

THE ORIGIN AND DEVELOPMENT OF EMERGENCY REGIMES IN CAMEROON

Gerard Emmanuel Kamdem Kamga* **

1 Introduction

The present paper, which is part of a larger project, examines the origin and development of emergency regimes in Cameroon. These regimes are established in exceptional circumstances, allowing states legally to suspend laws and infringe human rights when dealing with a threat. Emergency regimes include a state of emergency, a state of exception, a state of siege and martial rule. In Cameroon, these regimes are currently described by section 9 of the Constitution and Law 90/047 of 19 December 1990 on the state of emergency. Section 9 of the Constitution reads:

- (1) The President of the Republic may, where circumstances so warrant, declare by decree a state of emergency, which shall confer upon him such special powers as may be provided for by law.
- (2) In the event of a serious threat to the nation's territorial integrity or to its existence, its independence or institutions, the President of the Republic may declare a state of siege by decree and take any measures as he may deem necessary. He shall inform the Nation of his decision by message.

The purpose of this study is to trace the origin and development of these emergency regimes, to address their negative impact on the current structure of the political system

* Postdoctoral fellow, Department of Jurisprudence, University of Pretoria.

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and to highlight the need for change in the country. From a historical perspective, the idea of suspension of law derives from the canonical maxim *necessitas non habet legem*, which means that necessity knows no law, or necessity creates its own law. The idea that necessity can, in exceptional circumstances, be considered as an excuse for not complying with the rules is very old and widespread.¹ An example is given in Seneca's *Rhetoric* controversies,² of a soldier who, having lost his weapons during a battle, took the weapon of another soldier who had died and been buried. Although he emerged from the battle on the winning side, this soldier was accused of invading the grave.³ The author justified these acts by referring among others, to the *lex Rhodia de jactu*, and by asserting the following:

Necessity requires a ship's cargo to be thrown away in order to lighten it; necessity requires the demolition of houses in order to extinguish fires; necessity is the law of the moment.⁴

According to Frank Roumy, the first text that directly prefigures the formulation of the maxim *necessitas non habet legem* is to be found in the commentary of Bede the venerable on the gospel of Mark, written in the years 725-730. Commenting on the verse which proclaims that the Sabbath was made for man, not man for the Sabbath (Mk 2 27), Bede by implication refers to the case of David who, being hungry, entered the temple and ate the consecrated bread (which is not lawful for anyone to eat except the priests (Mk 2 26)), to justify a sick person's breaking the daily fast by arguing that "what is not allowed by the law, becomes permissible by necessity".⁵ By the time of the twelfth or early thirteenth century, at least five branches of medieval knowledge, namely civil law, liturgy, theology, philosophy and narrative literature had received the maxim.⁶

In the light of the above developments, it is evident that the maxim *necessitas non habet legem* was meant to be a palliative measure to remedy the inadequacy and insufficiency of the law, and was a circumstantial remedy aiming at addressing a particular emergency. The investigation into the origin and development of emergency regimes in Cameroon that follows, demonstrates that such regimes, which were introduced into the country through imperialism, have lost their exceptional character and appear to be the keystone on which the entire politico-legal system currently rests. Indeed, Cameroon came into being as a political unit in the 1880s. Before then, there were numerous states, nations, or political entities in the area,

1 F Roumy "L'origine et la diffusion de l'adage canonique *necessitas non habet legem* (VIII-XIIIe S.)" in *Medieval Church Law and the Origins of the Western Legal Tradition a Tribute to Kenneth Pennington* (Washington, 2006) 301-319 at 301.

2 *Idem* at 304.

3 *Ibid.*

4 *Ibid.*

5 *Idem* at 306.

6 *Idem* at 313.

each with its own culture, history, government, and economy.⁷ The competition engaged in by European traders to obtain the products sold at the coast by indigenous Cameroonians was by the 1880s to develop into a scramble for control over the entire area, a process that led to the colonisation of Cameroon by Germany in 1884.⁸ After the First World War, the Versailles peace conference in 1919 set up a new system of mandates over conquered colonies, which were placed under international supervision. Consequently, after thirty years of German rule (from 1884 to 1914), the former colony of Kamerun was handed over to France and Britain and soon split into two parts. Kamerun (the German spelling) became “Cameroun” under French influence and was named “Cameroon” by the British administration. On 20 July 1922, this partition was endorsed by the League of Nations, which placed the country under a regime of mandate.⁹

