(Un)Constitutional Amendments and Cameroon Constitutions: Strange Bedfellows with the Rule of Law and Constitutionalism

Justin Ngambu Wanki

LLD Candidate, Department of Jurisprudence, Faculty of Law, University of Pretoria, South Africa.

Abstract

The article examines unconstitutional constitutional amendments in the constitutional order of Cameroon dating back from 1960 to 2008. The examination reveals that all the amendments engaged within this period fail to comply with the rule of law and constitutionalism, facilitated and abetted by the three branches of government in Cameroon. The article ends by emphasising that since power is held by government only as a trust for the benefit of the people, it entails that constitutional amendments should be undertaken only when they are in the interests of the people who are the ultimate beneficiaries of the trust.

Keywords: independence constitution, rule of law, constitutionalism, unconstitutional constitutional amendments, presidential powers, Cameroon

I. INTRODUCTION

This article specifically examines the approach of the Cameroonian government to constitutional amendment bills in parliament. Two questions could be raised. Firstly, has government exhibited a conduct of promotion and protection of popular interests over government interest in amendment processes; and secondly, do the constitutional amendments comply with the rule of law and constitutionalism prior to and post the amendment process? This article is based on the assumption that the independence constitution of 1960 from which all subsequent constitutions took their cue was not the outcome of the aspirations of Cameroonians. Cameroonians did not participate in the constitution-making process which only permitted the exclusive participation of a handful of colonial regime-minded Cameroonian elites and the colonial administration.[1] This trend was sustained up to the 1996 constitutional amendment. The Cameroon government has argued – and rightly so – that it relied on the powers attributed by the Constitution to the President to amend the Constitution as a reiteration of its commitment to uphold the rule of law and constitutionalism in terms of Article 63(1). Nevertheless, the conditions under which the 1996 constitution was amended, which will later be examined in detail elsewhere in this article, render the legitimacy of the final document questionable. Impliedly, the amendment is inconsistent with the rule of law, and the resultant amendment power the President assumes, though 'justifiable',[2] is nonetheless inconsistent with the rule of law because his amendment power is derived from a defective document – which is not the will of the people. There exists an inherent weakness built into the constitution plaguing the integrity of the content and the subsequent implementation and execution of the constitution.[3] Mbaku thus argues that Cameroon has never had a constitution that provides for the effective separation of powers. As a result, the universally accepted elements of the

rule of law are non-existent under the current 1996 constitution which is deeply embedded in presidential absolutism.[4] Such a constitutional design has excluded the people from participation in state governance and from exercising other constitutional rights. As earlier discussed regarding popular exclusiveness from the constitution-making process, the question then becomes, can a law acquire true meaning when the will of the people was not attributed to a people as a principle that pre-exist the granting of that will-participation?[5]

As earlier noted, the colonial government used the Cameroonian colonial minded elites as a medium through which it kept Cameroon dependent on it even after independence.[6] As a result, successive constitutions became rooted in the 1960 independence constitution, all anchoring on non-participation of the people. Such a deficit gives sufficient reason to conclude that the current 1996 constitution is unarguably a relic of popular exclusiveness and putrescence of the colonial legal order, which legacy has survived into the current constitutional order and from which the chief executive now legally draws unfettered powers. Such a constitution-making deficit is an affront to the rule of law and constitutionalism and by implication most of the provisions the constitution entrenches may be unconstitutional. By virtue of the people not being subjects of the constitution-making process suggests that the constitution gives a right it does not possess to the president of the Republic to amend the constitution.[7] As Fuller has opined, procedural law must be distinguished from substantive law. The internal morality of law should be assigned a substantive agreement between official action and enacted law.[8] Therefore interest should be attributed not to substantive aims of legal rules but rather to the manner in which a system of rules for governing human conduct must be constructed and administered in order to enhance its efficaciousness and remain what it purports to be.[9] The incongruence of the constitutions with the rule of law and constitutionalism may equally be informed by the questionable origin and teleological rather than deontological approaches and application of the constitutions.

This article comprises four parts. The second part will constitute a historical background of post-independence Cameroon. In the third part, the constitutional amendment processes are used and applied to test Cameroon's pedigree in upholding or disregarding the underlying doctrines. This section also briefly discusses and evaluates the impact of non-compliance with the doctrines of the rule of law and respect of constitutionalism in constitutional amendments in Cameroon with specific reference to the functioning of the legislative, executive and judicial branches of government. Thereafter a conclusion is drawn and a reflection on the way forward is suggested.

II. A HISTORICAL BACKGROUND OF POST-INDEPENDENCE CAMEROON

Cameroon has experienced the administration of three different colonial masters, namely:[10]

- 1884–1914. The Germans administered Kamerun. Owing to the German defeat during the First World War, all her protectorates were seized.[11]
- 1916–46. The League of Nations mandated Cameroon to France and England.[12]

- 1946–60. The UN's mandate over Cameroon was converted into a trusteeship but its administration remained entrusted to France and England.[13]

Firstly under the colonial hegemony of Germany and secondly under France and England, the Cameroonian citizens experienced unacceptable and untold suffering, to the extent that the Royal Reitchstag had to summarily recall one of its colonial administrators, Von Puttkamer, and discipline him for his conduct.[14]

More attention is attributed to state security at the expense of human rights or self-determination. To this end, the union of the two Cameroons ensured under the 1961 constitution was thus not the outcome of the will of Cameroonians, but rather became what the UN decided. The 1961 constitution thus ushered in a new constitutional dispensation which brought French Cameroun and English Cameroons together under a federal arrangement. In 1961 the existing constitution had to be slightly amended in order to absorb Southern Cameroons to form what became known as the Federal Republic of Cameroon. This union of the two Cameroons provided a viable opportunity to reform the existing laws and institutions to fit the realities of the dispensation and also to reflect the views and aspirations of Cameroonians.[15] However, the short-sightedness of the Southern Cameroons delegation to the Foumban constitutional conference, in addition to the constraints already placed on the territory by the UN, gave way for Ahidjo's opportunism since he used this opportunity to push for institutional arrangements that gave the opportunity for post-reunification leaders to engage in opportunism.[16] Amadou Ahidjo was the first Cameroonian President to assume power after the trusteeship was terminated and Cameroun achieved independence in 1960 and he remained president under the federal arrangement.[17] In 1972, in order to eliminate the existing federation and institute a unitary state, President Ahidjo single-handedly launched a constitutional coup that resulted in a unitary state.[18]

He later resigned and surrendered power to the then Prime Minister, Paul Biya, in 1982. Biya despite not having acquired power through an election process, has ruled Cameroon ever since.[19] The transfer of authority to Biya took place in a calm fashion, although soon after, a pro-Ahidjo faction attempted to regain power by means of a coup. The attempt was brutally quelled by the Biya regime. Biya, afraid that these events might repeat themselves, has ruled the country with an iron fist ever since, using autocracy and authoritarianism as the sole means of governance.[20]

Starting with President Ahidjo, the Constitutions have consistently been amended by subterfuge and used as a mechanism to legitimate the President's selfish endeavours. The 20 May 1972 Referendum which delivered the Unitary Constitution was a sham and this constitution is thus known as the Constitution octroyée.[21] Upon assuming power, Biya simply picked up where Ahidjo left off.[22] Cameroonians clamoured for constitutional change on the basis that the 1972 constitution was a sham.[23] Rather than organise a national conference, President Biya organised on his own terms what became known as the Tripatite Conference.[24] The conference produced what came to be known as the as the 1996 amendment to the 1972 constitution. This constitution metamorphosed through numerous stages against popular expectation and finally resulted in a document which was based

exclusively on a proposal put forward by the president of the Republic.[25] Given this degree of disregard for the rule of law and constitutionalism, reliability on the entrenchment of Article 63 of the 1996 constitution that gives the President of the Republic amendment powers can only be said to be a sham.

