameroon were constitutionalised and well defined as in the case of Zimbabwe, they may indeed become important actors in helping local government in development, conflict management and service delivery. Considering the inherently undemocratic nature of traditional authorities and institutions, the definition of their duties and responsibilities and their formal recognition in governance will remain a hurdle, but it is one that should be further examined and addressed.

5.2.7 The weak role of women and indigenous people in decentralisation

As examined in chapter 2, the status of women and their active involvement in the decentralisation process is another important issue that is not adequately addressed by the 1996 Constitution. Cameroonian women face many cultural barriers to their involvement in development, public life and politics. As examined in chapter 2, one of such impediments is that women receive little or no attention when it concerns training opportunities and therefore receive little or no preparation for administrative duties. Men are given priority when it comes to being prepared for positions in governance.[67]

Cameroon, like most countries around the world, has made major international commitments with respect to women empowerment and gender equality. Compulsory and all-encompassing education is guaranteed in the Constitution.[68] The notion of gender equality derives from the injustices women face worldwide, especially in undeveloped countries. Despite steps to empower women, customary laws still seemingly favour overt discrimination against women.[69]

Making sure women take up important duty posts in government as well as ensuring that they are duly registered to participate in politics, will go a long way in strengthening their role in country's decentralisation process. An example worth mentioning is the case of South Africa, which has made progress in facilitating women's involvement in top-ranking levels in national and local government structures and programme implementation.[70] Government needs to

[66] J Makumbe 'Local authorities and traditional leadership' in J De Visser, N Steytler & N Machingauta (eds) Local government reform in Zimbabwe: A policy dialogue (2010) 88.
[67] JF Mufua**,** Women's Participation in Governance in Cameroon Improves March 8, 2014, available at <http://www.asianpressinstitute.org/?p=852> (accessed 27 August 2017).
[68] Preamble of the Constitution.
[69] J Arrey 'Assessing Cameroon's Commitment to Gender equality and women empowerment' available at <http://www.geocities.com/camheroes/GenderEquity.htm> (accessed 27 September 2018).
[70] A Williamson 'Women and local government: Steps towards greater inclusivity' 12 (2010) *Local Government Bulletin* 1, 1.

therefore strengthen its commitment to women empowerment and gender equality so as to eradicate the phenomenon of poor participation of women in governance affairs.

As examined in chapter 2, the Constitution was also supposed to address the role indigenous groups play in the governance affairs of the country.[71] Like most countries around the world, Cameroon also has made major international commitments with respect to the rights of indigenous people. Making commitments is not enough.

Apart from upholding the rights of indigenous people in the Preamble, there is no other provision in the Constitution which allows them to effectively take part in the decentralisation process. In addition to this, Cameroon's land tenure law excludes especially the Pygmies as it stipulates that all land that is not owned under private land title belongs to the State. Pygmies therefore find themselves in a deplorable situation as they cannot claim ownership of land.[72] This is the same situation with the Mbororos. These group of indigenous people continue to face difficulties to benefit from land ownership and so have not effectively participated in the decentralisation process of the country. To this respect, some measures have been taken by the Mbororos themselves to ease their effective participation in the decentralisation process. For instance a few educated Mbororo elite in the urban areas created the Mbororo Social and Cultural Development Association, known by its acronym, MBOSCUDA. This organisation through its Access to Justice programme has been instrumental in enlightening the Mbororos especially with respect to the need to own land and participate in the decentralisation process.[73]

There is no gainsaying that indigenous groups like the Mbororos and Pygmies do not have senior positions in government. Even in situations were they have participated in elections, they are not represented in Parliament and in Judiciary. The Government needs to therefore strengthen its commitment to empowering indigenous people so as to allow them to own land as well as involve them more in the governance affairs of the country.

5.3 Shared rule via a bicameral legislature with a weak second chamber

As observed in Chapters 2, one of the major innovations of the Constitution was the ushering in of a bicameral parliamentary architecture.[74] An examination of the organisation and

[71] See Chapter 2, sections 5.3.
[72] NV Pemunta 'The governance of nature as development and the erasure of the Pygmies of Cameroon' 78(2013) *Geojournal* 2, 15.
[73] RN Fon & M Ndamba ' Mboscuda's Access to Justice and Promotion to Land Rights for the Mbororos of the North West of Cameroon' 200, 6-10. available at <https://dlc.dlib.indiana.edu>Fon_232401> (accessed 25 November 2018).
[74] See Chapter 2, sections 4.2.

functioning of the Senate and the National Assembly show that the National Assembly has more powers than the Senate.[75]

The Senate still plays a weak role when it comes to development, preventing ethnic conflict, overseeing land disputes, curbing gender disparity and promoting democracy. Though some traditional rules are part of the Senate they do not play an effective rule in influencing decisions of development and conflict affecting their various areas of governance.

The first senatorial election took place in 2003 and the mandate of the inaugural batch of senators ended in 2018.[76] The second senatorial election took place in March 2018. The CPDM, the country's ruling party gained an overwhelming majority of the seats in the Senate. According to official elections from the elections body, ELECAM, CPDM obtained 63 out of the 70 available seats. The rest of the 7 seats were obtained by the Social Democratic Front (SDF), the country's main opposition party. CPDM was victorious in 9 out of the 10 regions including one of two of the Anglophone regions, the South West region. The SDF obtained its senatorial seats in the North West region, the other Anglophone region.[77] Since the senators are supposed to be 100 in number, the remaining 30 senators were appointed by the President.[78]

Since the second mandate of the Senate, not much has changed in addressing the governance challenges faced by the country. The Anglophone crisis has instead became volatile. Issues of minorities such as woman and indigenous people still remain unaddressed by the Senate. The regions remain underdeveloped.

5.4 Weak intergovernmental relations and cooperation

A key factor in the central government's top-down approach and excessive control over decentralised local government entities is the surprising lack of any meaningful consultative mechanism between central and local government. While they are not essential for an efficient and effective local government system, cooperative governance and consultative mechanisms

[75] See Chapter 2, sections 4.2.

[76] CRTV 'Cameroon's Senate: The Upper House of Parliament' available at <http://www.crtv.cm/2018/09/cameroons-senate-the-upper-house-of-parliament/> (accessed 11 November 2018).

[77] ARA Shaban 'Cameroon ruling party wins 90% of elective senate seats' African News, 2018, available at <http://www.africanews.com/2018/04/05/cameroon-ruling-party-wins-90-percent-of-elective-senate-seats/> (accessed 18 December 2018) .

[78] CRTV, 'President Paul Biya appoints 30 Senators this 12 of April 2018' available at <http://www.crtv.cm/2018/04/president-paul-biya-appoints-30-senators-this-12th-april-2018/> (accessed 25 October 2018).

have become *en vogue* in seeking to reflect and cater for the community's views and concerns in local governance.

A case worth emulating is Zimbabwe, where consultative mechanisms are entrenched in the 2013 Constitution and have been effective in the county's decentralisation agenda.[79] Unlike the Constitution of South Africa, Chapter 3 of which focuses on cooperation,[80] there is no exhaustive chapter for intergovernmental relations in the 1996 Constitution of Cameroon. South Africa has even gone so as to pass the Intergovernmental Relations Framework Act[81] which governs the functioning of the premiers' intergovernmental forums, district intergovernmental forums, and the technical support structures controlling political intergovernmental structures.[82]

In the case of Cameroon, the President and the Minister of Decentralisation and Local Development (minister in charge of regional and local authorities) are in charge of driving the whole decentralisation agenda. As mentioned in Chapter 4, this is done with the Board chaired by the Prime Minister, which is supposed to monitor and assess the implementation of decentralisation.[83] As also mentioned in Chapter 4, the Committee is responsible for the preparation and monitoring of the allocation of powers and resources to local government entities. What is disturbing here is that all these bodies for supervising and monitoring the decentralisation process are made up primarily of authorities nominated by the central

[79] For instance, section 265 of the 2013 Zimbabwe in its general principles on principles of provincial and local government states as follows: '(1) Provincial and metropolitan councils and local authorities must, within their spheres—(a) ensure good governance by being effective, transparent, accountable and institutionally coherent; (b) assume only those functions conferred on them by this Constitution or an Act of Parliament; (c) exercise their functions in a manner that does not encroach on the geographical, functional or institutional integrity of another tier of government; (d) co-operate with one another, in particular by—
(i) informing one another of, and consulting one another on, matters of common interest;
(ii) harmonising and co-ordinating their activities;
(e) preserve the peace, national, unity and indivisibility of Zimbabwe;
(f) secure the public welfare; and
(g) ensure the fair and equitable representation of people within their areas of jurisdiction. …
(3) An Act of Parliament must provide appropriate mechanisms and procedures to facilitate co-ordination between central government, provincial and metropolitan councils and local authorities'.

[80] See Chapter 3, section 41 of the 1996 South African constitution on the principles of co-operative government and intergovernmental relations. See also article 189 of the Kenyan 2010 constitution on cooperation between the central government and county government.

[81] Intergovernmental Relations Framework Act, No. 13 of 2005.

[82] 'The Intergovernmental Relations Framework Act: a Year in the Provinces and Districts' 8 (2006) *Local Government Bulletin* 5.

[83] See section 78 of the 2004 Law on the Orientation of Decentralisation Law. See also the composition of the National Decentralisation Board in Official website of the Presidency of the Republic of Cameroon, 'Decentralisation in Cameroon', Policy Paper available at <http://www.prc.cm/index_en.php?link=files/decentralisation/decetralisation_in_cameroon> (accessed 25 June 2018).

government, with very limited space accorded for the views of other stakeholders, the community or even local government.[84]

It is crucial to note that both the Board and the Committee are supposed to ensure that decentralisation is carried out effectively, especially in terms of its supporting the equitable development of impoverished areas. These bodies are also responsible for ensuring that issues such as minority, ethnic, diversity concerns and the incorporation of traditional governance into the decentralisation agenda are addressed. However, they merely extend the powers of the executive and operate as deconcentrated units.

5.5 An unpredictable fiscal decentralisation agenda

The possibility of fiscal decentralisation to support real political decentralisation depends on the extent and nature of the decentralisation of both responsibilities and of financial resources. This necessitates a good equilibrium that gives local government authorities some autonomy of action and a predictable medium of financing. Article 55(5) of the Constitution allows issues relating to the financial regulations of regional and local authorities to subsequent law. As a result, legislation on fiscal decentralisation in Cameroon is numerous, poorly drafted and continues to be misinterpreted, as are other pieces of legislation on decentralisation generally.

Several of the weaknesses of the framework for decentralised political entities are exacerbated by the design of the financial system, which has created a scenario in which public funds are open to clientelism, capture and rent-seeking directed from the central government. Section 7 of the 2004 Orientation of Decentralisation Law states that 'any devolution of power to a regional or local authority shall be accompanied by the transfer by the state to the former, of the necessary resources and means for the normal exercise of the power so devolved'. It adds in section 9(1) that 'the devolution and sharing of power between regional and local authorities shall distinguish between the powers devolving upon regions and those devolving upon councils'. Many provisions in various pieces of legislation do the exact opposite: they allocate concurrent powers not only to deconcentrated administrative units and decentralised political entities but even to various levels of decentralised sub-units.

[84] In fact, Decree No. 2008/14 of 17 January 2008 to lay down the organisation and functioning of the inter-ministerial committee on local services provides for a committee of 41 members, only ten of whom are representatives of civil society and local government entities; moreover, two of these ten are designated by what was then MINATD, prior to its division in 2018 into MINAT and the Ministry of Decentralisation and Local Development.

As was observed in Chapter 4, the main instrument governing financial issues under the decentralisation architecture is Law No. 2009/011 of 10 July 2009 relating to Financial Regime of Regional and Local Authorities (2009 Decentralisation Law). In section 2, it purports *inter alia* to give local government authorities 'financial autonomy for the management of regional or local interests', but in fact hardly does so. Instead, the financial resources that local government authorities need to carry out their duties depend on the goodwill of the central government. Although there is a clear list of non-discretionary expenses that local government must cover, there is no predictable and guaranteed source of financing.[85]

Local authorities levy charges and taxes, including cattle taxes, direct council taxes and market trading licences, and also receive block grant revenue from the central administration, which as observed in Chapter 4, is paid by MINAT via FEICOM. These grants are supposed to be allocated taking into consideration the council's surface area, population and factors such as its level of development.

The financing *modus operandi* provided for by the decentralisation framework is a major impediment to the success of decentralisation in Cameroon. The distorted way in which revenue is distributed, along with the widely differing characteristics of municipal and urban councils, has led to significant inequalities in development. The consequence is that smaller councils have very limited resources and face difficulties in carrying out their fundamental statutory responsibilities, particularly the responsibility under section 28 of the Financial Regime Law to issue certain compulsory payments.

Another issue is the unclear definition of duties and responsibilities, which leads to disputes emanating from concurrent competences by various tiers of local government over the very revenue-generating areas. For instance, urban councils are usually made up of two or more sub-divisional councils. The law does not clearly differentiate between the duties and responsibilities of the urban council and those of the sub-divisional council. Given the restricted financial sources available to these local authorities, there are constant disputes between the urban council and the sub-divisional councils under it as to whom is supposed to

[85] Section 12 of the Financial Regime Law lists sources of tax revenue as including direct local taxes, additional council tax on state taxes and duties, and direct and indirect taxes. However, the preceding provision, section 11, states that local authorities can collect a tax or fee only if provided for by law, whereas section 13 states that the conditions for the assessments, issue, collection and payment of taxes and duties are to be laid down by law. See also M Fiken & D Latouche 'Décentralisation, acteurs locaux et services sociaux en Afrique: L'impact de la décentralisation sur les services de santé et d'education en Afrique de l'Ouest et du Centre' (1999) Programme de Développement Municipal Afrique de l'Ouest et du Centre [Municipal Development Programme of West and Central Africa] 59.

collect taxes from various activities.[86] The authorities from the central government exploit the ambiguities and gaps in the law which warrants the dispersal of finances to the sub-divisional councils under their area of jurisdiction in the most distorted manner.[87]

Generally speaking, councils, particularly those in rural areas, due to limited financial sources, have to rely on transfers from the central government through FEICOM. These allocated finances or transfers from the central government are usually insufficient, transferred late, and come with some political nexus attached instead of developmental and need-based considerations. For instance, these financial transfers are supposed to be allocated based on certain vaguely defined criteria such as the 'population' of the council, but the lack of accurate information has allowed preference to be given to political considerations over other conditions.[88] This has resulted in a serious gap between wealthy and poor councils, especially as the poorly financed and less-fortunate councils struggle to provide basic services to their communities.

Decentralisation is thus perceived by most council areas as an extra burden that comes with unwarranted tax increases and obliges them to seek all manner of creative and dubious means of raising finances. These hurdles are frequently alarming, in that certain taxes such as vehicle and property taxes, which in normal circumstances should be collected locally in terms of international taxation norms, are shared with FEICOM or the government, and as a result has a negative effects on accountability. It is important that the assignment of expenditure be accompanied by the assignment of competencies and tasks. Some states, such as South Africa, even allow lower spheres of government to raise and, to an extent, control their own finances.[89]

In general, due to the lack of a clear definition of the competence of the different role-players, the financial framework has a negative effect on the decentralisation process. The framework is fraught with difficulties, such as the inadequate transfer of revenue to local government, poor fiscal coordination from the central government, and budgeting and accounting constraints.[90]

[86] See OT Mbuagbo 'Cameroon: Flawed decentralisation and the politics of identity in the urban space' (2012) 12 *Global Journal of Human Science, Sociology, Economics and Political Science* 11, 15-25.
[87] Mbuagbo (n 86 above) 18.
[88] See 2012 World Bank Report (n 34 above)10.
[89] G Anderson *Fiscal Federalism: A Comparative Introduction* (2010) 21.
[90] See generally SA Fru *An evaluation of the process of fiscal decentralisation to the local government of Cameroon: Case of selected councils in the South region* (unpublished Master of Science in Accounting and Finance, Department of Business Studies, Pan African Institute for Development, West Africa, Buea, 2016).

5.6 The Constitutional Council's weakness in safeguarding decentralisation

A proper decentralisation process necessitates an effective dispute-resolution system. Because conflicts are bound to occur in the course of the interactions between the different spheres of government, including local government, elaborate conflict-resolution mechanisms usually necessitate regular consultation and prior negotiation of conflicts, with recourse to the courts being taken only when this fails. There are several good examples of this in Africa, Kenya especially so.[91]

The lack of an effective system of constitutional review, as alluded to in chapter 4, is one of the major defects of the 1996 constitutional framework. With respect to decentralisation, articles 46 and 47 of the Constitution confer on the Constitutional Council (the Council) the power to regulate the functioning of institutions and deal with any 'conflicts between the state and the Regions, and between the Regions'. However, only the presidents of regional executives may refer cases to this institution 'whenever the interests of their Regions are at stake'.

The weaknesses of this outdated model of constitutional review have been acknowledged, so it was clearly a retrogressive move to have introduced it in the Constitution.[92] It hardly provides a rational means for dealing with the many conflicts that intra-local government relations or relations with central government can provoke. Even so, there are serious doubts about the utility of this mechanism. A critical analysis of the scope of review powers, as well as of the nature of the opinions and decisions of this institution with respect to decentralisation, raises doubts about its utility, as does an analysis of the effect on the advice given by this Council and electoral petitions.

[91] For example, article 189 of the Kenyan 2010 Constitution, in providing for 'cooperation between national and county governments,' states, inter alia: '(2) Government at each level, and different governments at the county level, shall co-operate in the performance of functions and exercise of powers and, for that purpose, may set up joint committees and joint authorities. (3) In any dispute between governments, the governments shall make every reasonable effort to settle the dispute, including by means of procedures provided under national legislation. (4) National legislation shall provide procedures for settling intergovernmental disputes by alternative dispute resolution mechanisms, including negotiation, mediation and arbitration'. Similarly, section 41 of the 1996 South African Constitution provides, under the heading of 'co-operative government', as follows: '(3) An organ of state involved in an intergovernmental dispute must make every reasonable effort to settle the dispute by means of mechanisms and procedures provided for that purpose, and must exhaust all other remedies before it approaches a court to resolve the dispute. (4) If a court is not satisfied that the requirements of subsection (3) have been met, it may refer a dispute back to the organs of state involved.'

[92] See generally CM Fombad 'The Cameroonian Constitutional Council: Faithful servant of an unaccountable system' in CM Fombad (ed) *Constitutional Adjudication in Africa* (2017).

There exist several similar but poorly drafted provisions in the 2004 Law on the functioning of the Council. For instance, its section 26 states that, where the Council rules that a provision in the law is unconstitutional and is not explicit if it is severable from the law, the President may either refer the law to Parliament for a second reading or enact the law excluding the impugned provision. What happens if Parliament were to decide to maintain the law as it is with the impugned provisions? Would this override the decision of the Council? Arguably, the 2004 Law clouds the situation instead of clarifying it.

There is no explicit explanation about the consequences of the advice given by the Council under article 47(1) of the Constitution. There is indeed no reason to think that an advisory opinion suggests anything different from what it purports to, even on issues concerning the interpretation of the Constitution. What is troubling is that there is no clarity as to whether the Council, when seized of an issue, has absolute discretion to decide whether to give its ruling as an advisory opinion or by manner of a final and binding decision.

Concerning elections, section 45 of the 2004 Law on the functioning of the Council gives the Council the latitude to annul electoral operations entirely or partially. With regard to referenda, section 53 of the same 2004 Law necessitates that the Council establishes the existence of any irregularities before deciding. It thus takes into consideration the seriousness and nature of the irregularities, either to uphold the referendum partially or wholly.

A very rare example of when a law was declared unconstitutional occurred in 2002. The Standing Orders of the National Assembly were declared unconstitutional by the Supreme Court, which provided for a mechanism for the National Assembly to certify and acknowledge the validity of the election of each Member of Parliament (MP) before he or she occupy his or her seat after parliamentary elections. The Supreme Court decided that the standing orders violated the Constitution under which the Council had been accorded the mandate to make sure these elections were free and fair and to proclaim the final results.[93] This happens to be one of those rules the CPDM was willing to have expunged; the Council was equally happy to oblige.

Since 1996 when decentralisation was entrenched in the Constitution, a handful of electoral petitions have been tabled before the Council.[94] An examination of a selection of its decisions exposes numerous inconsistencies. This is linked not only to the fact that many of the relevant

[93] See Decision No. 001/CC/02-03 of 28 November 2002.
[94] The exact number of these petitions cannot be provided because of the poor record-keeping system in the country.

laws, especially on decentralisation, particularly those regulating elections, are in conflict with one another, but also to the way the decisions are presented. With respect to sections 60 to 64 of the 2004 Law on the functioning of the Council, when the president of the Council receives a petition, it is assigned to a particular member, who is called a rapporteur. The rapporteur has the responsibility of carrying out the investigation, preparing a report and presenting it before the Council. This report may be adopted by the Council or with amendments, and then becomes the Council's decision. Generally, the decisions are poorly written, unclear and lack clear legal reasoning.[95]

In fact, it is impossible for the Council to carry out any serious investigation appropriately, given the unrealistic time limit accorded for such a procedure. For instance, in 2011 one of the presidential candidates abandoned two petitions he tabled before the Council when he was officially invited to attend the proclamation of the results. This was rather absurd, especially since he had not had any response to his petition for the results of the election to be annulled. Considering this an aberration to democracy, he abandoned the petition.[96]

With circumstances such as these, there is no surprise that elections in Cameroon have not been free and fair especially during the two last decades. This raises concerns about the utility of the Council in promoting decentralisation and hence constitutionalism.