Note at this point that my investigation into the origin and development of emergency regimes in Cameroon focuses more on the French section than on the English one. The reason is that while operating under the authority of the League of Nations, both England and France administered their spheres of influence as they did their other African colonies. The British incorporated theirs into their colony of Nigeria, while the French portion was administered in the same way as the Ivory Coast, Congo Brazzaville and Senegal. British rule did not rely on draconian measures such as it imposed on the Mau Mau in Kenya, but on a system of indirect rule characterised by local administration by indigenous authorities over their own population. The French system of governance, on the other hand, relied heavily on brutal measures. The French applied the *politique d'assimilation*, which had drastic implications for the human rights and freedoms of the governed, because it forced the indigenous people in that area to forget about their customs and traditions and adopt French culture. This policy was implemented through the introduction of emergency regimes. Subsequently such regimes have recurred and currently occupy a central place in the country's institutions and have had a considerable impact on democratic progress in the state. Certain questions need to be answered:

- What was the origin of emergency regimes in Cameroon and how did they develop?
- What is the legal framework and historical context of their implementation?
- What is their impact on current institutions?

Following a legal and historical approach, I shall answer these questions firstly by addressing the origin and development of emergency regimes in Cameroon before and after independence, secondly by analysing their impact on current institutions and thirdly by providing some suggestions.

7 MW Delancey *Cameroon Dependence and Independence* (Boulder, Colo, 1989) at 2.

8 R Neville *Cameroun an African Federation* (London, 1971) at 22.

9 *Ibid.*

2 Emergency regimes in Cameroon before “independence”: a legacy of colonialism

Understanding this section requires a review of the introduction of emergency regimes in Cameroon under international supervision, the Algerian experience, the move toward independence and the formalisation of emergency regimes.

2.1 The introduction of emergency regimes in Cameroon under international supervision

After World War I, possession of Kamerun was transferred from Germany to France and Britain by virtue of section 119 of the Versailles treaty of 28 June 1919.¹⁰ Sometime after French authorities took over the larger portion of the territory, the French Royal Ordinance of 17 November 1840 on the government of Senegal and its dependencies became applicable in Cameroon. Some provisions of this document essentially contain emergency measures, for it provides that “the governor shall ensure the security and peace of the colony” and that “all acts and events likely to undermine public law and order or the peace shall be immediately referred to him”.¹¹ Similarly, a Decree issued on 9 November 1901 by the French president of the time, Emile Loubet, also became enforceable in Cameroon. Two provisions of this Decree regulating the relations between governors and senior commanders of the troops clearly refer to emergencies that may arise in the colonies.¹² A Decree of 23 March 1921 relating to the prerogatives of the commissioner of the French Republic in Cameroon subsequently transferred the special powers of the governors of the colonies to the commissioner. Section 2 of this Decree conferred upon the *Commissaire de la République* powers of defence of the territory, to be exercised under the authority of the Minister of Overseas Territories of France.¹³

Emergency regimes were introduced in Cameroon not only because the French imposed on it some draconian measures already in force in their colonies, but also through international instruments which endorsed French control over the territory. Section 26 of the League of Nations Mandates of 20 July 1922, which placed the country under a mandate, vested in France and Britain the power of administering it and ensuring peace, law and order. In addition, section 3 conferred “special powers” on France and Britain to use indigenous troops to fight threats of war or to defend the territory. The harsh nature of the measures was also underlined in section 7, which entitles the mandatory powers to “take all necessary measures” to maintain public order and a good administration.

10 *Ibid.*

11 JG Bouvenet & R Bourdin *Codes et lois du Cameroun* (Yaounde, 1956) at 119.

12 See ss 1 and 2 of the Decree of 9 Nov 1901 available at <http://djibouti.frontafrique.org/?toDo=docs&ID=260&posID=116> (accessed 5 Nov 2013).

13 *Journal officiel des territoires occupés de l’Ancien Cameroun* 1 Jun 1921 at 88.

In 1939, when the Second World War broke out, French authorities took further exceptional measures and sent the indigenous population into the killing fields. Even though the Versailles treaty formally forbade Britain and France to “give military instruction to the indigenous population except in the case of policing or defence of territory”,¹⁴ the Gaullist administration ignored these provisions and under the pretext of “*effort de guerre*” instituted *l’engagement volontaire* (voluntary commitment) which forced around 10 000 indigenous Cameroonians into the battle fields. It is reported that:

In fact the French administration in Cameroon treated the indigenous population very harshly during the war. To put it frankly, the system set up by the free French in Cameroon resembled a military dictatorship. As soon as he arrived, Leclerc imposed a state of siege on the entire territory and abolished almost any public freedom.¹⁵

Then in the course of the Second World War, a state of siege, historically the foremost institution of emergency regimes, was enforced by the French administration in a country where institutional frameworks were yet to be set up.