Constitutions, being higher laws, deserve to be protected against frequent amendments, especially for ulterior motives,[26] since an observation of the amendment culture in Cameroon suggests that constitutional amendments do not serve the interest of the public. As a matter of fact, the very nature of constitutionalism suggests that there is need for a sufficient degree of endurance of constitutions.[27]

III. A THEORETICAL PERSPECTIVE OF THE RULE OF LAW AND CONSTITUTIONALISM

A. The Rule of Law

The fundamental objective of the rule of law finds expression in a procedural device which constrains those with power to rule under the law.[28] According to Dicey,[29] the rule of law requires three propositions of which one is obsolete in our present day for objective reasons as will be demonstrated in the following discussion. Firstly, the preponderance or supremacy of the law instead of brute force must be accentuated.[30] Secondly, the law should be applied equally to everybody notwithstanding status or position.[31] Thirdly, freedoms and rights are better protected by common law than positive law.[32] This third position was the source of criticism of Dicey's proposition.[33] However, while there exist diverse reasons to explain why this third proposition was criticised, it should be noted that these principles were propounded at a time when parliamentary sovereignty in England was at its zenith.[34] Grosso moddo, the rule of law is a yardstick which enables the assessment of government compliance with the law regarding individuals, in both a protective and a prescriptive manner.[35]

For the rule of law to function smoothly in a dispensation, implementation and execution are key. In this regard, Montesquieu argued that government is made up of three distinct organs: the legislative, the executive and the judiciary.[36] The fact that the rule of law promotes protection of citizens from the executive is evidence that the concept accentuates independence more than impartiality.[37] It is clear, therefore, that the rule of law seeks to promote the substance and application of law with some minimum standards, and the purpose of these standards is to shield citizens from capricious and unpredictable treatment at the hands of government.[38] Consequently the rule of law entails the incorporation of the following basic requirements of the law.[39]

1. The Principle of Legality and Equality

The principle of legality asserts that the law will not be applied retrospectively and the law must only punish what it predicted.[40] Rawls and Fuller's conception of the law also reflects characteristics associated with the rule of law.[41] One such characteristic is ‘no crime without law’ – nullum crimen sine lege. Serious offences must be narrowly interpreted and laws must be written, made public and circulated in simple and clear language.[42] It follows that

the retrospective application of the law violates the rule of law. Dicey's aim was to establish the fact that those exercising power should be accountable to the law.[43]

Equality denotes that all persons are equal before the law, irrespective of their office and rank. All classes of people are subject to the ordinary law of the land without distinction, and with no discrimination on the basis of sex or race.[44] To maintain and promote equality and legality, judicial power must be shielded from executive influence.

2. Separation of Powers and Independence of the Judiciary

Three components have been proposed by Vile, constituting what he designates the 'pure' doctrine of the separation of powers. He argues that a functional dichotomy exists between the three agencies, and advocates that they be shielded from each other.[45] What he advances as the fundamental reason for this position, is that groups or individuals cannot be judges in their own cause.[46]

Conclusively, formalistic rule of law which promotes political values over legal values and material justice over procedural justice and positivism without due regard for procedure must be understood as an infringement on general constitutional principles regardless of their conformity with isolated, bright-line rules or letter of the law. Laws enacted by the legislature may not be considered an enforcement of the rule of law unless an accepted condition is fulfilled:

> The fulfilment of these norms therefore creates a situation that may be described in legal terms as being materially just. The constitution therefore, not only binds state authority to uphold procedural safeguards but also obligates the legislature to act in accordance with the requirements of substantive justice when exercising its function of lawmaking.[47]

B. Constitutionalism

Constitutionalism is concerned with the proposition that governmental power is regularised by rules prescribing the procedures which encourage legislative and executive acts to be undertaken and which delineate the content of the activities the government performs.[48] Constitutionalism is said to have become practicable when arbitrariness of discretion is curtailed in order to promote enjoyment of individual liberty and political actors start restraining the trespass by authority into prohibited space.[49] The concept of constitutionalism essentially connotes: a limitation on government; constitutionalism as the antithesis of arbitrary rule; and a government conducted by predetermined rules, and not according to the whims and caprices of the rulers or a despotic government.[50] For constitutionalism to work effectively and properly to restrain the executive from carrying out certain unconstitutional or illegal acts, certain aspects defined by modern constitutionalism must be respected. Among other aspects are the following: legitimacy, the need for a mechanism to amend the constitution, respect for human rights, the supremacy of the constitution and elements of democracy and an independent judiciary. I discuss two of these aspects of modern constitutionalism below.

1. Legitimacy of the Constitution

Legal legitimacy requires the constitution to conform to specific legal principles and norms.[51] Political or popular legitimacy is revealed in the sovereign independence of the people who adopt constitutions, people that might form different plural groups.[52] A constitution must be differentiated from constitutionalism. A constitution is the form of the text itself while constitutionalism refers to the values entrenched in a constitutional provision.[53] A constitution that ignores constitutionalism makes the constitution illegitimate.[54] For the constitution to pass the legitimacy test, the rule of law must operate in a just legal system in order to ensure proper functioning.[55] Most constitutions ensure the rule of law through independent overseeing bodies and courts, the doctrine of constitutional supremacy and the constitution ensuring the guarantee of fundamental rights and judicial review.[56] Other principles that render the constitution legitimate include popular sovereignty or democratic governance, which identify the people as the basis of governmental power.[57]

2. The Supremacy of the Constitution

Constitutional supremacy simply means the constitution is the supreme law of the land and any legislation inconsistent with this law is invalid.[58] For instance, the authority for this rule in the South African Constitution is section 1(c).[59] The locus classicus that eloquently demonstrates this rule is the Pharmaceutical Manufacturers of South Africa: In re ex parte President of the Republic of South Africa case,[60] '… there is only one system of law. It is shaped by the Constitution which is the supreme law and all law, including the common law, derives its force from the Constitution and is subject to constitutional control …'[61] As the supreme law, it establishes the preponderance of the rule of law over the rule of man.[62] The principle of the supremacy of the constitution was formulated in the United States Constitution Article 6 thus: '[The] constitution … shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding.'[63] The constitution as the paramount law meant that no unconstitutional acts will be allowed.[64] Alexander Hamilton who is one of the fathers of the American federal constitution, defines the supremacy of the constitution in the Federalist Papers as follows:

> There is no position which depends on clearer principles, than that every act of a delegated authority, contrary to the tenor of the commission under which it is exercised, is void. No legislative act therefore contrary to the constitution can be valid. To deny this would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers may not only be what their powers do not authorize, but what they forbid.[65]

The principle of the supremacy of the constitution is characterised by three traits, which are distinguishing between constitutional and other laws; the legislator is bound by the constitutional law, which requires special procedures for amending constitutional law and an institution vested with the authority to test the constitutionality of governmental legal

acts.[66] Basic constitutional principles may not be altered as such an attempt can open the door for majority rule.[67] Even after the citizens have participated in the constitution-making process, the constitutional court or the judiciary is required to certify the final constitution after assurance that the constitution complies with constitutional principles.[68] Such a procedure will enable the review of a defective constitution before its supremacy is hailed, as a rule of law.