It is thus vital to examine the review system's utility to and impact on decentralisation and constitutionalism. It has been argued that an effective constitutional review system can play a significant role in promoting constitutionalism, entrenching democracy, accommodating diversity, curbing conflict, enhancing development and promoting the respect of the rule of law in any country. The Council has in fact specialised in adjudicating electoral conflicts. How important has this role been and what is the utility and impact on electoral justice in the context of decentralisation?

An analysis of a few of the decisions made by the Council clearly demonstrates that the Council, when confronted with cases involving electoral disputes, has focused on procedural loopholes and sanctioning non-compliance with filing requirements rather than carefully investigating and sanctioning violations of electoral laws as well as other violations emanating

[95] See *Agbor Ashu Emmanuel Omar v Republic of Cameroon* (unreported) mentioned in Fombad (n 92 above) 91, footnote 31.

[96] See 'Cameroun/Contentieux electoral: Un candidat abandonne les débats' <http://journalducameroun.com/camerouncontentieux-electoral-un-candidat-abandonne-les-debats/>(accessed 19 June 2018).

from the electoral process.[97] A selection of controversial examples can be cited in supported of this claim.

Section 49 of the 2004 Law on the functioning of the Council, for instance, provides that a petition 'under pain of inadmissibility' must carry the 'full name, status and address of the petitioner as well as the name of the member(s) of parliament whose election is contested'. The effect of this is that the Council has always thrown out petitions that do not include all of the information required by section 49. This ignores the fact that several cases may have nothing at all to do with any particular person but may relate instead to the general way in which the elections are conducted and the adverse impact this has had on its freeness and fairness.

In the *Lontouo Marcus* case,[98] decided on 1 October 2004, the complainant challenged the decision of the then Ministry of Territorial Administration and Decentralisation (MINATD), which had rejected his documents, for him to stand as a presidential candidate on the grounds that he had made a mistake with respect to the declaration to respect the Constitution. He had in the declaration committed instead to respect the Constitution only if he were elected as President. MINATD, in throwing out his application, was of the view that by pledging his allegiance to the Constitution only if he were elected, he had indirectly shown that he was prepared to violate it before, during, and after the election if he were not elected as President. When the case was tabled before the Council, it declared that the absurd manner in which the declaration was formulated to uphold the Constitution was synonymous with no declaration at all. However, there was no explicit provision in any law giving direction on how such declarations were to be drafted.[99]

The electoral process for the 7 October 2018 Presidential election got into its decisive phase as the Constitutional Council examined 18 petitions on 16 October 2018. These petitions were filled in by five contenders of the elections, Maurice Kamto (the *Kamto case*[100]) of the Cameroon Renaissance Movement (CRM), Joshua Osih (*the Osih case*[101]) of the Social Democratic Front (SDF), Cabral Libii (*the Libii case*[102]) of the UNIVERS party, Bertin Kisob (the *Kisob case*[103]), National President of the Cameroon Party for Social Justice (CPSJ) and

[97] AD Olinga mentioned in Fombad (n 92 above) 92.
[98] Unreported.
[99] See Fombad (n 92 above) 92.
[100] Unreported.
[101] Unreported.
[102] Unreported.
[103] Unreported.

Reverend Gabanmidanha Rigobert Aminou (the *Aminou case*[104]), an independent applicant for the candidacy of President. Kamto petitioned the Council to partially annul elections in 7 regions of the country, notably the North West, South West, Far North, North, South, East and the Adamawa. To him, the elections were marred with irregularities. Joshua Osih, the SDF candidate and Cabral Liii of UNIVERS petitioned the Council to completely cancel the elections. According to Kisob of the CPSJ, the Council had to annul the whole elections and secondly the Council, due to the undemocratic manner in which its members were selected, was incompetent to proclaim the results of the elections. Aminou also filled a petition on the grounds that his documents were rejected before the elections by the Council for failure to produce the certificate of payment of a guaranteed bond of 30 000000 FCFA. As in the *Lontouo Marcus case*, when these petitions were tabled before the Council, they were rejected mostly with respect to procedural loopholes rather than carefully investigating and sanctioning violations of electoral laws.[105]

The Council has the major responsibility to investigate and decide matters with respect to electoral petitions. In order to do so, it has to rely mostly on government authorities for information. The major officials are the SDOs and DOs, as well as local forces of law and order. All of these authorities are appointed by the President and serve at his discretion. It comes as no surprise that before each election, government authorities are demoted, others appointed and many others transferred to strategic posts, especially in areas dominated by opposition parties.

Elections Cameroon (ELECAM), which was established to replace the defunct National Electoral Observatory (NEO) as an independent electoral management body,[106] is still managed and controlled by well- known supporters of the ruling CPDM party and can hardly be expected to play an *amicus curiae* role in cases before the Council. In addition, the electoral process is tainted by irregularities, especially as all the electoral laws have been enacted by the CPDM-dominated parliament. This has given the Council a fundamental role in electoral adjudication.

[104] Unreported.

[105] SN Epang 'Post-Election Litigations: Constitutional Council begin examining petitions this Tuesday', *Cameroon Report.com, L'Essentiel de L'info du Cameroun* , 16 October 2018 , available at <https://cameroon-report.com/presidentielle-2018/7485/ > (accessed 13 May 2019). For the unreported cases also see National Commission on Human Rights and Freedom, *7 October 2018 Presidential Election Observation Report*, NCHRF (2018) 1-38.

[106] CM Fombad 'Election Management Bodies in Africa: Cameroon's 'National Electoral Observatory' in Perspective' (2003) 3 *African Human Rights Law Journal* 25.

However, as noted, it has taken care not to go against the wishes of the CPDM-dominated government.

The major responsibility of the Council has been to 'ensure the regularity of presidential elections, parliamentary elections and referendum operations'. Most of the modern indicators of the rule of law, constitutionalism and good governance show that the Council has failed to ensure the regularity of parliamentary and presidential elections. There are several examples to support this claim. For instance, the Commonwealth Experts Team, in their post-election press release on the 2011 presidential election, acknowledged that the election was peaceful though there was need for some degree of fairness to be injected into it for confidence to be gained by all actors in the electoral process.[107]

5.7 Concluding remarks

If one takes into consideration the constitutional average life expectancy of 19 years, then Cameroon has passed the age of maturity.[108] It is rather odd that a system of decentralisation that was considered at the time as one of the major innovations of the Constitution took almost ten years to begin to be implemented. The notion of so-called 'progressive realisation' alluded to in section 9(2) of the 2004 Orientation of Decentralisation Law may provide a convenient excuse for the government's timid rate of implementation. The reality, though, is that decentralisation was adopted very reluctantly by a regime under pressure from foreign donors such as the World Bank and International Monetary Fund (IMF) and seeking to counter what it regarded as a secessionist threat disguised as two-state federalism. So, there are several reasons why the decentralisation system introduced under the Constitution is weak.

It is evident from a critical examination of the constitutional and legal framework with respect to the central government in Cameroon that the President appoints all senior officials in the public service, including general managers of para-public institutions as well as ministers, governors, SDOs and DOs. Although article 12(1) of the Constitution considers the Prime Minister the head of government who 'shall direct its action', in fact he, like the other members

[107] See Post-election press release, Commonwealth Expert Team, Cameroon Presidential elections available at <http://www.keepeek.com/Digital-Asset-Management/oecd/commonwealth/governance/cameroon-presidential-election-9-october-2011_9781848591332-en#page 37> (accessed 17 June 2018).

[108] In, 'The Endurance of National Constitutions,' available at <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1536925 .1.> (accessed in June 2018).

of government, is appointed by and can be dismissed at the discretion of the President, who also exercises enormous powers in appointments in the legislature as well as the judiciary.

A close examination of the constitutional and legal framework of decentralisation under the Constitution exposes the dominance of the powers of the executive, which trickle down through the shared-rule and self-rule elements of the governance architecture. With respect to shared rule, the President has the discretion of appointing 30 out of the 100 senators in the country. Most of those appointed are loyal to the CPDM. This means his grip on shared rule is still very powerful and he can influence the decisions of senators. Moreover, the Senate is considered by many as an undemocratic and cumbersome institution.

Likewise the executive exerts a dominant influence on institutions of self-rule such as the regional councils and municipal councils. The President alone decides on how territorial units should be carved out. At the level of regional councils, the Secretary-General is appointed by the President, while at the level of municipal councils the Secretary-General is appointed by the minister in charge of local and regional authorities. This shows how powerful the executive is over the institutions of shared rule and self-rule in the country.

Concerning traditional leaders and traditional institutions, their role remains obscure and this seems to be deliberate. They are found at the bottom of the hierarchy of both the deconcentrated administrative and decentralised political units. The present governance disposition is silent on the role of traditional leaders and institutions play.

Fiscal decentralisation under the current decentralisation architecture is tainted with irregularities. The legislation governing fiscal decentralisation is complex and inconsistent in many regards especially with respect to the collection and distribution of revenue to local councils. Embezzlement, corruption and poorly trained personnel add to the weak and porous fiscal decentralisation agenda.

The role played respectively by the Council and the Board in supervising, and the UCCC in monitoring the decentralisation process is wanting. An examination of the role other institutions like the NCPBM and ELECAM play, show that their role remains insufficient in propelling the process ahead.

In an epoch of major expansion of constitutional review, even in Francophone African states, Cameroon has remained reluctant to change, adhering to a system which is inconsistent with modern developments and shields state institutions from constitutional accountability for their

inactions as well as actions. The Cameroonian constitutional review system demonstrates that the design and functioning of the review mechanism can have a positive or negative effect on constitutional evolution as well as decentralisation in the country. The current system, which dates back to independence and reunification of the country, has had major effects on the country's constitutional development and hence decentralisation efforts.

First, the refusal of ordinary citizens of the right to access the Council, especially in a situation where their constitutional rights have been violated, amounts to the refusal of constitutional justice. Secondly, respect for the rule of law, constitutionalism and hence decentralisation have remained an illusion, given the absence since independence of an independent judiciary. This is exacerbated by the lack of an effective, credible and efficient system of constitutional review for upholding the rights of citizens.

Cameroon's decentralisation system is thus based on a fundamentally weak, flawed and confusing constitutional and legislative framework riddled with obscurities and contradictions. A constitutionally entrenched mechanism that intentionally fails to provide any clear direction of the scope and nature of decentralisation and which allows important issues of constitutional importance to be decided by the President is a recipe for failure. What lessons can be drawn from Cameroon's decentralisation process – one that is indeed failing?

First, although the decentralisation process seems to have taken power and politics closer to the people, the distortion and micromanagement of the process at the local level has ensured that it has not had the impact and brought about the improvement and self-development in actual governance that should come with it. Nevertheless, high hopes have been raised by the process, and there is too much potential danger in not ensuring that it comes to fruition. The current failed experiment does contain the ingredients for what is needed in the future.

The second conclusion that can be drawn from the Cameroonian case study is that decentralisation is unlikely to help in promoting democracy, constitutionalism and respect for the rule of law if the central government that presides over the process is not aspiring to be democratic. The decentralisation process has hardly altered the manner in which the authoritarian regime operates. The regime remains, at its core, personal rule based on a patron-client network that uses the ruling CPDM and government positions as a foundation from which to manipulate and control followers who hold strategic posts throughout central and local government administration in order to fortify its grip on power. In other words,

decentralisation policy has done no more than provide a mirage of constitutionalism and democracy so as to deceive foreign donors whilst the regime entrenches itself in power.

Thirdly, decentralisation is failing because of a phobia of losing power that will not let the government loosen its grip on it. It is thus naïve to expect that in a neo-patrimonial system those who need the very power they have been accorded to maintain their base would relinquish this power. On examining the conflict between the central government, especially the line ministries, and the decentralised political areas, the conclusion is that efficient and effective devolution of power is a zero-sum power game in which the elites at the centre lose power to the local government.

However, the truth is that if the process is well thought-through and designed, it will lead to a win-win situation for both central and local government. Chapter 6 focuses on measures for effective decentralisation in Cameroon. By drawing lessons from developing countries which, like South Africa, Kenya and Zimbabwe, amongst others, have opted for decentralisation under a unitary state, this next chapter carefully proposes a constitutional and legal framework for effective decentralisation in Cameroon.

CHAPTER 6

Towards a More Rationalised Decentralisation Design

6.1 Introductory remarks

This chapter proposes a more rationalised design for decentralisation in Cameroon. It commences with an analysis of the present challenges of governance in Cameroon. Section 2 then provides a summary of the key weaknesses of the constitutional and legislative framework and examines the Cameroonian identity crisis. Section three focuses on the challenges within a rationalised decentralisation framework. This entails considering if Cameroon should opt for a federal system or maintain its present decentralised unitary state form. Another issue examined in section three is whether the decentralisation framework under the 1996 Constitution (the Constitution) falls under a constitutionalised framework or a non-constitutionalised (legislative) framework. Other issues examined in section three include the need to reinforce political and administrative autonomy. Section four examines the fiscal arrangements that are fundamental to the success of a decentralisation design. Section five deals with supervision and the need for intergovernmental cooperation, after which section six examines the importance of managing diversity, ethnic and minority issues as well as constitutionally entrenching the role of women and traditional authorities in a rationalised decentralisation framework. Section seven considers various dispute resolution and implementation mechanisms, and the chapter ends with some concluding remarks.

6.2 Current challenges of governance in Cameroon

Cameroon has faced several governance challenges since independence. These challenges have persisted due to fundamental weaknesses in the constitutional and legislative framework. One of the major impediments to governance and democratic rule is Cameroon's identity crisis, epitomised by the Anglophone problem. This section summarises these key weaknesses and focuses on the Anglophone problem.

6.2.1 A summary of the constitutional and legislative framework's key weaknesses

A close examination of the constitutional and legal framework of decentralisation under the Constitution exposes the dominance of the powers of the executive,[1] which trickle down

[1] Article 11 of the 1996 Constitution of Cameroon stipulates that 'the Government shall implement the policy of the nation as defined by the President'. The President of the Republic nominates all senior officials in the public service, including high-ranking officials of the judiciary, the legislative arm of government, general managers of para-public institutions as well as ministers. Although article 12(1) of the Constitution declares the Prime Minister as head of Government, he is appointed and may be dismissed at the absolute discretion of the President of the Republic.

through the shared-rule and self-rule elements of the governance architecture. With respect to shared rule, the President has the discretion of appointing 30 of the 100 senators in the country.[2] Most of those appointed are loyal to the Cameroon Peoples' Democratic Movement (CPDM) ruling party.[3] This means that the President's control over shared rule is strong and that he has extensive influence over the decisions of senators. Many regard the Senate as both undemocratic and an unnecessary expense.

The executive also has strong influence over institutions of self-rule such as regional and municipal councils. The President alone decides how territorial units should be carved out.[4] At the level of regional councils, the Secretary-General is appointed by the President, while at the level of municipal councils, the Secretary-General is appointed by the minister in charge of local and regional authorities.[5] This demonstrates how powerful the executive is over the country's institutions of shared rule and self-rule.

Section 2(2) of the 2004 Orientation of Decentralisation Law states that the Cameroonian decentralisation framework is designed to act as a major leitmotif for the promotion of diversity issues at the local level. The question is whether the legal framework can achieve this purpose as well as manage minority and ethnic issues. In fact, there is no operational plan and effective strategy to deal with diversity, minority and ethnic issues, especially as line ministries consider decentralisation as a threat to their power and their influence over resources.[6]

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[2] Article 20(2) of the Constitution.

[3] The selection of the members of the Senate is undemocratic, especially as the President has the powers of appointing 30 out of the 100 members of this body. There is no clearly defined criteria on how these senators are appointed.

[4] See article 61(2) of the Constitution. The President has the absolute discretion to create, recreate, change, modify, name and rename the geographical boundaries of all the administrative and political sub units. This goes against the grain to contemporary trends as observed in Kenya, where article 188(1) of the 2010 Kenyan Constitution provides that the boundaries of a county may be altered only by a resolution (a) recommended by an independent commission set up for that purpose by Parliament; and (b) passed by (i) the National Assembly, with the support of at least two-thirds of all of the county delegations. According to article 188(2) of the 2010 Kenyan Constitution, other factors relevant when altering boundaries include the views of the communities affected, geographical factors, cultural and historical ties, as well as the objectives of devolution of government.

[5] See Section 68 of the Law No. 2004/019 of 22 July 2004 to lay down the laws on Regions (hereinafter Law on Regions). The President of the Republic may terminate the duties of the Secretary-General in case of ill-health, incompetence or threat to territorial integrity. See also Law No. 2004/018 of 22 July 2004 to lay down the laws on Council (hereinafter Law on Councils).

[6] See Law No. 2004/17 of 22 July 2004 to lay down the Orientation of Decentralisation (hereinafter Decentralisation Orientation Law). See also Report No. 63369-CM. 'Cameroon: The path to fiscal decentralization. Opportunities and Challenges,' Document of the World Bank, September 2012 available at <http://documents.worldbank.org/curated/en/685841468239367086/pdf/633690ESW0Gray0disclosed01105020120.pdf > (accessed 19 May 2018) 31. See also SB Moungou Mbenda & ER Bekono *Gouvernance des collectivités territoriales décentralisées (CTD) et gestion des compétences transférées* (2012) Working Paper, <http://www.researchgate.net/publication/312969211> (accessed 24 June 2018) 2. These line ministries, which transferred just some competences and not all, include sectors like agriculture and rural development, urban

Even allowing that Cameroonian constitutional-builders ever had such 'good intentions', the scope for the decentralisation framework under the Constitution to serve as a platform from which to resolve diversity issues is limited. In opting for a top-down, centralised symmetrical decentralisation design, the constitution-builders neglected the country's deeply rooted diversity, minority and ethnic issues, particularly so the Anglophone problem and the discrimination faced by the disabled, by indigenous people, by women and by the youth. The aim of a good constitutional system, especially as regards the design of the decentralisation framework, should be to ensure that issues of equity, inclusion and diversity are catered for.[7]

Concerning traditional leaders and traditional institutions, their role remains obscure and this seems to be deliberate. Generally considered as auxiliaries of the administration, they are not attributed any particular functions or duties by any of the legal instruments regulating the decentralised system. The lone reference to traditional authorities is found in article 26(1) of the 2004 Law on Regions, which stipulates that the traditional authorities in every region constitute an electoral college that elect certain of their members to represent them in the Regional Council.[8]

The Constitution does not accord financial autonomy to the regions. Financial decisions are taken by the central government and imposed on the regions. The main instrument governing financial issues under the decentralisation architecture is Law No. 2009/011 of 10 July 2009 relating to Financial Regime of Regional and Local Authorities (2009 Decentralisation Law). It purports in section 2 to, inter alia, provide local government authorities with 'financial autonomy for the management of regional or local interests'.[9] The regions are not consulted in the budgeting process and depend on the budget drawn up by the central government. Custom duties as well as major taxes are collected by the central government and shared to the regions and councils. The only sources of revenue for local government are property tax, business licenses, user charges and market fees. Numerous municipalities have huge gaps between reported and projected revenues. This is due to the many distorted and incoherent

development and housing, livestock, fishing and animal husbandry, water and energy, public works, public health, women's affairs, culture, commerce, basic education, small- and medium-size enterprises, and tourism.

[7] See article 197 of the Kenyan 2010 Constitution, which states: '(1) Not more than two-thirds of the members of any county assembly or county executive committee shall be of the same gender. (2) Parliament shall enact legislation to—(a) ensure that the community and cultural diversity of a county is reflected in its county assembly and county executive committee; and (b) prescribe mechanisms to protect minorities within counties.'

[8] Article 26(1) of Law No. 2004/019 of 22 July 2004 to lay down the laws on the Regions (hereinafter Law on Regions).

[9] Section 2 of Law No. 2009/011 of 10 July 2009 relating to Financial Regime of Regional and Local Authorities (hereinafter 2009 Decentralisation Law).

decentralisation laws related to finance as well as to the poor administrative capacity of bodies such as FEICOM to enforce the payment of taxes.[10]

Organised local government exists through the organisation and functioning of the UCCC.[11] The UCCC aims at instilling harmony between the councils and promoting development for the common interest of all. In this respect, councils in divisions may realise joint projects, upon the request of the supervisory authority (the state representative) or arising from joint deliberations by their respective executive councils. This includes the construction of rural roads as well as other local services of importance. In reality, the UCCC has not been effective in facilitating harmony and equitable development between councils, given that serious disparities continue to exist among councils.

