

ELECTION MANAGEMENT IN CAMEROON: CAN ELECTIONS
CAMEROON (ELECAM) TURN THE TIDE OF FLAWED ELECTIONS?

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PLAGIARISM DECLARATION

I, TEM FUH MBUH do hereby declare that the dissertation '**Election management in Cameroon: Can Elections Cameroon (ELECAM) turn the tide of flawed elections?**' is my original work and that it has not been submitted for any degree or examination in any other university. Wherever other sources are used or quoted, they have been duly acknowledged.

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DEDICATION

This work is dedicated to all those who sacrificed their lives to fight for democratic reforms in
Cameroon

ACKNOWLEDGMENT

I am most grateful and heavily indebted to my family for their unfailing love, concern and prayers for my well-being and success. May the Lord bless you plenteously.

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ACRONYMS

Unless the context requires otherwise, the following abbreviations stand for:

ACHPR	African Charter on Human and Peoples' Rights
ACHR	American Convention on Human Rights
CENA	Commission Electorale Nationale Autonome of Senegal
CPDM	Cameroon People's Democratic Movement
DGE	Directorate General of Elections
EB	Electoral Board of Elections Cameroon
EC	Electoral Commission of Ghana
EISA	Electoral Institute of Southern Africa
ELECAM	Elections Cameroon
EMB	Election Management Body
ICCPR	International Covenant on Civil and Political Rights
IDEA	International Institute for Electoral Assistance
IEC	Independent Electoral Commission of South Africa
IFES	International Foundation for Election Systems
MINADT	Ministry of Territorial Administration and Decentralization
NDI	National Democratic Institute for International Affairs
NEO	National Elections Observatory
ONEL	Observatoire Nationale des Elections
SET	Supreme Electoral Tribunal of Costa Rica
UNDP	United Nations Development Program

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Chapter one: Introduction

1.1 Background

The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by equivalent free voting procedures¹

The right to participate freely in the government of one's country is recognized and protected in many international human rights instruments. These include the African Charter on Human and Peoples' Rights (ACHPR),² the International Covenant on Civil and Political Rights (ICCPR),³ the European Convention for the Protection of Human Rights and Fundamental Freedoms⁴ and the American Convention on Human Rights (ACHR).⁵ This right has generally been understood to include among others things, the right to vote and be voted through an election process that is free, fair transparent and convincing.⁶

The free expression of the will of the people by a secret and equal vote, through a universal, transparent and participatory election process is considered the cornerstone of an inclusive and sustainable democracy. The right to vote and be voted can however be constrained in a myriad of ways by unscrupulous, power-hungry and irresponsible governments for selfish political ends. Governments in many self-declared democracies around the world today, have highly manipulative tendencies which render the electoral process a façade and democracy, largely meaningless.⁷

Many elections in flawed democracies⁸ are characterized by vote rigging, irregularities in the observance of electoral laws, abuse of the electioneering process and violence targeted at opposition political parties. This state of affairs has been attributed among others, to the absence of credible electoral institutions. This situation has led to very unpleasant results in many instances especially in Africa resulting in violence and unrest.⁹ Though not sufficient to

¹ Art 21(3) Universal Declaration of Human Rights 1948.

² Art 13 of the ACHPR.

³ Art 25 ICCPR.

⁴ Art 3 of Protocol No 1

⁵ Art 23 ACHR

⁶ See *Constitutional Rights Project and Another v Nigeria* (2000) AHRLR 191 (ACHPR 1998) para 50.

⁷ M Trebilcock & P Chitalkar 'From nominal to substantive democracy: The role and design of election management bodies' (2009) 2 *Law and Development Review* 196.

⁸ *Note*: flawed democracy is used here in terms of the Democracy Index of the Economist Intelligence Unit classifications.

⁹ The example of recent presidential elections in Kenya (2007) and Zimbabwe (2008) is illustrative of this fact.

guarantee free and fair elections in themselves, credible electoral institutions are a necessary condition for convincing elections because the overall legitimacy and acceptability of an election depend largely on the integrity of the electoral institution and its management of the electoral process. Election Management Bodies (as they are generally referred to) are pivotal institutions at the heart of the electoral process for three main reasons. First, they have an enabling function in that they establish the practical framework in which credible elections can take place. Secondly, they have a supervisory function in that they monitor the activities of other actors in the electoral process and identify and remedy malpractices. Lastly, they have an education and communication function by carrying out civic education on the electoral process.¹⁰ An election management body (EMB) that is independent, impartial, professional and transparent and enjoys the trust of the people can play a crucial role in ensuring the credibility of an election and enhancing public and political confidence in it.

Alive to this reality, governments have been urged in numerous international fora to create independent, all inclusive, competent and accountable electoral institutions manned by well trained staff and equipped with adequate logistics to oversee the election process.¹¹

Since the re-introduction of multi-party politics in Cameroon in 1990, several presidential, parliamentary and municipal elections have been held. The outcome of all these elections have been hotly contested with most stake holders labeling them as seriously flawed and failing to reflect the will of the people. Renowned international bodies involved in election observation such as the Commonwealth, the National Democratic Institute for International Affairs and the International Foundation for Election Systems have observed elections in Cameroon and their reports have all been dismissive of the process as a façade.

This state of affairs has largely been blamed on the lack of a credible and independent elections management body, given the fact that elections in Cameroon have hitherto been managed by institutions that are not trusted by most stakeholders. Before 2001, elections in Cameroon were exclusively managed by the Ministry of Territorial Administration and Decentralization (MINADT)¹². Due to the fact that the MINADT was highly biased and manipulated election results in favor of the ruling party, the National Elections Observatory (NEO) was created to remedy this problem.¹³ However, NEO's mandate did not permit it to take an active part in the election management process. It was limited to supervising and

¹⁰ See Sara Birch 'Electoral management institutions and electoral integrity: Evidence from Eastern Europe and the former Soviet Union available on <http://www.essex.ac.uk/government/electoralmalpractice/> (accessed 20/07/10).

¹¹ See for example the 2002 Durban Declaration on the Principles Governing Democratic Elections in Africa para III (c); see also General Comment No 25 of the Human Rights Committee on the Right to Participation in Public Affairs para 20.

¹² This is the Francophone equivalent of the Interior Ministry in most Anglophone jurisdictions.

¹³ See Law No 2000/016 of 19 December 2000 to establishing the NEO.

controlling elections while the actual organization of the elections remained with the much criticized MINADT. NEO's role in the organization of elections in Cameroon since 2002 has been heavily criticized as ineffective and biased.¹⁴ There has therefore been a gradual and dangerous institutionalization of autocratic rule in Cameroon masked in democratic garments, thanks to flawed elections occasioned by poor management.

Due to intense pressure from opposition political parties, civil society and the international community, the Cameroon government in 2006 created Elections Cameroon (ELECAM) as the sole body responsible for managing the entire election process¹⁵. However, the body was only officially made functional in January 2010 with the signing and transfer of all electoral documents to ELECAM from MINADT. The creation of ELECAM and the impending challenge of it having to manage the 2011 presidential elections in Cameroon have raised a lot of debate as to whether it can, given its mandate, institutional and legislative framework, meet this challenge and ensure a credible ballot. It is within this context that this work situates itself, and seeks to examine whether this structure is fully empowered in terms of its independence, non partisanship and professional capacity to credibly manage an entire election process.

1.2 Research questions and objectives

The integrity of the management of an election process is one of the most crucial factors that determine its overall legitimacy and acceptability. The main questions that this work seeks to answer are the following:

- What are the prerequisites or criteria for determining the credibility and integrity of an election management body (EMB)?
- What were the weaknesses of MINADT and NEO that led to flawed elections?
- Does ELECAM's mandate in terms of the law establishing it meet these criteria?
- What are the weaknesses of ELECAM if any?
- How can these weaknesses be improved upon to enhance its credibility and performance?

¹⁴ See C Fombad 'Election management bodies in Africa: Cameroon's National Elections Observatory in perspective' (2003) 3 *African Human Rights Law Journal* 25 – 51.

¹⁵ See Law No 2006.011 of 29 December 2006 to set up and lay down the Organization and Functioning of Elections Cameroon.

The main objectives of this research are to analyze the mandate of ELECAM as an EMB with reference to internationally accepted standards and practices, identify any weaknesses and explore ways of improvement through recommendations.

1.3 Statement of research problem

Elections in Cameroon have lost their relevance as a weapon in the hands of the people to hold their government accountable and as a vehicle for democratization. Instead, elections have been used to stall the democratization process and perpetuate the stay of leaders in power even against the will of the people. Elections in Cameroon have been marred by fraud and numerous irregularities and these have been blamed on the poor administration of these elections. This situation has been exacerbated with the creation by the government, of phony election management institutions that lack all the guarantees of independence, credibility and effectiveness that these institutions are supposed to have.

1.4 Significance of the research

Democratic elections are the basis of the authority of any representative government. Free, fair, credible and convincing elections constitute a key element of the democratization process and are essential ingredients of good governance, the rule of law, the maintenance and promotion of peace, security, stability, development and the respect for human rights. The centrality of elections to liberal democracy is premised on the assumption that there are institutions in place to organize credible elections.

A credible EMB is one of the most important institutions that are decisive in influencing the outcome of an election and its overall legitimacy and acceptability. Such a body has been lacking in Cameroon since independence and the creation of ELECAM could be a great booster to the drive for democratization in Cameroon if the body is sufficiently strengthened and insulated from manipulation. It is within the context of strengthening ELECAM that this research finds its significance. This is necessary because a smooth transition in Cameroon through the ballot is indispensable for genuine democratization and peace.

1.5 Methodology

This research relies primarily on literature review. Desktop research will constitute a major part of the work. While critically analyzing the mandate of ELECAM, the mandate and functioning of other EMBs around the world that have proved their worth in election

management and relevant international standards and practices will be used as yardsticks for comparison and comments.

1.6 Limitations of the study

This work only focuses on election management in Cameroon since the re-introduction of multiparty politics in 1991. The work is limited to an analysis of the mandate of ELECAM within the context of the law creating the institution. Other aspects of the electoral process do not fall within the purview of this research.

1.7 Literature review

The need to establish independent and impartial electoral bodies to supervise the electoral process has been stressed by the Human Rights Committee.¹⁶ Many international organizations such as the UNDP, the International Foundation for Election Systems (IFES), the International Institute for Democracy and Electoral Assistance (IDEA),¹⁷ the Electoral Institute of Southern Africa (EISA)¹⁸ and a host of other institutions involved in electoral issues have published extensively on best practices for electoral administration and EMBs. *Rafeal Lopez Pintor*, in a UNDP publication, has made a general survey of EMB types in the world with a special emphasis on the factors that affect their efficiency.¹⁹ The role and design of EMBs has been examined by *Trebilcock & Chitalkar* who set out some normative benchmarks against which the credibility of an EMB can be gauged.²⁰

The management of elections in Cameroon has equally been the subject of some scholarly works and MINADT and NEO's role in the electoral process have generally been condemned by scholars who have engaged with the issue. *C Fombad* has maintained that NEO and MINADT were mere tools in the hands of the regime that it manipulated to maintain a stranglehold on power.²¹ *N Nshiyoyo* argues that the organization of elections in Cameroon by the duo, NEO and MINADT, has been the major cause of flawed elections due to the fact that

¹⁶ See n 7 above.