The Second World War had highlighted the weaknesses of the League of Nations, which eventually led to the creation of the United Nations Organisation (UN) in 1946. This resulted in the two mandated territories of Cameroon being converted into United Nations Trust territories.¹⁶ With regard to emergency regimes, section 4 of the trusteeship agreement provided for the setting up of military, maritime, and air force headquarters, and entitled authorities to “take all necessary measures for the organisation and own defence to ensure the participation of the territory in the maintenance of peace and international securities, in respect of interior order and the defence of the territory”. The provision creates the impression that the trusteeship agreement was designed to be implemented in an atmosphere of turmoil.

In Cameroon, severe measures were regularly enforced when there was political agitation against colonialism, led by the *Union des Populations du Cameroun* (UPC), a nationalist movement started in April 1948 and led by Ruben Um Nyobe. The movement demanded nothing less than independence and reunification of the British and French Cameroons, a request acknowledged by two resolutions of the United Nations in January 1952 and December 1953, which required France’s trusteeship in Cameroon to move toward autonomy or independence.¹⁷ Embarrassed by these developments, the French incited the UPC to violence by subjecting the party to social, political and even religious harassment.¹⁸ On 19 February 1955, the French

14 T Deltombe *et al Kamerun! Une guerre cachée aux origines de la Françafrique 1948-1971* (Paris, 2011) at 34-35.

15 *Idem* at 34.

16 “Fiftieth anniversary independence and reunification” available at <http://www.cinquantenaires-cameroun.org/en/history.php> (accessed 12 Oct 2012).

17 *Idem* at 128.

18 Deltombe (n 14) at 122-123.

high commissioner in Cameroon, Roland Pre, issued a decree empowering all officials of the administration to “use force in order to prevent and disperse meetings that can disturb public order”.¹⁹ In the same vein, on 13 July of the same year, the UPC movement was outlawed by a decree of the president of the Council, Edgar Faure. As a result, some leaders of the movement, including its chairperson Felix Moumié, and his deputies Abel Kingue and Ernest Ouandié, went into exile. Another section of the leadership, headed by its secretary-general Um Nyobe, went underground and started guerrilla warfare, known in Cameroon as the *maquis*.²⁰ The French administration reacted to this guerrilla warfare by launching massive campaigns of repression. On 21 December, Pierre Messmer, the new high commissioner issued “special requisitions” that allowed security forces to open fire on saboteurs caught “in flagrante delicto”. A day later, on 22 December, a *Zone de maintien de l’ordre de la Sanaga-Maritime* (ZOE), (zone of law enforcement in Sanaga-Maritime) was set up for two months.²¹ This led to patrols and raids by the police, gendarmerie and Cameroon guards in Douala, Yaounde, Nkongsamba, Bafia and elsewhere.²²

The recurrence of expressions such as “meetings that can disturb public order”, “special requisitions” and “zone of law enforcement” were consistent with the colonial authorities’ developing idea of emergency regimes and suspension of the law in the country. The status of Cameroon was later amended by two French decrees: the Decree of 16 April 1957 on internal autonomy, and the Decree of 30 December 1958 on the complete autonomy of the country. With regard to emergency regimes, whereas section 39 of the Decree of 16 April 1957 allowed the headquarters of the High Commissioner to be moved “in case of necessity”, section 41 of the same document stressed that the High Commissioner was in charge of public order and the security of persons and property. He had at his disposal state security and gendarmerie stationed in the territory, and was allowed “in case of urgency to take all necessary measures for the safeguarding of order or its restoration”. Similarly, section 25 of the Decree of 30 December 1958 provided that the High Commissioner of France in Cameroon and the Prime Minister might issue a joint order declaring a state of exception in case of an armed attack, or serious anticipation of such an attack or of foreign war. Though the High Commissioner and the Prime Minister were both entitled to enforce a state of exception, the Decree provided that in case of disagreement between the two, the decision of the French High Commissioner should prevail. The High Commissioner would by virtue of an order enforcing the state of exception “take necessary measures” to safeguard order and its restoration.

19 *Idem* at 163.