Supervisory bodies include the Board[12] and the Council.[13] ELECAM supervises the election of parliamentarians, senators, regional councillors and municipal councillors.[14] The NCPBM, though created in 2017, also has a role to play in the decentralisation framework of the

[10] Law No. 74/23 of 5 December 1974 to organise councils also created the Special Council Support Fund for Mutual Assistance (FEICOM). Decree No. 77/85 of 22 March 1977 focused on the organisation of this structure. This institution has been reorganised twice, by presidential decrees on 11 December 2000 and 31 May 2006. Decree No. 2009/248 of 5 August 2009 by the President of the Republic institutes a Common Decentralisation Fund at the disposal of municipal and urban councils. Structures such as the Ministry of Territorial Administration, the Ministry of Supreme State Control, the National Anti-Corruption Commission, the Directorate General of Taxation, Treasury and the Budget that are supposed to assist FEICOM in effective fiscal decentralisation have not been able to do so.

[11] See The local government system in Cameroon, country profile, available at <http://www.clgf.org.uk/default/assets/File/Country_profiles/Cameroon.pdf 39> (accessed August 2018). The United Councils and Cities of Cameroon (UCCC) is an association created by the councils and cities in Cameroon in 2003. The UCCC was formed from the merger of the Cameroon Union of towns and Councils and the Cameroon Association of Towns.

[12] See Section 2 of Decree No. 2008/013 of 17 January 2008 of the Composition and Functioning of the National Decentralisation Board. The Board is charged with the follow-up and evaluation of the decentralisation process. In this respect, it is charged with forwarding an annual report on the state of progress of the decentralisation process and the functioning of local services to the President of the Republic.

[13] See Section 2 of Decree No. 2008/014 of 17 January 2008 on the Composition and Functioning of the Inter-ministerial Committee on Local Services. The Committee is an interministerial committee placed under the authority of the minister in charge of regional and local authorities. It has as mission to ensure the preparation and follow up of competences and resources to be transferred to decentralised local collectivities.

[14] ELECAM was created by Law No. 2006/11 of 29 of December 2006. See also Law 201/005 of 13 April 2010, to amend and supplement certain provisions of Law 2006/11 of 29 December 2006 to set up and lay down the organisation and functioning of Elections Cameroon. See also K Yuh, 'The shortcomings and loopholes of Elections Cameroon (ELECAM) within the electoral dispensation of Cameroon (2010) 4 Cameroon Journal on Democracy and Human Rights 74 available at <http://cjdhr.org/2010-06/Joseph-Yuh.pdf> (accessed 20 August 2018). Prior to the creation of ELECAM, elections in Cameroon were organised and monitored by MINAT. This opened the doors to criticism about election-rigging. Subsequently, the importance of creating an Independent Elections Observatory was acknowledged but this structure was also criticised and considered a 'toothless bulldog'.

country.[15] An examination of the functioning of these bodies reveals much duplication, overlap and confusion in the role these institutions play.[16]

In an era that has seen the expansion of constitutional review, even in Francophone African states, Cameroon has been reluctant to change and has adhered to a system which is inconsistent with modern developments and shields state institutions from constitutional accountability for their inactions as well as actions. As shall be seen in section 6.7, the Cameroonian constitutional review system demonstrates that the design and functioning of the review mechanism can have a positive or negative effect on constitutional evolution as well as decentralisation in the country.[17]

6.2.2 The Cameroonian identity crisis as a major challenge

A problem of major concern that has become acute due to the weak constitutional framework on decentralisation is the identity crisis exemplified by the Anglophone problem. The Anglophone area of Cameroon consists of two of the country's ten regions, the North West and the South West regions. It covers 16,364 km^2 of the country's total area of 475,442 km^2 and has about five million of Cameroon's 24 million inhabitants, or roughly 20 percent of the population. It is the stronghold of the main opposition party, the Social Democratic Front (SDF) and plays an important role in the economy, especially its dynamic commercial and agricultural sectors. Most of Cameroon's oil, which accounts for one-twelfth of the country's Gross Domestic Product (GDP), is located off the coast of the South West region.[18]

The Anglophone problem dates back to Francophone Cameroon's independence in 1960 and when Southern Cameroon joined Francophone Cameroon in 1961. After the plebiscite which took place in Southern Cameroons, the then Prime Minister, Dr John Ngu Foncha, who led the Southern Cameroonian delegation, struggled to arrive at a new constitutional arrangement with Ahmadou Ahidjo, the then President of the Republic of Cameroon. This arrangement was to put in place a fairly loose and decentralised federation. The negotiating power of the Southern

[15] Decree No 2017/013 of 23 January 2017 focuses on the establishment, organisation and functioning of the NCPBM. According to Section 1(2) of the Decree of the NCPBM, this structure is placed under the authority of the President of the Republic.

[16] For instance, there is a lot of duplicity on the roles played by the National Decentralisation Board and the inter-ministerial Committee on Local services with respect to monitoring of the decentralisation process. This allows for the poor monitoring of the process.

[17] See generally CM Fombad 'The Cameroonian Constitutional Council: Faithful servant of an unaccountable system' in CM Fombad (ed) *Constitutional Adjudication in Africa* (2017).

[18] Crisis Group Africa Report N°250 'Cameroon's Anglophone Crisis at the Crossroads', International Crisis Group, 2 August 2017, 2.

Cameroonians may have been very weak, which led President Ahidjo to grant some concessions to their proposals by simply amending the 1960 Constitution by an annexure termed 'transitional and special dispositions'. What became the Federal Constitution of the Federal Republic of Cameroon was simply a law revising the Republic of Cameroon's Constitution of 4 March 1960.

The union brought together not only people of English and French background but a multitude of about 250 ethnic groups speaking more than 270 languages.[19] Faced with such a mixture of cultural, ethnic and linguistic groups having various aspirations and interests at independence, the government needed to put in place an institutional framework to cater for diversity under an umbrella of unity, especially unity between Francophone and Anglophone Cameroonians. Evidently, diversity was not adequately managed either under the 1961 Federal Constitution or the 1972 Unitary Constitution, nor have Anglophone Cameroonians benefitted from the autonomy envisaged under the 1996 Constitution.[20] But never before has tension around the Anglophone problem been as acute as it is currently. It is thus important to examine the events that reignited this problem.

From October to December 2016 lawyers and teachers from the North West and the South West region went on strike. The requests by Anglophone lawyers, ignored until then by Cameroon's justice ministry, were related[21] to the justice system's failure to utilise the common

[19] Encyclopaedia of the Nations, available at <http://www.nationsencyclopedia.com/index.html> (accessed 4 February 2017).

[20] The Federal Constitution of 1961 created a two-state federation made up of East Cameroon, corresponding with the former French Cameroun, and West Cameroon, made up of the former British Cameroons. Remarkably, the Federal Constitution of 1961 made no major alterations to the formal government arrangements that had existed separately in East and West Cameroon before reunification. On the important issue of the division of powers between the spheres of government, article 5 of the 1961 Federal Constitution gave the central government responsibility over matters such as national defence, border disputes between federated states, press and broadcasting, regulation as to procedure and otherwise of the Federal Court of Justice, nationality issues, rules governing the conflict of laws, higher education and scientific research, amongst several pertinent issues. Article 6(1) of the Federal Constitution also accorded the central government powers over issues such as criminal law, human rights, prison administration, law of persons and property, labour law and public health, as well as secondary and technical education, amongst several important competencies. This meant that the central government was dominant in the affairs of the two federated states of East and West Cameroon. For instance, although article 4 of the Federal Constitution bestowed federal authority in both the President and the Federal Assembly, the President eventually obtained wide-ranging powers that gave him control of all national institutions, developments which made the federal arrangement a sham *ab initio*. For a history of the problem, see also AS Caxton 'The Anglophone Dilemma in Cameroon' 2017 *Conflict Trends* 2, 21 July 2017 available at <http://www.accord.org.za/conflict-trends/anglophone-dilemma-cameroon/> (accessed 30 August 2018).

[21] Cameroon inherited two legal systems when the parts controlled by the French and the British joined to create a single state after the colonial powers withdrew. Common law was practised in the English-speaking region and Civil law practiced in the French speaking region during colonisation. The 1996 Constitution has not adequately dealt with the *bijural* system which simply provides for indivisibility of the Republic in article 1(2) without expressly clarifying how the differences of both legal systems shall be addressed under the unitary state.

law in the two Anglophone regions. The lawyers requested the translation into English of the Code of the Organisation for the Harmonisation of Business Law in Africa (with the French acronym of OHADA) and other legal texts. They objected to the 'francophonisation' of common law jurisdictions.[22] Concerns of an intentional policy of assimilation and 'de-identification' gained serious ground prior to 2018, especially as Francophone prosecutors and judges with little to no knowledge of the Common law, as applied in Cameroon, were appointed to serve in the Anglophone regions.[23] The threatened elimination of the Common law, as applied in Cameroon, widely considered as one of the last vestiges of inherited English culture in the country, is probably one of the clearest signs that the overriding policy objective is one of unity based on the suppression and homogenisation of differences rather than their accommodation.

Administrative authorities of the deconcentrated administrative areas have over the years also been a cause of tension between the Francophone and Anglophone communities. Francophones who speak and understand very little English and lack a grasp of its associated culture are routinely appointed in Anglophone areas as officials from the lowest to highest of ranks. With little understanding of the working environment, these authorities have loyally carried out political instructions from the central government as well as served their own interests. Indeed, they have done next to nothing to address the needs of the communities they are called upon to serve. Over time, this has generated complaints and raised suspicion of a policy of imposing Francophone culture and eradicating Anglophone culture. Although the official policy of bilingualism for some time now has entailed nothing more than a type of 'bilingualism in French,' in the last decade many Francophone Cameroonians have made vital strides not only in learning English but undergoing their secondary education in the Anglophone regions.

[22] See Crisis Group Africa Report No. 250 (n 18 above) 9. OHADA was formed in 1993, has 17 member states and is dominated by Francophone countries. The law forms part of one of very few areas that Yaoundé has until now avoided standardising. The first Francophone magistrates were appointed to posts in the Anglophone part in 2002 and this trend intensified in 2014. Common Law lawyers had asserted the same demands to the justice ministry in the past without obtaining any concessions; for example, in May 2015, 700 Anglophone lawyers called for federalism and the creation of an autonomous Anglophone Bar. Crisis Group interviews, magistrate, Anglophone and Francophone lawyers, Douala, Buea and Bamenda, March-May 2017; and email correspondence, president of the Northwest Lawyer's Association (NOWELA), 29 May 2017.

[23] See Cameroon 2015 Human Rights Report, available at <http://www.state.gov/documents/organization/252873.pdf> (accessed May 2018) 37. See also Spécial réaménagement du Gouvernement *L'Essentiel du Cameroun* No 141, Monday 05 March 2018. During the March 2018 cabinet reshuffle, out of a total of 69 Ministers appointed, four were from the South West region and six from the North West. For the first time in the history of Cameroon, an Anglophone, Paul Atanga Nji, from the North West, was appointed to the strategic post of Minister of Territorial Administration.

Secessionist groups have also emerged since January 2017. They have taken advantage of the current Anglophone crisis to radicalise the population, with support from a segment of the Anglophone diaspora. While the risk of dividing the country is minimal, the probability of a resurgence of the crisis in the form of armed violence is high, as some groups, such as the Southern Cameroons People's Organisation (SCAPO), the Southern Cameroons National Council (SCNC), and the Southern Cameroons Ambazonia Consortium United Front (SCACUF), are now clamouring for that approach.[24]

The government has taken several measures since March 2017 to address the Anglophone crisis. For instance, on 23 January 2017 the President created the NCPBM.[25] But Anglophone Cameroonians criticised this as too little, too late, and regretted that nine of the NCPBM's 15 members were Francophone Cameroonians, that most of them belonged to the older generation, and that several were members of the ruling CPDM party.[26]

In May 2018, the NCPBM undertook missions in the Anglophone regions and held workshops with civil society groups and administrative officials. The aim was to listen to the concerns of the people with respect to the Anglophone problem and other ethnic as well as minority issues. Concerns such as employment opportunities, underdevelopment, poor service delivery and the use of English as one of the national languages were raised. The NCPBM made a vague promise to communicate these problems up the hierarchy to achieve lasting solutions.[27] It is feared that if some of these concerns are not taken seriously and incorporated into the decentralisation framework through constitutional means, the country will remain encumbered with the Anglophone problem as well as ethnic and minority problems. The NCBM is handicapped by its remit, which gives it no power to impose punitive measures and restricts it to preparing reports and advocating for bilingualism and multiculturalism. Some of its members have recognised this weakness. It is thus important for the role of the NCPBM to be entrenched constitutionally for its decisions to be given adequate constitutional importance.

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[24] See Crisis Group Africa Report No. 250 (n 18 above) 15. SCAPO and SCNC are two organisations defending the rights of the people of Southern Cameroons, particularly their right to self-determination. SCACUF in particular is advocating for secession.

[25] Decree No. 2017/013 of 23 January 2017 focuses on the establishment, organisation and functioning of the NCPBM.

[26] ST Agbaw-Ebai 'National Commission for the Promotion of Bilingualism and Multiculturalism: Another ELECAM' Cameroon Intelligence Report, 16 March 2017 available at <http://www.cameroonintelligencereport.com/national-commission-for-the-promotion-of-bilingualism-and-multiculturalism-another-elecam/> (accessed 30 August 2018).

[27] See PM Musonge, NCPBM, *Final Communique, Listen to the People's Mission, Launching of the Mission in Bamenda, Headquarters of the North West Region*, 1 June 2018.

Other measures taken by the government to curb the identity crisis include the creation of a Common Law Section at the Supreme Court and a new department for Common law at the National School of Administration and Magistracy, with French acronym ENAM, as well as Common Law departments in some state universities. The government has also recruited Anglophone magistrates, mostly in the Anglophone regions, and more than a thousand bilingual teachers.[28] But the leaders of the Anglophone movement are not satisfied with these measures. They may be considered as token short-term palliatives rather than lasting solutions. These expedients may always be ended at anytime at the pleasure of the government in place.

International pressure has been muted, but has nevertheless pushed the government to put in place the measures described above.[29] Measures from religious leaders and civil society groups have also been muted.[30] The central government of Cameroon seems more sensitive to international than to national pressure. Without coordinated, persistent and firm pressure from its international partners, it is unlikely that the government will seek lasting solutions to the ongoing crisis.

Anglophone Cameroonians need well-defined mechanisms to be put in place for their administrative and political autonomy, which is not the case under the current decentralisation dispensation. Likewise, there is need for the state to recognise the legal culture and identity of Anglophone Cameroonians, which is not the case under the *status quo.*

The politicisation of the Anglophone crisis and the radicalisation of its protagonists are mainly due to the government's response, particularly its disregard, denial, repression and intimidation of Anglophone Cameroonians. There has been diminishing trust between the government and the Anglophone population. The identity crisis has been exploited by political actors who have aggravated the population's resentment to the point that probably most Anglophone

[28] Crisis Group Africa Report No. 250 (n 18 above) 12-13.
[29] See Caxton (n 20 above). See also Crisis Group Africa Report No. 250 (n 18 above) 16. The international response has been mostly piloted by the United States of America., some multilateral organisations like the African Union, and international civil society. On 28 November 2016, the US State Department published a communiqué advocating for dialogue in the Anglophone regions and calling on the government of Cameroon to respect human rights and fundamental freedoms. In December, the UN Centre for Human Rights and Democracy in Central Africa condemned the violence and asked Cameroon to respect minorities. On 18 January 2017, the President of the African Union Commission expressed concern about acts of violence and arbitrary arrests and detentions, and called on the government to seek dialogue. The UN Special Representative for Central Africa visited Yaoundé in February and April. He met Consortium leaders in prison and signed a communiqué calling for the release of prisoners and the restoration of the internet and dialogue. On the part of neighbouring countries, Nigeria has been tactful about not meddling into the crisis for fear of triggering secessionists movements in its own country.
[30] Crisis Group Africa Report N°250 (n 18 above) 15 -16.

Cameroonians now view secession or a return to federalism as the only feasible ways out of the identity crisis.

The Anglophone crisis is a classic example of excessive control from the centre. First, the crisis has led to restrictions on civil liberties, which have become more pronounced since 2013, particularly with the banning on demonstrations. It has served as an excuse for repression, with anti-terrorist legislation being used for political ends and threats against journalists and greater control over social media becoming commonplace.[31] Second, it reveals major governance failures, ones accentuated by a false decentralisation and a political system that relies on co-opting traditional chiefs and local elites.[32]

6.3 Addressing the challenges within a rationalised decentralised framework

In addressing the present challenges within a rationalised decentralised framework, we first consider whether Cameroon should opt for a federal system or maintain its current decentralised unitary state form. It is equally important to determine if the decentralisation framework for Cameroon is a constitutionalised or a non-constitutionalised (legislative) one, as well as to gauge if this has contributed to constitutionalism and reduced the central government's quest to centralise power.

6.3.1 Opting for federalism or maintaining the unitary state framework?

The current crisis has increased support for secession or federalism among the Anglophone Cameroonian population. This point of view demonstrates how complicated the Anglophone problem has become. School closures and ghost-town operations could not have continued for long as they have without the compliance of a large part of the population.[33] An issue which

[31] See 'Crise Anglophone: le SNJC demande aux journalistes d'ignorer les injonctions du CNC', camerpost.net, 22 January 2017. In January 2017, the Minister of Posts and Telecommunications signed an order imposing prison sentences and fines on anyone clamouring for federalism on social and other media. The National Communications Council (CNC) was charged with ensuring that the Minister's order was respected. Government officials regularly sent text messages to the public to warn them of the penalties awaiting them for advocating federalism and publishing fake news. See also Crisis Group interviews, journalists, Yaoundé, December 2016, March 2017, 'Des médias camerounais dénoncent les pressions de Yaoundé sur le traitement de la crise Anglophone', Le Monde, 22 February 2017.

[32] See Generally Crisis Group Africa Briefing No. 101, 'Cameroon: Prevention is Better than Cure' International Crisis Group, 4 September 2014.

[33] See Crisis Group Africa Report No. 250 (n 18 above) footnote 70, page 18. Dissatisfaction amounting to boycotts and riots around the Anglophone crisis involves almost all factions of the Anglophone population. Only the Anglophone government elite distances itself from the movement, yet they are accused of hypocrisy and double standards by their Francophone counterparts. Several Francophone police officers have accused Anglophone police officers of supporting the Anglophone cause. Only loyalty to their uniform and institutional discipline hold them back from publicly expressing their support. Crisis Group interviews, police inspector and technical advisor to the presidency, Yaoundé, Douala, Buea, 2017.

needs to be addressed is if federalism or the current unitary state disposition can resolve the governance issues, including the Anglophone problem.

Although most Anglophone Cameroonians advocate federalism, there is no consensus about the number of administrative units or regions in a future federation. There remains much disagreement about returning to the two-state federation that existed before unification. Some Anglophone Cameroonians are in favour of a four- or six-state federation to better reflect the sociological composition of the country and make the idea of federalism acceptable to Francophone Cameroonians. Other Anglophone Cameroonians are in favour of a ten-state arrangement that mirrors the current pattern of Cameroon's ten regions. There is equally a view that, however many federated states are created, the political capital, Yaoundé, should not be made the federal capital nor included among the federated states.[34] For another category of activists, federalism seems to be a better negotiating option for achieving at least an effective decentralisation in which there is adequate administrative and financial autonomy for all the country's ten regions. This would necessitate either complete revision or full application of the country's current laws on decentralisation.[35]

Inasmuch as several states have opted for a federal system and others for a decentralised unitary state arrangement, it is argued that, due to several factors, especially historical, political and, most importantly, cultural ones, a decentralised unitary arrangement is preferable. Maintaining the current ten regions, 58 divisions and 360 subdivisions may be important for the country to promote democracy, enhance development and manage issues to do with diversity, ethnicity and minorities. Such an arrangement may also be valuable in incorporating traditional authorities and enhancing constitutionalism and respect of the rule of law. But for such a

[34] Crisis Group interviews, academics and trade unionists, Bamenda, April 2017. See Crisis Group Africa Report No. 250 (n 18 above)18. See also G Asuagbor 'Is Federalism the answer?' in J Takougang & JM Mbaku (eds) *The leadership challenge in Africa: Cameroon under Paul Biya* ed (2004) 497. See Benjamin (1987) in NF Awasom 'Negotiating federalism: How ready were Cameroonian leaders before the February 1961 United Nations Plebiscites?' (2002) 36 *Canadian Journal of African Studies* 427. See also FM Starks 'Federalism in Cameroon: The shadow and the reality' (1976) 3 *Canadian Journal of African Studies* 429. See also CL Bongfen 'The Road to the Unitary State of Cameroon 1959-1972' (1995) 41*Paideuma*, 22. See also Jr. DE McHenry, 'Federalism in Africa: Is it a solution to, or a cause of ethnic problems? 'Paper presented at the annual meeting of the African Studies Association in Columbus Ohio (November 1997) available at <http://www.federo.com/pages/Federalism_in_Africa.htm#_edn3> (accessed on 12 February 2018). See also M Dent 'Federalism in Africa, with special reference to Nigeria' in M Forsyth (ed) *Federalism and nationalism* (1989) 172. See A Kom 'Conflits interculturels et tentatives séparatiste au Cameroun' (1995) 5-6 *Cahier Francophone d'Europe-Centrale Orientale* tome 1, 143-152. See also M Kamto 'La montée des séparatismes au Cameroun' (1995) *Génération* hors-série 001 10-11.