¹⁷ See IDEA 'Code of conduct for the ethical and professional management of election' (2007)

¹⁸ EISA 'Principles for election management, monitoring and observation in the SADC Region' (2003)

¹⁹ R Lopez-Pintor *Election Management Bodies as Institutions of Governance* (2000) UNDP

²⁰ M Trebilcock & P Chitalkar 'From nominal to substantive democracy: The role and design of election management bodies' (2009) 2 *Law and Development Review* 196

²¹ C Fombad 'Election management bodies in Africa: Cameroon's National Elections Observatory in perspective' (2003) 3 *AHRLJ* 25 – 51.

these bodies lacked independence and credibility and were susceptible to manipulation by the government.²²

The creation of ELECAM has not yet generated much literature. However, some international donor organizations and partners of the Cameroon Government have reacted differently to the creation of this body. While the Commonwealth for example, sees ELECAM as a move in the right direction for the consolidation of the democratization process in Cameroon,²³ the European Union has generally been skeptical about its independence and capacity to organize convincing elections in Cameroon.²⁴ Some major weaknesses in the law creating ELECAM have equally been pointed out by *Kijem Yuh* who concludes that these must be improved upon if ELECAM is to make any difference.²⁵

The above literature review reveals that the criteria necessary for an election management body to be considered credible and various election management bodies have been treated each in isolation. None of the works reviewed have made an attempt to apply the principles or criteria to a specific EMB in order to determine its compatibility with the standards. This leaves a major lacuna which this work seeks to bridge by applying the requisite criteria to ELECAM in order to determine the extent to which its mandate is informed by international standards of election management bodies and election administration as a whole.

1.8 Chapter outline

The preceding section of this work constitutes chapter one of the research. Chapter two examines the concept of election management/EMBs and sets out the prerequisites for such a body to be considered credible. Chapter three, deals with the management of elections in the MINADT/NEO era and sets out the major criticisms and weaknesses that these bodies had. Chapter four examines ELECAM and makes a determination of the extent to which its mandate is informed by the criteria referred to in chapter two. An attempt is also made to bring out the weaknesses of ELECAM from a comparative perspective. Chapter five concludes the work with recommendations and suggestions for strengthening ELECAM.

²² N Nshiyoyo 'Cameroon EMB case study' available on <http://aceproject.org/ero-en/region/africa/CM/case-study-cameroon.doc/view> (accessed 27/06/10).

²³ See <http://www.thecommonwealth.org/news/160566/270207mugasha/lauds/Cameroon.htm> (accessed 29/06/10).

²⁴ See <http://www.newstimesafrica.com/archives/6216> (accessed 29/06/10).

²⁵ K Yuh 'The shortcomings of elections cameroon within the electoral dispensation of Cameroon' (2010) 4 *Cameroon Journal of Democracy and Human Rights*.

Chapter two: The concept of election management and the standards for the credibility of an EMB

2.1 Introduction

This chapter briefly explores the concept of election management and attempts to define an election management body and the activities that commonly fall within the purview of the mandate of election management bodies. It also briefly examines EMB types that exist in the world today and makes an attempt to propose the model that is most suitable for Cameroon, taking into consideration the prevailing political context. This is then followed by an in-depth examination of the international standards and practices that are commonly accepted as being critical and necessary for the integrity and efficiency of EMBs.

The *raison d'être* of this chapter is to set the context for this research by outlining the principles and standards of election management and the minimum requirement to which EMBs must adhere in order for them to inspire confidence in the electorate and stakeholders. This will serve as a reference point for subsequently examining the flawed nature of elections in Cameroon and how this can be attributed to poor management. The international minimum standards for EMBs will also serve as a basis for the analysis of the mandate of ELECAM to determine whether it could make a difference in managing elections in Cameroon.

2.2 The concept of election management and election management bodies

Election management or election administration, as it is commonly called, is an administrative undertaking of considerable size and complexity involving a series of operations, actors and institutions and intricate monitoring activities.²⁶ According to *Trebilcock & Chitalkar*:²⁷

Election administration is the broad institutional frame work within which voting and electoral competition takes place. It involves rule making i.e. designing the basic rules of the electoral process, rule application i.e. applying those rules to organize the electoral process and rule implementation i.e. resolving disputes arising within the electoral process.

Election management is essentially the mechanics of how elections are run, ranging from preparation for the election, the methods by which people cast their ballots to how the winners are declared. It involves a whole range of activities including running elections on election day as well as all pre and

²⁶ See Joe Baxter 'Techniques of effective election management' (1994) *African Election Colloquium* 1.

²⁷ See Trebilcock & Chitalkar (n 20 above) 199.

post election activities such as maintaining voter registration lists, drawing electoral boundaries, selecting polling sites, procuring equipment, recruiting and training poll officials, canvassing the vote and implementing the electoral law.²⁸

Election management is a very complex activity and requires specialist skills for an effective management of the electoral process. This makes the establishment of specialized institutions responsible for election management very necessary. Many of such institutions exist around the world in various forms, shapes and sizes and are variously referred to as ‘Election Commission’, ‘Department of Elections’, Electoral Council’, Electoral Unit’ or ‘Electoral Board’. The term ‘electoral management body’ is a generic term that has been coined to refer to the body or bodies that are responsible for the management of elections; the differences in form, size and title notwithstanding. Simply put, an electoral management body is the formal unit which is principally responsible for the organization and conduct of election.²⁹

According to the *ACE Electoral knowledge Network*:³⁰

An EMB is an organization which has been founded for the purpose of, and legally responsible for, managing one or more of the essential elements that are essential for the conduct of elections and of direct democracy instruments such as referendums, citizen initiatives and recall votes if those are part of the legal framework

The essential elements referred to above include activities such as determining who is eligible to vote, receiving and validating the nominations of electoral participants, conducting balloting, counting votes and totaling votes from various polling stations. Depending on the legal framework, the mandate of most EMBs also include the authority to conduct voter registration, boundary delimitation, voter education, electoral dispute resolution, oversight of campaign financing and procurement of electoral materials.³¹

²⁸For an elaborate discussion on election management activities, see IDEA ‘*Code of conduct for the ethical and professional administration of elections*’ (1997) 7; see also <http://earc.berkeley.edu/faq.php> (accessed 16/08/10).

²⁹ See Saheen Mozaffar ‘Patterns of electoral governance in Africa’s emerging democracies’ 23 *International Political Science Review* 1(2002).

³⁰ Ace Electoral Knowledge Network available on <http://aceproject.org/ace-en/topics/em/ema/ema01> (accessed 16/08/10).

³¹ As above.

2.3 Types of electoral management bodies

Studies on EMB types around the globe have come up with three broad categories into which any EMB can be classified depending on aspects such as institutional arrangements, composition, formal accountability, funding and the terms of office of members of the EMB. These categories are the non-autonomous EMB (located within the formal government bureaucracy), the semi-autonomous EMB (located within the formal government bureaucracy but under the supervision of an autonomous body established for that purpose) and the autonomous EMB, commonly referred to as an Independent Electoral Commission.³²

The non autonomous EMB is said to follow a governmental approach due to the fact that elections are mostly conducted by regular civil servants and the electoral process is entirely in the hands of the government. This EMB type is very common in Western European countries where the democratic culture is well developed. This EMB type is exemplified by France where election management at the national level is entirely in the hands of the Ministry of the Interior. The semi-autonomous or mixed model is an EMB type in which elections are managed by the executive branch through a ministry with some level of oversight provided by an independent component of the EMB.³³

The autonomous EMB or what is commonly called the Independent Electoral Commission is the most prevalent among EMB types in the world today. A survey carried out by *R Lopez-Pintor* reveals that 53% of EMBs in the world follow the autonomous model³⁴. First introduced in India and Costa Rica, this type of EMB is completely dissociated from the government and has full responsibility over the entire election process. Elections are managed by an EMB which is institutionally independent and autonomous from the executive branch of government.³⁵

There are some distinctive advantages of this model in that the EMB has an electoral corporate identity. It manages its own budget and thus enjoys financial autonomy and accountability. Thus it is in control of its own funding and implementation of electoral activities as well. The EMB is not accountable to a government ministry or department but may be accountable to the legislature, judiciary or head of state. It has a high level of technical efficiency because it has permanent professional personnel to support it. It is also less likely to be subject to restrictions on who can be

³² See Trebilcock & Chitalkar (n 20 above) 200; see also R Lopez-Pintor *Election management bodies as institutions of governance* (2000) UNDP 19-30.

³³ A good example of this situation obtains in Senegal where the MINADT manages elections under the supervision of the Commission Electorale Nationale Autonome (CENA).

³⁴ Lopez-Pintor (n 32 above).

³⁵ The EMBs of South Africa, Ghana and Kenya, follow the autonomous model.

involved in electoral management, as it may be able to draw from outside talent. Its concentration in electoral business may result in better planning and more cohesive institutionalization of election tasks.³⁶

In Cameroon all the institutions are highly subservient to the executive and the President of the Republic wields extraordinary and sometimes arbitrary powers which he can use to manipulate the institutions. Since the advent of political pluralism in Cameroon, the government has constantly demonstrated its zeal for manipulating elections and public confidence in the government to organize credible elections is very low. It is therefore of utmost importance, in the present dispensation to establish an EMB that has all the guarantees of independence and credibility. A fully autonomous EMB would therefore be most suited for the system in order to inspire confidence in a largely distrustful, polarized and previously disenfranchised electorate.

Below is a table that illustrates the distinctive characteristics of the main EMB types in the world.³⁷

³⁶See Zimbabwe Election Support Network available on <http://newzimsituation.com/electoral-management-bodies-the-options-opinion-an-23009.htm> (accessed 23/08/10).

³⁷Adopted from the ACE Electoral Knowledge Network available on <http://aceproject.org/ace-en/topics/ei/eif/eif01/> (accessed 30/08/10)

Table 1: Characteristics of the Three Broad Models of Electoral Management and their Component EMBs

Aspect of the Model and the Component EMB(s)	Mixed Model			
	Independent Model	Governmental Model	Independent Component	Governmental Component
	Independent EMB(s)	Governmental EMB(s)	Component Independent EMB	Component Governmental EMB
Institutional arrangement	Is institutionally independent from the executive branch of government	Is located within or under the direction of a department of state and/or local government	Is institutionally independent from the executive branch of government	Is located within or under the direction of a department of state and/or local government
Implementation	Exercises full responsibility for implementation	Implementation is subject to executive branch of government direction	Has autonomy to monitor or supervise, and in some cases set policy for, implementation	Implementation is subject to executive branch of government direction, and monitoring or supervision and in some cases policy setting by independent component
Formal accountability	Does not report to executive branch of government but with very few exceptions is formally accountable to the legislature, judiciary or head of state	Fully accountable to executive branch of government	Does not report to executive branch of government and is formally accountable to the legislature, the judiciary, or the head of state	Fully accountable to executive branch of government
Powers	Has powers to develop the electoral regulatory framework independently under the law*	Powers are limited to implementation	Often has powers to develop electoral regulatory framework independently under the law. Monitors or supervises those who implement elections	Powers are limited to implementation
Composition	Is composed of members who are outside the executive branch while in EMB office	Is led by a minister or public servant. With very few exceptions has no 'members', only a secretariat	Is composed of members who are outside the executive branch while in EMB office	Is led by a minister or public servant. Has no 'members', only a secretariat
Term of Office	Offers security of tenure, but not necessarily fixed term of office	Usually no members, therefore N/A. Secretariat staff are civil servants whose tenure is not secured	Offers security of tenure, but not necessarily fixed term of office	Term of office is not secured
Budget	Has and manages its own budget independently of day-to-day governmental control	Budget is a component of a government ministry's budget or local authority budget	Has a separately allocated budget	Budget is a component of a government ministry's budget or local authority budget

* A few countries which use the Independent or Mixed Model of electoral management, such as Hungary, do not have independent EMBs with regulatory powers.