III. CONSTITUTIONAL AMENDMENTS AND DISREGARD FOR THE RULE OF LAW AND CONSTITUTIONALISM IN CAMEROON

This section will explore the unconstitutionality of constitutional amendments and the incompatibility of such amendments with the constitutions and the norms of constitutional amendments.

A. The Conventional Purpose and Constitutional Provision for Amendments

As a beginning, it is important to highlight the nature of an amendment and reasons why amendments are carried out before examining the conventional purpose of constitutional amendments. These amendments are carried out for the purpose of closing up generational gaps and responding to contemporary exigencies. Many constitutional amendments are carried out by the president, parliament or the people through a referendum as in the case of Cameroon. Nevertheless, it has been observed that an amendment cannot be narrowly defined as to mean a formal addition or subtraction from the constitutional text exclusively.[69] Informal amendments may be carried out on constitutions by desuetude. This occurs when the non-application of a given provision over a significant duration of time leads to the implicit repeal of that law.[70] Desuetude partly results from non-use and can be described as a constructive waiver, affected self-consciously in the course of time, of a right or power.[71] Desuetude is therefore a species of legal obsolescence, 'an intentional relinquishment or abandonment of a known right or privilege'.[72]

More so, the purpose of an amendment is that an amendment process serves as a mechanism for constitution-makers to share part of their authority with posterity so that every future generation is empowered with part of constituent power.[73] American constitutionalism is founded on this approach, where it is assumed that Article V of its constitution, which empowers 'the people' to amend the constitution, is the foundation of the constituent power.[74] Using the supremacy argument, it is held that 'the people' may alter constitutional powers. This constitutional amendment can modify other constituted powers, and can also change its own boundaries, since an amendment possesses what is known as 'competence over the competence'.[75] It is assumed that if constituent power produces constitutional laws that govern constituted powers, then the amendment of the said constitutional laws through amendment is an exercise of constituent power.[76] As a matter of fact, an amendment is designed for the textual change of constitutional provisions.[77] However, such textual changes may not change fundamental political decisions constituting the substance of the constitution.[78] Furthermore, constitutional amendments are usually required to meet with specific standards without which the amendment process would be considered unconstitutional. Modern democracies now require constitutional

courts with testing powers (judicial review) to investigate the validity of amendments[79] in terms of procedure and substance and if, after proper examination consisting of impugning the process, irregularities are apprehended, such a constitutional amendment could be declared unconstitutional.[80] The intervention by the judiciary to review the constitutionality of amendments could be informed by the historical experience of despotic and dictatorial regimes who employed random amendments to achieve certain self-serving interests.[81] Constitutionalism also requires the entrenchment of certain immutable provisions such as protection of fundamental rights as safeguards, so that review of amendments would serve as a disincentive for any despotic regime to be tempted to violate.[82] The differentiated rules for adopting constitutional amendments have been established as one of the cornerstones of a 'multi-level' constitution. South Africa represents such an example, and more so, as the most internally consistent constitution in that regard.[83] This situation is, however, contradicted by the levity with which a constitutional amendment is treated in French-speaking countries, especially, given that they have a formidable taste for ingénierie constitutionnelle.[84] The limitation of the power to amend constitutional texts that has largely become a tradition is completely absent with French-speaking countries.[85] The Anglo-Saxon tradition appears to sanctify constitutional provisions while the French-speaking tradition is more flexible and not concerned about flexibility, to the extent that constitutional prohibitions are considered to have no operative power.[86] In the French-speaking culture, laid down constitutional rules may not be sacrosanct. For example, they have a penchant for majoritarian democracy rather than constitutional democracy. They believe that the 'the people' by virtue of their constitutional authorship[87] created the constitutional court or parliament and are greater than these institution, therefore the 'people' can abrogate even supra-constitutional norms like unalterable provisions.[88] Perhaps this could be explained by the conservative tradition in the formation of French constitutional orders based on coup d'états from above and not ground swells from the masses.[89] However, Dicey in defining the rule of law according to the Anglo-Saxon tradition underlined the supremacy of the constitution and highlighted the fact that any act inconsistent with the constitution must be struck down. This position implies that even 'the people' themselves are subject to the constitution.

It must, however, be accepted that the deference conferred by past to future generations by virtue of their supermajority amendment requirement may negatively impact the self-determination of present democratic majorities.[90] For such a reason an unamendable provision may undermine the rights of later citizens of adequate and equal opportunities for participation in public debates and effective representation.[91] Amending such provisions therefore will be inevitable as a means of rendering both the constitution and the people of a specific generation or era relevant. Nevertheless, such an amendment is in no way reminiscent of a constitutional prohibition having no operative power.

It is an established fact that a constitution would only be most effective as long as the mechanism entrenched for ensuring its proper implementation and its violation are regularly sanctioned.[92] By this same token, two fundamental issues underpin modern constitutionalism vis-à-vis its citizenry such as: limitations imposed on the state and a clear provision for mechanisms for the legal enforceability of such limitations.[93] Given that

amending the constitution is one of the control mechanisms of the constitution, the constitution being the will of the people, if allowed to be easily, casually, carelessly by subterfuge amended, then the will of the people will be thwarted and the whole purpose of a constitution serving as a restraint on governmental power shall be watered down and the prospects of genuine constitutionalism shall be diminished.[94]

If the ultimate desire to amend the constitution is not the wish of the people but that of the president, it is most likely that amendments will not endure for long as the president might constantly and by subterfuge resort to a new amendment on the constitution whenever he desires to satisfy his ulterior motives. Fombad captures this view in the following words: 'In the absence of any limit or restriction on the amendment of a constitution, it is extremely difficult for such a constitution to promote constitutionalism, respect for the rule of law, democracy and good governance.'[95] When the foundation of law-constitution is ill-conceived, the resultant laws in the legal system then become bad laws.[96] In this vein, the Cameroon constitution which has experienced numerous amendments instigated by political motives has resulted in the dilution of the authority of the legislature and the judiciary.[97]

Nfamewih Aseh has observed that the Cameroon constitution is revised or selectively applied according to the shifting ambitions of the president of the Republic and his local and foreign allies.[98] If this view is correct, then it can be concluded that this constitution is capable of being so easily tampered with in terms of amendments that outrightly disregard the rule of law and constitutionalism.