[35] See Crisis Group Africa Report No. 250 (n 18 above)18. See also RE Yusimbom *Breaking to Build: Decentralisation as an efficient mechanism for achieving National Unity in Cameroon* (unpublished Master's thesis, Faculty of Law, University of the Western Cape, 2010).

decentralised system to work, it may be necessary to have a constitutionalised asymmetrical arrangement, as shall be discussed in section 6.3.3. It may also be important to have strong regions, with the effective establishment of regional councils and a strong local government system, as in the case of South Africa.[36]

6.3.2 A more conducive framework: Constitutional versus legislative framework

Assessing the nature and importance of the trend towards the constitutional entrenchment of decentralisation in Cameroon is necessary. This trend raises important questions and has implications not only for efforts towards the constitutional entrenchment of devolved government but for constitutional and democratic governance in the country as a whole.

Concerning the constitutional entrenchment of decentralisation, the Constitution of Cameroon, with perhaps the exception of the Constitution of the Democratic Republic of Congo of 2005, has some of the most exhaustive provisions on decentralisation to be found in any civilian-style or Francophone constitution in Africa.[37] The present decentralisation framework under the Constitution is indeed a constitutional one, but a closer look at the provisions therein, especially ones on decentralisation, shows there are many claw-back clauses. Numerous important issues on decentralisation are allowed to be determined by subsequent legislation. The Constitution barely provides for powers to be shared between the state and the regions, but leaves the exact form and nature these are to take to subsequent legislation. In fact, although the decentralisation provisions are found in just six articles, in at least 13 clauses within these six articles, fundamental issues are left to be determined by subsequent legislation. For instance, article

[36] See D Powell 'Fudging Federalism: Devolution and Peace-making in South Africa's Transition to Apartheid to a Constitutional Democratic State' in N Steytler & YP Ghai (eds) *Kenyan-South African Dialogue on Devolution* (2015) 32-52. In the case of South Africa, the country was faced with demands for a strong federal system of government at the end of the apartheid rule. Right-wing Afrikaners who wanted an Afrikaner Volkstaat or region, as well as Zulu nationalists who wanted a self-governing territory in Kwazulu-Natal province, led the demands for a strong federal system. Both the Afrikaner and Zulu groups were afraid of the creation of a robust centralised government under the African National Congress (ANC). However, lack of basic services, poverty and underdevelopment, which can all be traced to the period under apartheid, required that a strong system of local government be created so as to facilitate development and access to services. A system with 'weak' provinces and powerful local governments with a well-defined mandate for service delivery and conflict management was finally created in South Africa. This proves that the local level can play a crucial role both in development and ethnic conflict management if well designed and allocated with resources for its mandate.

[37] By 'civilian-style and Francophone constitutions', reference is made generally to French-speaking Africa as a whole as well as to the constitutions of Hispanophone and Lusophone Africa which have adopted the continental civil law constitutional tradition. It should also be noted that even countries like Botswana, which have not exhaustively entrenched decentralisation in the constitution, have in practice exhaustively carried out a devolution of powers that has culminated in democracy, development, the enhancement of diversity, and the management of diversity and ethnic problems. Botswana's decentralisation process has also been able to incorporate traditional institutions, promote respect of the rule of law, and enhance constitutionalism.

55(1), after stating that the regional and local authorities of the country shall be composed of regions and councils, adds that 'any other such authority shall be created by law'.[38]

It is also important to examine if the number of tiers of government in Cameroon is constitutionalised or left to be determined by subsequent legislation. Several constitutions are silent on the number of tiers of government a country should have. Although this is a common phenomenon in Francophone countries, it is also a growing trend in some Anglophone countries.[39] The Constitution provides for two tiers of government, namely regional and local government.[40] It is argued that the security of lower spheres of government is guaranteed where their existence is upheld through adequate constitutional restraints that have been instituted to check against arbitrary usurpation by the central government.[41]

With respect to political decentralisation, as shall be examined in section 6.3.3, the Constitution provides for a mix of appointed and elected officials at the lower tiers of government.[42] Concerning administrative decentralisation, the degree of administrative decentralisation is low, due to the cumbersome supervisory and discretionary powers which the Constitution grants the central government over the lower tiers of government.[43] Unlike the constitutions of South Sudan,[44] South Africa,[45] Kenya and Uganda,[46] which provide for a high degree of fiscal decentralisation, the Constitution does not exhaustively focus on fiscal decentralisation. This is left to subsequent legislation.[47]

Concerning elements of constitutionalism, particularly the promotion and protection of human rights, the Constitution, unlike most post-1990 constitutions, lays emphasis almost completely on civil and political rights, although some mention is made of some social and economic

[38] Article 55(1) of the Constitution.
[39] For instance, see article 3 of the Liberian Constitution of 1986.
[40] See article 55 of the Constitution.
[41] CM Fombad 'Constitutional Entrenchment of Decentralisation in Africa: An Overview of Trends and Tendencies' in 2018 *Journal of African Law* 15.
[42] See articles 57 to 60 of the Constitution.
[43] See article 55(3) of the Constitution.
[44] See sections 168 and 175-179 of the 2011 Transitional Constitution of the Republic of South Sudan.
[45] See sections 213 to 230 of the 1996 Constitution of South Africa.
[46] See articles 178 A and 190-197 of the 1995 Constitution of Uganda.
[47] The main instrument regulating financial matters is Law No. 2009/011 of 10 July 2009 relating to Financial Regime of Regional and Local Authorities. Section 7 of the 2004 Orientation of Decentralisation Law states that 'any devolution of power to a regional or local authority shall be accompanied by the transfer by the state to the former, of the necessary resources and means for the normal exercise of the power so devolved'. It adds in section 9(1) that 'the devolution and sharing of power between regional and local authorities shall distinguish between the powers devolving upon regions and those devolving upon councils'. Many provisions in various pieces of legislation do the exact opposite: they allocate concurrent powers not only to deconcentrated administrative units and decentralised political entities but even to various levels of decentralised sub-units.

rights.[48] Almost all the fundamental rights outlined in the Constitution are found only in the Preamble.[49]

The scope of application and enforceability of human rights under the Constitution is thus limited. Instead of having these rights in a well-structured bill of rights, the Constitution outlines them in its preamble. The enforceability of human rights under the Constitution is definitely wanting. Entrenching provisions of decentralisation has not led to the effective promotion and protection of human rights.

A constitution is only as good as the modus operandi put in place for ensuring that its provisions are respected by all citizens and violations of it promptly sanctioned. An independent judiciary is provided for in articles 37 to 42 of the Constitution. The notion of judicial independence is expressly stated in article 37(2) of the Constitution, which provides that 'the judicial power shall be independent of the executive and legislative power'.

Although the Constitution professes to institute, for the first time, what it terms 'judicial power', judicial independence is effectively neutralised due to the President's unlimited power to appoint and dismiss judges. Perhaps most seriously, the Constitution does not have the force of a supreme, overriding law, and as a result there is no guarantee of respect for the rule of law.

As is discussed in section 6.3.7, the lack of an efficient and effective system of constitutional review is also one of the principal loopholes of the 1996 constitutional framework.[50] Articles 46 and 47 of the Constitution give the Constitutional Council the jurisdiction to regulate the way institutions operate and to mediate on any 'conflicts between the state and the Regions, and between the Regions'. However, only the presidents of regional executives may forward any conflict related concerns to this organ 'whenever the interests of their Regions are at stake'. There is, however, no efficient and effective system for constitutional review under the Constitution, despite the entrenchment of provisions on decentralisation.

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[48] The preamble of the Constitution.

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

[50] See CM Fombad 'The new Cameroonian Constitutional Council in a comparative perspective: Progress or retrogression?' (1998) 42 *Journal of African Law* 172-186.

It is thus evident from the above analysis that such entrenchment of decentralisation has not significantly reduced the central government's capacity to centralise power. Despite the entrenchment of provisions of decentralisation in the Constitution, the central government is still predominant over the other branches of government as well as local government.

6.3.3 Reinforcing political autonomy

Reinforcing political autonomy is important for Cameroon's decentralisation process. A rationalised decentralisation system would promote political autonomy at lower tiers of government in order to facilitate development, promote democracy, manage diversity, minority and ethnic issues, incorporate traditional authorities, promote constitutionalism and preserve the rule of law. Reinforcing political autonomy has several dimensions, which the Cameroonian decentralisation system may be tested against.

Inasmuch as article 14(2) of the Constitution stipulates that both the National Assembly and the Senate, acting as Parliament for the enhancement of shared rule, 'shall legislate and control government action', they do not operate on an equal basis. The National Assembly and the Senate do not possess the same powers. The Senate has less influence and powers than the National Assembly. This is comprehensible, since the senators represent just the regional and local authorities and are either elected by indirect universal suffrage or appointed by the President of the Republic,[51] whereas all the members of the National Assembly are selected through direct and secret universal suffrage and represent the entire country.[52]

Though the principle of bicameralism was introduced in the Constitution, the Senate became operational only in 2013. The Cameroonian Parliament is regarded as an organ that simply rubber-stamps what the government tables before it and thus of little importance to the daily concerns of the ordinary populace. The reintroduction of multipartyism has not changed the *status quo* significantly, especially as several of the rules and regulations utilised by the National Assembly were introduced during the era of one-party rule. Another reason for this situation is that the ruling Cameroon People's Democratic Movement (CPDM) has a substantial majority over opposition parties and has prevented any serious alteration to parliamentary procedure.

[51] See article 20(1) and (2) of the Constitution.
[52] See article 15(1) and (2) of the Constitution.

There is thus a need for the role of the second chamber to be redefined so as to give more meaning to shared rule. For instance, appointing 30 out of 100 senators is absurd. It is thus necessary to refer to the example of South Africa as a case which Cameroon may copy from. South Africa has been selected based on the view that as another African country, it would serve as an appropriate benchmark for the review of the composition and functioning of Cameroon's second chamber than those of the USA or France which might rather result in an asymmetrical analysis. Also both countries have gone through common historical experiences and currently have similar legal systems.[53] As in the case of South Africa, some members of the second chamber may be elected by the provincial executives, while others are elected by their respective regional assemblies.[54] There may be need for a special veto power with respect to laws concerning the decentralised units in Cameroon, as in South Africa.[55] If adopted in the case of Cameroon, this may go a long way in reinforcing the autonomy of the Senate and subsequently in promoting democracy and development.

According to article 61(2) of the Constitution, the President has the absolute discretion to create, recreate, change, name, rename and modify the geographical boundaries of all the administrative and political sub-units. The only qualification to this, if it could be read as one, is article 62(2) of the Constitution, which stipulates that he may 'take into consideration the specificities of certain Regions with regard to their organisation and functioning'.[56] Articles 2 to 5 of the 2004 Law on Councils, article 2 of the 2004 Law on Regions, as well as section 6 of the 2004 Law on the Orientation of Decentralisation, all reaffirm the constitutional rights of the President to create and change administrative and political entities at will without consulting anybody or institution. This indeed is a method that is not in accordance with contemporary trends of democracy, especially as observed in states like Kenya, which is selected because of a lot of progress made in the decentralisation process.[57]

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[53] JN Wanki 'Convergence or divergence in text and context? Reflections on Constitutional Preambles in the Constitution-making exercises of post-independence Cameroon and post-apartheid South Africa (2018) 33 *South African Public Law* 2, 1.

[54] YP Ghai 'South African and Kenyan Systems of Devolution: A Comparison' in in N Steytler & YP Ghai (eds) *Kenyan-South African Dialogue on Devolution* (2015) 11-12.

[55] See section 76(5)(b)(i) and (ii) of the 1996 Constitution of South Africa.

[56] See CM Fombad 'Cameroon and the anomalies of decentralisation with a centralist mindset' in CM Fombad & N Steytler (eds) *Decentralisation and Constitutionalism in Africa* (forthcoming). This provision can be seen as President Biya's concession to the Anglophone members of his hand-picked Technical Committee on Constitutional Matters that were supposed to have drafted the 1996 Constitution and who had insisted on a return to the pre-1972 two state federation.

[57] Compare this with article 188(1) of the 2010 Kenyan constitution, which provides that the boundaries of a county may be altered only by a resolution (a) recommended by an independent commission set up for that purpose by Parliament; and (b) passed by (i) the National Assembly, with the support of at least two-thirds of all of the

As examined in chapter 3 and worth repeating, two elements are identified by Watts in a boundary demarcation exercise. First, there must be participation by the concerned population via referenda or other means of making the views of the affected persons heard. Secondly, the process must be objective and transparent.[58] In a country where ethnicity is magnified, it is necessary to use ethnic identity as a main element in carving the borders.[59] In other scenarios, non-identity factors and issues of economic viability are pertinent in demarcating the borders. It is also prudent for states to entrust boundary demarcation to an autonomous body. In the case of South Africa, it is entrusted to the Municipal Demarcation Board (MDB).[60] It is necessary to have such an institution oversee issues of boundary demarcation in Cameroon.

The composition of regional councils is also a major concern hampering effective self-rule. For instance, article 57(2) states inter alia that 'the Regional Council shall reflect the various sociological components of the Region,' and in clause 3 that 'the Regional Council shall be headed by an indigene of the Region elected from among its members …' The Regional bureau is also supposed to reflect the 'sociological components of the region'. This is reiterated in articles 26(2) and 61(2) of the Law on Regions. Once again, the Constitution and the applicable laws dealing with these issues contain glaring contradictions and anomalies.

First, the requirement of respecting the sociological composition of the regional council as well as who qualifies as an indigene applies only to regions and not councils. How can this be upheld when a similar condition is not imposed on councils especially as it is from the council membership that the regional council is elected through indirect means?

Secondly, the Constitution and subsequent legislation offer no explanation of what is meant by the 'sociological component of a region' or of who an 'indigene' is (*autochthony* is the word utilised in the French texts). The question as to who qualifies as an indigene has also been raised by authors like Guimdo.[61]

members of the Assembly; and (ii) the Senate, with the support of at least two-thirds of all of the county delegations. (2) The boundaries of a county may be altered to take into account— (a) population density and demographic trends; (b) physical and human infrastructure; (c) historical and cultural ties; (d) the cost of administration; (e) the views of the communities affected; (f) the objects of devolution of government; and (g) geographical features. See also AR Muriu 'Number, Size an Character of Counties in Kenya' in Steytler & Ghai (n 54 above) 105.

[58] RL Watts *Comparing Federal Systems* (2008) 78.

[59] See articles 46 and 47 of the 1995 Constitution of the Federal Democratic Republic of Ethiopia.

[60] Y Fessha & J De Visser 'Drawing Non-Racial, Non-Ethnic Boundaries in South Africa' in Steytler & Ghai (n 54 above) 87.

[61] Kamto also ponders the issue of who an indigene is. Mentioned in DBR Guimdo 'Les bases constitutionelles de la décentralisation au Cameroun : contribution a l'etude de l'émergence d'un droit constitutionel des collectivités décentralisées' 29 (1998) *Revue Générale de Droit* 1, 90 .

Questions of autochthony, in the form of the politics of place, belonging and identity, open the floodgates to some of the most controversial issues in Africa in that they mostly favour exclusion rather than inclusion. This in fact leads to fragmentation and polarisation rather than fostering national consciousness and unity.[62] In cases where autochthonous representation is imposed by the central government at the local-government level, especially in municipalities, decentralisation may not necessarily promote democracy.[63] Such autochthons are more liable to serve the central government's political interests as well as their personal interests rather than the interests of the people. In such a situation, decentralisation hampers democracy. It is thus important for the issue of autochthony to be well defined under the Constitution.

Thirdly, the constitution-builder is concerned about having persons and indigenes reflecting the 'sociological components of the region' where this relates to decentralised political areas, but sets no such condition when referring to the origins of persons such as administrative authorities. These authorities hold far powerful posts in the deconcentrated administrative areas, and generally control and supervise the activities of decentralised areas. It is these administrative authorities of deconcentrated administrative areas who over the years have been the main reason for tensions between the Francophone and Anglophone communities in the country. There is thus need for conditions on the origins of these administrative authorities to be well defined under the Constitution.

Moreover, the President's enormous powers to appoint some of the top government officials in the decentralised political administrative units may actually influence the decision to create administrative units.[64] In the appointments of these officials and authorities, the President or his Ministers have no obligation to consult anybody or to consider the political composition of the local government area. The consequence is that while the people of an administrative unit or council area may vote for one party, the President and his ministers may appoint members

[62] Morten Boas mentioned in Fombad (n 56 above).
[63] P Moudoudou 'Les tendances du droit administratif dans les etats d'Afrique noire francophone 2009 (3) *Annales de l'Université Marien NGOUABI* 10, 37.
[64] Article 68 of the 2004 Law on Regions stipulates that the President of the Republic appoints the Secretary General and his assistant, all of whom are in charge of the day to day functioning of the administrative services of the region. The 2004 Law on Councils requires the mayors to be elected with respect to the sub-divisional councils but then article 80 authorises the Minister of Territorial Administration (MINAT) to appoint the Secretary General, who as in the case of the Regions, is responsible for the day to day running of the administration of the council. Likewise, under section 58 of Law No. 2009/011 of 10 July 2009 relating to Financial Regime of Regional and Local Authorities (Financial Regime Law), the regional revenue officers and council revenue officers who act as accounting officers are appointed by various Ministers from central government.

from the ruling party, the CPDM, to act as general managers, executive heads or accounting officers of local government executives even in areas controlled by opposition parties.[65]

This is worth comparing with a country such as Zambia, which has made significant strides in reducing the influence the ruling party and central government have over local government administration. Through the Local Government Act of 1991 and the Public Sector Reform Programme of 1993, the country has opted for local governments' choosing competent managers rather than relying on political appointments from the central government.[66] Amadou thus argues that appointing executive heads, particularly government delegates in local government areas, as in Cameroon, is a regression from the principle of democracy.[67] Cameroon may want to opt for a model such as that in Zambia, where competence is given priority to in selecting officials at the local-government level.

In a rationalised decentralisation design it is also necessary to examine how powers can be dispersed symmetrically and asymmetrically through the country. Symmetric decentralisation entails dispersing the same powers and authorities from the central government equally to all lower spheres of government.[68] Asymmetric decentralisation entails according special autonomy to certain regions within a country.[69]

An inclusive electoral system is necessary in a rationalised decentralisation system. The electoral system is considered 'the most powerful lever of constitutional engineering for accommodation and harmony in severely divided societies'.[70] An electoral system can therefore be designed in such a way as to facilitate interdependence as well as cross-communal cooperation between groups in fragmented societies.[71]

Several international indicators of good governance and democracy show that Cameroon is far from democratic. For the presidential election, the system used is the FPTP, while for electing Members of Parliament (MPs) a complex system constituted of FPTP and a party list PR system is used. Indeed, Cameroon has remained one of the few African states never to have been

[65] Fombad (n 56 above).
[66] BC Chikulo 'Local governance in Zambia' 10 (2008) *Local Government Bulletin* 3, 1.
[67] Amadou H, *Rapport d'étude Sectorielle du projet de promotion de la gouvernance local (PDG/OL) décentralisation* (2011) 16. See also Division for Public Administration and Development Management and UN Department of Economic and Social Affairs 'The Republic of Cameroon, Public Administration Country Profile' (2004) 5-6.
[68] G Anderson *Fiscal Federalism: A Comparative Introduction* (2010) 54-55.
[69] Anderson (n 68 above) 54-55.
[70] S Wolf 'Post conflict state building : The debate on institutional choice' (2011) 32 *Third World Quarterly* 7.
[71] B Reilly *Democracy in divided societies: Electoral engineering in divided societies* (2004) 2.

classified as a 'free' zone, even in the 1990s when countries across the continent began to democratise themselves. Since the 1990s, Cameroon has lagged behind other African states in putting in place a system of government which is transparent, devoid of corruption, and accountable to its people.[72]

There are about 300 registered political parties in Cameroon. Whilst several African states continue to make progress towards good governance and multiparty democracy, Cameroon's sole genuine effort at organising transparent, free and fair elections began and ended in 1992. Since then, elections have been tainted by serious fraud and election-rigging, as maintained by international and national election observers.

Inasmuch as there are several electoral systems Cameroon may select from, it is argued that the PR system is preferable because it prevents a clear majority from emerging, thus facilitating inclusive decision-making and opening room for the creation of coalition governments.[73] Cameroon may want to adhere to such an electoral system rather than retain a complex electoral system that has led only to election-rigging and thus to bad governance.