2.4 Standards of election management

Normative benchmarks for electoral management can be gleaned from international and regional human rights instruments and internationally observed best practices. Although the Universal Declaration of Human Rights and the ICCPR provide for important normative benchmarks on elections as a whole, how elections should be managed is not the subject of any specific provision in any of these international instruments.³⁸ This notwithstanding, the Human Rights Committee in a general comment to article 25 of the ICCPR on the Right to Participate in Public Affairs, has set out very important standards on election management and the minimum requirements to which EMBs should adhere. The General Comment provides for the establishment of an independent electoral authority to supervise the electoral process and to ensure that it is conducted fairly, impartially and in accordance with established laws which are compatible with the Covenant.³⁹

At the African Regional level, many standards have equally been elaborated that have a great bearing on election management and EMBs. According to the African Charter on Democracy, Elections and Governance, state parties to the Charter re-affirm their commitment to regularly holding free, fair and transparent elections and for this purpose undertake to establish and strengthen independent and impartial national electoral bodies responsible for managing elections.⁴⁰ Perhaps the most important and unambiguous standards of election management are set out in the 2002 Durban Declaration on the Principles Governing Democratic Elections in Africa. It provides that ‘democratic elections should be conducted...by impartial, all-inclusive, competent accountable institutions staffed by well trained personnel and equipped with adequate logistics’.⁴¹

In a resolution adopted in 1996, the African Commission on Human and Peoples’ Rights has urged state parties to preserve the credibility of the electoral process particularly the management of elections and to provide EMBs with sufficient resources to organize free and convincing elections.⁴²

In addition to the above, many international nongovernmental organizations working on issues of governance and democracy have come up with various codes of conduct, principles and best practices for election management and EMBs, which essentially elucidate on the standards set out in the above

³⁸ See arts 21 & 25 of the Universal Declaration and ICCPR respectively.

³⁹ See para 20 of General Comment No 25 of the Human Rights Committee on the Right to Participation in Public Affairs U.N. Doc. CCPR/C/21/Rev/Add.7 (1996).

⁴⁰ See art 17 (1) of the African Charter on Democracy, Elections and Governance 2007.

⁴¹ See principle II para 4(e) of the Declaration on the Principles Governing Democratic Elections in Africa 2002.

⁴² Resolution on Electoral Process and Participatory Governance, Nineteenth Ordinary Session, Ouagadougou, Burkina Faso 1996, available at <http://www.achpr.org/english/_doc_target/documentation.html?resolutions> (Accessed 25/08/10).

instruments. Prominent among such codes, principles and practices are those elaborated by the International Institute for Democracy and Electoral Assistance (IDEA),⁴³ the Electoral Institute of Southern Africa (EISA)⁴⁴ and the ACE Electoral knowledge Network.⁴⁵ The standards of election management have been summed up by Godwin Gill in an Inter-Parliamentary Union publication as follows:⁴⁶

Elections should be organized and administered by independent, impartial and trained officials, within a national election commission or other competent institution. Election administrators should be free from interference by government or parties and should be provided with sufficient funds to allow them to fulfill their responsibilities. The principles of openness and accountability, transparency and disclosure apply equally to the electoral administration as to political parties and candidates.

2.5 Minimum international benchmarks for EMBs

Today, there is international consensus on certain minimum requirements that electoral institutions must meet in order to be considered credible and capable of inspiring confidence in the electorate. Some of the most important of these requirements are discussed below in order to show how they impact on the credibility and efficiency of EMBs and hence the outcome and acceptability of election results.

2.5.1 Independence

This is perhaps one of the most important criteria that are often employed to gauge the credibility and level of confidence that an electoral institution inspires in the electorate. An EMB must be independent from all parties or stakeholders who have an interest in the outcome of elections especially the government and political parties. In Africa especially, where most governments have a track record of manipulating election results, any EMB, in order to inspire confidence in the electorate, must be seen to be especially independent of the government.⁴⁷

⁴³ See IDEA '*Code of conduct for the ethical and professional administration of elections*' (1997).

⁴⁴ See EISA '*Principles of election management, monitoring and observation in the SADC Region*' (2003) Electoral Handbook No 13

⁴⁵ Ace Electoral Knowledge Network '*Election management principles*' available at <http://aceproject.org/ace-en/topics/em/ema/ema01> (accessed 25/08/10).

⁴⁶ Guy S. Goodwin-Gill *Codes of conduct for elections* (1998): Inter-Parliamentary Union.

⁴⁷ Unpublished: Edward Odhiambo Okello, '*Guaranteeing the independence of election management bodies in Africa: A study of the electoral commissions of Kenya and South Africa*' LL.M Thesis, University of Pretoria (2006).

The independence of an electoral institution from the influence of stakeholders in the electoral process, especially from the executive is the hallmark of its credibility and efficiency. EMBs must have both formal (institutional independence) and substantive (practical independence)⁴⁸. Formal independence is based on the law creating the EMB and deals with such aspects as the appointment of members of election commissions, their terms and conditions of office, funding of the EMB and the legal creation of the EMB itself. Substantive independence on the other hand refers to the practical or actual application of the independence conferred on the EMB by legislative texts. An EMB must be seen as 'exercising' or 'living' its independence and not merely possessing it. EMBs that are perceived to be biased often have difficulties in persuading stakeholders to accept the outcome of elections.⁴⁹ Formal and substantive independence must co-exist in order for an EMB to be considered credible.

Many different ways of safeguarding the independence of EMBs have been advanced in the various codes of conduct and best practices elaborated by international actors and authors in the field of elections. First, provisions regarding the mode of appointment, removal and terms of service of members of the EMB must be clearly established in legislation and insulated from government control.⁵⁰ It is generally accepted that entrenching the creation of an EMB in the constitution is one of the best ways of safeguarding its independence⁵¹. Constitutional entrenchment of an EMB is very important because the constitution is the supreme law of the land and cannot be altered through ordinary legislative procedures. In situations where the executive has the capacity to manipulate the constitution at will (as is the case in Cameroon), it would be expedient to clearly provide that provisions relating to the EMB can only be amended by a qualified majority or referendum.⁵² This serves as a mechanism for limiting sudden change by executive action or through ordinary legislative processes and to ensure the permanency of the EMB. In Costa Rica and Venezuela for example, the constitution establishes the EMB as the fourth branch of Government after the executive, the legislature and judiciary.⁵³ The EMBs of South Africa and Botswana are also constitutionally entrenched.

⁴⁸ See Saheen Mozaffar (n 28 above) 90.

⁴⁹ This is very true of the Independent Electoral Commission of Kenya which was perceived to be manipulated by the incumbent during the 2008 presidential elections which led to non acceptance of the results of the polls by the opposition and the violence that ensued. This contrasts sharply with what happened during the 2009 Presidential Elections in South Africa where the independence and credibility of the electoral authority were manifest.

⁵⁰ See Statement of the Africa Conference on Democracy and Governance Pretoria (2003); see also Trebilcock & Chitalkar (n 20 above) 201.

⁵¹ See for example the African Association for Public Administration and Management (AAPAM) (1993) *Senior Policy Seminar on Strengthening Electoral Administration in Africa* Accra: AAPAM

⁵² See Fombad (n 21 above) 46.

⁵³ Lopez-Pintor (n 19 above) 123.

Operational autonomy of the EMB must equally be ensured as a safeguard for its independence. This means that in the exercise of its functions, the EMB must not be under the control, influence or direction of any arm government, political party or organized group, and this must be clarified in the law creating the EMB.

2.5.2 Mandate and powers of the EMB

The mandate conferred on an EMB is a very important determinant of its credibility and efficiency. An EMB that is vested with a broad mandate covering a range of activities that are central to the conduct of free and fair elections is more likely to be capable of effectively organizing democratic elections.⁵⁴ A broad mandate that includes activities such as resolution of election disputes, allocation of campaign funds, drawing up boundaries for electoral districts, and setting standards for acceptable electoral practices; is imperative for the effectiveness of an EMB. Many of these activities are very contentious because of the high political stakes that go with them. Allocating responsibility over such activities to an independent and impartial body rather than the government is indispensable for ensuring fairness and credibility in the electoral process.⁵⁵

Election Commissions in Africa that have proved their worth in organizing credible elections, such as, the Independent Electoral Commissions of South Africa and Ghana, generally have very broad mandates and their success has been partly attributed to the extensive powers of these bodies.⁵⁶

An EMB must also have sufficient powers to enable it execute its mandate. One of such powers which is crucial for the efficiency and independence of the EMB is the power to hire and fire its own staff according to its needs. This way, the staffs hired by the EMB will in all likelihood owe their allegiance to the EMB and enhance its independence as opposed to a situation where the EMB staff is seconded from the government bureaucracy. This does not however mean that an EMB should be precluded from requesting for human resources from the public service, but this should be done in a discrete manner in order not to tamper with the institutional independence of the EMB. The EMB must equally have the ability to determine its own agenda and activities and how to execute its mandate within its legal framework.

⁵⁴ See Trebilcock & Chitalkar (n 20 above) 204.

⁵⁵ As above.

⁵⁶ See Consortium for Development Partnerships 'Governance and institution building in Africa' (2010) CODESRIA; also available at <http://www.codesria.org/spip.php?article772&lang=fr> (accessed 20/08/10).

2.5.3 Composition of the EMB

The composition of an EMB is another facet of its institutional framework that has a great bearing on its independence and credibility. The quality of people, how they are appointed and dismissed, their backgrounds, political affiliations and integrity play a great role in shaping public perceptions about the credibility of electoral institutions in general. The mode of appointment of members of an EMB is a confidence building measure and contributes immensely to its image in the eyes of stakeholders and the public as a whole.⁵⁷

According to the African Union Commission and the Association of Electoral Authorities in Africa, ‘the selection and appointment procedures for commissioners should be determined by parliament and should be transparent, inclusive, and sensitive to gender equality and the representation of diverse groups’.⁵⁸ The manner of selecting members of an EMB is very fundamental to its independence and image. It is generally accepted that the selection and appointment of Commissioners should not be the exclusive preserve of one branch of government, especially the executive, but should equally involve the legislature and judiciary, in order to assure inclusiveness.⁵⁹

Practice differs widely with regards to the mode of appointment of commissioners in various electoral institutions around the world. While some EMBs are composed exclusively of party representatives⁶⁰, others are made up exclusively of judges⁶¹, and yet others are drawn from diverse backgrounds and experiences.⁶² The appointment of party nominees is seen as suited for political systems where there is a high degree of political polarization and low levels of confidence in the impartiality and independence of the civil service. This can help in consensus building; improve broad based participation and mobilization of the electorate.⁶³ However, the risk of politicizing the EMB is equally very high where such a method of appointment is employed.⁶⁴

⁵⁷ See Okello (n 47 above) 11.

⁵⁸ See Statement of the Africa Conference on Democracy and Governance Pretoria (n 48 above) 4; see also EISA Principles (n 44 above) 12.

⁵⁹ See Sara Birch ‘Election management bodies and electoral Integrity: Evidence from Eastern Europe and the former Soviet Union’ available at <http://www.essex.ac.uk/government/electoralmpractices/> (accessed 27/08/10).

⁶⁰ This is the case for example of the General Electoral Commission of Indonesia (KPU) and the Mozambican electoral institution.

⁶¹ An example is the Central Election Commission of Pakistan

⁶² The South African Independent Electoral Commission (IEC) provides a good example of this mode of selection of Commissioners.

⁶³ See Lopez-Pintor (n 19 above) 64.

⁶⁴ See Birch (n 59 above) 5; see also Trebilcock and Chitalkar (n 20 above) 202.