20 The expression *maquis* refers to a non-conventional war or guerilla warfare in which nationalists, being aware of their inferiority and weakness in the face of a well-equipped French army, remained hidden in the forest and organised sporadic strikes in the cities.

21 Deltombe (n 14) at 214.

22 *Ibid.*

The introduction of emergency regimes in Cameroon was obviously the consequence of the reception of various draconian measures provided for either by international instruments or by legislation already enforced in other French colonies. In the 1950s the various provisions on emergencies were formally grouped into specific emergency legislation. In particular, emergency regimes as currently experienced in Cameroon were formally created by the French during Algerian colonialism. They remain the point of intersection between the history of Cameroon and that of Algeria. For an adequate understanding of the dynamics of these regimes in the context of Cameroon, a review of the Algerian experience is therefore necessary.

2.2 The Algerian experience and the genesis of emergency regimes

Having witnessed the resounding defeat of France in 1940 [and the defeat of the French in Indochina] nationalists engaged in the struggle for the emancipation of their country are now aware that they can gain independence through violence and weapons. Algerians of the FLN will remember the lesson; and so will Cameroonians of the UPC in other circumstances.²³

In the context of the struggle for independence, led by a nationalist movement, the *Front de Libération Nationale* (FLN), the French authorities continuously enforced draconian measures in Algeria in order to suppress any nationalist tendencies. The FLN on 1 November 1954 launched what was dubbed “*le massacre de la Toussaint Sanglante*” (the slaughter on All Saints’ Day) which resulted in the killing of many French as well as Algerian Muslims supporting the colonial regime.²⁴ A parliamentary session held in France on 12 November 1954 suggested a set of repressive measures aimed not only at preventing a repetition of such a massacre but also at retaliation against the FLN. Following various developments that led to the dismissal of the Mendes government on 5 February 1955, the French Assembly on 3 April 1955 finally passed bill 55/385 declaring a state of emergency. For the first time in history, a law on a state of emergency had been passed and was soon enforced in Algeria to counteract the nationalist movement. Despite the enforcement of this severe legislation, the cycle of violence continued a few months later when, on 20 August 1955, 123 Europeans and an official number of 1273 rebels were killed, although there were 12000 deaths according to the FLN.²⁵ It is important to emphasise the genesis and purpose of the French law of 3 April 1955 creating a state of emergency, because French imperialism soon reacted to the growing nationalist movement in

23 Deltombe (n 14) at 151.

24 “Guerre d’Algérie, de la colonisation à l’Indépendance” available at <http://www.curiosphere.tv/ guerre-algerie/> (accessed 2 Oct 2012).

25 “Guerre d’Algérie: Massacre du 20 Aout 1955” available at <http://www.mekerra.fr/images/ ecritures/amand-guy/20-aout-1955.pdf> (accessed 11 Nov 2013).

Cameroon by also passing similar legislation there. Thomas Deltombe and others have observed that the means and methods of French authorities in the face of events in Algeria and Cameroon closely resemble each other:

Facing “disorder” from the UPC followers, the scale of Manichean interpretation of French authorities implemented in the Algerian war is gradually introduced and pinned on the Cameroon situation by the heads of the army.²⁶

Algeria was among the first African countries to formally experience the trauma of a state of emergency, but in 1961 that country also experienced another type of emergency regime, which was the state of exception, at that time very new and also to be introduced in Cameroon. Indeed, when the escalation of violence in Algeria resulted in the return of General de Gaulle as the French head of state, he was given full powers and allowed to revise the Constitution. This led to the collapse of the Fourth Republic and the birth of the Fifth. One of the biggest innovations of de Gaulle’s new Constitution of 4 October 1958 was section 16 concerning a state of exception. This section made provision for a complete concentration of power in the hands of the president when the state’s safety, independence, international obligations or institutions were threatened.

Whereas de Gaulle was acknowledging the demands of those seeking independence, many French settlers in Algeria opposed the struggle for independence, viewed it as treason and strongly disagreed with de Gaulle’s politics. As a result, on 21 April 1961, four generals of the French army organised a military putsch in Algiers to prevent de Gaulle from relinquishing French sovereignty over French Algeria (*l’Algérie Française*).²⁷ In retaliation, de Gaulle two days later, on 23 April, formally implemented section 16 of the Constitution and declared a state of exception in Algeria which lasted until 29 September 1961.

2 3 The move toward “independence” and the formalisation of emergency regimes in Cameroon

This section examines the state of warning and the state of alert as the foremost formal emergency regimes in the country, which then became keystones in the process of constitution making.