Another important component of a rationalised decentralisation system embraced by most states is the rule of law. The rule of law dictates that accessible and comprehensible written laws, be they constitutional or legislative, should guide government actions as well as decisions. Moreover, these laws must be fairly and consistently applied to everybody by government, including government officials, and everyone must have access to justice and the enforcement of the laws. Therefore, a commitment to the rule of law also necessitates vigilance against the abuse of power and corruption.[74] A common practical rather than theoretical conception of the rule of law includes an element of justice. Therefore, in addition to having laws that are predictable, universally applicable and accessible, the just legal system gives impetus to the rule of law. Apart from merely adhering to the law or the valid enactment of law, such a system encompasses equality and human rights and does not discriminate unjustifiably among various classes of people.[75]

[72]See 2015 Ibrahim Index of African Governance, Country Insights: Cameroon available at <http://static.moibrahimfoundation.org/u/2015/10/02201321/08_Cameroon.pdf?_ga=1.162651384.511305310.1474465231> (accessed in August 2018).
[73] S Wolf 'Electoral-System design and power sharing' in I O' Flynn & D Russell (eds) (2005) *Power Sharing: New Challenges for Divided Societies* 62.
[74] N Hedling *A Practical Guide to Constitution Building: Principles and Cross-cutting Themes* (2011)17.
[75] Hedling (n 74 above) 17.

Cameroon may promote the rule of law in several ways, most importantly by adopting a coherent legal system. The institutions of judicial review, constitutional supremacy and independent oversight bodies can indeed solidify such a framework. For instance, the preamble as well as a separate provision of the Constitution of Rwanda accord supremacy to the Constitution and the rule of law.[76] Any conflicting legislation is considered null and void. Supremacy therefore protects and gives overriding importance to the rule of law via ample legal structures, checks and balances, and the guarantee of rights.

The judiciary, which applies the law to individual cases, acts as the guarantor and the guardian of the rule of law. Therefore, a properly operating and independent judiciary is essential for the rule of law, which necessitates a legal system which is just and promotes the right to fair hearing and the accessibility to justice.[77]

6.3.4 Strengthening administrative autonomy

Strengthening administrative autonomy is key for the reinforcement for political autonomy as well as the effectiveness of fiscal autonomy. For administrative autonomy to be strengthened, there is a need for administrative authority over internal procedures, the firing and hiring of own staff, and the salaries of personnel.

There is no gainsaying that administrative autonomy is weak, especially at the lower tiers of government in Cameroon. Regions and councils do not have authority over their personnel. The hiring and firing of staff are still coordinated by the central government. Most mayors do not have the academic qualifications for carrying out their demanding duties, especially as there is no provision for this in either the Constitution or subsequent legislation. Likewise, the internal procedures of local government are still influenced by the central government,[78] which continues to influence the salaries set for local government authorities and officials.[79]

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[76] The preamble and article 200 of the 2003 Constitution of the Republic of Rwanda.

[77] Hedling (n 74 above) 18.

[78] Amadou H, *Rapport d'étude Sectorielle du projet de promotion de la gouvernance local (PDG/OL) décentralisation* (2011) 28, 37 to 50. See also Division for Public Administration and Development Management and UN Department of Economic and Social Affairs 'The Republic of Cameroon, Public Administration Country Profile' (2004). See also KK Ndiva 'Local governance under Cameroon's decentralisation regime: Is it all sound and fury signifying nothing? (2011) 37 *Commonwealth Law Bulletin* 3 513–530. See also *An evaluation of the process of fiscal decentralisation to the local government of Cameroon: Case of selected councils in the South region* (Unpublished Master of Science in Accounting and Finance, Department of Business Studies, Pan African Institute for Development , West Africa, Buea, 2016) 2-3.

[79] See Decree No. 2015/406 of 16 September 2015 relating to the indemnities and other financial advantages attributed to Government Delegates, Mayors, Assistant Mayors, members of the Board of directors of urban councils and municipal councillors. See also AIMF *Preparation du plaidoyer sur le statut de d'elu local et fonction publique territoriale* (2015) 7.

For administrative autonomy to be reinforced, there is a need for administrative authority over internal procedures. If lower spheres of government are given the mandate to institute their own internal procedures, there is a chance for them to respond to the demands of their localities.[80] For instance, countries like South Africa have put in place modalities for lower spheres of government to establish their internal procedures, which has gone a long way in enhancing service delivery and thus in enhancing democracy and development as well as in curbing conflict.[81] Such a measure may be particularly necessary in Cameroon in the interests of more efficient administrative autonomy.

There is equally a need for administrative authority over the hiring, firing and training of own staff. Lower spheres of government may be hampered in delivering effectively and efficiently on their mandates if they use employees from the public sector, especially those over whom they have no control. Nevertheless, given that lower spheres of government tend to experience difficulties in retaining and attracting skilled staff, it may be important for the central government to step in and put in place a deployment scheme whereby some national government staff are sent to these lower spheres. Once these lower spheres of government have their personnel structure in place, developing a code of conduct and making it public is a necessity that would help to ensure that their public officials are disciplined and diligent.[82]

Countries such as Kenya and Uganda have accorded administrative authority to local government with respect to hiring, training and firing staff, and this has gone a long way in enhancing development and democracy and in curbing conflict.[83] What is also important is professionalisation through the training and recruitment of local staff for efficient local government that may accommodate diversity, manage minorities, enhance development as well as promote democracy. A key step in this regard is improving the curriculum of Cameroon's Local Government Training Centre (CEFAM), created by Presidential Decree No. 77/497 of 7 December 1977. Mayors as well as government delegates also need a combination of academic

[80] OECD & D Mountford 'Organising for local development: the role of local development agencies. Summary Report', 26-27 November 2009, working document, CFE/LEED, OECD, available on <www.oecd.org/dataoecd/54/41/44682618.pdf?contentId=446> (accessed 1 September 2018) 27.
[81] PM Sokhela *Intergovernmental relations in the local sphere of government in South Africa with reference to the City of Tshwane Metropolitan Municipality* (unpublished Doctor of Philosophy in Public Affairs, Faculty of Economic and Management Sciences, University of Pretoria, 2006) 211-220.
[82] UN Habitat 2007 3 mentioned in TC Chingwata *The Law and Policy for Provincial and Local Government in Zimbabwe: The Potential to realise Development, Build Democracy and Sustain Peace* (unpublished PhD thesis, Faculty of Law, University of the Western Cape, 2014) 70.
[83] See Department for International Development *Local Government Decision-Making: Citizen Participation and Local Accountability, Examples of Good (and Bad) Practice in Kenya* (2002) 4-7.

and professional training in order to accomplish the demanding tasks they face at local-government level.

Administrative authority over the salaries of personnel in lower ties of government is also very important. This entails having authority over the salary scales of local employees, which can go a long way in attracting and retaining skilled personnel.[84] For instance, a lower sphere of government such as local government may vary salary levels on the basis of performance or the scarcity of a specific skill or profession. However, the power to determine salary scales should be exercised with caution to avoid corruption and resource wastage.[85] Therefore, in a rationalised decentralisation design for Cameroon, it may be necessary for the central government to define clear modalities whereby lower spheres of government, especially local government, can set salary levels for their staff. Countries such as Kenya[86] and South Africa[87] have accorded powers to lower spheres of government with respect to setting salary scales for personnel. This has contributed to administrative efficiency at the local-government level.

6.4 The need for fiscal and resource management autonomy

Fiscal arrangements are also important for a rationalised decentralisation design because without enough financial resources it would be impossible for lower spheres of government to carry out their duties effectively. Fiscal decentralisation refers to the degree to which central executives give lower spheres of government financial autonomy.[88] Delaying or omitting fiscal decentralisation renders political and administrative decentralisation ineffective. It is important that the assignment of expenditure be accompanied by the assignment of competencies and tasks. This section thus examines the importance of fiscal and resource-management autonomy in a rationalised decentralisation design for Cameroon.

The financing modus operandi provided under the decentralisation framework in Cameroon is not working. The distorted way in which revenue is distributed, along with the widely differing characteristics of municipal and urban councils, has led to significant inequalities in

[84] A Rodriguez-Pose & S Tijmstra 'Local Economic Development as an alternative approach to economic development in Sub-Saharan Africa' Paper adapted from that prepared for the World Bank-Netherlands Partnership Program Evaluating and Disseminating Experiences in Local Economic Development (2005) 6.
[85] J Siegle and P O'Mahony 'Assessing the merits of decentralisation as a conflict mitigation strategy' (2006) 138.
[86] Department for International Development (n 83 above) 4-7.
[87] Rodriguez-Pose & Tijmstra (n 84 above) 6.
[88] Anderson (68 above) 2-5.

development and, in turn, to conflict in some parts of the country.[89] The consequence is that smaller councils, having very limited resources, are faced with difficulties in carrying out their fundamental statutory responsibilities, especially the responsibility under section 28 of the Financial Regime Law to issue certain compulsory payments.[90] In addition, lower spheres of government do not have adequate powers for raising and borrowing finances. Intergovernmental transfers also remain weak. It is thus important to consider the example of South Africa with respect to the role that adequate fiscal and resource autonomy can play in augmenting political and administrative autonomy in a rationalised decentralisation design.

South Africa allows lower spheres of government to raise their own finances. Its 1996 Constitution states that the designation of administrative and political functions and powers to lower spheres of government must be accompanied by adequate financial means.[91] This implies that local government should be endowed with adequate fiscal powers and authority to carry out the duties and functions attributed to it by the Constitution. But this in no way means that that the central government should relinquish control over its main financial instruments, as in the highly devolved system of fiscal autonomy for which Bahl and Lin argue.[92] If this were to happen, it would be difficult to adjust the levels of inflation that may be aimed at by reducing imports or stimulating imports. It also becomes challenging to pass structural tax reforms or to increase revenue so as to reduce the national budget deficit.[93]

It is thus important to take into consideration three major elements in enhancing a fiscal decentralisation design for Cameroon. The first element is the assignment of responsibility to

[89] World Bank, Poverty Reduction and Economic Management Unit Africa Region 'Towards better service delivery: An economic update on Cameroon with focus on fiscal decentralisation', 2011 *Cameroon Economic Update* 2, 8-16.
[90] World Bank (89 above) 11-14.
[91] Section 214 (2) (d) of the 1996 Constitution of South Africa. See also D Conyers 'Decentralisation and Development: A framework for analysis' (1986) (2) *Community Development Journal* 21 91. See also The local government system in Rwanda, country profile available on <www.clgf.org.uk/rwanda143> (accessed I March 2018). On the important issue of the mobilisation of resources, under a decentralised system of government, local government is often better placed to mobilise resources than the central government. Central governments mostly utilise tax-raising measures to generate revenue, such as company taxes, taxes on goods and personal taxes. Because of the administrative procedure in collecting such taxes, the central government targets the formal sector. This means the informal sector is largely left out of the tax base, resulting to a reduction in the mobilisation and collection of national resources. Rwanda is a country which has made progress developmentally because of the role local government plays in mobilising resources. Local government can thus be instrumental in mobilising resources through the utilisation of tax instruments such as business licensing, service charges, and property rates, which are inclusive of both the informal and formal sectors. This may be necessary in the case of Cameroon. See also R Bahl 'Fiscal decentralisation as development policy' (1999) 19 *Public Budgeting and Finance* 2.
[92] R Bahl & JF Linn *Urban Public Finance in Developing Countries* (1992) mentioned in A Stanton *Decentralisation and Municipalities in South Africa: An Analysis of The Mandate to Deliver Basic Services* (unpublished degree of Doctor of Philosophy in Policy and Development Studies, Faculty of Humanities, Development and Social Sciences, University of KwaZulu-Natal, Pietermaritzburg, 2009) 246
[93] Bahl & Linn mentioned in Stanton (n 92 bove) 246.

lower levels to raise revenue.[94] The second is the assignment of responsibility for expenditure, or in other words assigning responsibility to a level to pay out money for services. The third element is intergovernmental transfers, which focuses on how various tiers of government equalise imbalances and share revenues. To ensure that the administration carries out its duties effectively, the assignment of competencies and tasks must accompany the assignment of responsibility for expenditure. If all taxing authority is vested in the national government, this may result in undesirable consequences.[95] For instance, separating spending powers from revenue-raising authority may obscure the nexus between the gains or benefits of public expenditure and its cost, which are the taxes levied to finance them, with the result that the separation does not encourage fiscal responsibility among politicians and their electorate at the local level.[96] If a constitution confers too much responsibility for raising taxes to local government, the central government may have difficulties with macroeconomic development planning.[97]

It is thus important for constitution-drafters to take into consideration two major elements when deciding whether to give tax-raising and spending responsibility to local government. First, local government should be allowed to collect sub-national revenues from its local residents linked to benefits gotten from local services. Making sure that there is a nexus between benefits received and taxes paid strengthens the accountability of local administrators and the quality of governmental service delivery.[98] Secondly, revenues allocated to the local governments should be adequate to finance all locally provided services that mainly benefit local residents.[99]

An imbalance often exists between spending and taxing at the levels of government, especially lower spheres of government, in that the central government usually collects the greatest share of taxes but assigns enormous spending duties to the local level.[100]

[94] Anwar Shah *The Reform of Intergovernmental Fiscal Relations in Developing and Emerging Market Economies* (1994) The World Bank: Washington DC 15-18.
[95] Anderson (n 68 above) 2-3.
[96] Shah (n 94 above) 15-18.
[97] Anderson (n 68 above) 2-3.
[98] Anderson (n 68 above) 41. Property tax is thus labelled as the ideal local tax. If well designed, user charges on trading services such as water, sanitation, electricity and solid waste collection may be interesting local revenue instruments. Equally benefit taxes such as port tolls and road tolls as well as various licences can be good avenues to raise taxes locally.
[99] G Anderson *Federalism: An Introduction* (2008) 35-36.
[100] Anderson (n 99 above) 34.

In chapter 3 it was noted that Horizontal imbalances are imbalances between sub-national levels;[101] pre-transfer fiscal deficits, or vertical imbalance.[102] It was also observed that lower tiers of government are usually not entrusted with the same revenue-raising capabilities as higher ones, given that wealthy residents are not found in every region and that regions do not all have the same needs: some regions demand more services, or are more populated, than others.

To adjust for such imbalances, there is thus need for intergovernmental transfers – vertically,[103] if the payments are from the central to lower spheres of government, and horizontally,[104] if these transfers are between sub-national governments. There may equally be grants from the central to lower tiers of government, which can go a long way in making local governments autonomous.[105]

It is also important for the Ministry of Territorial Administration (MINAT), the National Anti-Corruption Agency, and the Directorate General (DG) of Taxation, the DG of the Budget and the DG of Customs to reinforce the role of FEICOM in the fiscal decentralisation agenda so as to curb corruption and wastage and ensure efficient administrative and political decentralisation.

6.5. The need for supervision and intergovernmental cooperation

A meaningful consultative mechanism between central and local government is important in a rationalised decentralisation design. Cooperative governance and consultative mechanisms have become imperative for an efficient and effective local government system that seeks to reflect and cater to the views and concerns of the community.

In Cameroon, the Constitution has no exhaustive chapter on intergovernmental relations. The President and the Minister of Decentralisation and Local development are in charge of driving the whole decentralisation agenda. This is done with the Board chaired by the Prime Minister,

[101] Anderson (n 68 above) 6.
[102] Anderson (n 68 above) 6.
[103] See R Bird 'Subnational Taxation in Developing Countries: A Review of the Literature' (2010) *Policy Research Working Paper* 5450 World Bank: Washington, DC 1.
[104] See E Ahmad 'Intergovernmental Transfers: An International Perspective' in E Ahmed (ed.) *Financing Decentralised Expenditures: An International Comparison of Grants* (1997) 6. Transfers may be in the form of either revenue-sharing or surcharges whereby the national government transfers a share of revenues from specific taxes collected within that local government. See also CR Jnr McLure *The Tax Assignment Problem: Conceptual and Administrative Considerations Achieving Subnational Fiscal autonomy* (1999) 12.
[105] Anderson (n 99 above) 58.

which is supposed to monitor and assess the implementation of decentralisation.[106] The Committee is responsible for the preparation and monitoring of the allocation of powers and resources to local government entities. What is disturbing, however, is that all these bodies for supervising and monitoring the decentralisation process are primarily constituted of authorities nominated by the central government, with very limited scope afforded to the views of other stakeholders, the community or even local government.[107] Their functions overlap, which leads to corruption and waste of funds.

Some countries have constitutionally entrenched such cooperative governance and consultative mechanisms; others have put in place institutions to oversee cooperative governance; and others have developed them through practice. A case worth emulating is Zimbabwe, where consultative mechanisms are entrenched in the 2013 Constitution, and which have gone a long way in facilitating decentralisation especially by including several stakeholders.[108] Chapter 3 of the Constitution of South Africa focuses on cooperation,[109] and has gone further to put in place several instruments, among them the Intergovernmental Relations Framework Act.[110] The latter governs the functioning of the premiers' intergovernmental forums, district

[106] See section 78 of the 2004 Law on the Orientation of Decentralisation Law. See also the composition of the National Decentralisation Board in Official website of the Presidency of the Republic of Cameroon, 'Decentralisation in Cameroon', Policy Paper available at <http://www.prc.cm/index_en.php?link=files/decentralisation/decetralisation_in_cameroon> (accessed 25 June 2018).

[107] In fact, Decree No. 2008/14 of 17 January 2008 to lay down the organisation and functioning of the inter-ministerial committee on local services, provides for a committee of 41 members, only 10 of whom are representatives of civil society and local government entities; even so, two of these ten are designated by the then MINATD (MINATD was divided into MINAT and the Ministry of Decentralisation and Local development in 2018).

[108] For instance, section 265 of the 2013 Zimbabwe in its general principles on principles of provincial and local government states as follows: '(1) Provincial and metropolitan councils and local authorities must, within their spheres—(a) ensure good governance by being effective, transparent, accountable and institutionally coherent; (b) assume only those functions conferred on them by this Constitution or an Act of Parliament; (c) exercise their functions in a manner that does not encroach on the geographical, functional or institutional integrity of another tier of government; (d) co-operate with one another, in particular by— (i) informing one another of, and consulting one another on, matters of common interest; (ii) harmonising and co-ordinating their activities; (e) preserve the peace, national, unity and indivisibility of Zimbabwe; (f) secure the public welfare; and (g) ensure the fair and equitable representation of people within their areas of jurisdiction … (3) An Act of Parliament must provide appropriate mechanisms and procedures to facilitate co-ordination between central government, provincial and metropolitan councils and local authorities.'

[109] See Chapter 3, section 41 of the 1996 South African Constitution on the principles of cooperative government and intergovernmental relations. See also article 189 of the Kenyan 2010 Constitution on cooperation between the central government and county government.

[110] Intergovernmental Relations Framework Act No. 13 of 2005. See also the Local Government Municipal Structures Act 117 of 1998; Local Government Municipal Systems Act 32 of 2000; and Local Government Transition Act 209 of 1993.

intergovernmental forums, and technical support structures controlling political intergovernmental structures.[111]

In Cameroon, both the Board and the Committee are supposed to play their supervisory role by ensuring that the decentralisation process is effectively carried out, especially so in terms of bringing about the equitable development of impoverished areas. These bodies also have the responsibility to ensure that minority, ethnic and diversity concerns and the incorporation of the traditional governance system into the decentralisation agenda are upheld. These structures, however, simply extend the powers of the executive and operate as deconcentrated units. Cameroon may want to emulate the example of South Africa for effective supervision and intergovernmental relations.

On the important issue of organised local government, Part IV of the 2004 Law on Councils focuses on inter-council cooperation and solidarity. In this respect, organised local government or decentralised cooperation is feasible where there is an agreement between two or more councils, especially when they decide to merge their different resources with an aim of attaining common objectives.[112] Such cooperation may be undertaken between councils or between councils and councils of foreign states.[113]

In a bid to achieve inter-council cooperation, councils of the same division or region may, by at least a two-thirds majority of the decision of each council, create a union.[114] Such a council union shall be set up by agreement by the mayors of the concerned councils.[115] The bodies of the council union shall be constituted of a union board and a union chairman.[116]

The UCCC is an association created by the councils and cities in Cameroon in 2003. The UCCC was formed from the merger of the Cameroon Union of Towns and Councils and the Cameroon Association of Towns.[117] As its appellation makes clear, city councils and councils constitute the membership of the UCCC; they are represented therein by government delegates, in the case of city councils, and Mayors in the case of councils. These members together constitute

[111] 'The Intergovernmental Relations Framework Act: a Year in the Provinces and Districts' 8 (2006) *Local Government Bulletin* 5.
[112] Section 131 of the 2004 Law on Councils.
[113] Section 131(2) of the 2004 Law on Councils.
[114] Section 133(1) of the 2004 Law on Councils.
[115] Section 133(2) of the 2004 Law on Councils.
[116] Section 135(1) of the 2004 Law on Councils.
[117]See The local government system in Cameroon, country profile, available at <http://www.clgf.org.uk/default/assets/File/Country_profiles/Cameroon.pdf 39>(accessed in September 2018).

the UCCC assemblies at national, regional and divisional levels, from which the executive bureaux for the respective levels are elected.