B. The Constitutions of Cameroon and the Nature of Amendments

The current structure and philosophy of the 1996 Constitution has its roots in the 1960 Constitution. The Republic of Cameroon was born on 1 January 1960. The state was created by the Constitution of 1960 which was modelled on the Gaullist Constitution of the Fifth French Republic.[99] Though with minor adaptations to suit the local situation, the wording of the document, the nature of the organs it created and above all the extensive powers and prerogatives it conferred on the President, attested to its Gaullist model.[100] Article 49(1) of this constitution vests the powers to propose a constitutional amendment in the President of the Republic, the Council of Ministers and the National Assembly.[101] Article 49(2), however, does not qualify the powers of the President vis-à-vis the amendment process.[102] The same article highlights that in the case of the National Assembly, one third of the signature of parliamentarians is needed for this option to be considered. And then for the amendment to be adopted, a two-third majority of the parliamentarians must vote in favour of the amendment.[103] Article 49(3) then states that where the two-third majority of parliamentarians fail to adopt the amendment bill, then the bill will be submitted to a popular referendum.[104] The remarkable idea of this provision in general is that the rules of amendment are more stringent when tabled by the National Assembly than the President. This is simply a reiteration of presidentialism or centralisation of authority in the hands of the President, which is at odds with the rule of law and the purpose of constitutionalism. The President by virtue of his amendment power may propose an unconstitutional amendment and yet it is enacted into law with the help of his fleeting majority in

parliament. Such constitutional provisions may in turn become unconstitutional as they defy the norms of the rule of law and constitutionalism.

On 1 October 1961, the Federal Republic of Cameroon saw the light of day with the Cameroon Republic becoming East Cameroon and Southern Cameroons becoming West Cameroon.[105] However, the plebiscites organised by the UN whose outcome determined Cameroon's independence and led to the amendment of the 1960 Constitution were in conflict with UN Resolution 1514 of 12 December 1960. This resolution addressed the right of self-determination of all trust territories to end colonialism. The resolution proclaimed: 'Transfer of all powers to the peoples of those territories without any condition or reservations … in order to enable them complete independence and freedom.'[106] Paradoxically, the people were not allowed to determine what kind of government or political dispensation they preferred. It cannot therefore be gainsaid that the subsequent amendment that ensued was a strange bedfellow with the rule of law and constitutionalism given that the will of the people was curtailed.

The Constitutional Conference leading up to the production of the 1961 Constitution saw heated debates between Southern Cameroons' delegations and Ahidjo of the Cameroun Republic as the Southern Cameroons' delegates identified numerous irregularities in the draft constitution which infringed on Southern Cameroons' interests.[107] This observant attitude of Southern Cameroons' delegation infuriated Ahidjo to the extent that he peremptorily closed the meeting. It should be noted that the 1961 Constitution was not endorsed by common bargain and popular or parliamentary approval. Therefore, the resultant Federal Republic lacked both a juridical and legitimate foundation.[108] Article 47(1) of the 1961 constitution makes it clear that any proposal for the revision of the constitution in question (the 1961 constitution) which impairs the unity or integrity of the federation shall be rejected. The subsequent dissolution of the federation to form the unitary state that subsequently ensued was at variance with the rule of law and the requirements of constitutionalism.

The conditions leading up to the promulgation of the 1972 Constitution were puzzling and illegitimate. Firstly, a peaceful revolution was orchestrated by Ahidjo as he sacked the federal government and dissolved both the Federal House of Assembly in Yaoundé and the House of Assembly in West Cameroon.[109] He then proceeded by arrogating to himself absolute untrammelled power – plein pouvoir. The Southern Cameroons was surprised at the way Ahidjo used his referendum gimmick to despotically end the federation. The referendum was a charade which left citizens with only a 'yes' or 'oui'[110] option.[111]

In securing the unitary state, Ahidjo played his trump card. He awarded federal services better salaries and conditions than state services and informed the National Assembly of his intention to create a unitary state provided the electorate gave their support for the idea in a referendum to be held on 20 May 1972.[112] This intention was at odds with Article 47(1) of the Federal Constitution of 1961 which says: 'any proposal for the revision of the present constitution, which impairs the unity and integration of the Federation, shall be inadmissible'.[113] The constitution of 1972 in Article 36 lays down the modalities required for any constitutional amendment. This provision entrusts the president with enormous

powers. The provision leaves the president with the choice to decide to submit any amendment to the people by way of a referendum instead of the constitution deciding such a fundamental matter. Such discretionary powers attributed to the president certainly conflict with the rule of law and with the executive power constraining the role of constitutionalism.

According to Law number 90–60 of 18 January 1996, the constitution of 1972 was amended by that of 1996 and gave birth to the Constitutional Council and other innovations. The 1996 constitution takes its cue from the 1972 constitution. The most outstanding provisions of the amended constitution were those for 'judicial power' in principle and a defective Constitutional Council charged with testing the constitutionality of legislation and supervision of constitutional amendments. This organ is highly controversial which can be described as a 'supreme political jurisdiction' and not a judicial institution.[114] The negotiation of this revised constitution was masterminded by the ruling party: the Cameroon Peoples Democratic Movement (CPDM).[115] The president promulgated this bill into law on 18 January 1996 as 'Law No. 06 of 18 January 1996 to amend the constitution of 2 June 1972'.[116]

This constitution was actually amended by a handful of political elites receiving instructions directly from the president and not the people of Cameroon. The legitimacy of the constitution is quite contentious as the constitution-making process was not open to popular consultation and participation. The amended constitution of 1972 which resulted in the 1996 version entrenched Article 63(1) which attributes constitutional amendment powers to the president of the Republic. This provision may be considered a sham by virtue of the defectiveness of the constitution. The constitution was not born out of the will of the people of Cameroon. The resultant constitution was inconsistent with the rule of law and constitutionalism, given that basic constitutional principles and values have been ignored.

On 10 April 2008, the National Assembly, overwhelmingly dominated by the ruling party CPDM, passed a Bill to amend Law 96/08 to permit the president to be eligible for unlimited re-elections.[117] The portions of the constitution that were amended to enable the president extend his stay in power resulted in a controversy. In approving the 2008 constitutional revision, the National Assembly revised Article 6(2), which maintained the seven-year tenure for the president but scrapped the two-term limit. The president can now be re-elected without limit.[118] Article 53(3) then granted immunity to the president to the degree that he shall not be accountable for acts he committed while in office as president and even after the exercise of his function as president of the Republic. Such an amendment is in stark disregard for the rule of law and constitutionalism and a mockery of the salient values of these concepts.

Two common traits in the four constitutions are lack of legitimacy and unconstitutionality. All the constitutional amendments dating back from 1961 up to 2008 resulted in illegitimate and unconstitutional amendments. The constitutional amendments neither respected constitutional procedures nor were they popularly endorsed. There is thus a sound legal basis upon which to assert that the Cameroon Constitutions are illegitimate and unconstitutional.