The appointment of judges as commissioners has also been put forth as the ideal method of ensuring impartiality since judges are generally believed to be impartial and respectable people. The conflict of interest that might arise if a decision of the electoral institution is appealed in the courts has been put forth as the major weakness of this mode of selection.⁶⁵

The appointment of independent personalities with requisite professional experience in election management is generally accepted as the best way of assuring impartiality, independence and professionalism of an EMB. These could be drawn from diverse backgrounds such as the academia; civil society, the media, business and other sectors, provided the individuals are removed from active politics and should not be seen to have any conflict of interest in the discharge of their duties.

Closely related to the composition of an EMB, is the appointment and dismissal procedures of commissioners. The appointment and dismissal procedure should clearly be laid down and the process undertaken in a manner that is impartial, accountable and transparent. The procedures should also take into consideration the need to ensure the permanency and institutional continuity of the EMB.⁶⁶ The legal framework should equally specify the terms and conditions of service such as salaries, allowances and immunities. It is also necessary for the conditions of service of the commissioners to be regularly reviewed by an independent body created specifically for that purpose. Review by an independent body is important in order to reduce the influence of the executive in the process that can undermine the independence of the institution.⁶⁷ The term of office must be reasonable; not being too short to create uncertainty and not being too long to entrench commissioners in their offices.⁶⁸ The legal framework must also provide for immunity from legal action for official action undertaken in good faith by members of the EMB.

There must be stringent procedures to govern the removal of commissioners from office. It is preferable that such removal should be undertaken by a special body comprising representatives from the three branches of government in order to guard against the risk of arbitrariness in the process and insulate commissioners from abusive removal from office.

2.5.4 Funding

The proper administration of elections is a very costly exercise and requires enormous financial, material and human resources. It is therefore crucial that the legal framework setting up an EMB

⁶⁵ As above.

⁶⁶ See EISA Principles (n 44 above) 12

⁶⁷ See Okello (n 47 above) 12

⁶⁸ Ron Gould 'Canada: Independence, stability and trust' *ACE Electoral Knowledge Network*, 2

should make provision for the timely, adequate and independent financing of the structure. It is imperative that an EMB be financially autonomous from the government because its independence could adversely be affected if it is entirely dependent on the government for its funding which could starve it of funds for political gain. Although it is practically difficult for an EMB to function in a completely independent manner from the government with regards to its financial resources, it is expedient that such a link does not create a dependency relationship that can compromise the independence and effectiveness of the EMB.⁶⁹

In order to mitigate the risk of financial dependency of an EMB on the government, it is generally accepted that the budget of the EMB be voted directly by parliament⁷⁰. In situations where there is fear that parliament could be under the influence of the executive, it would be cautious for approval of the budget of the EMB to be validated by a supra-majority decision. The EMBs of India, Canada, South Africa and Botswana are financed through a consolidated fund which is under the direct control of parliament and not the executive. It is also imperative that the EMB should have a normal running budget as well as an election budget in an election year.

2.5.5 Accountability of the EMB

EMBs are public bodies funded with tax payers' money and like all public bodies, they must give account of their activities and how public funds entrusted to them have been used. Accountability of EMBs is necessary to ensure that they carry out their functions effectively and to ensure that public funds allocated to them be put to the use for which they are intended. Therefore, although an EMB is supposed to be independent of any form of control, it must however remain accountable for the use of its resources and the execution of its mandate.⁷¹ Accountability may take the form of submission and publication of activity reports and the auditing of the financial accounts of the EMB.

The most critical concern with regards to the accountability of an EMB is the organ of government or personality to which it should be accountable. Who an EMB is accountable to is very important in maintaining its independence, integrity and public confidence in its impartiality. It is generally accepted as a matter of best practice that EMBs submit their activity reports to parliament for scrutiny and should equally make their reports available to the public as a matter of transparency. In order to

⁶⁹ Trebilcock & Chitalkar (n 20 above) 204.

⁷⁰ See EISA Principles (n 44 above) 12

⁷¹ See V Padmanabhan 'Democracy's baby blocks: South Africa's electoral commissions' (2002) 77 *New York University Law Review* 1157

maintain financial probity, it is also generally accepted that the financial accounts of the EMB should be audited by an independent personality such as the Auditor General in countries where this exists.⁷²

Conclusion

The foregoing discussion has endeavored to explore the various standards of election management, various EMB types and the essential minimum elements that EMBs must possess in order to be considered credible. These standards have been drawn from international instruments as well as various codes of conduct which have been endorsed by many electoral bodies worldwide. The discussion has generally been prescriptive in nature taking into consideration the peculiar political context and circumstances of the Cameroon political system. Though there is no perfect EMB in the world as such, the crucial test is always whether an EMB is sufficiently founded on the principles of independence, non partisanship, professionalism and adequacy of resources in order to enable it discharge its duties. This chapter has therefore set the framework within which election management in Cameroon will be analyzed in subsequent chapters both during the MINADT/NEO era and within the context ELECAM.

⁷² See Okello (n 47 above)

Chapter three: Flawed elections due to poor management: The MINADT/NEO era

3.1 Introduction

This chapter deals with election management in Cameroon during the MINADT/NEO era. It basically sets out to demonstrate that the main cause of flawed elections in Cameroon has been due to a large extent on the lack of a veritable election management institution that is independent, efficient, credible and impartial. The chapter will examine the institutional framework within which elections were managed during this time and highlight the major irregularities that led to flawed elections. The necessity of this chapter might be put to question given that the NEO is now defunct and the management of the entire election process is in the hands of ELECAM.

However, it is trite to say that this chapter is necessary if not indispensable for any comprehensive examination of election management in Cameroon today within the context of EECAM for two reasons. First, it will help in portraying that an EMB that does not meet the minimum requirements set out in chapter two is bound to be ineffective and lack credibility. Secondly, it will serve as a reference point for gauging whether the weaknesses identified have been taken care of in ELECAM's institutional and legislative set-up. This chapter only deals with election management in Cameroon after the reintroduction of political pluralism in the early nineties and does not take into consideration, the single party era when semi competitive elections within the ruling party structures were the order of the day.

3.2 The birth of NEO

Multi- party democracy was formally instituted in Cameroon in 1990 following decades of a monolithic system.⁷³ During the early days of multi-party democracy, the management of the electoral process was entirely run by the Ministry of Territorial Administration and Decentralization through a unit in the ministry known as the Directorate of Elections. This was a non-autonomous EMB that was totally controlled, managed and funded by the government of the day.⁷⁴

⁷³ Political pluralism was introduced through Law No 90-53 of 19th December 1990 on Freedom of Association; see also J Takogang & M kriegler *African state and society in the 1990s: Cameroon's political crossroads* (1998), for a full account of the circumstances under which political pluralism was re-introduced in Cameroon.

⁷⁴ Refer to pg 10 for characteristics of non-autonomous EMBs.

The first elections managed by the MINADT in a multi-party dispensation were the March 1992 Parliamentary elections that were won by the ruling party by a very narrow margin. These elections have generally been certified by commentators as credibly organized with the results reflecting the true outcome of the polls.⁷⁵ The real test for the MINADT as an EMB in a multi-party setting came during the hotly contested October 1992 Presidential Elections in which the incumbent, Paul Biya, was declared winner with 40% of the votes, closely followed by John Fru Ndi with 36%. The outcome of these elections was hotly contested by the major stakeholders and international observers, labeling them as heavily flawed and designed to fail.⁷⁶ The March 1997 Parliamentary elections and the October 1997 presidential elections (which were boycotted by all the major opposition parties) were equally reportedly fraught with numerous irregularities and led to major political gains for the ruling party and the incumbent president.⁷⁷

At the heart of the irregularities pointed out by various international observer missions and stakeholders, was the role of a highly politicized MINADT as the sole body charged with organizing and supervising the entire election process and its complete lack of independence from the government. The MINADT was accused of manipulating the electoral process in order to ensure victory for the ruling party and incumbent president.⁷⁸ As a result of this, there were incessant calls by the opposition, civil society and the international community for the setting up of an independent body to manage elections in Cameroon. These calls led to the creation of the National Elections Observatory (NEO) in December 2000 as an oversight body charged with controlling and supervising all stages of the Electoral process.⁷⁹ Below is a brief examination of the structural design and institutional framework of the NEO which will enable us understand why the structure has failed to organize a single credible ballot and why it was sharply condemned by stakeholders as ineffective and devoid of credibility.

⁷⁵ See for example J Derrick 'Cameroon: One party, many parties and the state' (1992) 22 *Africa Insight* 165 176.

⁷⁶ See National Democratic Institute for International Affairs (NDI) *An assessment of the 11 October 1992 Elections in Cameroon* (1993) iii-iv in Fombad (n 19 above) 39.

⁷⁷ See for example the opinion of the US State Department on the 1997 elections in Cameroon available at <http://www.state.gov/g/drl/rls/hrrpt/2000/af/713.htm> (accessed 10/09/10), which considers the elections as having been marred by serious irregularities. During these elections, the incumbent president won 92.6% of the votes cast against seven other candidates. The Commonwealth, Francophonie, NDI, and the International Foundation for Election Systems (IFES) declined to send observers for the reason that the outcome would be a foregone conclusion.

⁷⁸ See Fombad (n 21 above) 41-43 who describes various gimmicks employed by the government to ensure that MINADT manipulated the electoral machinery to guarantee victory for the ruling party.

⁷⁹ The NEO was established through Law No 2000/016 of 19 December, 2000. It was modeled after a similar body that had earlier been set up in Senegal known as the Obseatoire Nationale des Elections (ONEL), although there are major differences in their mandates, composition and institutional framework.

3.3 The institutional structure and mandate of NEO

The NEO was a temporal election oversight body that could only be constituted during an election year, with the Secretariat being its only permanent structure⁸⁰. The structure was made up of eleven members appointed by presidential decree for a mandate that ended as soon as the electoral process was over. NEO had a Chairperson and Vice-Chairperson who were appointed by presidential decree from amongst its members. The secretariat was headed by a Secretary General equally appointed by presidential decree.

The NEO was some sort of a semi-autonomous EMB without any real powers. According to provisions of Law No 2000/016 establishing the National Elections Observatory (the NEO Law), the NEO was an independent body charged with supervising and controlling elections and referendums.⁸¹ The law empowered NEO with a very restrictive mandate of supervising and controlling certain essential elements of the electoral process enumerated in the text. These included the supervision and control of the following: management of the electoral register; the functioning of the mixed Commissions charged with establishing and revising voters' lists; printing of electoral materials and the establishment and distribution of voters' cards. Its mandate also extended to hearing claims and protests concerning voter's lists and cards that were not resolved by the competent supervisory committees.⁸²

The NEO was therefore charged with supervising and controlling the organization of elections but the actual organization and management of the electoral process remained in the hands of the much criticized MINADT. MINADT managed all the essential elements of the electoral process such as voter registration, procurement of electoral materials, distribution of voter cards and delimitation of electoral boundaries and setting up polling stations. NEO only had to ensure that all this was done in accordance with the electoral law; a task it was even unable to effectively accomplish because of the omnipotence of the MINADT officials. It did not have any real powers that could enable it rectify any electoral malpractices perpetrated by the MINADT; hence it was seen by many as a toothless bull dog that could bark without being able to bite.⁸³

Added to this, the fact that the NEO was a temporary body had significant negative effects on the professionalism of the body, conservation of institutional memory and consistency in its approach to

⁸⁰ See arts 3 & 9 of the NEO Law.

⁸¹ See art 1 of the NEO Law.