In reality, the UCCC has not been effective in playing a role in the development of councils, given the serious developmental disparities that continue to exist between the jurisdictions of the various councils. There is hence a need for Cameroon to follow the examples of South Africa and Zimbabwe in seeking effective organised local government.

6.6 Redefining the role of women, ethnic and minority groups, and traditional rulers in the decentralisation process

This section advocates for the need to redefine the role of women, ethnic and minority groups in a rationalised decentralisation design as well as that of traditional rulers.

6.6.1 Reinforcing the role of women

The status of women and their active involvement in the decentralisation process is not adequately addressed by the Constitution. It has been established that Cameroonian women indeed face many cultural barriers when it concerns being involved in decentralisation. The poor rate at which women participate in public life and politics is complicated by the fact that men are given more attention when it comes to higher educational opportunities and are favoured for administrative duties, while women, even those who went to school, are prepared to be better housewives.[118]

For women to actively take part in the decentralisation process, especially decision-making positions as well as in politics in Cameroon, they would need to play a much stronger role in the country's electoral process. There is no doubt that they outnumber men in the population statistics, but while this stands to their advantage they are less than active in the political domain.[119] Women's underrepresentation in governance, especially with respect to political affairs and development at the national as well as lower spheres of government, is likely to worsen unless concrete measures are taken for the constitutional entrenchment of their role in

[118]JF Mufua, Women's Participation in Governance in Cameroon Improves March 8, 2014 available on <http://www.asianpressinstitute.org/?p=852> (accessed 28 May 2018). See also N Lauzon & L Bossard 'Processus de Décentralisation et Développement local en Afrique de l'Ouest', Journées 2005 des Attaches de la Coopération belge, Atelier régional Afrique de l'Ouest , Décentralisation dans les pays partenaires et coopération, Bruxelles 7, Septembre 2005 8.

[119] Mufua (n 118 above).

these domains. Apart from South Africa, countries such as Zimbabwe and Kenya have already taken steps in this regard.[120]

6.6.2 Emphasising the importance of diversity, minority and ethnicity issues

The preamble to the Constitution stipulates, inter alia that, the 'State shall ensure the protection of minorities and shall preserve the rights of indigenous populations in accordance with the law'. Article 1(3) of the Constitution adds that the official languages of the country shall be English and French, with both having the same status.[121]

Section 2(2) of the 2004 Orientation of Decentralisation Law states that the Cameroonian decentralisation framework is designed to act as a major medium for the promotion of diversity issues at the local level. It is argued that the scope for the decentralisation framework under the Constitution to serve as a platform from which to resolve diversity, ethnic and minority issues is quite limited. [122]

The Constitution is weak in several respects in addressing these issues, but for the major part completely ignores them in the hopes that they will be resolved automatically or by a stroke of luck. Therefore, entrenching the promotion and protection of the rights of these groups in the Constitution is important. Making sure the rights of these minority groups are adequately protected and promoted in practice is equally necessary.

6.6.3 Asserting the role of traditional authorities

Traditional authorities in Cameroon are classified under the existing legal framework into three categories: first-degree chiefs, second-degree chiefs and third-degree chiefs. Generally considered as auxiliaries of the administration, they are not attributed any particular functions or duties by any of the legal instruments regulating the decentralised system. The lone reference to traditional authorities is found in article 26(1) of the 2004 law on Regions, which stipulates that the traditional authorities in every region will constitute an electoral college that will elect some of their members to represent them in the Regional Council.[123]

[120] See sections 3,13, 14, 17, 24, 56, 68, 80, 124, 157, 194 and 269 of the 2013 Zimbabwean Constitution. See also articles 21, 27, 97, 98, 100, 127, and 232 of the 2010 Kenyan Constitution.
[121] Article 1(3) of the Constitution.
[122] 2012 World Bank report (n 6 above).
[123] Article 26 (1) of 2004 Law on Regions.

Traditional authorities have an important role to play in accelerating decentralisation. A reform of traditional chiefdoms is under way in Cameroon,[124] the aim being to confer on the traditional chiefs a status and accord them a specific and defined role in the decentralisation process in the country.[125] Traditional authorities will henceforth be important actors in the supervision of socio-economic and developmental activities of the populations, under the supervision of the administrative authorities.[126] If the role of traditional authorities in Cameroon is constitutionalised and well defined, as in South Africa[127] and Zimbabwe,[128] they may indeed become important actors in helping local government in development, conflict management and service delivery.

6.7 Envisaging dispute-resolution and implementation mechanisms

In a bid to enhance constitutionalism, the respect of the rule of law and hence adequate decentralisation there is need for institutions such as the courts or a council, or mechanisms such as a referendum, to be put in place. Taking into consideration the institution for the enhancement of effective decentralisation, usually the constitutional court or council, there is need to entrust such a body with the duty of upholding the constitution and ruling on disputes between spheres of government.[129] This section suggests a rationalised design for the composition and functioning of the Constitutional Council (the Council) of Cameroon.

[124] B Josué **'**Les chefs traditionnels au cœur de la décentralisation du président Biya', posted on 29 avril 2018, Cameroon-Report.com, L'essentiel de l'info au Cameroun available on <https://cameroon-report.com/politique/decentralisation-les-chefs-traditionnels-au-coeur-de-la-politique-de-paul-biya/> (accessed on 27 June 2018).
[125] Josué (n 124 above).
[126] Josué (n 124 above).
[127] D Bizana-Tutu 'Traditional Leaders in South Africa: Yesterday, today and tomorrow' Unpublished M.Phil. mini thesis submitted at the Faculty of Law, University of the Western Cape (2008) 7. See also sections 211(1) and (2) of 1996 Constitution of South Africa. See also the Traditional Leadership and Governance Framework Act 41 of 2003.
[128] See J Makumbe 'Local authorities and traditional leadership' in J De Visser, N Steytler & N Machingauta (eds) Local government reform in Zimbabwe: A policy dialogue (2010) 88. See also section 120(1)(b) of the Constitution of Zimbabwe. Zimbabwe is proof that chieftaincy, with its functions clearly constitutionalised and defined by the state, can be used effectively in the delivery of customary and common laws. In Zimbabwe, traditional leaders are represented in the Senate by a total of 16 chiefs. Chiefs are instrumental in facilitating development in their respective areas through structures such as village and ward assemblies. They also play a supporting and advisory role to various agencies and government ministries, especially those operating at the local level. They are instrumental too in dispute resolution. See also generally T Chigwata 'The role of traditional leaders in Zimbabwe: are they still relevant?' (2016) *Law, Democracy and Development* 20.
[129] J Kincaid 'Editor's Introduction: Federalism as a Mode of Governance' in J Kincaid (ed) *Federalism*, vol 1 (2011) xxvii.

6.7.1 The composition of the Constitutional Council

According to article 51 of the Constitution, the 11 members of the Council are appointed by the President. In addition, former presidents of the Republic shall be *ex officio* members of the Council for life. In case of a tie, the President of the Constitutional Council shall have the casting vote.

As already examined, three observations were made about constitutional provisions with respect to who can be nominated, on what basis such appointments are made, and who makes them. First, the competence, effectiveness and independence of a constitutional court judge depend on an appointment procedure with transparent criteria, established objectives, and high regard for integrity, qualifications and competence. Adapted from the 1958 design, article 51 of the Constitution simply states that the 'members shall be chosen from among personalities of established professional renown' and 'must be of high moral integrity and proven competence'. This means they need not be jurists to qualify as judges.[130] It is thus argued that, because of their training and capacity for analytical critical legal reasoning, jurists will make more rational and effective judges than simply persons of renown who are not jurists.

Secondly, the original 1996 Constitution formulation of article 51(1) stipulated that members of the Council were to be designated for a 'non-renewable term of office of 9 (nine) years'. This provision was revised in 2008 by the President in favour of an open term when he decided to remove the two-term presidential term limit from the Constitution. This is a shift from the 1958 French design which, at first blush, gives the impression that this encourages the general will to expunge term limits from the Constitution. In spite of the open term, section 18 of Law No. 2004/004 of 21 April 2004, which lays down the rules and regulations concerning the membership of the Constitutional Council (hereinafter the 2004 Law on membership of the Council), provides that the Council 'by a majority vote of two-thirds of its members may, of its own motion or at the request of the designating authority and following an adversarial procedure, terminate the appointment of a member'. This demonstrates that while it seems the members of the Council have an open term limit, their term limit can be terminated not only by the President but also by the Council.

[130] Fombad (n 17) 84.

Thirdly, unlike the case in states such as South Africa[131] and Brazil,[132] all 11 members of the Council are appointed by the President. Although it is stated in the provision that the President directly appoints just three members and that the others are to be 'designated' by other office-holders such as the President of the National Assembly, the President of the Senate and the Higher Judicial Council, the reality is that the President, through the ruling CPDM, influences the appointment of all members of the Council. Similarly, the Higher Judicial Council is chaired by the President and co-chaired by the Minister of Justice. They both decide on its agenda and when it is to meet. In a nutshell, the President ultimately decides on who qualifies as a member of the Council.[133] This should not be the case. It may be necessary for leaders of political parties represented in the National Assembly to complement a well-constituted Higher Judicial Council in the selection of members of the Council.

6.7.2 The functioning of the Constitutional Council

In making suggestions on how the Council may function better, it is important to address the scope of its review powers, access to this body, and the nature of opinions and decisions. With respect to the scope of review powers reserved for the Council, one of the major factors in the effectiveness of a system of judicial review is the powers accorded to such a body. The ambit of matters the Council is empowered to handle are regulated by articles 46 to 48 of the Constitution and Law No. 2004/004 of 21 April 2004 on the organisation and functioning of the Constitutional Council (the 2004 Law on the functioning of the Council). An overview of these laws demonstrates that the Council has been accorded jurisdiction over advisory and contentious issues. The provisions on contentious issues are more elaborate and provide that the Council may carry out constitutional review in three major areas. First, it can intervene in the situation of conflicts of competence between certain state institutions; secondly, it can ensure the regularity of elections; and thirdly it has a general power of review of the

[131] See W Le Roux 'Descriptive overview of the South African Constitution and Constitutional Court' in O Vilhena, U Baxi & F Viljoen (eds) *Transformative Constitutionalism* (2013) 154. In South Africa the President appoints all Constitutional Court judges. In appointing the Chief Justice and the Deputy Chief Justice, although he or she exercises an executive discretion, the leaders of all political parties represented in the National Assembly as well as the Judicial Service Commission (JSC), must be consulted. The President thus has a far narrower discretion when it comes to the appointment of the other nine judges of the Constitutional Court. The President must select the judges for appointment from a list of suitable candidates presented to it by the JSC and after consulting with the Chief Justice and leaders of political parties represented in the National Assembly.

[132] See S Shankar 'Descriptive overview of the Brazilian Constitution and Supreme Court' in Vilhena, Baxi & Viljoen (n 144) above 92-93. The Supreme Court in Brazil acts like the Constitutional Court. In the appointment of the 11 Justices the President of the Republic consults the Minister of Justice and the appointment of these Justices is contingent upon Senate approval by absolute majority.

[133] Fombad (n 17) 84.

constitutionality of laws, agreements and treaties. The Council has not been effective in carrying out these objectives. There is thus a need for the Council to be effective in this regard.

With respect to access to the Council, the issue of constitutional justice happens to be one of the major weaknesses of the French 1958 constitutional council design adopted by Cameroon in all its constitutions.[134] In general, cases may only be referred to the Council by the President of the Republic, the Presidents of both the Senate and National Assembly, one third of members of the Senate or one third of members of the National Assembly. The major exception here, relates to electoral disputes. In this respect, Article 48 (2) of the Constitution stipulates that any cases in respect to electoral disputes, or parliamentary or presidential elections may be brought before the Council by 'any candidate, political party that participated in the election in the constituency concerned or any person acting as government agent at the election'. The Council, when confronted with cases involving electoral disputes, has instead focused on procedural loopholes and sanctioning non-compliance with filing requirements than with carefully investigating on and sanctioning violations of electoral laws as well as other violations which emanate from the electoral process.[135] There is need for the Council to go beyond such a scope and examine more substantive issues involving electoral disputes.

Concerning the nature of opinions and decisions, rulings of the Council may take the form of a decision or an advisory opinion. However, the way this provision was drafted, leaves a lot to be desired. For instance Article 50 (1) of the Constitution stipulates that decisions of the Council are not subjected to appeal and are binding on all judicial authorities, military officials, administrative officials, public officials as well as all corporate bodies and natural persons'. Article 50 (2) further states that 'a provision declared unconstitutional may not be enacted or implemented'. The utilisation of the permissive 'may' appears to mean that the Council is not obliged to nullify legislation which is inconsistent with the Constitution, yet the purpose of the whole section is to make sure that any legislation found to be inconsistent with the Constitution is not adopted. From all indication it means the powers of the Council with respect to constitutional review are limited, which should not be the case.

[134] See generally CM Fombad 'The New Cameroonian Constitutional Council in a Comparative Perspective: Progress or Retrogression ?' (1998) 42 *Journal of African law* 2 186.
[135] AD Olinga mentioned in Fombad (n 17 above) 92.

6.8 Concluding remarks

Cameroon's constitutionally entrenched mechanism needs to intentionally provide a clear direction of the scope and nature of decentralisation and not by way of claw back claws allow important issues of constitutional importance to be decided by the President because this is indeed a recipe for failure. It may therefore be necessary to suggest certain mechanisms to be put in place.

First, although the decentralisation process seems to have taken power and politics closer to the people, the distortion and micromanagement of the process at the local level has to ensure that it has an impact and provide the improvement and self-development in actual governance that should come with it. This is so because, high hopes have been raised by the process and there is too much potential danger in not making sure that it comes to fruition. The current failed experiment does contain the ingredients for what is needed in the future. Second, decentralisation is unlikely to help in promoting development, democracy, constitutionalism and respect for the rule of law if the central government that presides over the process is not aspiring to be democratic. The decentralisation process needs to alter the way in which the authoritarian regime operates which remains at its very core, personal rule based on a patron-client network. The ruling CPDM and government positions need not be used as a medium from which to manipulate and control its followers who hold strategic posts throughout central and local government administration in order to fortify its grip on power.

It is thus evident from a critical examination of the constitutional and legal framework with respect to the central government in Cameroon, that the executive is domineering over shared and self-rule arrangements. With respect to shared rule, the President should not have the discretion of appointing 30 out of 100 senators in the country. If the powers of the President are limited, this would give more meaning to shared rule. Senators would be able to make decisions independently with little coercion from the executive.

Likewise the executive's influence should not be so dominant over the institutions of self-rule such as the regional councils and municipal councils. The President should not alone decide on how territorial units are carved out. He should not also have enormous powers in appointing personalities such as government delegates and secretary generals of regional councils. There is also need for the issue of who is an indigene to qualify as a regional councillor, to be revisited. This may lead to better management of diversity.

For better self-rule and thus political autonomy there is also need for an efficient electoral system. The PR system may be thus preferable because it prevents a clear majority from emerging, thus facilitating inclusive decision-making and creating room for the creation of coalition governments.

Additionally, for better self-rule, promoting the rule of law is important. This may be done in several ways, most importantly by adopting a coherent legal system. The doctrines of judicial review, constitutional supremacy and independent oversight bodies can indeed solidify such a framework.

For better administrative autonomy there is need for local government to have autonomy over hiring and firing of its staff. There is also need for professionalisation of especially executives like mayors and government delegates. Autonomy over the internal procedures of councils is also important for administrative autonomy. Local government should also have authority over putting in place the salary scales of local employees which may go a long way in attracting and retaining skilled personnel.

There is need to revisit the many distorted and incoherent decentralisation laws related to finance as well as improve on the poor administrative capacity at the levels of bodies such as FEICOM to enforce the payment of taxes. There is also a need to improve on the poor administrative capacity to assess the revenue base; eradicate corruption, such as embezzlement of revenues; lessen or better still eradicate external pressure on the local finance department to furnish optimistic projections; and weaken political pressure on the local tax administration to relax on revenue collection, especially during election periods.

Supervisory bodies such as the Board and the Council need to be effective. ELECAM, the body which supervises the election process of parliamentarians, senators, regional councillors as well as municipal councillors needs to be transparent and efficient. The NCPBM, created in 2017, which has a role to play in the decentralisation framework of the country needs to be constitutionalised and effective. There is need for the central government to limit the duplicity, overlap and confusion in the role these institutions play.

A meaningful consultative mechanism between central and local government is important in Cameroon's decentralisation design. For cooperative governance and for efficient consultative mechanisms, there is need for an exhaustive chapter for intergovernmental relations in the Constitution. Organised local government especially the role of the UCCC needs to also be strengthened so as to better oversee the decentralisation process.

Reinforcing the role of women, ethnic and minority groups as well as traditional rulers in the decentralisation process is also fundamental. There is need to constitutionalise the role of women in the decentralisation process. Emphasising on the importance of diversity, minority and ethnic issues in the constitution is also fundamental. Officially recognising the languages and culture of minority groups and Anglophone Cameroonians is also very important. Also constitutionally asserting the role of traditional authorities in the decentralisation process is also necessary.

Cameroon's constitutional review system needs to be modernised in order to supervise the decentralisation process. There are a couple of issues which need to be addressed. First the refusal of ordinary citizens of the right to access the Council especially in a situation where their constitutional rights have been violated which amounts to the refusal of constitutional justice cannot be justified. Ordinary citizens need to be given access to the Council. Secondly, the respect for the rule of law, constitutionalism and hence decentralisation have remained an illusion in the country since independence without an independent judiciary. This is exacerbated by the lack of an effective, credible and efficient system of constitutional review, which upholds the rights of citizens.

CHAPTER 7

Summary, Recommendations and Conclusion

7.1 Introduction

The *raison d'être* of decentralisation varies from state to state in that each design is instituted to solve the particular challenges a country faces. In many respects, Cameroon reflects the paradoxes of decentralisation in Africa and the negative consequences it can have for development, democracy, constitutionalism, human rights and the rule of law if it is not carefully designed to address fully a country's underlying problems. Given that there is little legal scholarship that investigates decentralisation under the 1996 Constitution (the Constitution), this study has aimed to help fill this gap. It sought to answer the following major question: How can decentralisation be achieved effectively under the 1996 Constitution?

In answering this question, the study set out to answer the following sub-questions:

- What are the issues that decentralisation was supposed to address?
- How is the current institutional framework composed and operating?
- What is the constitutional and legal framework of decentralisation in Cameroon?
- Has the current framework succeeded in dealing with the problems in the country, especially issues such diversity, minority concerns, underdevelopment, ethnic conflict and service delivery?
- How can the weaknesses of the present constitutional and legal framework be ameliorated?
- What are the prospects for the future?

This concluding chapter synthesises the study's major findings and presents its conclusions. Finally, it proposes a number of reforms that are necessary for enabling decentralisation under the Constitution to be effective in addressing governance challenges in Cameroon.

7.2 Key findings and conclusions

Before the thesis delved into an analysis of decentralisation under the Constitution, it was necessary first of all to examine, in Chapter 2, the historical background of Cameroon's governance challenges. Present-day Cameroon is the outcome of the Berlin Conference of 1884, where it was declared a colony of Germany with the name 'Kamerun'. It was a German colony until a combined French and British military contingent defeated the German army in Cameroon in 1916 during the First World War and divided the territory into two. The French took the larger part, composed of about four-fifths of the territory, while the British took two

small-disconnected parts, which they labelled Southern and Northern Cameroon. This partition was later acknowledged by the League of Nations and its successor, the United Nations (UN).

The French administered their portion through direct rule, while Britain governed its two disconnected portions in effect as parts of its next-door Nigerian colony. However, in plebiscites conducted by the UN in February 1961, the Northern Cameroons decided to remain part of the Federation of Nigeria, as it is to this day, while the Southern Cameroons voted in favour of reuniting with the former French Cameroon, which had already gained independence as the Republic of Cameroon on 1 January 1960.

After the plebiscite in Southern Cameroons, the then Prime Minister, Dr John Ngu Foncha. who led the Southern Cameroonian delegation, struggled to arrive at a new constitutional arrangement with Ahmadou Ahidjo, the then President of the Republic of Cameroon. This constitutional arrangement put in place a fairly loose and decentralised federation. As previously mentioned, the negotiating power of the Southern Cameroonians may have been very weak, which led President Ahidjo to grant some concessions from their proposals by simply amending the 1960 Constitution by an annexure termed 'transitional and special dispositions'. What became the Federal Constitution of the Federal Republic of Cameroon was simply a law revising the Republic of Cameroon's Constitution of 4 March 1960. The reunification brought together people of English and French background as well as about 250 ethnic groups with more than 270 languages.