2 3 1 From de facto emergency to de jure emergency: l’état d’alerte and l’état de mise en garde

Until 1959, the campaign of repression and the deployment of draconian measures across Cameroon had been carried out through emergency mechanisms provided

26 Deltombe (n 14) at 186.

27 “13 Mai 1958 Alger se révolte” available at <http://www.herodote.net/histoire/evenement.php?jour=19580513> (accessed 2 Oct 2012).

by international instruments and French colonial legislation designed for other colonies. That situation came to an end in May 1959, when Prime Minister Ahidjo, facing violence perpetrated by nationalist fighters and consequent insecurity issues, formally requested legal means to address the situation from the legislative assembly of Cameroon, (ALCAM).²⁸ Such legal means were provided in four executive bills, which were approved by thirty-four to fourteen votes on 22 and 27 May 1959 through Law 59/33 of 27 May 1959 on the maintenance of public order.²⁹ For the first time legislation formally acknowledged two specific types of emergency regime, namely, a state of alert (*l'état d'alerte*) and a state of warning (*l'état de mise en garde*).³⁰ These regimes were largely based on the repressive provisions of the Law of 3 April 1955 on the state of emergency and section 16 of the French Constitution that had been applied in Algeria.

As emergency institutions, a state of alert and a state of warning could be declared by both the interior minister and prime minister in the case of a “serious presumption or event threatening public order.”³¹ Whereas a state of warning could not last more than eight days, a state of alert could last for up to three months.³² Both measures were renewable and extended to *inter alia* the prohibition of meetings and publications, the imposition of a curfew and the request for administrative authorisation to enjoy certain rights. People who did not comply with these provisions could be imprisoned for twelve months or fined between FCFA 200 000 and 500 000.³³ The state of warning and the state of alert gave legitimacy to the government’s persecution of nationalist fighters, which had previously been carried out in secret. Special criminal tribunals were set up in Bafia, Douala, Dschang, Nkongsamba and Yaounde, and large numbers of suspects were arrested. Six opposition newspapers, including Bebey Eyidi’s *L’opinion au Cameroun*, were suppressed.³⁴ The following table gives an idea of the scale of enforcement of states of alert and states of warning across the country.

28 A Eyinga *Mandat d’arrêt pour cause d’élections: De la démocratie au Cameroun 1970-1978* (Paris, 1978) at 14.

29 *Ibid.*

30 *Journal officiel du Cameroun* 27 May 1959 at 637.

31 *Ibid.*

32 Eyinga (n 28) at 14.

33 *Journal officiel du Cameroun* 1 Jul 1959 at 637.

34 N Awasom “Politics and constitution-making in Francophone Cameroon, 1959-1960” (2002) 49(4) *Africa Today* 3-30 at 9-10.

Declaration and extension of a state of alert and a state of warning in Cameroon during the year 1959

<i>Reference and date</i>	<i>Type of emergency and area of implementation</i>
Order 2086, 28 Jun 1959	Declaring a state of alert in the Bamileke region. ³⁵
Order 2087, 28 Jun 1959	Declaring a state of alert in the Wouri region. ³⁶
Order 2088, 28 Jun 1959	Declaring a state of warning in the Nyong and Sanaga region. ³⁷
Order 2089, 28 Jun 1959	Declaring a state of alert in the Sanaga-Maritime region. ³⁸
Order 21/43, 4 Jul 1959	Declaring a state of alert in the Mungo region for three months. ³⁹
Order 21/48, 7 Jul 1959	Declaring a state of alert in the Nkam, Mbam Sanaga-Maritime, Nyong et Kelle, Ntem and Dja-et-Lobo regions for three months. ⁴⁰
Order 2041, 7 Jul 1959	Declaring a state of warning within the Kribi division. ⁴¹
Order 2241, 15 Jul 1959	Declaring a state of alert within the Kribi division. ⁴²
Order 3270, 29 Sep 1959	Extending a state of alert within the Wouri division. ⁴³
Order 3272, 29 Sep 1959	Extending a state of alert in the Bamileke region. ⁴⁴
Order 3272, 30 Sep 1959	Extending a state of alert within the Nyong and Sanaga for a new period of three months. ⁴⁵
Order 3414, 8 Oct 1959	Extending a state of alert for a new period of three months in the Nkam, Mbam Sanaga-Maritime, Nyong et Kelle, Ntem and Dja-et-Lobo divisions for three months. ⁴⁶
Order 3520, 16 Oct 1959	Extending a state of alert within the Kribi division for three months. ⁴⁷

The adoption of repressive legislation in May was to be followed a few months later by the heated debate on *pleins pouvoirs* during the parliamentary session of October 1959.