1. The Impact of Non-compliance with the Doctrines in Constitutional Amendments on the Legislature

The Constitution of Cameroon has transformed the president into a constitutional dictator as he has been attributed extensive and enormous powers by the 1996 constitution.[119] Firstly, the constitution has vested legislative power in him, even in the absence of political crisis. He may thus substitute himself for parliament.[120] This substitution is in breach of Article 2(1) which restricts any individual from arrogating national sovereignty to himself. Yet, if parliament confronts a crisis regarding the legislation-making process, the president is enjoined by article 28(1)(3) of the constitution to promulgate law in lieu of parliament.[121]

Secondly, parliament does not oppose the endorsement of any presidential act – the legislature has become the rubber stamp of the executive. However, parliamentary interaction in Cameroon is dominated by party discipline that requires all members of parliament to abide by party resolutions in assessing legislation tabled before them.[122] Given that the overwhelming majority, being 76 per cent or more, of parliamentarians are members of the ruling party, they can manipulate any situation to the benefit of the party.[123] The system frowns on members of parliament who reject bad decisions emanating from the executive or judiciary. The Honorable Adama Modi's action at the National Assembly is a quintessence in this regard.[124]

Thirdly, Article 64 of the Constitution provides that 'No procedure for the amendment of the constitution affecting the republican form, unity and territorial integrity of the state and the democratic principles which govern the Republic shall be accepted.' Fombad criticises this provision for making the invalidation of a constitutional amendment to rely on a couple of undefined concepts in the constitution such as 'unity' and 'democratic principles'. The obscurity of these concepts could be used as justification to stay the progress of any amendments.[125] More importantly if the President of the Republic simply ignores Article 64 and calls a referendum or uses his majority in parliament to effect an amendment inconsistent with Article 64, can such a controversial amendment be challenged? The answer is clearly set out by Article 47(3). The Constitution of Cameroon, 1996 provides exclusively for a priori review of legislative acts.

In addition, this article clearly spells out the category of persons empowered to refer matters to the Constitutional Council charged with the mandate to test the constitutionality of laws. The persons are political cohorts of the president in addition to the president himself and may therefore not charge the president or the president charge himself to the council. This creates a challenge to the rule of law and constitutionalism at the level of the legislature in terms of constitutional amendments.

The chief executive flouts the rule of law and commits various atrocities while hiding behind the constitution and state sovereignty which he exercises, together with parliament, in the name of the people.[126] The combination of the constitution and state sovereignty permits him to act like a horse without a bridle, promoting disregard for the rule of law and constitutionalism.

2. The Impact of Non-compliance with the Doctrines in Constitutional Amendment on the Executive

Respect for the rule of law and constitutionalism has been trivialised in Cameroon by the chief executive who has monopolised state powers through the centralisation of public structures and has succeeded in influencing the governmental troika[127] in Cameroon to submit to his whims and caprices.[128] This submission is evidenced by the fact that all members of government praise the chief executive, his politics and the progress he has made when given the opportunity to voice their opinions in the media.[129] However, these praises are misplaced and unnecessary as an appraisal of government's practical commitment to these doctrines leaves the lauded efforts of the chief executive questionable.

The flawed constitution which vests extensive powers in the president grants him the leeway to make the government answerable to him rather than to the law. This approach can be traced back to the words of President Modibo Keita of Mali who used the judiciary to expound on the non-existence of the separation of powers or independence of the judiciary in a state because everyone is answerable to the person who appointed them.[130] Biya's ideology makes the situation of Cameroon reminiscent of Bodin's theory of sovereignty: that the monarch has unrestrained powers, his word is law and all citizens are mere subjects who are answerable to him.[131]

Article 63(1) of the constitution gives the president powers to propose amendments to the constitution. Relying on this article, Biya introduced the 2008 amendment to the constitution to manipulate another term of office for himself.[132] The most controversial part of the 2008 amendment is that Article 6(2) appoints him a de facto president for life given that term limits have been scrapped and grants him immunity from prosecution for acts committed during his mandate as president.[133] The content of the amendment caused the anger of aggrieved Cameroonians to spill over and go on the rampage in 2008.[134]

Famous Cameroonian Makossa singer Lapiro de Mbanga was detained because his musical album named Constitution constipée seemed to awaken Cameroonians' will to resist the ills behind the amendment to the constitution.[135] For its part, the Cameroonian government relied upon the powers attributed by the Constitution to the President to amend the Constitution[136] as a reiteration of its commitment to uphold the rule of law and constitutionalism.

3. The Impact of Non-compliance with the Doctrines in Constitutional Amendments on the Judiciary

Disregard for the rule of law and constitutionalism in the judiciary has been legitimised by the constitution of 1996 in Article 37(3) which says the president of the Republic shall be the guarantor of the independence of the judiciary, without elaborating how this is to be realised.[137]

This means the president can legally manipulate the constitution to fit his personal desires. Moreover, Article 47(4) and 48(1) refer matters relating to presidential and parliamentary

elections and even referendum operations to the Constitutional Council which is composed, among others, of nominees of the president. Most of the nominees have extremely limited legal knowledge, revealing that their sole purpose is to guard the president's interest,[138] given that he who pays the piper dictates the tune.

A case in point illustrating judicial submissiveness to the executive resulting in disregard for the rule of law and constitutionalism is the case of Mangwa Stephen & another v. Muyuka Rural Council and others.[139] In this case, the Fako Court of Appeal restored the powers of the courts after jurisdiction was declined at first instance. The Fako Court of Appeal later ruled in favour of the appellant. It was held that the expropriation of the appellant's land by the Muyuka Rural Council was under the jurisdiction of the courts and not the council. The lower court had suggested through its ruling that only the Supreme Court had jurisdiction over such administrative matters. The powers of the local courts are considerably curtailed in favour of the Supreme Court, with the intention of lending support to the government's wilful manipulation of the constitution.[140] The government manipulates the constitution with the hope of rendering the Supreme Court incapable of exercising its duty as the guarantor of institutional independence.[141] This fact is reiterated by the assertion of the Chief Justice Najeme, who presided over the case, who stated in a press interview that she was implementing the instructions of her boss, the Minister of Justice.[142] Certainly she lacked independence and, by extension, a reverberation of government's diminution in conforming to the tenets of the rule of law and constitutionalism.

Moreover, Cameroonian courts lack the review powers that courts in the United States of America and South Africa have, to find laws to be invalid on the basis that they are unconstitutional.[143] In a nutshell, the judiciary does not have the locus standi to rule legislation unconstitutional. This reveals that judges merely interpret the legislation without considering its validity or legality,[144] making Cameroon reminiscent of the apartheid regime in South Africa. In apartheid South African judges merely interpreted statutes but had no constitutional testing rights.[145]

IV. CONCLUSION

Constitutional democracy in Cameroon is exercised in such a manner that government is seen as an almighty sovereign who can only liaise with the people through a ‘top-down’ approach and elite-driven governance,[146] and the citizenry are reduced to silent listeners, taking orders.[147] Even in constitutional amendment processes which will affect the lives of the people, they are neither consulted nor allowed to participate in the processes as demonstrated above. Rousseau has argued that even though government has been assigned the duty to apply and implement the law, all lawmaking authority ultimately vests in the people themselves.[148] If this view of Rousseau is correct, then the conduct of Cameroon's government does not align with the concept of the government holding a trust to the benefit of the citizens.[149] Holding a trust to the benefit of the people entails undertaking constitutional amendments only when it is in the interest of the people who are the ultimate beneficiaries of the trust and not in the interest of government as has been illustrated in the case of Cameroon above. Non-compliance with the doctrines of constitutionalism and respect for the rule of law in constitutional amendments in Cameroon

with regard to the legislative, executive and judicial branches of government has in turn exacerbated and promoted the disregard for the rule of law and constitutionalism by the same government, relying on an unconstitutional amendment which has been transformed into a constitutional source after an amendment by subterfuge.