⁸² See generally art 6 of the NEO Law

⁸³ See N Nshiyoyo 'Cameroon: EMB case study' available on <http://aceproject.org/ero-en/region/africa/CM/case-study-cameroon.doc/view> (accessed 12/09/10).

election management. This only helped to reinforce its dependence on the MINADT whose main interest in the electoral process was a favorable outcome for the ruling party and president.⁸⁴

3.4 Composition NEO

According to the law establishing NEO, the members of this body were to be chosen from among personalities of Cameroonian nationality with a reputation for moral rectitude, intellectual honesty, neutrality and impartiality. In the discharge of their duties, they were forbidden from requesting or receiving orders from any public or private authority.⁸⁵ The law prohibited persons from various backgrounds from being appointed as members of the NEO. These included government officials, legal and judicial officers in active service, various categories of public administrative officials, traditional leaders, supporters of political parties and a host of others.⁸⁶

The President of the Republic had the sole power to appoint all the NEO members and its Secretary General without any input from other organs of government or political parties. This power enabled the president to appoint many well known members of the ruling party as members of NEO. This alone was enough to compromise NEO's credibility given the atmosphere of political volatility and mistrust that reigned at the time when the law establishing this body was promulgated. The appointment of party cronies to an EMB that was supposed to be non partisan put the independence and impartiality of the NEO in serious disrepute and this falls short of the standards and best practices set out above in chapter two.

3.5 Funding and accountability of NEO

The funding and accountability of the NEO was another issue that was at the heart of its lack of independence and effectiveness as an EMB. The law creating NEO provided simply that the government was to place at the disposal of the NEO, the material and financial resources necessary for it to carry out its functions.⁸⁷

This system of funding certainly left a lot to be desired. Because it was the government and not parliament that had a greater say on how much funding was to be allocated to the NEO, it was frequently starved of funds and this significantly diminished its capacity to execute its restrictive mandate of supervising and controlling the management of elections by the MINADT. All throughout its existence, the NEO always complained of insufficient funding as an impediment to its work. This

⁸⁴ See Fombad (n 21 above).

⁸⁵ Art 3(3) of the NEO Law.

⁸⁶ See art 5 of the NEO Law for a complete list of those disqualified from being appointed to NEO membership.

⁸⁷ See art 20 of the NEO Law.

had significant negative effects on its capacity to execute its mandate and led to inefficiency. This method of funding, contrasts sharply with the internationally accepted standards set out in the preceding chapter.

The accountability of NEO as an EMB also left a lot to be desired. There were no special mechanisms for auditing the accounts of the NEO as the case should have been with a supposedly independent body and in accordance with generally accepted principles and standards of election management. Instead, NEO was subjected to the same accounting procedures like all other bodies and was therefore accountable for its finances in this respect to the Ministry of Finance. It was accountable for the conduct of the polls, solely to the president of the republic. NEO was to draw up a report on the conduct of each election and forward it to the president of the republic for publication⁸⁸. NEO therefore had no duty to account to the public and there was no duty on the president of the republic to publish the NEO report within a specific period of time.

3.6 An appraisal of elections managed by NEO/MINADT

An assessment of elections organized during the NEO/MINADT era reveals a series of recurrent irregularities and management shortfalls which many observers recognized as tainting the credibility of the ballot.⁸⁹ Since the establishment of NEO, three elections have been organized in Cameroon. In all three elections, the ruling Cameroon People's Democratic Movement (CPDM) and its incumbent president won by a large margin amidst allegations of massive fraud, rigging and numerous irregularities.⁹⁰

Chief among the many flaws identified by stakeholders in all three elections included basic irregularities that go to the very heart of the management process. These irregularities were wide-ranging and occurred before, during and after the election. Most flaws identified before election day mainly had to do with a complex registration process that was supposed to be undertaken by the MINADT. These included the creation of fake voter registers, the non appearance of names duly registered on the voter register, late or non delivery of voter cards, gerrymandering with the voter register, the registration of foreigners and the non respect of registration deadlines⁹¹. On election day, flaws such as the stuffing of ballot boxes, ghost voters, the location of polling stations in local rulers'

⁸⁸ See art 19 of the NEO Law.

⁸⁹ See for example the US State Department Report on the State of Human Rights in Cameroon 2009 available at <http://www.state.gov/g/drl/rls/hrrpt/2009/af/135942.htm> (accessed 21/09/10).

⁹⁰ See African Elections Database available at <http://africanelections.tripod.com/cm.html> (accessed 21/09/10) for the results of all elections that have been held in Cameroon since independence.

⁹¹ See The Post News Online 'Election rigging in Cameroon: A state of the devil's art' available at <http://www.postnewsline.com/2007/07/sdf-confronts-n.html> (accessed 21/09/10)

palaces in stark violation of the law, the absence of indelible ink, fraudulent voting and the absence of opposition ballot papers in many polling stations, were identified. Allegations of intimidation of opposition polling agents and chronic corruption at various polling stations were equally rife during this era.⁹²

After each of the three elections, the Supreme Court of Cameroon was flooded with petitions submitted by opposition candidates requesting the Court to annul the result of the elections on account of the many irregularities. The Court in many cases deemed the irregularities sufficiently serious to warrant the cancellation of some of the results. Thus, after the 2002 Parliamentary Elections, the Supreme Court nullified the results of the elections in seventeen constituencies as well as the results of five districts (affecting 17 parliamentary seats) during the 2007 Parliamentary Elections, on account of severe irregularities.⁹³

These irregularities effectively operated to deny many Cameroonians the right to take part in the conduct of public affairs and the outcome has been increasing voter apathy.⁹⁴ The results of all the elections organized by the NEO were never accepted by the parties that lost and it was only fear of the ruthlessness of the military machinery that violence never erupted as a result. The persistence of such basic flaws and irregularities despite NEO'S apparent supervision and control of the electoral process demonstrates that NEO was blatantly ineffective and lacked credibility due to the inherent limitations in its institutional and structural framework which prevented it from being able to stop MINADT in indulging in any electoral illegality. Thus, NEO could not force MINADT to deliver voting cards, it could do nothing if MINADT failed to provide indelible ink or print opposition ballot papers; it was powerless when polling stations were located in illegal places, nor could it do anything if fake results were produced. These are such basic irregularities that an EMB that is sufficiently empowered can easily handle and ensure a credible ballot. This easily explains therefore, why NEO's demise was imminent and came just a short while after its establishment.

⁹² As above; see also the US State Department Report (n 87 above); see also National Commission on Human Rights and Freedoms 'Report on the state of human rights in Cameroon' (2007-2008), available at www.cndhl.cm (accessed 21/09/10).

⁹³ See African Election Database, available at <http://africanelections.tripod.com/cm.html> (accessed 21/09/10). It should be noted that the Supreme Court declared hundreds of petitions inadmissible on account of procedural lapses; which suggests that there was a potential for elections to be nullified in many more constituencies and districts. The Supreme Court and various observer missions also admitted irregularities during the 2004 Presidential Elections but said these were not severe enough to warrant a cancellation of the elections.

⁹⁴ George Ngwane 'Citizen democracy in Cameroon' available at <http://www.postnewsline.com/2010/03/citizen-democracy-in-cameroon.html#more> (accessed 23/09/10).

Conclusion

The preceding discussion has aptly demonstrated that the flawed nature of elections in Cameroon can, to a large extent, be attributed to a remarkable failure in the management of the electoral process. This failure emanated from the lack of an independent, credible and efficient EMB that meets the standards set out in the preceding chapter to oversee the conduct of elections. A highly politicized MINADT, that managed the most essential elements of the electoral process could not be put in check by NEO, whose mandate only permitted it to be nothing but an unhelpful onlooker to the many irregularities and illegalities that MINADT was bound to commit.

Considering the failure of NEO to bring change to the electoral landscape in Cameroon and establish credibility, there were renewed calls by major stakeholders for the creation of an independent body with an expanded mandate to manage elections and restore sanity and rekindle the faith of Cameroonians in their political system and integrity in the electoral process. This led to the creation in 2006 of Elections Cameroon, as the sole institution charged with the management of the entire electoral process. An analysis of ELECAM from a comparative perspective and within the context of the standards set out in the preceding chapter will be the main focus of the next chapter.

Chapter four: Elections Cameroon from a comparative perspective

4.1 Introduction

The recurrent allegations of fraud, massive rigging and severe irregularities that accompanied each election organized in Cameroon during the NEO/MINADT era, coupled with intense pressure from opposition parties, civil society and the international community for electoral management reforms, were what led to the establishment of Elections Cameroon in December 2006.⁹⁵ ELECAM was established as the sole institution that will henceforth be responsible for the management of the entire electoral process in Cameroon. Its members were appointed on December, 30th 2009 but the body was only officially made functional in January 2010, following the signing and transfer of all electoral materials and records from the MINADT to ELECAM.⁹⁶

This chapter will analyze in detail, various facets of the institutional and legislative framework of ELECAM with a view to determining whether it is sufficiently empowered and insulated from government control and manipulation to enable it turn the tide of flawed elections in Cameroon. The analysis of ELECAM's mandate will follow a comparative approach. Each facet of its institutional and legislative framework will first be compared to the defunct NEO to determine whether there has been an improvement or whether the status quo has been maintained.

Similarly, the standards set out in chapter two will equally serve as a yardstick for comparison in order to gauge the degree to which ELCAM conforms to international standards that underlie the functioning of EMBs. Finally, ELECAM will be compared to the Independent Electoral Commission of South Africa (IEC), the Commission Electorale Nationale Autonome of Senegal (CENA) and other electoral institutions that have proved their worth in election management elsewhere⁹⁷. Such a comparative approach will help in exposing any shortcomings of ELECAM and serve as a starting point for recommending reforms

⁹⁵ ELECAM was established through Law No 2006/011 of 29 December, 2006 to set up and lay down the organization and functioning of Elections Cameroon.

⁹⁶ See Cameroon Today 'Elections Cameroon: An overview of the Cameroon's election body' available at <http://www.cameroon-today.com/elecaml-elections-cameroon.html> (accessed 02/10/10).

⁹⁷ The IEC has been widely acclaimed as an ideal independent EMB and it is reputed for its efficient and credible management of the electoral process in South Africa. The CENA on the other hand is a semi autonomous EMB and has credibly managed elections in Senegal coupled with the fact that Senegal and Cameroon have a similar political system. This explains why these two EMBs have been chosen for comparison with ELECAM.

4.2 Legislative and institutional framework

4.2.1 Institutional framework

Elections Cameroon is an independent model EMB with an independent board known as the Electoral Board (EB) and an executive department known as the General Directorate of Elections (GDE).⁹⁸ The Electoral Board is the legislative and supervisory organ of ELECAM and is the main policy making body of the institution. The General Directorate of Elections on the other hand, is the executive unit and is charged with implementing the decisions of the Electoral Board and managing the poll.

According to the law establishing ELECAM (the ELECAM law), ‘the EB shall ensure compliance with the electoral law of all stake holders for the purpose of guaranteeing impartial, free, fair, transparent and credible polls.’⁹⁹ The EB is composed of twelve members appointed by presidential decree for a four years renewable period, from amongst independent personalities of Cameroonian nationality reputed for their stature, moral uprightness, intellectual honesty, patriotism, neutrality and impartiality. The unit is headed by a Chairperson and one Vice-Chairperson.¹⁰⁰ The DGE on the other hand is responsible for the organization and management of the poll and is headed by a director general assisted by a deputy, both appointed by decree of the president for a period of five years renewable.¹⁰¹ The DGE wields a lot of power over election management and the Director General seems to be the most important officer of ELECAM.

ELECAM is a centralized structure with its head office in Yaoundé.¹⁰² It has branches at regional, divisional and council level, the organization and functioning of which is laid down by the EB. All branch officers of ELECAM are appointed by the Director General of ELECAM upon the approval of the EB.¹⁰³ Elections Cameroon is a permanent institution and functions both during election and non election periods. In this respect, it conforms to the international norms set out above that require that EMBs should be permanent structures within the institutional dispensation of states.