2 3 2 Emergency regimes, a keystone in the process of constitution making in Cameroon: the parliamentary session of October 1959 and the heated debate on *pleins pouvoirs*

According to Herbert Tingsten, a state of exception embodies the concept of “full powers” (*pleins pouvoirs*), which is characterised by a concentration of power in the

35 *Journal officiel du Cameroun* 1 Jul 1959 at 839.

36 *Idem* at 840

37 *Ibid.*

38 *Ibid.*

39 *Idem* 15 Jul 1959 at 918.

40 *Ibid.*

41 *Idem* 5 Aug 1959 at 1040.

42 Eyinga (n 28) at 151.

43 *Journal officiel du Cameroun* 14 Oct 1959 at 1391

44 *Ibid.*

45 *Ibid.*

46 *Idem* 21 Oct 1959 at 1415.

47 *Ibid.*

hands of the executive and the provisional abolition of the separation of legislative, executive and judicial powers.⁴⁸ During parliamentary debates in Cameroon in October 1959, two contradictory proposals were made: Firstly, it was proposed that full power be granted to the prime minister to draft a Constitution. Secondly, it was proposed that politicians participate in a round-table conference in order to achieve national reconciliation and elect a constituent assembly to draft a Constitution. However, Prime Minister Ahidjo opposed the idea of a round-table conference, saying that it would be a “gathering of ‘talkative people’” (*une assemblée de bavards*). Instead, he requested parliament to grant him full powers and permission to rule the country by decree for six months. In other words, Ahidjo was asking the Legislative Assembly to relinquish its legislative prerogatives in his favour and go on leave until such time as a new assembly was elected and convened.

In reality, the Prime Minister requested full powers because what was happening in Cameroon echoed events in France in the previous year. By May 1958, when war in Algeria was threatening, many Frenchmen, including the then president Rene Coty called upon General de Gaulle to take over power in order to restore peace in the country. On 1 June 1958, de Gaulle who had retired from politics, agreed to do so, subject to parliament’s granting him *pleins pouvoirs* for six months. A day later he was given full powers by the National Assembly and on 3 June he was allowed to revise the Constitution. He then drafted an entirely new Constitution that marked the transition from the Fourth to the Fifth Republic.

The situation in Cameroon resembled that in Algeria, for the country was experiencing political troubles and armed insurrection led by the UPC. Moreover, Cameroon had no Constitution, so that Ahidjo had the opportunity to become the “Cameroonian de Gaulle”, the saviour of the nation. Those who opposed granting him full powers included the members for West Cameroon, the members of the *Parti Démocrate Camerounais* (PDC) and the elected members from the divisions of Sanaga-Maritime and Nyong et Kelle.⁴⁹ Tsalla Mekongo, one of the opposition speakers of the PDC party observed as follows:

I have already mentioned that the circumstances that brought General de Gaulle to power are not similar to those currently known in Cameroon.⁵⁰

The opposition parties strongly criticised the attitude of the Prime Minister, who was merely mimicking de Gaulle’s stance. Whereas in France there was widespread support for de Gaulle’s return to power, Ahidjo sought to eliminate parliament from the process of decision-making and the drafting of the Constitution. Ahidjo

48 H Tingsten as quoted by G Agamben *State of Exception* (Chicago, 2005) at 7.

49 “Le vote des pleins pouvoirs à M. Amadou Ahidjo le 29 Octobre 1959” available at http://www.pdcccpcd.org/images/stories/publications/doc/archives/Le_vote_des_pleins_pouvoirs_a_Amado_AHIDJO_29_octobre_1959.pdf (accessed 3 Oct 2012).

50 *Ibid.*

contended that the deteriorating situation required a pause in the “democratisation” of the country because all resources had to be mobilised against “terrorism and violence”. This argument evoked a strong reaction. Daniel Kemajou, a member of the opposition, observed that if full powers were granted to the prime minister, he would be so powerful that he would be able to pass laws disadvantaging his opponents, redraw electoral districts as he saw fit and by decree suppress anything he wanted to.⁵¹ Despite these severe criticisms, Ahidjo’s emergency powers bill was formally proposed three days later, and tempers again flared in parliament. Victor Levine relates that the debate was “marked by a scene in which the opposition shouted, stamped on the floor, pounded the tables, and hurled insults at Assembly President Mabaya who, at one point, was forced to suspend the sitting for five minutes because no one could be heard above the tumult”.⁵² The Ahidjo government held a significant parliamentary majority, and the bill was eventually passed by a vote of fifty to eleven with two abstentions.⁵³ Vested with full executive and legislative powers, the Prime Minister could then freely dictate the form of new institutions.