The betrayal of too trusting a people in the 1961 constitution-making and independence process through reunification demonstrates that the sham process was null and void ab initio and therefore a disregard of the rule of law and constitutionalism and the violation of Article 47 of the Federal Constitution which prohibited the impairment of the federation made the constitutional amendment for a unitary state in 1972 an unconstitutional one.[150] Dixon argues that processes for constitutional amendment must consist of legislative and popular involvement in addition to a formal change in the text of a written constitution.[151] In this regard, the 1960 constitution and the 1961, 1972 and 2008 constitutional amendments ignored the popular participation of Cameroonians.[152] Consequently, these constitutions, instead of promoting the rule of law and constitutionalism, paradoxically stifle and disregard these fundamental constitutional tenets.[153]

A careful observation of the various constitutional amendment processes reveals that the government of Cameroon has not complied in any anyway with the conventional rules against which proper constitutional amendments are to be measured. Consequently, the rule of law and constitutionalism will be, and have been, undermined in Cameroon as a matter of fact and this unfortunate eventuality may and has in fact inspired governance epitomised by arbitrary rule, autocracy, authoritarianism and despotism in Cameroon. Accordingly, constitutional amendments in Cameroon have become strange bedfellows with the rule of law and constitutionalism.

V. REFLECTION ON THE WAY FORWARD

The prime objective of any constitutional amendment should be to empower the people and entrench their power while concurrently limiting government's power over them. However, when government's conduct portrays it as constantly fulfilling its own interests at the expense of that of the people, that government through its amendment processes only succeeds in systematically entrenching the putrescent past informed by colonialism and dictatorship.

It must be acknowledged that Africa's terrain in general is not very conducive for the practice of democracy. Given this fact, democracy can neither be a panacea nor a silver bullet that resolves all crises in Africa. Consequently, amendments engaged by the people themselves may result in a placebo, inadequate to completely fix the backlashes of constitutional democracy. Nevertheless, there exist myriad arguments to prove that Cameroon can progressively do better with its current state of democracy than it is doing.

African countries, including Cameroon, stray far apart from the ideals or minimum requirements of democracy with the excuse that the terrain is not conducive for its practice. While most African countries are struggling to get a grip on the practice of democracy in general, at least the progress of countries like Benin, Ghana and South Africa testify to the belief that Cameroon can do better regardless of its history. Benin, formerly under French

rule as with Cameroon, has an independent Constitutional Court which protects the rights of the people. In addition, Articles 154 and 155 make it difficult for the president of the Republic to manipulate the business of constitutional amendments. Article 154 contemplates a stringent threshold of a three-fourths majority of the National Assembly in order to consider an amendment proposal. Article 155 makes it even tougher as it requires the approval of a four-fifths majority of the National Assembly if the amendment is not approved in a referendum. In a very executive-dominated constitution such as that of Ghana, Article 290(4) states that:

> After the bill has been read the first time in Parliament it shall not be proceeded with further unless it has been submitted to a referendum held throughout Ghana and at least forty percent of the persons entitled to vote, voted at the referendum and at least seventy-five percent of the persons who voted cast their votes in favour of the passing of the bill.

In Article 291, a non-entrenched provision of the constitution shall not be introduced into parliament. Where parliament approves such a bill, presidential assent will only be allowed where the bill was approved by a second and third reading and voted for by at least two-thirds of all members of parliament. Furthermore, the judiciary is very independent so as to independently implement such constitutional provisions.[154] The strict independence of the Ghanaian judiciary has consistently led to a standoff between the judiciary and the executive against whom the judiciary has passed a number of bold and daring judgments. The Constitutional Court of South Africa has proven to be a veritable custodian of human rights and this institution makes sure that amendments in the nature of the national interest put the people first. Cameroon is supposed to emulate such examples.

Three ways are proposed to fix this problem. To abrogate the constitution and rebuild it from scratch, the position of the Constitutional Council should be strengthened, given that it is currently over-compromised and cannot rule against the president and the irrational presidential privileges which give him the advantage to undertake constitutional amendments without question. If in reality the Constitutional Council (CC) exists to protect the human rights of the Cameroonian citizenry, then the citizenry must be vested with locus standi to lodge complaints or make appearances before the council. Presidential powers should be reduced accordingly. He may only participate in ordinary amendments which enable him to execute his policies and politics as the head of state.[155]

It must be noted that the enumerated recommendations are neither proposed to the current autocratic regime who will likely not pay heed as the same may be against their interest, nor to the international community who cannot intervene in the affairs of a sovereign state. Cameroonians themselves must assume the responsibility.

Notes

1 J. Mbaku, 'Decolonization, Reunification, and Federation in Cameroon', in J. Mbaku and J. Takougang (eds) The Leadership Challenge in Africa: Cameroon under Paul Biya (Africa World, 2003): 10 and 46. N. Awasom, 'Politics and Constitution-making in Francophone Cameroon, 1959–1960', 49 Africa Today (2002): 21 and 24.

2 Because the source of the power is constitutional – Article 63(1) and 36(1)(a) of the Cameroon constitution of 1996 amending the 1972 constitution.

3 B. Ndifor, 'The Politicization of the Cameroon Judicial System', Regent Journal of Global Justice and Public Policy (2014): 36.

4 Ibid., 43.

5 E. Christodoulidis, 'Constitutional Irresolution: Law and the Framing of the Society', European Law Journal (2003): 424.

6 It must also be noted here that though France only exercised mandatory powers over Cameroon in principle, in practice France treated Cameroon as a colony. The Cameroonian elites were the instrument used by the colonial government to enforce continuous dependence on France despite achieving independence on 1 January 1960. Awasom, supra, note 1, pp. 21 and 24.

7 Article 63(1) attributes constitutional amendment powers to the president of the Republic. Nevertheless, the defective nature of the constitution makes this right illegitimate and unconstitutional.

8 L. Fuller, The Morality of Law (Yale University Press, 1969): 97.

9 Ibid.

10 While France and England exercised trusteeship powers on behalf of the UN over the two parts of Cameroon and have never been de jure colonial masters of any of the two Cameroon territories, Anyangwe holds that de facto they were administered and treated as colonies. C. Anyangwe, The Cameroonian Judicial System (CEPER, 1987): 4.

11 C. Fombad 'Researching Cameroon Law' <http//www.nyulawglobal.org/Cameroon.htm> (accessed 9 December 2017). (Fombad <www.nyulawglobal.org>.

12 Le Vine, The Cameroons: From Mandate to Independence (University of California Press, 1964): 7.

13 Ibid., 11.

14 Cameroon: Fragile State?Africa Report No. 160 (2010): 2.

15 Mbaku, supra, note 1, p. 46.

16 Ibid.

17 A. Ndedi, In the Name of Democracy: Dynamics of Elections in Cameroon (PULP, 2008): 34.

18 C. Anyangwe, Imperialistic Politics in Cameroon: Resistance and the Inception of the Restoration of the Statehood of Southern Cameroons (Langaa Research & Publishing, 2008): 130–3.