Faced with such a mixture of groups and interests, the government needed to set up an institutional framework to manage diversity under an umbrella of unity, particularly so between Anglophone and Francophone Cameroonians, but diversity, minority issues and ethnicity were not well managed under either the 1961 Federal Constitution or the 1972 Unitary Constitution. As shown in this thesis, Anglophone Cameroonians have not benefitted adequately from the autonomy envisaged under the Constitution.

It was argued in Chapter 2 that, after German colonisation and dual British and French rule, the reunified post-independence Cameroon was, until about 1990, regarded as one of the few peaceful and stable countries in Africa. For many years, Cameroon had narrowly escaped the cycles of economic and political turmoil that plagued other African countries. This was impressive for a country with such linguistic and ethnic diversity. In addition, the union between the Anglophone minority and the dominant Francophone majority, despite its

imperfections, remained intact, albeit mainly as a result of a highly centralised and repressive regime that has been in power since independence.

In the early 1990s, due to much discontent coupled with economic recession, the government of Cameroon was forced to introduce a form of multiparty democracy. Nevertheless, the tentative democratic measures have been little more than political symbolism in which the ruling Cameroon Peoples' Democratic Movement (CPDM) has always emerged victorious.

Strong demands for crucial constitutional reforms led to the 1996 amendment to the 1972 Constitution, but resulted instead in the incumbent tightening his grip on power and reinforcing the already centralised Gaullist system of government. The complete rejection of a federalist system of government and the labelling of its proponents as agents of division or secession – happening at a time of rising tension between Francophone and Anglophone Cameroonians, and combined with doubts being cast on the value of democracy as an instrument of peaceful change – have made one question Cameroon's claim to be a bi-cultural and bilingual country.

In addition to the rising tensions between Anglophone and Francophone Cameroonians, the country faces challenges that were meant to have been addressed by the Constitution but which remain unresolved: minority concerns such as the rights of women and indigenous people, the incorporation of the traditional system of governance, and managing the transition from authoritarian to democratic governance.[1]

Chapter 3 focused on the nature, scope and *raison d'être* of decentralisation. This evolving concept was defined by Rondinelli as the transfer or apportioning of responsibility for planning, management and the raising and distribution of resources from the central government and its agencies to field units of governmental agencies, lower levels of government, corporations, semi-autonomous public authorities, voluntary organisations, regional or functional authorities as well as non-governmental organisations.[2] Based on the principle of subsidiarity, decentralisation also facilitates the delivery of services closer to the people, for reasons of accountability and efficiency. The principle of subsidiarity warrants that services that can be effectively rendered by lower spheres of government should be carried out by them.[3]

[1] See Chapter 2.
[2] DA Rondinelli et al. *Decentralisation in Developing Countries: A Review of Recent Experience* (1984) 9. See also P Mawhood *Local government in the Third World: The Experience of Tropical Africa* (1984) 4.
[3] WE Oates 'An Essay on Fiscal Federalism' (1999) 33 *Journal on Economic Literature* 3, 1121-1122.

Local government was examined as an aspect of decentralisation.[4] Federalism was considered as a form of decentralisation, in that a central government and a number of regions (or provinces or states) exist, each with its own functions, powers and resources that are institutionalised and protected in the constitution.[5] Other forms of decentralisation, such as devolution, deconcentration, delegation and divestment, were also examined.[6] Further issues examined in this chapter included the importance of decentralisation in the management of diversity and ethnic conflict; the promotion of the rule of law and constitutionalism; the promotion of development; and the enhancement of self-rule and democracy in states. The chapter identified challenges that can arise if decentralisation is not well designed, such as inequalities, corruption, ethnic conflict, secession and a weak macro-economic environment.[7]

Chapter 4 focused on the structure and operation of the current decentralisation framework, while Chapter 5 undertook a critical assessment of the framework. It was noted that, in the *status quo* with respect to the central government in Cameroon, the President nominates all senior officials in the public service, including general managers of para-public institutions as well as ministers. Although article 12(1) of the Constitution states that the Prime Minister is the head of government who 'shall direct its action', he, like the other members of government, is appointed and can be dismissed at the whim of the President. The latter also exercises enormous powers in appointments in the legislature and judiciary.

The dominance of the executive trickles down through the shared-rule and self-rule elements of the governance architecture. With respect to shared rule, the President has the discretion of appointing 30 senators out of the 100 senators in the country. This means his control of shared rule is dominant and he can influence many of the decisions that senators take. Moreover, the Senate is widely regarded as undemocratic and an unnecessary cost. The executive's influence

[4] See ME Libonati 'State constitutions and local government in the United States' in N Steytler *The place and role of local government in federal systems* Konrad Adenauer Stiftung Occasional Papers (2005) 11-23. See also N Steytler 'Local government in South Africa: Entrenching decentralised government' in N Steytler *The place and role of local government in federal systems* Konrad Adenauer Stiftung Occasional Papers (2005)183-209. See also M Sandford 'local government in England: Structures' (2017) 07104, *Briefing Paper, House of Commons Library* 4. See generally H Reigner 'The transformations of local government in France: Towards a co-administration model between local authorities and state field services'. Paper prepared for presentation at ECPR Joint sessions of workshops, Mannheim 26-31 March 1999. Workshop 1: Politicians, Bureaucrats and Institutional reform.

[5] See RL Watts *Comparing Federal Systems* (2008) 8. See also RL Watts 'Federal co-existence in the Near East: General Introduction' in T Fleiner (ed) Federalism: a Tool for Conflict Management in Multicultural Societies in the Near East (1999) 26. See also DJ Elazar 'Federalism vs. Decentralization: The Drift from Authenticity' (1976) 6 *Publius*: *The Journal of Federalism* 4, 12.

[6] See Chapter 3 (section 3.2.4).

[7] See Chapter 3 (section 3.4).

is just as strong over institutions of self-rule such as the regional and municipal councils. For instance, at the level of regional councils, the Secretary-General is appointed by the President, while at the level of municipal councils, the Secretary-General is appointed by the minister in charge of local and regional authorities.

As for traditional leaders and traditional institutions, their role remains obscure and this seems deliberate. They are at the bottom of the hierarchy of both the deconcentrated administrative and decentralised political units. The present governance configuration is silent on the role of traditional leaders and institutions.

The Constitution does not accord financial autonomy to the regions. Financial decisions are taken by the central government and imposed on the regions. The main instrument governing financial issues under the decentralisation architecture is Law No. 2009/011 of 10 July 2009 relating to Financial Regime of Regional and Local Authorities. It purports in section 2 to provide local government authorities with 'financial autonomy for the management of regional or local interests'.[8] The regions are not consulted in the budgetary process and depend on the budget drawn up by the central government. Custom duties as well as major taxes are collected by the central government and shared with the regions and councils. The only sources of revenue for local government are property tax, business licenses, user charges and market fees. In many municipalities, there are huge gaps between reported and projected revenues. This is due to incoherent decentralisation laws on finance and the poor administrative capacity of bodies such as the Special Council Support Fund for Mutual Assistance to enforce the payment of taxes.[9]

Though organised local government exists by way of the United Councils and Cities of Cameroon (UCCC), it remains weak in influencing the decentralisation process. Supervisory bodies include the National Decentralisation Board (the Board) and the Interministerial Committee on Local Services (the Committee). Elections Cameroon (ELECAM) supervises the election of parliamentarians, senators, regional councillors as well as municipal councillors. The National Commission on the Promotion of Bilingualism and Multiculturalism (NCPBM),

[8] Section 2 of Law No. 2009/011 of 10 July 2009 relating to Financial Regime of Regional and Local Authorities (hereinafter 2009 Decentralisation Law).
[9] Law No. 74/23 of the 5 of December 1974 to organise councils also created the Special Council Support Fund for Mutual Assistance (FEICOM). Decree No. 77/85 of the 22 of March 1977 focused on the organisation of this structure. This institution has been reorganised twice by presidential decree.

though created in 2017, also has a role to play in the decentralisation architecture. Analysis of their functioning shows a lot of overlap, duplication and confusion in the roles they play.

The Constitution also ushered in a new institution, the Constitutional Council (the Council), which is tasked with the responsibility of overseeing issues involving the constitutionality of the law. Another important task of this organ is to regulate conflict of powers between the central government and regions, between state institutions, and between regions. It was entrenched in the Constitution in 1996, but only went operational in February 2018. In the interim, the Supreme Court sat in for this institution with respect to the mitigation of conflict between state organs responsible for decentralisation and the constitutionality of the law.

As argued in Chapter 5, a highly centralised system of government has been a major factor in Cameroon's governance and service delivery shortcomings. A consequence of this high degree of centralisation is that the lower spheres of government, especially local councils, remain poor and underdeveloped. There is an atmosphere of discontent, particularly in the two English-speaking regions, the North West and South West, which claim they have limited political, administrative and financial autonomy in the management of their own affairs.[10] This has fuelled sentiments in favour of secession or federalism. A crucial goal in solving the country's governance problems is thus to develop legislation and institutions for adequate administrative and financial decentralisation to lower spheres of government. There is, indeed, an impressive array of legislative instruments in Cameroon that seem to provide the basis for decentralisation.

After examining the weaknesses of the decentralisation process in Chapter 5, this study made suggestions in Chapter 6 on how the current constitutional and legal decentralisation framework could be improved so as to work towards solving the country's governance challenges. With respect to shared rule, it was argued that the Senate is an important body for shared rule in the decentralisation process but that the executive overrides its decisions. There is thus a need to revisit the manner in which senators are selected, rather than having the President appoint 30 out of the 100 senators. This could go a long way in accommodating diversity. The President also has the discretion to create, recreate and dissolve administrative units, instead of having such exercises carried out by an independent body as happens in countries like South Africa.[11] In addition, the institutional framework is premised on the exercise of central and deconcentrated authority at the regional level, with elected mayors and

[10] See Chapter 5 (section 5.2.4).
[11] See Chapter 6 (section 6.3.3).

appointed government delegates operating in the rural and urban municipalities, respectively. In practice, the executive remains dominant over the political and administrative autonomy of local government.

In Chapter 6, it was noted that there are several organs for facilitating financial decentralisation. An equitable allocation of financial resources to councils is necessary in view of the key role financing plays in decentralisation. It was argued that the current decentralisation framework is not working. There is a need for local government to be granted some fund-raising and -sharing powers. This does not mean, however, that the central government would relinquish all its major powers in this regard to local government. There is also a need for intergovernmental relations to be strengthened.

There exist bodies which are supposed to supervise and monitor the decentralisation process. Our analysis showed that they have not been effective in doing so. Additionally, traditional authorities, women and indigenous people are regarded as part of the decentralisation machinery, but their duties and functions are not clearly defined. It was argued that there is need to revisit the role of these actors in the decentralisation process.

An important element for enhancing constitutionalism, the respect of the rule of law and hence adequate decentralisation, is the presence of an umpire, a role usually played by a constitutional court or council entrusted with the duty of upholding the constitution and ruling on disputes between the various spheres of government. It was argued that there is need for a constitutional council that operates in a manner which allows for the control of the constitutionality of laws and for ordinary citizens to have access to it.

This study thus contended that for decentralisation to be adequately attained in Cameroon, there is need for sectorial and institutional reform. Above all, ordinary citizens have to be engaged more significantly in the decentralisation process.

7.3 Recommendations

In the light of the various issues that have been dealt with, and based on lessons arising from discussions in Chapters 5 and 6, this study recommends several measures as the way forward in bringing about adequate decentralisation under the Constitution. These measures are: maintaining a decentralised unitary state framework; ensure a constitutional framework that upholds the principles of constitutionalism; strengthening shared rule, especially by putting in place an independent Senate; redefining self-rule arrangements; improving administrative

autonomy; fiscal and resource management autonomy; and redesigning supervisory and intergovernmental cooperation. It is also important to constitutionalise the role of traditional authorities, women, ethnic and minority groups as well as to redesign dispute-resolution and implementation mechanisms.

7.3.1 Maintain a decentralised unitary state framework

Engaging in a genuine and inclusive dialogue on the form of the state in necessary. Federalism may work in some states but could instead instigate secession and more ethnic conflict in other states, especially if not well designed. As argued in chapter 6, a federal structure may not address the challenges Cameroon faces especially the Anglophone problem.

Maintaining the current ten regions, 58 divisions and 360 subdivisions may be important for the country to promote democracy, enhance development and manage issues to do with diversity, ethnicity and minorities. Such an arrangement may also be valuable in incorporating traditional authorities and enhancing constitutionalism and respect of the rule of law. But for such a decentralised system to work, as was suggested in chapter 6, it may be necessary to have a constitutionalised asymmetrical arrangement. It is recommended that strong regions should be created with the effective establishment of regional councils and also a strong local government system, as in South Africa.

7.3.2 Ensure a constitutional framework that upholds constitutionalism

The present decentralisation framework under the Constitution is weak because of its numerous claw-back clauses. As previously demonstrated in this thesis, many important issues on decentralisation are allowed to be determined by subsequent legislation. The Constitution barely provides for powers to be shared between the state and the regions but leaves the exact form and nature these are to take to subsequent legislation. There is hence a need for the exact form and nature of decentralisation to be constitutionalised and not left for subsequent legislation.

It was also argued in Chapter 6 that there is need for the number of tiers of government to be constitutionalised. The Constitution provides for two tiers of government, the regional government and local government. The security of lower spheres of government should be

guaranteed by strong constitutional restraints that protect them from arbitrary usurpation by the central government.[12]

With respect to political decentralisation, the Constitution provides for a mix of appointed and elected officials at the lower tiers of government. Concerning administrative decentralisation, the degree of administrative decentralisation is low, due to the cumbersome level of supervisory and discretionary powers the Constitution grants to central government over lower tiers of government. As noted in Chapter 6, unlike the constitutions of South Sudan, South Africa, and Uganda, which provide for a high degree of fiscal decentralisation, the Constitution does not adequately deal with fiscal decentralisation. This is left to subsequent legislation.

It was thus argued in Chapter 6 that the entrenchment of decentralisation has not significantly reduced the central government's capacity to centralise power. Despite the entrenchment of provisions of decentralisation in the Constitution, the central government still predominates over the affairs of the other branches of government as well as those of regional and local government. There is thus a need for provisions on decentralisation to be constitutionalised and not left for subsequent legislation.

7.3.3 A shared-rule arrangement with an independent senate

Effective participation and representation of decentralised units as well as minority groups in central decision-making enhances the ability of these units and groups to influence decisions from the centre and therefore counterbalance centralised power at the centre.[13] This depends on the powers as well as structure of an institution of shared rule, such as the Senate.

While article 14(2) of the Constitution stipulates that both the National Assembly and the Senate, acting as Parliament for the enhancement of shared rule, 'shall legislate and control government action', they do not operate on an equal basis. The National Assembly and the Senate do not possess the same powers: the Senate has less influence and powers than the National Assembly. This is comprehensible, since the senators represent just the regional and local authorities and are either elected by indirect universal suffrage or appointed by the President, whereas all the members of the National Assembly are selected through direct and secret universal suffrage and represent the entire country.

[12] CM Fombad 'Constitutional Entrenchment of Decentralisation in Africa: An Overview of Trends and Tendencies' in 2018 *Journal of African Law* 15.
[13] B Baldi 'Beyond the federal-unitary dichotomy' Working paper, Institute of Governmental Studies (1999) 7.

There is need for the role of the second chamber to be redefined so as to give more meaning to shared rule. For instance, it is undemocratic for the President to be empowered to appoint 30 out of 100 senators. In the case of South Africa, some members of the second chamber are elected by the provincial executives, while others are elected by their respective regional assemblies.[14] There may be need for a special veto power with respect to laws concerning the decentralised units in Cameroon, as in the case of South Africa. If adopted in the case of Cameroon, this may go a long way in reinforcing the autonomy of the Senate and consequently in promoting democracy and development.

It is also recommended that the structure of the senate should incorporate the interests of decentralised units and minority groups in central decision-making. Concerning powers, it is recommended that the Senate should be vested with powers that can enable decentralised units to take part in important central decision-making and effectively influence decisions by the central government.

7.3.4 Redefining self-rule arrangements

Redefining self-rule arrangements is also very important for adequate decentralisation. There is no rational, legal or logical explanation for a system of demarcation of council and sub-divisional council boundaries that is decided upon by the President alone based purely on political opportunism in which the wishes of the people are purely incidental. This is not in line with contemporary democratic practice as seen, for instance, in Kenya.

As examined in chapter 3 and 6, two elements are identified by Watts in a boundary demarcation exercise. First, there must be participation by the concerned population via referenda or other means of making the views of the affected persons heard. Secondly, the process must be objective and transparent.[15] In Cameroon where, as in Ethiopia, ethnicity is magnified, it may be necessary to use ethnic identity as a main element in carving the borders.[16] It may also be important to use other non-identity factors such as economic viability in demarcating the borders. It is also prudent for states to entrust boundary demarcation to an autonomous body. In South Africa, for instance, boundary demarcation is entrusted to the

[14] YP Ghai 'South African and Kenyan Systems of Devolution: A Comparison' in N Steytler & YP Ghai (eds) *Kenyan-South African Dialogue on Devolution* (2015) 11-12.
[15] Watts (n 5 above) 78.
[16] See articles 46 and 47 of the 1995 Constitution of the Federal Democratic Republic of Ethiopia.

Municipal Demarcation Board.[17] It is necessary to have a similar institution oversee issues of boundary demarcation in Cameroon.

The composition of regional councils is also a major concern hampering effective self-rule. For instance, article 57(2) states, inter alia, that 'the Regional Council shall reflect the various sociological components of the Region', and in clause 3, that 'the Regional Council shall be headed by an indigene of the Region elected from among its members …' The regional bureau is also supposed to reflect the 'sociological components of the region'. This is reiterated in articles 26(2) and 61(2) of the Law on Regions. Once again, the Constitution and the applicable laws dealing with these issues contain glaring contradictions and anomalies.

First, the requirement of respecting the sociological composition of the regional council as well as who qualifies as an indigene applies only to regions and not councils. How can this be upheld when a similar condition is not imposed on councils, especially as it is from the council membership that the regional council is elected through indirect means?

Secondly, the Constitution and subsequent legislation offer no explanation of what is meant by the 'sociological component of a region' or of who an 'indigene' is. Questions of autochthony, in the form of the politics of place, belonging and identity, open the floodgates to some of the most controversial issues in Africa in that they mostly favour exclusion rather than inclusion. This in fact leads to fragmentation and polarisation rather than fostering national consciousness and unity. As pointed out in Chapters 3, 5 and 6, in cases where autochthonous representation is imposed by the central government at the local-government level, especially in municipalities, decentralisation may not necessarily promote democracy. Such autochthons are more liable to serve the central government's political interests as well as their personal interests rather than the interests of the people. In such a situation, decentralisation may instead hamper democracy. It is thus important for the issue of autochthony to be well defined under the Constitution.

Third, the Cameroonian constitution-maker is concerned about having persons and indigenes reflecting the 'sociological components of the region' where it concerns decentralised political areas, but imposes no such condition when referring to the origins of personalities such as administrative authorities. These authorities hold far powerful and important posts in the deconcentrated administrative areas and predominantly control and supervise the activities of

[17] Y Fessha & J De Visser 'Drawing Non-Racial, Non-Ethnic Boundaries in South Africa' in Steytler & Ghai (n 16 above) 87.

decentralised areas. It is these administrative authorities of deconcentrated administrative areas that have over the years been the main reason for tensions between the Francophone and Anglophone communities in the country. There is thus need for conditions on the origins of these administrative authorities to be defined in the Constitution.

Additionally, the President's enormous powers to appoint some of the top government officials in the decentralised political administrative units may indeed influence the decision to create administrative units. In the appointments of these officials and authorities, the President or his Ministers have no obligation to consult anybody or to consider the political composition of the local government area. The consequence is that while the people of an administrative unit or council area may vote for one party, the President and his ministers may appoint members from the ruling party, the CPDM, to act as general managers, executive heads or accounting officers of local government executives even in areas controlled by opposition parties. Cameroon as well as other African states may want to opt for a model were competence is given priority in selecting officials at the local-government level.

As discussed in Chapter 6, it is important for powers to be dispersed symmetrically and asymmetrically throughout the country. An asymmetrical decentralised framework may go a long way in addressing the Anglophone problem in that it would recognise and protect the two English-speaking regions' autonomy. It would also help in constitutionally entrenching a right to a continuation of their legal system, culture and language and control over matters such as education. There is need for a mechanism that enables concurrent and shared powers to exist between the central government and local government. In the current dispensation, the decentralisation design has reinforced a system in which Anglophone Cameroonians feel like second-class citizens with little prospect of entering the deconcentrated administrative system. In such a framework, Anglophone Cameroonians have no autonomy whatsoever. As a result of poor governance and central government indifference, development in the two Anglophone regions has lagged behind that of the other eight regions of the country.