3 Emergency regimes in Cameroon after “independence”: A major legal instrument of government

This section examines the emergency atmosphere that prevailed at the time of the drafting of the Constitution and the legal architecture of emergency regimes in Cameroon.

3 1 The emergency mechanism surrounding the drafting of the Constitution

After Ahidjo was vested with full powers, the Assembly went into recess and the Prime Minister set up an extra-parliamentary Constitutional Committee; a committee with no real power. Key opposition figures like Daniel Kemajou and Soppo Priso refused to be associated with it.⁵⁴ In truth the supreme law for Cameroon was drafted in one night by two French advisers, Jacques Rousseau and Paul Audat⁵⁵ and was later proofread by a French political science expert, Professor Maurice Duverger, who for a fee agreed to be part of this legal farce.⁵⁶ It is reported that because the initial provisions were too liberal, Colonel Jacques Richard, the French Commander of the

51 *Ibid.*

52 V Levine *The Cameroons from Mandate to Independence* (California, 1964) at 186.

53 “Le vote des pleins pouvoirs” (n 49); see, further, Deltombe (n 14) at 376.

54 Deltombe (n 14) at 384; see, further, Awasom (n 34) at 15.

55 *Idem* at 384-385.

56 *Idem* at 386.

Gendarmerie in Cameroon, persuaded Duverger to include certain repressive sections in the draft constitution to counter the ongoing rebellion.⁵⁷ As described sarcastically by Gaillard, in the absence of a secretary “an eminent professor fashioned the draft constitution for Cameroon according to the dictate of a policeman”.⁵⁸

Note the link between the constitution-making process and emergency regimes. Haste, confusion of powers, executive dominium and an absence of checks and balances are the main attributes of these regimes. This particular Constitution was hastily drafted in one night by two people and proofread by a third one without any parliamentary input, as if in time of war.

3 2 Emergency regimes within the legal structure of Cameroon

Following the so-called independence of Cameroon under French administration on 1 January 1960, the exceptional powers vested in Ahidjo were soon incorporated into the new Constitution of 4 March 1960. The provisions on emergency regimes in section 20 were largely inspired by section 16 of the French Constitution of 4 October 1958. This section provided for two new emergency regimes, namely a state of exception and a state of emergency. Indeed, until then the only such regimes had been a state of alert and a state of warning, which have been analysed above. On 5 May 1960, Ahidjo was chosen as the president of the country and two days later he issued Ordinance 60/52 of 7 May 1960 on the organic law on the state of emergency.⁵⁹ The following day, he decreed a state of emergency within eleven troubled divisions of the country for a period of four months, which was renewable indefinitely.⁶⁰ The provisions of the new Ordinance were largely based on those relating to the repealed state of alert and state of warning. Thus they concerned for instance the restriction and administrative authorisation of the movement of persons and property, the surrender of arms, ammunition and transceivers, the prohibition of meetings and publications and so on. Despite the severity of these measures, the relevant punishments were even more severe. Section 10 of the Ordinance provided for imprisonment for a period of between two and five years and a fine of between FCFA 300 000 and 1 000 000 for anyone who failed to comply with the provisions of the Ordinance.⁶¹ The following table reflects the scale of enforcement of emergency decrees in the country issued from the year 1960 until the first half of the year 1961.

57 Awasom (n 34) at 14; see, further, Deltombe (n 14) at 386.

58 Awasom (n 34) at 16.

59 *Journal officiel de la République du Cameroun* 12 May 1960 at 679-680.

60 Deltombe (n 14) at 387.

61 *Journal officiel de la République du Cameroun* 12 May 1960 at 679-680.