19 Ndedi, supra, note 17, p. 38.

20 Takougang, supra, note 1, p. 102.

21 'Issued Constitution' – 'Issued' because President Ahidjo carried out a peaceful constitutional coup since there was the absence of any physical massacre (Ndedi, supra, note 18, p. 30). To make his activity appear as though the rule of law and constitutionalism were respected, he arranged for a referendum in this regard, for the 20 May 1972. The referendum was a farce. President Ahidjo had personally drafted the Constitution with the assistance of his French constitutional law expert,

Professor Maurice Duverger, who reviewed the document before it was secretly typed by his tribesman Ousmane Mey. Worse still, the questions prepared for the referendum did not allow room for citizens to properly decide what they wanted. The outcome of the referendum was already a foregone conclusion in favour of a unitary state as masterminded by Ahidjo: Anyangwe, supra, note 18, p. 109.

22 Ndedi, supra, note 17, p. 32.

23 It was a sham because the Southern Cameroonians were bewildered by the manner in which President Ahidjo employed his referendum ploy to despotically get rid of the federal constitution of 1961. To buttress his constitutional gimmick, he made sure the referendum questions asked were all to his advantage.

24 C. Fombad, 'Cameroon's Troubled Democratic Transition and the Deconstruction of the Federalist Problematic', in F. Columbus (ed.) 3 Politics and Economics of Africa (2002): 52. The conference took place between October and November 1991 and was essentially comprised of the President's appointees and operated within a restricted agenda. Heeding to pressure from the delegates, the conference decided to establish a TCCM. Composed of seven Francophones and four Anglophones, the committee was charged with the duty of formulating the outlines of a 'new' constitution.

25 Ibid., 53.

26 T. Ginsburg, Written Constitutions and the Administrative State: On the Constitutional Character of Administrative Law', Public Law and Legal Theory Working Paper No. 331 (2010) < http://ssrn.com/abstract=1697222122> (accessed 20 December 2016).

27 Ibid.

28 H. Barnett, Constitutional and Administrative Law (Taylor & Francis, 2006): 67.

29 A. Dicey, Introduction to the Study of the Law of the Constitution (St. Martin's Press, 1959): 42.

30 Ibid.

31 Ibid.

32 Ibid.

33 Ibid. It should be noted that at the time Dicey propounded his three-tier principles, parliamentary sovereignty was at its peak in the UK and rights were believed by Dicey to be better protected by common law than the constitution. However, today, in the wake of constitutional democracy, this argument no longer holds water.

34 Ibid.

35 H. Barnett, Constitutional and Administrative Law (Cavendish, 2000): 85.

36 Ibid.

37 A. Bedner, 'An Elementary Approach to the Rule of Law', 2 Hague Journal on the Rule of Law (2010): 67–8.

38 C. Sypnowich, 'Utopia and the Rule of Law', in D. Dyzenhaus (eds) Recrafting the Rule of Law (Hart, 1999): 180.

39 Barnett, supra, note 35: p. 77.

40 B. Tamanaha, On the Rule of Law: History, Politics, Theory (Cambridge University Press, 2004): 52.

41 M. Radin, 'Reconsidering the Rule of Law', in R. Bellamy, The Rule of Law and the Separation of Powers (Routledge, 2005): 44.

42 Ibid.

43 A. Dicey, Introduction to the Study of the Law of the Constitution (Macmillan, 1885): 45.

44 Barnett, supra, note 35, p. 85.

45 M. Vile, Constitutionalism and the Separation of Powers (Clarendon Press, 1967): 13.

46 Ibid., 17.

47 Quoted in S. Gloppen, South Africa: The Battle over the Constitution (Taylor & Francis, 1997): 47.

48 S. De Smith, 'The New Commonwealth and Its Constitutions', in J. Hatchard, M. Ndulo and P. Slinn, Comparative Constitutionalism and Good Governance in the Commonwealth: An Eastern and Southern African Perspective (Cambridge University Press, 2004): 1.

49 Ibid.

50 B. O. Nwabueze, 'A Constitutional Democracy and a Democratic Constitution', in Democracy and the Law: Papers Presented at the Second Conference of the Body of Attorneys-General in the Federation, 12 September, Abuja, Nigeria (1991): 1.

51 Ibid., 2.

52 Ibid., 2.

53 A. Mangu, 'Constitutional Democracy and Constitutionalism in Africa', 2 Conflict Trends (2006): 4.

54 J. Olaka-Onyango, 'Constitutionalism in Africa: Yesterday, Today and Tomorrow', in J. Olaka-Onyango, Constitutionalism in Africa: Creating Opportunities, Facing Challenges (Fountain, 2001): 94.

55 N. Hedling (International Institute for Democracy and Electoral Assistance), A Practical Guide to Constitution Building: Principles and Cross-cutting Themes (2011): 17.

56 Ibid.

57 Ibid., 15.

58 S. Woolman, T. Roux and M. Bishop, Constitutional Law of South Africa (Juta, 2007): 35.

59 Constitution of the Republic of South Africa, 1996, ch.1.

60 2000 (2) SA 674 (CC).

61 CCT31/99 [2000] ZACC1; 2000 (2) SA 674; 2000 (3) BCLR 2241 (25/02/2000).

62 Barnett, supra, note 28, p. 67.

63 J. Limbach 'The Concept of the Supremacy of the Constitution', Modern Law Review (2001): 2.

64 Ibid.

65 Ibid.

66 Ibid., 3.

67 Ibid.

68 H. Ebrahim, Soul of the Nation: Constitution-making in South Africa (1998): 159. C Murray, 'Negotiating Beyond Deadlock: From the Constitutional Assembly to the Court', in P. Andrews and S. Ellmann, Post-apartheid Constitutions: Perspectives on South Africa's Basic Law (New York Law School Review, 2001): 122.

69 R. Albert, 'Constitutional Amendment by Constitutional Desuetude', American Journal of Comparative Law (2014): 643.

70 Ibid.

71 Ibid., 644.

72 Ibid.

73 Y. Roznai, Unconstitutional Constitutional Amendments: The Limits of Amendment Powers (Oxford University Press, 2017): 111.

74 Ibid.

75 Ibid.

76 Ibid.

77 Ibid., 117.

78 Ibid., 117.

79 Y. Roznai, 'Unconstitutional Constitutional Amendments – The Migration and Success of a Constitutional Idea', American Journal of Comparative Law (2013): 657–719, at p. 679.

80 G. Halmai, 'Unconstitutional Constitutional Amendments: Constitutional Courts as Guardians of the Constitution?', Constellations: International Journal of Critical and Democratic Theory (2012): 182–203, at p. 182.

81 Ibid., 183.

82 Ibid.

83 Ibid., 191.

84 Flexibility in the invention and renewal of constitutions. E. Nforbin, 'The Francophone/Anglophone split over Article 47 of the Constitution of the federal republic of Cameroon: An Abiding Malaise with an Explosive Charge', African Journal of International and Comparative Law (2017): 538–60, at p. 542.