The institutional framework of ELECAM is markedly different and significantly more developed than that of the defunct NEO. First, as a permanent institution, ELECAM stands better chances of

⁹⁸ Sec 5 Law No 2006/011 of 29 December, 2006.

⁹⁹ Sec 6 of the ELECAM law.

¹⁰⁰ Sec 8 (1-4) of the ELECAM law.

¹⁰¹ Sec 18-20 of the ELECAM law.

¹⁰²

Sec 1(5) of the ELECAM law.

¹⁰³ Sec 26 of the ELECAM law.

developing a professional approach to elections than NEO, conserving institutional memory and developing a consistent approach to election management.¹⁰⁴ The two pronged structural set up of ELECAM is also very different from that of the NEO and could be an added impetus to the efficiency of the body in that managerial and supervisory functions are clearly separated and could lead to each organ, developing expertise in its area of concern. This set-up has however been criticized by some commentators as being too bureaucratic and a potential breeding ground for conflicts of interest between the EB and the DGE. The excessive powers vested in the Director General of ELECAM could lead to authoritarian management of the institution as has been the case with most Para-public institutions in Cameroon that have a similar institutional set-up.¹⁰⁵

4.2.2 Legislative framework

ELECAM has a very weak legal framework. The principal instrument that governs the legal foundation of ELECAM is Law no 2006/011 of 19 December 2006. This law establishes ELECAM, provides for its composition, mandate, powers, administrative structure, funding and the terms and conditions of office of the members of ELECAM. This law is supplemented by an enabling presidential decree that caters for the effective putting in place of ELECAM¹⁰⁶ and the decrees appointing members of ELECAM¹⁰⁷, the Chairperson and Vice¹⁰⁸, and the decree appointing the Director General and his Deputy¹⁰⁹. ELECAM, just like the defunct NEO does not therefore have any constitutional foundation and the law creating the institution can be amended by parliament following the normal procedure for the amendment of laws.

According to the international standards on election management set out above, an EMB ideally needs to be established in the constitution and its provisions entrenched in order to prevent arbitrary change by the government of the day¹¹⁰. Creating EELCAM through a simple legislative enactment poses a grave danger not only to its independence and efficiency but also to its very survival given the prevailing political situation in Cameroon. The executive head in Cameroon has wide ranging

¹⁰⁴ See n 82 above.

¹⁰⁵ See Joseph Kijem 'The shortcomings and loopholes of Elections Cameroon within the electoral dispensation of Cameroon' (2010) 4 *Cameroon Journal of Democracy and Human Rights* pg 97

¹⁰⁶ This decree was only passed after a petition was submitted to the Supreme Court by an opposition party challenging the legality of acts carried out so far by ELECAM. See <http://www.cameroon-info.net/stories/0,27424,@.elecaml-paul-biya-donne-raison-au-sdf.html> (accessed 20/09/10)

¹⁰⁷ Decree no 2008/463 of 30 December 2008 on the Appointment of Members of the Electoral Board of Elections Cameroon

¹⁰⁸ Decree no 2008/464 of 30 December 2008 on the Appointment of the President and Vice-president of the Electoral Board of Elections Cameroon.

¹⁰⁹ Decree no 2008/470 of 31 December 2008 on the Appointment of officials of Elections Cameroon

¹¹⁰ See Trebilcock & Chitalkar (n 20 above) 205; see also C Fombad (n 21 above) 46.

legislative powers and can propose amendments to any law.¹¹¹ Given that the present government has a large majority in a highly subservient parliament, any proposed amendment (even that which seeks to curtail the independent functioning of ELECAM) could easily sail through parliament.¹¹²

The legal foundation of ELECAM is akin to that of the Commission Electorale Nationale Autonome of Senegal, which is not enshrined in the Constitution of Senegal but is simply a legislative enactment that can be amended at any time by parliament through ordinary legislative processes. This contrasts sharply with the legislative framework of the South African IEC which is provided for in the 1996 Constitution of the Republic of South Africa as one of the institutions supporting constitutional democracy.¹¹³ The Constitution sets out general guidelines for the IEC and provides for its functions, composition and independence. The South African Constitution has very stringent amendment procedures and this has the positive effect of insulating the IEC from any arbitrary interference with its independence and larger institutional framework by the executive.¹¹⁴ The Electoral Commission of Ghana (EC)¹¹⁵, just like the Electoral and Boundaries Commission of Kenya¹¹⁶ equally owe their legal foundation to the constitutions of the respective countries. This is an important safeguard against any arbitrary interference with the legal framework of the electoral institution by any government.

4.3 Mandate and powers of ELECAM

As mentioned earlier, the mandate and powers attributed to an electoral institution are a very important determinant of its effectiveness and independence. ELECAM has been conferred with a fairly broad mandate of organizing, managing and supervising all electoral and referendum operations in Cameroon.¹¹⁷ To execute this mandate, the Electoral Board and the General Directorate of Elections have been vested with varying powers and duties to oversee the smooth conduct of the polls.

¹¹¹ See for example arts 8(7), 27 & 28 of the 2008 revised Constitution of the Republic of Cameroon.

¹¹² This power has already been abusively excised when in 2010 a law was adopted amending the ELECAM law to provide for the compulsory inclusion of MINADT officials in all commissions for the revision of registers of electors, commissions in charge of controlling the establishment and distribution of registration cards, local polling commissions as well as council supervisory commissions; See sec 7(2-4) (new) of Law no 2010/005 of 13 April 2010 to Modify and Supplement certain provisions of the ELECAM law.

¹¹³ See art 181 of the 1996 Constitution of the Republic of South Africa.

¹¹⁴ See Sec 74(3) of the South African Constitution which provides for the amendment procedure of this provision. A Bill must be passed in Parliament by at least two-thirds majority of the members and also by the National Council of Provinces with a supporting vote of at least six out of the nine provinces. An amending Act of Parliament can be contested before the Constitutional Court within 30 days by a member of the National Assembly with the support of at least two-thirds of the members.

¹¹⁵ See Chapter VII, secs 43-56 of the 1992 Constitution of Ghana.

¹¹⁶ See arts 88 & 89 of the 2010 Constitution of the Republic of Kenya.

¹¹⁷ Sec 1(2) & 4(1) of the ELECAM law.

Accordingly, the EB, which is the legislative and supervisory organ of ELECAM, is charged with ensuring compliance with the electoral law of all stakeholders for the purpose of guaranteeing free, fair, impartial, regular, transparent and credible polls.¹¹⁸ For this purpose, it is vested with various oversight functions over the conduct of the polls by the GDE. These include: scrutinizing and publishing the lists of various candidates contesting any election within its competence; publishing election trends; controlling the preparation of election materials and documents within the deadlines fixed by law; examining disputes regarding pre-election and elections operations and ordering corrections as appropriate; determining the organization and functioning of branches and a host of other oversight tasks.¹¹⁹

The DGE, which is the executive organ of ELECAM, has wide ranging powers with regards to the actual management of the electoral process. It is responsible for the organization and management of the poll under the supervision of the EB.¹²⁰ It is therefore responsible for managing the ‘essential elements’ of the electoral process. Some of these essential elements include the following:¹²¹

- Drawing up, managing, updating and keeping the national elections register as well as election documents and materials;
- Procuring and distributing election materials and documents;
- Drawing up and publishing voters’ lists and issuing and distributing voters cards;
- Organizing and supervising the training of electoral personnel;
- Organizing polling stations and appointing officers to the said polling station;
- Coordinating all bodies responsible for election operations;
- Coordinating the work of observers appointed by the appropriate national authorities;
- Forwarding election reports to the EB for the publication of electoral trends and
- Implementing the budget of ELECAM and elections budget.

Compared to the NEO, ELECAM has registered a significant improvement with regards to the broadening of its mandate. Unlike the restrictive mandate of the NEO that was limited to supervising and controlling the management of the electoral process by the MINADT, ELECAM has a greater and preponderant role in the electoral process and the MINADT has largely been relegated to the margins, though not completely pushed out of the electoral theatre. ELECAM’s mandate also contrasts sharply with that of the CENA of Senegal that only has powers of oversight and regulation over the electoral process in Senegal, just like the defunct NEO. The actual organization and management of elections in

¹¹⁸ Sec 6(1) of the ELECAM law.

¹¹⁹ See generally secs 6 & 7 of the ELECAM law.

¹²⁰ Sec 18 of the ELECAM law.

¹²¹ See generally sec 22 of the ELECAM law.

Senegal is still the exclusive preserve of the Ministry of Territorial Administration and Decentralization and the CENA serves as a watchdog institution albeit, with considerable regulatory powers.¹²²

However, when one examines the mandate of other credible electoral institutions in emerging democracies around the world, one notices that they have broader mandates than ELECAM and execute tasks that are very contentious, with high political stakes. In this wise, reference can be made to the South African IEC, which, in addition to the essential elements included in ELECAM's mandate is additionally vested with powers of promoting conditions conducive to free and fair elections,¹²³ declaring the result of various elections within seven days after such elections¹²⁴ and registering political parties.¹²⁵ Also included in the mandate of the IEC, is the power to manage the Represented Political Party Fund, allocate these funds to various represented political parties and ensure that the parties are accountable for the use of such funds.¹²⁶

The Electoral Commission Act of Ghana goes further by conferring on the EC, the power to demarcate electoral boundaries for national and local government elections and to undertake the preparation of identity cards.¹²⁷ The 2010 Constitution of Kenya also vests extensive powers of boundary demarcation on the Independent Electoral and Boundaries Commission of Kenya and makes it responsible for regulating the amount of money that may be spent by or on behalf of a candidate in respect of any election.¹²⁸ In Costa Rica, the Supreme Electoral Tribunal (SET) is not only responsible for convoking elections, conducting official counts of votes and declaring results but also has the mandate of interpreting all constitutional and legal provisions on electoral matters. In addition, before enacting any law concerning electoral matters, the Legislative Assembly must consult the SET.¹²⁹

The demarcation of electoral boundaries, the funding of political parties, campaign funding and the registration of political parties have traditionally been very contentious issues in the electoral history of Cameroon. All these aspect of the electoral process are known to have been used by the government to influence the outcome of the polls to its advantage. These remain a potential weapon of electoral

¹²² See arts 2, 3 & 8 of the Lois No 2005-007 of the law establishing the CENA.

¹²³ Sec 5(c) of the Electoral Commission Act 55 of 1996.

¹²⁴ Sec 5(1) (n) of the Electoral Commission Act.

¹²⁵ Sec 15 of the Electoral Commission Act.

¹²⁶ See the Public Funding of Represented Political Parties Act 103 of 1997.

¹²⁷ See art 2(b) & (d) of the Electoral Commission Act 451 of 1993; see also 45 (a) of the 1992 Constitution of Ghana.

¹²⁸ See arts 88 & 89 of the 2010 Constitution of Kenya.

¹²⁹ See art 102 of the 1949 Constitution of Costa Rica.

malpractice in the hands of the government since they are not included in ELECAM's mandate, which would have been better suited to handle these issues given its status as an independent institution.