An inclusive electoral system is necessary in a rationalised decentralisation system. The electoral system is considered an important instrument for the constitutional engineering of accommodation and harmony in severely divided and conflict-ridden societies. An electoral

system can therefore be designed in such a way as to facilitate interdependence as well as cross-communal cooperation between groups in fragmented societies.[18]

Inasmuch as there are several electoral systems from which Cameroon can choose, it is recommended that the proportional representation (PR) system is preferable because it prevents a clear majority from emerging, thus facilitating inclusive decision-making and creating room for the creation of coalition governments.[19]

7.3.5 Strengthening administrative autonomy

As was shown in Chapter 6, administrative autonomy is weak, especially at the lower tiers of government in Cameroon. Regions and councils do not have authority over their personnel. The hiring and firing of staff is still coordinated by the central government. Few mayors have academic qualifications equipping them for their duties, nor is provision for this made in the Constitution and its subsequent legislation. Likewise, the internal procedures of local government are still influenced by central government, which also influences the determination of the salaries of local government authorities and officials. Lower spheres of government should be given the mandate to establish their own internal procedures to enable them to respond to the demands of their localities.

There is equally a need for administrative authority over the hiring, firing and training of own staff. At present they are unable to deliver effectively and efficiently on their mandate because they rely on employees from central administration over whom they have no control. Once these lower spheres of government have their personnel structure in place, developing a code of conduct and making it public is a necessity that would help to ensure that their public officials are disciplined and diligent. Professionalisation through training and staff recruitment will enhance development as well as democracy. In a rationalised decentralisation design it is thus necessary for central government to clearly define modalities whereby lower spheres of government, especially local government, can set salary levels for their staff. This may contribute to administrative efficiency at the local government level.

[18] B Reilly *Democracy in divided societies: Electoral engineering in divided societies* (2004) 2.
[19] S Wolf 'Electoral-System design and power sharing' in I O' Flynn & D Russell (eds) (2005) *Power Sharing: New Challenges for Divided Societies* 62.

7.3.6 Adequate fiscal and resource management autonomy

Fiscal arrangements are also important for a rationalised decentralisation design because without enough financial resources it would be impossible for lower spheres of government to carry out their duties effectively. Delaying or omitting fiscal decentralisation renders political and administrative decentralisation ineffective. It is important that the assignment of expenditure be accompanied by the assignment of competencies and tasks.

As we saw in Chapter 6, the financing *modus operandi* provided under the decentralisation framework in Cameroon is not working. The distorted way in which revenue is distributed, along with the widely differing characteristics of municipal and urban councils, has led to significant inequalities in development and, in turn, to conflict in some parts of the country. The consequence is that smaller councils, having very limited resources, are faced with difficulties in carrying out their fundamental statutory responsibilities, especially the responsibility under section 28 of the Financial Regime Law to issue certain compulsory payments. In addition, lower spheres of government do not have adequate powers for raising and borrowing finances. Intergovernmental transfers also remain weak. It is thus important to consider the example of South Africa with respect to the role that adequate fiscal and resource autonomy can play in augmenting political and administrative autonomy in a rationalised decentralisation design. This may better guide constitution-builders in establishing a rationalised decentralised design for Cameroon.

Three issues are important for enhancing the fiscal decentralisation framework in Cameroon. The first is the assignment of responsibility to lower levels to raise revenue. The second is the assignment of responsibility for expenditure, or in other words assigning responsibility to a level to pay out money for services. The third is intergovernmental transfer, which concerns how various tiers of government equalise imbalances and share revenues. To ensure that the administration carries out its duties effectively, the assignment of competencies and tasks must accompany the assignment of responsibility for expenditure. If all taxing authority is vested in the national government, this may result in undesirable consequences. For instance, separating spending powers from revenue-raising authority may obscure the nexus between the gains or benefits of public expenditure and its cost, which are the taxes levied to finance them, with the result that the separation does not encourage fiscal responsibility among politicians and their electorate at the local level. If a constitution confers too much responsibility for raising taxes

to local government, the central government may have difficulties with macroeconomic development planning.

It is thus important to take into consideration two major elements when deciding whether to give tax-raising and spending responsibility to local government. First, local government should be allowed to collect sub-national revenues from its local residents linked to benefits gotten from local services. Making sure that there is a nexus between benefits received and taxes paid strengthens the accountability of local administrators and the quality of governmental service delivery. Secondly, revenues allocated to the local governments should be adequate to finance all locally provided services that mainly benefit local residents.

We noted that an imbalance exists between spending and taxing at the levels of government, especially lower spheres of government, in that the central government collects the greatest share of taxes but assigns enormous spending duties to the local level. Horizontal imbalances, that is imbalances between sub-national levels, exist. We also saw that pre-transfer fiscal deficits are common. Lower tiers of government are not entrusted with the same revenue-raising capabilities, especially as wealthy residents cannot live in every region, nor do they all have the same needs. Some regions demand more services than others, while others are more populous than others. To address these imbalances, it is recommended that there should be a predetermined framework for intergovernmental transfers – vertically, if the payments are from the central government to lower spheres of government, and horizontally, if these transfers are between sub-national governments. Similarly, a predetermined and constitutionalised system of grants from central to local government, similar to that in South Africa, should be adopted.[20]

[20] See sections 152 and 153 of the 1996 South African Constitution. All local government must be developmentally orientated and aim at meeting the basic needs of their respective communities in their budgeting and administrations. See also the White Paper on Local Government (1998) 129. In relation to municipal finance, the South African Constitution incorporates various directives. Neither national nor provincial governments may impede or compromise a municipality's right or ability to perform its function or exercise its powers. Both higher spheres of government must strengthen and support the capacity of municipalities to manage their own affairs and to perform and exercise their functions and powers. See also Section 151 (4) which should be read with Section 154 (1). The broader requirements relating to municipal finance are set in Chapter 13 of the Constitution. See also B Bekink *Principles of South African Local Government Law* (2006) Chapter 18. See also Section 227 (1) (a) (b) of the South African Constitution. Local government and each province is entitled to : (a) an equitable share of revenue raised nationally to enable it to provide basic services and to perform the functions allocated to it (b) receive other allocations from national government revenue, either conditionally or unconditionally. The intention of the constitutional drafters seems to be to encourage and promote provinces and municipalities to implement initiatives , so as to secure additional income. By protecting additional income municipalities are encouraged to devise new methods in raising more money for themselves so as to be able to perform and exercise their duties adequately.

7.3.7 Redesigning the system of supervision and intergovernmental cooperation

An effective consultative mechanism between central and local government is important in a rationalised decentralisation design. Cooperative governance and consultative mechanisms have become imperative for an efficient and effective local government system to ensure that the concerns as well as views of the community are fully reflected and catered for in local governance. As we saw in Chapters 5 and 6, there is no exhaustive provision for intergovernmental relations in the Constitution. The President and the Minister of Decentralisation and Local development are in charge of driving the whole decentralisation agenda. This is undertaken by means of the Board chaired by the Prime Minister, a body that meant to monitor and assess the implementation of decentralisation.

Some countries have constitutionally entrenched such cooperative governance and consultative mechanisms; others have put in place institutions to oversee cooperative governance; and others yet have developed it through practice. A case worth emulating is Zimbabwe, where consultative mechanisms are entrenched in the 2013 Constitution. Chapter 3 of the Constitution of South Africa focuses on cooperation,[21] and has gone further to put in place several instruments, among them the Intergovernmental Relations Framework Act. The latter governs the functioning of the premiers' intergovernmental forums, district intergovernmental forums, and technical support structures controlling political intergovernmental structures. [22]

In Cameroon, both the Board and the Committee are supposed to play their supervisory role by ensuring that the decentralisation process is effectively carried out. However, they simply extend the powers of the executive and operate as deconcentrated units. It is recommended that the system that operates in South Africa should be adopted.

7.3.8 Constitutionalising the role of women, ethnic and minority groups, and traditional authorities

Constitutionalising the role of women, ethnic and minority groups in a rationalised decentralisation design is very important, as is constitutionalising the role of traditional rulers. As we saw in Chapter 6, the status of women and their active involvement in the decentralisation process is not adequately addressed in the Constitution.[23] It was established

[21] See Chapter 3, section 41 of the 1996 South African Constitution on the principles of cooperative government and intergovernmental relations. See also article 189 of the Kenyan 2010 Constitution on cooperation between the central government and county government.
[22] See Chapter 6 (section 6.5).
[23] See Chapter 6 (section 6.6.1).

that Cameroonian women face many cultural barriers to being involved in governance. For them to take part actively in the decentralisation process, especially decision-making positions as well as in politics, they need to participate extensively in the country's elections. It is recommended that the role of women in governance should be constitutionalised as in the case of South Africa, Zimbabwe and Kenya.

In opting for a top-down, centralised symmetrical decentralisation design, the Cameroonian constitution drafters failed to address diversity, minority and ethnic issues, particularly the Anglophone problem and the discrimination faced by the disabled, indigenous people, women and the youth. An important aim of a good constitutional system, especially so of its decentralisation framework, is to ensure that issues of equity, inclusion, diversity, equality and differentiation of all citizens are catered for. For instance, the 1996 South African Constitution indirectly protects marginalised cultural and linguistic groups. Recognition is officially accorded to 11 languages. Entrenching the promotion and protection of the rights of these groups in the Constitution of Cameroon is important; making sure the rights of these minority groups are adequately protected and promoted in practice is just as, if not more, important.

Traditional authorities in Cameroon are classified under the existing legal framework into three categories: first-degree chiefs, second-degree chiefs and third-degree chiefs. Generally considered as auxiliaries of the administration, they are not attributed any particular functions or duties by any of the legal instruments regulating the decentralised system. The lone reference to traditional authorities is found in article 26(1) of the 2004 law on Regions, which stipulates that the traditional authorities in every region will constitute an electoral college that will elect some of their members to represent them in the Regional Council.

Traditional authorities have an important role to play in accelerating decentralisation. A reform of traditional chiefdoms is under way in Cameroon. It is thus recommended that the role of traditional authorities in Cameroon be constitutionalised and well defined, as in South Africa and Zimbabwe, because this could make them important actors in helping local government in development, conflict management and service delivery,

7.3.9. Redefining dispute resolution and implementation mechanisms

Well-defined dispute-resolution and implementation mechanisms are crucial in a decentralised system. This entails having an appropriate mechanism in place for the dealing with dispute resolution as well as ensuring that such institutions operate efficiently and effectively.

As seen in Chapter 6, the 11 members of the Constitutional Council (the Council) are appointed by the President[24] and they need not necessarily be jurists. It is recommended that, as in the case of South Africa, because of their training and capacity for analytical legal reasoning, jurists should be selected as a members of the Council because they will make more rational and effective judges than just personalities of established renown who are not jurists.[25] Leaders of political parties should be represented in the National Assembly to complement a well-constituted Higher Judicial Council in the selection of members of the Council. It is also recommended that the President should not have exorbitant powers in fixing the allowances and salaries of judges. The composition of the Council should thus not only have integrity but reflect the ethnic, religious and gender diversity of the country. In addition, the term of office of judges of the Council should be limited.[26]

With respect to access to the Council, it was observed in Chapters 5 and 6 that only the President of the Republic and the presidents of the Senate and National Assembly have access to the Council. The refusal of ordinary citizens of the right to access the Council, especially in situations where their constitutional rights have been violated, amounts to the refusal of constitutional justice. It comes as no surprise that most indicators on good governance and political rights expose Cameroon as one of the few African states that has made little or no progress in constitutionalism, democracy, the rule of law, development and hence in decentralisation efforts. It is therefore recommended that, as in the case of South Africa, ordinary citizens should be given access to the Council and not only the President and other top-ranking persons.[27]

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[24] Article 51 of the Constitution.

[25] See W Le Roux 'Descriptive overview of the South African Constitution and Constitutional Court' in O Vilhena, U Baxi & F Viljoen (eds) *Transformative Constitutionalism* (2013) 154. In South Africa, the President appoints all Constitutional Court judges. In appointing the Chief Justice and the Deputy Chief Justice, although he or she exercises an executive discretion, the leaders of all political parties represented in the National Assembly as well as the Judicial Service Commission (JSC), must be consulted. The President thus has far narrower discretion when it comes to the appointment of the other nine judges of the Constitutional Court. The President must select the judges for appointment from a list of suitable candidates presented by the JSC and after consulting with the Chief Justice and leaders of political parties represented in the National Assembly.

[26] Le Roux (n 28 above) 148-149. The limited term of office on the Court has at least three advantages: it enables greater racial and gender participation and representation on the Court; it allows judges to transfer their experience on the court into other areas of service after the completion of their term as Constitutional Court judges; and it ensures a vibrant, responsive and dynamic constitutional jurisprudence. Nonetheless, the restriction on the term of office means that experienced but relatively young judges are sometimes forced to leave to Court at the prime of their capabilities. See also the case of *Justice Alliance of South Africa v President of the Republic of South Africa* 2011 (5) SA 388 (CC).

[27] See section 172 (2)(d) of the 1996 South African Constitution. See also *Ferreira v Levin* 1996 (2) SA 621 (CC) para 38. In this case, the Constitutional Court held that a person acting in his or her own interest did not necessarily have to be the person whose own constitutional interest had been infringed. Chaskalson P, writing for the majority, argued that while it was the place of the Constitutional Court to decide what amounted to a sufficient interest, it

In Chapter 4 it was noted that the Council's judgements may take the form of a decision or an advisory opinion. However, the manner in which the relevant legislative provisions on this issue are drafted is wanting. It is thus recommended that the Council's judgements should be well drafted.

As was seen in Chapter 6, the Council has as a major responsibility the task of investigating and deciding matters to do with electoral petitions. In so doing, it has to rely mostly on government authorities for information. All of these authorities are appointed by the President and serve at his discretion. Given that the role of the Council in electoral adjudication is fundamental, it is recommended that it should not rely exclusively on information from government authorities and Elections Cameroon (ELECAM). The Council should be able to have independent experts carry out investigations, especially into electoral irregularities, so as to make the electoral process more transparent.

The Council, when confronted with cases involving electoral disputes, has focused more so on procedural loopholes and sanctioning non-compliance with filing requirements than on carefully investigating and sanctioning violations of electoral and other laws. This ignores the fact that cases often may have nothing to do with any particular person but relate instead to conducting elections in ways unsuitable to ensuring a free and fair turnout. It is recommended that the Council should go beyond its current narrow scope of enquiry and examine substantive issues at stake in electoral and other disputes, as in the case of South Africa.[28]

An examination of several decisions by the Council exposes inconsistencies. This is linked not only to the fact that many of the relevant laws, especially on decentralisation, particularly those regulating elections, are in conflict with one another, but also to the way the decisions are presented. With respect to sections 60 to 64 of the 2004 Law on the functioning of the Council, when the president of the Council receives a petition, it is assigned to a particular member, who is called a rapporteur. The rapporteur has the responsibility of carrying out the investigation,

would adopt a broad approach to the issue of standing. See also *Van Vuren v Minister of Correctional Services* 2010 (12) BCLR 1233 (CC) para 143. The Court has a discretion whether to grant direct access or not and may grant excess in cases of human rights abuses. See also *Mkontwana v Nelson Mandela Metropolitan Municipality* 2005 (1) SA 530 (CC) para 11. In the ordinary course of events, the Court may not grant access.

[28] See generally AK Abebe 'The substantive validity of constitutional amendments in South Africa ' (2014) 131 *South African Law Journal* 3, 656-694. The Constitutional Court of South Africa may scrutinise the substance of constitutional amendments to determine compliance with the proper procedure for each amendment of provisions of the Constitution. This implied hierarchy enables the Court to scrutinise the substance of constitutional amendments to determine compliance with the proper procedure for each amendment. Nevertheless, once the Court ascertains that an amendment has been enacted by following the appropriate procedure, the amendment cannot be attacked on substantive grounds.

preparing a report and presenting it before the Council. This report may be adopted by the Council or with amendments, and then becomes the Council's decision. Generally, the decisions are poorly written, unclear and lack clear legal reasoning.[29]

It is thus recommended that the many irrelevant laws should be revisited so as to allow for some consistency. It is also recommended that a team of experts should be constituted, not only a rapporteur, to carry out investigations before reports are presented before the Council. It is recommended, furthermore, that the Council should use both foreign and international law, provided these laws or agreements have been approved by Parliament and are not inconsistent with the Constitution or national legislation.[30]

7.4 Conclusion

This thesis has shown that Cameroon's constitutionally entrenched mechanisms need to provide clear, deliberate direction on the scope and nature of decentralisation and not do so by way of claw-back laws. Important issues of constitutional importance should not be decided alone by the President, because this is indeed a recipe for failure.

The thesis has argued that decentralisation is unlikely to help in promoting development, democracy, constitutionalism and respect for the rule of law if the central government that presides over the process is domineering and not aspiring to be democratic. The decentralisation process needs to alter the way in which the authoritarian regime operates, a regime which remains at its core one of personal rule based on a patron-client network. The ruling CPDM and government positions need not be utilised as an instrument of manipulation and control over followers who hold strategic posts throughout central and local government administration in order to strengthen its grip on power.

The thesis has also argued that although the decentralisation process seems to have taken politics and power nearer to the people, the distortion and micromanagement of the process at the local level has to ensure that it has an impact and provides the improvement and self-development in actual governance that should come with it. This is so because high hopes have been raised by the process and there is too much potential danger in not making sure it works.

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[29] See *Agbor Ashu Emmanuel Omar v Republic of Cameroon* (unreported) mentioned in CM Fombad 'The Cameroonian Constitutional Council: Faithful servant of an unaccountable system' in CM Fombad (ed) *Constitutional Adjudication in Africa* (2017) 91, footnote 31.

[30] See section 231(4)(c) of the 1996 South African Constitution. See also J Foster 'The use of foreign law in constitutional interpretation: Lessons from South Africa' (2010-2011) 45 *University of San Francisco Law Review* 79.

The current failed experiment does, however, have the elements of what is needed for a more efficient decentralisation process in the future.

It is thus evident from a critical examination of the constitutional and legal framework that the executive of the central government in Cameroon predominates over the country's shared- and self-rule arrangements. With respect to shared rule, the President should not have the discretion of appointing 30 out of 100 senators in the country. If the powers of the President are limited, this would give more meaning to shared rule. Senators would be able to make decisions independently with little coercion from the executive.

Likewise, the executive's influence should not be as dominant as it is over institutions of self-rule such as the regional and municipal councils. The President should not alone decide how territorial units are carved out. He should not have enormous powers in appointing officials such as government delegates and the secretaries-general of regional councils. The issue of who an indigene is, and thus of who qualifies to be a regional councillor, also has to be revisited. This may lead to better management of diversity.

For better self-rule and thus political autonomy, there is a need for an efficient electoral system. The PR system is preferable because, as argued, it facilitates inclusive governance. Additionally, for better self-rule, promoting the rule of law is important. This may be done in several ways but chiefly by adopting a coherent legal system. The doctrines of judicial review, constitutional supremacy and independent oversight bodies can solidify such a framework.

For better administrative autonomy there is need for local government to have autonomy over hiring and firing of its staff. There is also need for professionalisation, especially of executives such as mayors. Autonomy over the internal procedures of councils is also important for administrative autonomy. Local government should have authority over putting in place the salary scales of local employees, which can go a long way in attracting and retaining skilled personnel.

There is need to revisit the many distorted and incoherent decentralisation laws related to finance as well as improve on the poor administrative capacity at the levels of bodies such as FEICOM to enforce the payment of taxes. There is also a need to improve on the poor administrative capacity to assess the revenue base; eradicate corrupt activities such as the embezzlement of revenues; lessen or, better still, eradicate, external pressure on the local finance department to furnish optimistic projections; and weaken political pressure on the local tax administration to relax on revenue collection, especially during election periods.

Redesigning the system of supervision and intergovernmental cooperation is crucial. A meaningful consultative mechanism between central and local government is important in Cameroon's decentralisation design. For cooperative governance and for efficient consultative mechanisms, there is need for an exhaustive chapter for intergovernmental relations in the Constitution. Supervisory bodies such as the Board and the Council need to be effective. ELECAM needs to be transparent and efficient. Organised local government, especially so in the form of the UCCC, needs to be strengthened to better oversee the decentralisation process. There is need for the central government to limit duplication, overlap and confusion in the role these institutions play.

Reinforcing the role of women, ethnic and minority groups as well as traditional rulers in the decentralisation process is fundamental. There is need to constitutionalise the role of women in the decentralisation process. Emphasising the importance of diversity, minority and ethnic issues in the constitution is also fundamental. Officially recognising the languages and culture of minority groups and Anglophone Cameroonians is very important too, as is constitutionally asserting the role of traditional authorities in the decentralisation process.

The thesis concludes that Cameroon's constitutional review system needs to be modernised in order to supervise the decentralisation process. There are a couple of issues which need to be addressed. First, the refusal of ordinary citizens of the right to access the Council amounts to the refusal of constitutional justice and cannot be justified. Ordinary citizens need to be given access to the Council. Secondly, respect for the rule of law, for constitutionalism and hence for decentralisation has remained an illusion in the absence of an independent judiciary. This is exacerbated by the lack of an effective, credible and efficient system of constitutional review that upholds the rights of citizens.

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