85 Ibid.

86 Ibid., 548.

87 Y. Roznai '"We the people", "Qui, the people" and the Collective Body: Perceptions of Constituent Power', in G. Jacobsin and M. Schor, Comparative Constitutional Theory (2017): 12.

88 Ibid., 551.

89 K. Loewenstein, ‘The Demise of the French Constitution of 1875’, XXXIV American Political Science Review (1940): 867–8.

90 G. Mader, ‘Generation Gaps and Ties that Bind: Constitutional Commitments and the Framers’ Bequest of Unamendable Provisions', Howard Law Journal (2017): 483–517, at p. 485.

91 Ibid., 486.

92 C. Fombad, ‘The New Cameroonian Constitutional Council in a Comparative Perspective: Progress or Retrogression?’, 2 Journal of African Law (1998): 175.

93 C. Fombad, ‘Challenges to Constitutionalism and Constitutional Rights in Africa and the Enabling Role of Political Parties: Lessons and Perspectives from Southern Africa’, 55 American Journal of Comparative Law (2007): 20.

94 Ibid.

95 Ibid., 1.

96 Ndifor, supra, note 3, p. 47.

97 Ibid.

98 Ibid., 48.

99 V. Le Vine, The Cameroon Federal Republic (Cornell University Press, 1971): 81.

100 Ibid.

101 Constitution of the Republic of Cameroun, 1960.

102 Ibid.

103 Ibid.

104 Ibid.

105 N. Wakai, Under the Broken Scale of Justice: The Law and My Times (Langaa Research & Publishing, 2009): 110.

106 V. Fanso, ‘Constitutional Problems in the Construction and Legality of the Unitary State in Cameroon’, 3 Cameroon Journal of Democracy and Human Rights (2009): 7–8.

107 Anyangwe, supra, note 18, p. 42.

108 Ibid., 43.

109 Ibid.

110 Meaning ‘yes’.

111 Anyangwe, supra, note 18, p. 43.

112 P. Konings and F. Nyamnjoh, Negotiating an Anglophone identity: A Study of the Politics of Recognition and Representation in Cameroon (Brill, 2003): 89.

113 Ibid.

114 Fombad, supra, note 92, p. 172.

115 V. Ngoh 'Biya and the Transition to Democracy', in J. Mbaku and J. Takougang (eds) The Leadership Challenge in Africa: Cameroon under Paul Biya (Africa World, 2004): 442.

116 C. Fombad, 'Cameroon's Troubled Democratic Transition and the Deconstruction of the Federalist Problematic', in F. Columbus (ed.) 3 Politics and Economics of Africa (2002): 53.

117 C. Fombad and N. Inegbedion, 'Presidential Term Limits and Their Impact on Constitutionalism in Africa', in C. Fombad and C. Murray, Fostering Constitutionalism in Africa (PULP, 2010): 13.

118 W. Ross, 'Cameroon Makes Way for a King', BBC News (2008) <http://news.bbc.co.uk/2/hi/africa/7341358.stm> (accessed 20 December 2016).

119 See Articles 5–10.

120 Wakai, supra, note 105, p. 95. Articles 8(8), 27 and 28(1).

121 The Constitution of the Republic Cameroon of 1996, Part IV.

122 K. Nsom, 'Confusion in Parliament as CPDM MP Challenges Cavaye', Up Station Mountain Club <https://www.postnewsline.com/2007/09/confusion-in-pa.html> (published in 2007).

123 Assembly Bureau Elections: 2008.

124 Assembly Bureau Elections: 2008. Hon. Adama Modi opposed the Bill to amend the Constitution to allow Biya to stand for another term of office. For this reason, he was forced to resign.

125 Fombad, 'Constitutionalism in Cameroon' (2012): 56.

126 Article 2(1).

127 Legislature, executive and judiciary.

128 J. Mbaku, 'The Separation of Powers, Constitutionalism and Governance in Africa: The Case of Modern Cameroon' (2013): 5. Available at https://works.bepress.com/john_mbaku/7/>.

129 'Je remerçi d'abords son excellence le Président de la République, Mr Paul Biya …' ('I will begin by first thanking his Excellency the President of the Republic …).

130 Z. Fouman, 'L'independence des juridictions constitutionnelle en Afrique noire francophone et à Madagascar', 57 Juris Periodic (2004), 99.

131 L. Glanville, 'The Antecedents of Sovereignty as Responsibility', 17 (2) European Journal of International Relations (2010): 6.

132 France 24 Africa, 'Changing the Constitution to Remain in Power' <https://www.france24.com/en/20091023-changing-constitution-remain-power> (issued in 2009 and modified in 2013).

133 Constitution of Cameroon, 1996, Article 53(3).

134 Constitution of Cameroon, 1996, Article 53(3).

135 Constitution of Cameroon, 1996, Article 53(3).

136 Constitution of Cameroon, 1996, Article 63(1).

137 C. Fombad, 'Judicial Power in Cameroon's Amended Constitution of 18 January', 9 Lesotho Law Journal (1996): 1.

138 Ibid.

139 No. CASWP/6/19911998 2 CCLR.

140 M. Yanou, 'The Local Courts, Decentralization and Good Governance: The Case of the English-speaking Provinces of Cameroon', 5 International Journal of Human Rights (2009): 694.

141 Ibid.

142 Ibid.

143 S v. Makwanyane 1995 3 SA 391 (CC).

144 O. Doyle, 'Legal Positivism, Natural Law and the Constitution', Dublin University Law Journal (2009): 207.

145 E. Bjornlund, 'The Devil's Work? Judicial Review under a Bill of Rights in South Africa and Namibia', Stanford Journal of International Law (1989–90): 397.

146 J. Mbaku, 'Judicial Independence, Constitutionalism and Governance in Cameroon: Lessons from French Constitutional Practice', European Journal of Comparative Law and Governance (2014): 366–7.

147 W. Nkwi, 'The Counting of Votes That Have Never Counted: Reading into the 2011 Presidential Elections in Cameroon', 15 Cameroon Journal of Democracy and Human Rights (2011): 10.

148 J. Vile, The Constitutional Amending Process in American Political Thought (Praeger, 1992): 14.

149 T. D. Beshi and R. Kaur, 'Public Trust in Local Government: Explaining the Role of Good Governance Practices', Public Organisation Review (2020): 337.

150 Fanso, supra, note 106, pp.12 and 13.

151 R. Dixon, Constitutional Amendments Rules: A Comparative Perspective, Public Law and Legal Theory Working Paper Series (2011) <http://www.law.uchicago.edu/academics/publiclaw/index.html>.

152 Anyangwe, supra, note 18, pp. 42–3.

153 Constitution of the Republic of Cameroon, 1996, Article 53(1) and Article 6(2): 90.

154 K. Prempeh, 'How Not to Write an African Constitution: Reflections on Ghana's Current Constitutional Review' (2012) <https://vimeo.com/24892737> (accessed 15 December 2016).

155 J. Locke, The Second Treatise of Civil Government (1690): 92. See also legislated policy control from executive influence: M. Etonga, 'An Imperial Presidency: A Study of Presidential Power in Cameroon', in N. Kofele-Kale (ed.) An African Experiment in Nation-building: The Bilingual Cameroon Republic since Reunification (Westview Press, 1980): 146.