4.4 Composition and mode of appointment of Members of ELECAM

According to the law establishing ELECAM, members of the EB shall be designated from the midst of independent personalities of Cameroonian nationality reputed for their stature, moral uprightness, intellectual honesty, neutrality and impartiality. The EB is composed of twelve members appointed for a four years renewable term of office.¹³⁰ Barred from holding office as members of the EB is a list of various categories of persons enumerated in the law including members of government and persons ranking as such, members of the Constitutional Council, magistrates in active service, persons with a running mandate in national, regional or local bodies, various Categories of administrators, members of political parties or support group of a political party and a host of others.¹³¹ The Law does not provide for the Director General of ELECAM and his deputy, who are the most powerful members of the institution, to adhere to the above conditions of moral uprightness, intellectual honesty, neutrality and impartiality as well as the incompatibilities listed in section 6. This could be interpreted to mean that a person with a tainted personality, who is highly partisan and does not meet the above criteria, could be appointed as Director General of ELECAM.

The chairperson and vice-chairperson as well as all the other members of the EB and the Director General his deputy are appointed by the President of the Republic after consultation with political parties represented in parliament as well as civil society organizations.¹³² Such consultations are however non-binding on the president which implies that the appointment of ELECAM members and its key officials is technically the exclusive preserve of the President of the Republic. This manner of appointment is very arbitrary, restrictive, devoid of any iota of transparency and involves no input whatsoever from other organs of government. This mode of appointment saps ELECAM of any credibility and only helps to reinforce negative public perceptions about its independence and impartiality. This is in stark disregard of the international standards set out above, which require that the selection and appointment of members of an EMB be transparent, inclusive and should involve all the organs of government.¹³³

¹³⁰ Sec 8(2) of the ELECAM law.

¹³¹ See sec 13 of the ELECAM law.

¹³² See secs 8(1) (3) & 20 of the ELECAM law.

¹³³ This situation was exacerbated when in 2009 the president of the republic appointed the inaugural members of ELECAM, most of who were top ranking officials of the ruling party with clear histories of political bias and partiality, while others have histories of electoral mismanagement and tainted integrity. This led to a serious outcry from members of the opposition, civil society and the international community who saw this as a serious compromise of ELECAM's independence and credibility. See PICAM 'International Campaign for an Independent Electoral Commission in Cameroon' press release

In this regard, ELECAM has followed in the footsteps of the NEO whose members were equally appointed exclusively by the president, with disastrous consequences for its credibility.¹³⁴ The CENA of Senegal, which like ELECAM has twelve members, also follows this mode of appointment. The law creating the CENA simply states that members of the CENA shall be chosen from amongst personalities of Senegalese nationality known for their integrity, honesty, neutrality and impartiality after consultation with the institutions and various actors in civil society.¹³⁵ Civil society in Senegal is however stronger and more active than in Cameroon and has been able to wield considerable power over the choice of members of the CENA.

The South African IEC on the other hand consists of five Commissioners, one of whom must be a judge, appointed by the president. The members of the IEC are selected through a transparent, inclusive and stringent procedure that prevents any form of manipulation due to the number of actors involved in the process. A panel, consisting of the President of the Constitutional Court, a representative of the Human Rights Commission, a representative of the Commission on Gender Equality and the Public Prosecutor (all independent institutions), recommend a number of Commissioners to a Committee of the National Assembly. This Committee is made up of representatives of all parties represented in the National Assembly in equal proportions. This Committee then recommends a number of Commissioners to the National Assembly, which in turn, through a resolution adopted by a majority of the assembly, recommends the Commissioners to be appointed by the president.¹³⁶ The president's power of appointment is therefore largely ceremonial. Such a mode of appointment leaves no doubt with regards to the credibility of the IEC and helps to uphold public confidence in the independence of the institution.

4.5 Removal of ELECAM members from office

The ELECAM law provides for three situations through which the functions of a member of the Electoral Board of ELECAM can be terminated. These are: physical incapacity duly ascertained by ELECAM; serious misconduct duly ascertained by ELECAM, notably breach of oath and penalty imposed for a felony (life or fixed term imprisonment coupled with banishment and civic disqualification).¹³⁷ The mandate of an ELECAM member can also come to an end through non

available at www.picam.org for details on members of ELECAM and their links with the ruling party and president of the Republic; see also <http://www.newstimesafrica.com/archives/6216> (accessed 29/09/10), for the reaction of the international community on the president's illegal action.

¹³⁴ See art 3 of the NEO law.

¹³⁵ See art 4 of Lois No 2005-007 of the law establishing the CENA.

¹³⁶ See generally sec 6 of the Electoral Commission Act.

¹³⁷ Sec 11 of the ELECAM law.

renewal of the mandate, resignation, duly established by ELECAM, or temporary incapacity duly ascertained by ELECAM.¹³⁸

This method of terminating the mandate of an ELECAM member leaves much to be desired because the process is open to manipulation; it is non-transparent as well as being restrictive. The termination of a member's mandate especially in cases of serious misconduct only needs to be ascertained by ELECAM members without any form of external review. This is an affront to the principles of natural justice because ELECAM effectively becomes a judge in its own cause in this instance. In like manner, the president has multiple ways of removing ELECAM members from office either by forcing resignation, or having a majority of ELECAM members to declare the individual to be physically incapacitated or in breach of oath. Also, the fact that members of ELECAM may serve indefinitely provided that the president renews their mandate every four years is a cause for concern since this can serve as an incentive for them to maintain a pro-government agenda in order to retain their positions.¹³⁹ Another worrying issue is that the Constitutional Court can at any time establish that ELECAM is incompetent and the president is then empowered to take any corrective measures he deems necessary.¹⁴⁰ These are structural weaknesses that effectively operate to diminish any semblance of independence that ELECAM may possess.

The defunct NEO did not have such removal procedures since the mandate of its members ended immediately after the conduct of the polls¹⁴¹ In Senegal, the mandate of a member of the CENA cannot be terminated except on the member's demand or because of physical or mental incapacity duly ascertained by a medical doctor designated for that purpose by the National Order of Medical Practitioners.¹⁴² This is far better than the situation in Cameroon because the ascertainment of incapacity is done by an external body that is also independent.

In South Africa, the procedure for removing Commissioners from office is very stringent, transparent and inclusive and helps to insulate the IEC from any form of outside interference. According to the Electoral Commission Act, a commissioner may only be removed from office by the president on grounds of misconduct, incapacity or incompetence. Removal from office on the above grounds can only be effected after a finding to that effect by a Committee of the National Assembly, upon the

¹³⁸ Secs 9 & 10 of the ELECAM law.

¹³⁹ See PICAM press release (no 127 above)

¹⁴⁰ See sec 41 of the ELECAM law.

¹⁴¹ See art 3 (2) of the NEO law.

¹⁴² See art 6 of the Lois No 2005-007 establishing the CENA.

recommendation of the Electoral Court. A majority of the National Assembly must then adopt a resolution calling for that commissioner's removal from office.¹⁴³

4.6 The funding and accountability of ELECAM

The Director General is charged with preparing the draft budget of ELECAM. Such budget must be approved by the EB which then submits same to the government for consideration. After such consideration, the government then submits the budget to parliament for adoption as part of the finance law.¹⁴⁴ In essence therefore, ELECAM cannot elaborate its own budget independently and it is the government that has the final say on what to submit to parliament as ELECAM's budget. This is a sorry state of affairs since the government at any given time, can decide to starve the institution of funds. This would inevitably have the effect of rendering the body ineffective given that election management requires huge financial resources. This is the same situation that obtained with the defunct NEO. NEO officials repeatedly claimed that they could not effectively carry out their restrictive mandate because they lacked the financial means to do so. This is the same fate that is likely to befall ELECAM.

With regards to accountability for the funds entrusted to it, the minister in charge of finance is responsible for appointing a treasury accounting officer as well as a public accountant to ELECAM for the purpose of ensuring financial probity.¹⁴⁵ ELECAM is also required to submit its administrative and management accounts to the finance minister as well as to the Audit Bench of the Supreme Court. With regards to its day to day management, ELECAM is required to submit copies of minutes and progress report to the Minister of Territorial Administration and Decentralization.¹⁴⁶ This again is largely inconsistent with the international standards which require that an EMB be accountable for its management and finances to an independent institution such as parliament or the Auditor General. In this regard again, ELECAM has effectively maintained the status quo of what obtained during the NEO era since NEO was not accountable to an independent institution but to the President of the Republic; a personality who had a vested interest in the outcome of the polls.

The CENA in Senegal has a more robust and independent funding mechanism. The CENA elaborates its own budget in collaboration with the competent technical services of the state which is then adopted in parliament as an autonomous budget in the finance law which must be made available at

¹⁴³ See generally, sec 7(2) of the Electoral Commission Act.

¹⁴⁴ See secs 27 – 30 of the ELECAM law.

¹⁴⁵ Sec 31 & 32 of the ELECAM law.

¹⁴⁶ Sec 40 (2) of the ELECAM law.

the beginning of the fiscal year to the CENA.¹⁴⁷ As is the case with ELECAM, the finance minister appoints a public accountant to the CENA to ensure probity in the management of funds entrusted to it. The CENA is required to submit election and annual reports to the President of the Republic.

In South Africa, the budget of the IEC is approved by Parliament, which then releases funds to it.¹⁴⁸ According to section 181(5) of the Constitution, the IEC, as one of the six institutions supporting democracy, is accountable to the National Assembly and must report on its activities and the performance of its functions to the Assembly at least once a year. It must also submit an audited statement of income and expenditure annually. To ensure more financial autonomy, the IEC is empowered to expend money without authority from any quarter. The Chief Electoral Officer, as the accounting officer of the IEC, is responsible for the financial accounting of the IEC. In order to ensure financial probity, the IEC's accounts must be audited by the Auditor-General whose office is constitutionally independent.¹⁴⁹

4.7 Terms and conditions of service of members of ELECAM

The ELECAM law provides for the terms and condition of service of members of the EB as well as the Director General and deputy. The Chairperson and Vice-chairperson of ELECAM as well as the Director General and his deputy are entitled to monthly remuneration and statutory benefits.¹⁵⁰ The other members of the EB are only entitled to session allowances during meetings of the EB and a refund of all expenses incurred upon presentation of supporting documents. They are equally entitled to session and mission allowances. All the forms of remuneration mentioned above are exclusively determined by the President of the Republic by decree.¹⁵¹

The terms and conditions of service of ELECAM members are therefore left to the whims and caprices of the President who can use his discretion to manipulate the institution. The exclusive powers conferred on the president to determine the remuneration of ELECAM officers, without any form of oversight is dangerous to the independence and efficiency of the body because the president can use such powers to entice ELECAM members with attractive salaries and get them to toe a pro government line; or set the remuneration in a way that will affect the effectiveness of the members of ELECAM. ELECAM has in this sense followed closely in the footsteps of the NEO, since the terms

¹⁴⁷ See art 19 of Lois No 2005-007 establishing the CENA.

¹⁴⁸ Sec 13 (1) of the Electoral Commission Act.

¹⁴⁹ Sec 13(3) of the Electoral Commission Act.

¹⁵⁰ Sec 37 (1) & 38 of the ELECAM law.

¹⁵¹ Sec 37 (3 & 4) of the ELECAM law.

and conditions of service of the members of NEO were exclusively decided by the President of the Republic.

In Senegal, the terms and conditions of service of members of the CENA follow a similar pattern. The law establishing the CENA states simply that members of the CENA shall be entitled to indemnities and mission allowances under conditions fixed by a decree of the president of the Republic.¹⁵² This contrasts significantly with the method of remuneration of members of the Electoral Commission of Ghana, whose chairman and deputies are entitled to the same terms and conditions of work of a judge of the Court of Appeal and High Court respectively. The remuneration of the other members of the Commission is fixed by parliament.¹⁵³ In South Africa, the President fixes the remuneration of members of the IEC, in consultation with the Commission on the Remuneration of Representatives.¹⁵⁴ The system in Ghana and South Africa is more inclusive and prevents arbitrariness and any likelihood of manipulation.

4.8 Can ELECAM's legislative and institutional framework enable it to organize a credible ballot?

Having examined the major facets of ELECAM's institutional and legislative framework, the major question that needs to be answered is whether this framework assures the independence and effectiveness of ELECAM in order to enable it credibly manage elections and prevent fraud and irregularities in the electoral process that have hitherto been prevalent in Cameroon? In other words has this framework adequately improved on the weaknesses of the defunct NEO to enhance public confidence in the independence and capacity of ELECAM to manage a credible, free fair, transparent and acceptable ballot?

It is certain that ELECAM's framework is a considerable improvement when compared to the NEO. Unlike NEO that lacked authority over how elections were executed and thus left the electoral process under the firm control of the executive, ELECAM's mandate gives it full authority over the management of the electoral process. ELECAM, unlike the NEO is a permanent institution and this can have significant positive impacts on the professionalism of the body and its effectiveness in managing elections. These are commendable improvements that could enable ELECAM effectively deal with some of the irregularities that obtained during the NEO era, occasioned by the MINADT.

¹⁵² Art 21 of the Lois No 2005-007 establishing the CENA.

¹⁵³ See sec 5 of the Electoral Commission Act of Ghana.

¹⁵⁴ Sec 7(2) of the Electoral Commission Act.

However, ELECAM has retained most of NEO's structural weaknesses that makes it vulnerable to the same pro-government pressure that beleaguered the NEO. First, the DGE of ELCAM wields excessive powers and the Director General is literally not required to adhere to the same requirements of neutrality, intellectual honesty, impartiality, patriotism and moral uprightness that is required of members of the EB. Secondly, the mode of appointment and removal of members of the EB, their terms and conditions of office, the funding and accountability of the institution are not significantly different from that of the defunct NEO and fail to conform to international standards on election management. . The law on ELECAM gives the President of the Republic excessive and arbitrary powers that can enable him negatively affect ELECAM's independence and effectiveness.

Furthermore, a dubious relationship between ELECAM and the MINADT has still been maintained. The Minister of Territorial Administration is required to ensure constant liaison with ELECAM and the latter is required to submit progress reports to him.¹⁵⁵ The ELECAM law also provides for the compulsory inclusion of MINADT officials in all commissions for the revision of registers of electors, commissions in charge of controlling the establishment and distribution of registration cards, local polling commissions as well as council supervisory commissions.¹⁵⁶ MINADT has been the chief architect of electoral fraud in Cameroon and its re-involvement in any aspect of the electoral process is highly suspect and only helps to diminish ELECAM's independence and credibility in the eyes of the public.

Therefore, ELECAM still falls far short of the guarantees of independence, impartiality and credibility that is required of a truly independent electoral institution that it purports to be. It is therefore highly unlikely that ELECAM will be able to turn the tide of flawed elections in Cameroon given that the fraud machinery is so well entrenched and organized that only an institution with all the requisite guarantees of independence and effectiveness can be expected to change the status quo. However, should the members of ELECAM remain steadfast and refuse to yield to any pressure whatsoever; they could still make a significant impact on the electoral process though this is highly illusory in light of the prevailing political climate in Cameroon.

Conclusion

The foregoing discussion has endeavored to analyze the major facets of the institutional and legislative framework of Elections Cameroon with a view to determining whether it conforms to the requisite international standards. An attempt has also been made to examine whether ELECAM's framework

¹⁵⁵ See sec 40(2) Law no 2010/005 of 13 April, 2010 modifying the ELECAM law; see also Kijem Yuh (n 105 above) 75.

¹⁵⁶ Sec 7 (new) of the ELECAM law; see also Kijem Yuh (n 105 above)76

has improved on NEO's weaknesses or whether the status quo has been maintained. For practical comparative purposes, the IEC of South African and the CENA of Senegal, together with other EMBs around the world have been used to gauge the guarantees of independence and effectiveness contained in the laws creating the various EMBs.

What is manifest from this analysis is that although ELECAM is an improved version of the NEO, it falls far short of many of the international standards underlying the design and functioning of credible electoral institutions. It retains most of the weaknesses of the NEO and is beset with structural weaknesses that make it prone to pro-government pressure and manipulation, with the result that its independence and credibility is highly jeopardized. With these weaknesses, it is highly unlikely that ELECAM is capable of turning the tide of flawed elections in Cameroon except its members show proof of extraordinary bravery and refuse to bow to pressure of any kind. This though, is highly illusory given the iron grip the government has over the institution.

Chapter five: Conclusions and recommendations

5.1 Conclusions

Credible elections are today, considered the cornerstone of an inclusive and sustainable democracy. The credibility of elections in most flawed democracies such as Cameroon has however been compromised by flaws characterized by fraud and numerous irregularities that render the electoral process a façade and the will of the people meaningless. This state of affairs has been attributed to the lack of a credible election management body to manage the electoral process in an unbiased, transparent and independent manner. EMBs play a pivotal role in the electoral process and therefore need to adhere to certain minimum standards to ensure that the outcome of the ballot is acceptable to all stakeholders.

These minimum standards, comprising internationally accepted norms and practices have been succinctly elucidated in this work. Using these standards, it has been amply demonstrated that the management of elections in Cameroon during the NEO/MINADTE era was fraught with numerous flaws and irregularities because the electoral management institutions did not meet the requisite international standards. It has been shown that these institutions did not have the legal safeguards necessary for their independence, impartiality and effectiveness.

The flawed nature of elections in Cameroon has contributed to stalling the drive for democratization and reinstating autocratic rule clad in garments of democracy. The electoral process has been subverted and incumbents in Cameroon use manipulative techniques to perpetuate their hold over power. Because of the lack of a credible institution to manage elections in Cameroon, elections have lost their significance and have become a mere ceremony through which the ruling elite validate their legitimacy without giving effect to the will of the people.

The attempts of the government to remedy these problems through the creation of ELECAM are halfhearted and highly dubious because ELECAM still retains most of the major structural and institutional weaknesses of its predecessors and fails to adhere, on many counts, to the minimum standards that have been set out. A careful examination of the major facets of ELECAM's legislative and institutional framework has demonstrated that the government and especially the President of the Republic still wields enormous and arbitrary powers over ELECAM and has multiple avenues of manipulating the institution to serve his whims and caprices. ELECAM was designed as an independent electoral institution but when compared with similar bodies around the world, especially the IEC of South Africa, one discovers that it lacks all the safeguards against interference and impartiality. It is therefore highly doubtful that ELECAM can turn the tide of flawed elections and

ensure a transparent and credible ballot and the 2011 presidential elections will certainly serve as testimony to this effect.

5.2 Recommendations

Given that most Cameroonians have lost faith in their political system and especially the institutions responsible for managing the electoral process, the only way to rekindle their hope and inspire confidence in the electoral process is to conceive and design an EMB that has all the necessary guarantees of independence, impartiality, credibility and professionalism. This is indispensable for any hope of a peaceful transition and genuine democratization in Cameroon. Presently, ELECAM does not have these guarantees and it is in this light that the recommendations set out below are proposed with a view to strengthening the institution and insulating it from any form of manipulation.

- The legal framework of any institution such as ELECAM is pivotal for guaranteeing its effectiveness and independence. The legal framework of ELECAM needs to be reviewed with a view to insulating it from arbitrary executive interference. ELECAM as an independent institution should be constitutionally established and its provisions entrenched. These provisions should clearly set out the composition, selection and appointment procedures of members of ELECAM, their removal from office, its funding and accountability. These procedures must be transparent, inclusive and aim at guaranteeing the independence and effectiveness of the institution. A law passed in Parliament can then set out further details with regards to the institution that must conform to the stipulations of the Constitution.
- The two pronged structure of ELECAM in which powers and responsibilities are shared between the EB and the DGE is highly undesirable and should be abolished. The DGE of ELECAM needs to be scrapped and all its powers and functions should be transferred to the EB. This way, the risk of any conflict of interest will be preempted and the excessive powers conferred on the Director General, can be exercised in a more responsible manner by the board as whole.
- Appointment procedures of ELECAM members must be reviewed to render them more transparent, inclusive and stringent. The role of the President of the Republic in the selection and appointment procedure should be very minimal. Since the independence of institutions in Cameroon is severely limited, nomination of ELECAM members should be done by political parties represented in the National Assembly and civil society organizations. All appointments

should be made by the president from such nominations and all such appointments should be subject to parliamentary approval. This way, the president's ability to appoint party cronies as has been the case in the past will be put in check.

- With regards to funding, ELECAM should be given the leeway to elaborate its budget and submit to parliament as an autonomous budget without prior approval by the government. A law should provide a minimum threshold budget that should be made available to ELECAM to enable it continuously improve the management process by for example employing new technologies in election management in order to minimize irregularities. ELECAM should also be allowed to seek external funding. This would enhance its efficiency and guard against the possibility of the institution being starved of funds by the government. No effort should be spared in adequately funding the institution because it costs the state far more when elections are rigged and there is chaos and civil strife as was the case in 1992. ELECAM should account for the funds entrusted to it to an independent authority such as the Administrative Bench of the Supreme Court and not the finance minister.
- The procedure for the removal of ELECAM members from office should be reviewed to include review of any dismissal by an independent institution. It is recommended that the South African approach be adopted in this respect and any dismissal of an ELECAM member especially on grounds of incompetence, misconduct or breach of oath should be subject to the approval of two thirds of the members of Parliament. Provision should also be made for a review of such dismissal by courts of law. In cases of physical or mental incapacity, the Senegalese approach where a doctor designated by the National Order of Medical Practitioners determines such incapacity, should equally be adopted.
- The terms and conditions of service of ELECAM members should be determined by law and not through a presidential decree and provision should equally be made for a review of these conditions by a body specifically created for that purpose. The term of office of ELECAM members should be limited in time to a maximum of two terms which should not exceed ten years and which should not coincide with the term of office of an elected government. This way, the President's arbitrary powers over the remuneration and re-appointment of ELECAM members would be significantly curbed and the avenues for manipulation, reduced.
- The mandate of ELECAM should be broadened to include the registration of political parties, delimiting electoral boundaries overseeing the expenditure of candidates and political parties

during elections and playing a leading role in reviewing any bill concerning electoral legislation. It should equally be granted the power to make regulations to govern the conduct of elections. This will have the effect of ensuring that the broader political landscape in which elections take place is made level for a fairer competition amongst parties.

- ELECAM should report on its activities to parliament through annual reports and any other such reports as parliament may deem necessary. These reports should include information on the management of finances entrusted to it, information on the execution of its mandate and difficulties encountered and projections for the future. It is recommended that these reports should first be submitted and defended before a parliamentary committee established for that purpose. The committee could then seek clarification and further information on any pertinent issue before submitting the report to the plenary of the Assembly for debate and approval by a simple majority.
- ELECAM should also be required by law to report regularly to the public on its activities and should enhance public participation in its activities. It should for instance, conduct regular public assessment of its activities in order to get public opinion and perceptions on its performance. The public should be regularly informed of ELECAM's activities through the publication of its activity reports as adopted by parliament, the publication of newsletters, brochures, booklets and pamphlets. This, if well implemented, will enhance transparency and public accountability of the institution
- The requirement that the Constitutional Council should establish ELECAM'S incompetence should be scrapped and this power conferred on parliament. The Constitutional Council has not yet been put in place and even if it were, its composition makes it highly inappropriate to discharge this responsibility in an impartial manner. MINADTS role in any aspect of the electoral process should also be eliminated given that it has hitherto been the chief architect of electoral fraud and its involvement in the management of elections is highly suspect. Broader institutional reforms should be instituted because ELECAM cannot function effectively even if well insulated from manipulation if other institutions with which it is condemned to collaborate are inefficient.

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