Declaration and extension of a state of alert and a state of emergency in Cameroun from the year 1960-1961

<i>Reference and date</i>	<i>Type of emergency and area of implementation</i>
Ordinance 62/2, 12 Jan 1960	Extending a state of alert in the Wouri, Bamileke, Nyong et Kelle, Ntem, Dja-et-Lobo, Kribi, Mungo divisions "until further notice". ⁶²
Decree 60/124, 8 May 1960	Declaring a state of emergency. ⁶³
Decree 60/102, 9 Nov 1960	Extending the state of emergency in the usual ten departments. ⁶⁴
Law 61/5, 4 Apr 1961	Declaring a state of emergency throughout the national territory of the Republic of Cameroon. ⁶⁵
Decree 61/52, 24 Apr 1961	Extending the state of emergency within the usual ten departments for a new period of 4 months. ⁶⁶
Decree 61/76a, 4 Jun 1961	Repeating the extension. ⁶⁷

After North British Cameroon became part of Nigeria on 12 February 1961, the Southern portion of this part of the territory became independent and by 1 October 1961, had officially attached itself to the Francophone Cameroon. The reunification of the two Cameroons that the UPC had been seeking for years was to give birth to the Federal Republic of Cameroon. The drafting of the new Constitution followed more or less the same process that had guided the adoption of the previous Constitution of 4 March 1960. The negotiations were conducted outside parliament by Ahidjo's adviser Jacques Rousseau for the Francophone Cameroon side and a British attorney for the Anglophone Cameroon.⁶⁸ Rousseau observed that the disagreements between them were significant as "the attorney proposed a very complicated document where he cared too much about human rights like a typical Briton. It was really ridiculous".⁶⁹ Rousseau eventually emerged as the winner and the Constitution, a mere adaptation of the previous one, was adopted on 14 August 1961 by the National Assembly.⁷⁰ This new supreme law was promulgated on 1 September and took effect

62 *Idem* 3 Feb 1960 at 131.

63 On 7 May 1960, the Ordinance on the State of Emergency was issued as provided for by s 20 of the Constitution. At that moment the state of alert and the state of warning disappeared from the legal framework of the state. *Journal officiel de la République du Cameroun* 12 May 1960 at 692.

64 *Idem* 11 Nov 1960 at 1429.

65 *Idem* 12 May 1961 at 446.

66 *Idem* 3 May 1961 at 577

67 *Idem* 19 Aug 1961 at 936.

68 Deltombe (n 14) at 484.

69 *Ibid.*

70 *Ibid.*

on 1 October 1960 in the absence of any referendum or election.⁷¹ The emergency regime continued, because the new Constitution vested President Ahidjo with full powers in the name of a “harmonious transition” for a new period of six months.⁷² Indeed section 50 of the new supreme law provided as follows:

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

Despite these emergency provisions, the main repressive arsenal of the state continued to be section 15, with its references to a state of exception and a state of emergency. However, the state of emergency and “state of siege” could now be proclaimed for a longer period and in a larger area than in the past, when they had been imposed only in Francophone Cameroon. On 4 October 1960 the state of emergency which had been enforced and repeatedly renewed in that part of the country since 8 May 1960 was again renewed for six months, with the possibility of further extension.⁷³ In addition, President Ahidjo issued Ordinance 61/OF/5 of 4 October 1961 on the state of emergency, which was to regulate emergencies within the new federal state.⁷⁴ One month after the release of this ordinance, Decree 23 of 6 November 1961 for the first time declared a state of emergency in some portions of former British Cameroon. A few months later, the President took another important step when he issued Ordinance 62/OF/17 of 12 March 1962, which extended to other parts of the federal territory certain provisions of Ordinance 61/OF/5 of 4 October 1961 concerning a state of emergency.⁷⁵ The peculiarity of this ordinance was that when a state of emergency was declared within a portion of the federal state, its effects automatically spread across the entire country. Section 1 reads:

When a state of emergency has been declared in a part of the territory, the following provisions of Ordinance 61/OF/5 of 4 October 1961 concerning a state of emergency will be enforceable as of right in the entire federal territory ...⁷⁶

By now, the former French Cameroon was called “Eastern Cameroon”, whereas the former British Cameroon was known as “Southern Cameroon” or “Western Cameroon”. This demarcation was purely theoretical, since the former Anglophone portion of the territory was subject to a completely authoritarian policy. As a result, in May 1972, two years after the renewal of his presidential mandate on 28 March

71 *Ibid.*

72 *Idem* at 384.

73 *Ibid.*

74 *Journal officiel de la République Fédérale du Cameroun* 1-6 Oct 1961 at 8-10.

75 *Idem* at 232.

76 *Idem* at 276.

1970, Ahidjo made a speech in which he announced: “My dear countrymen, I have decided to end the federal form of the state” (*mes chers compatriotes, j’ai décidé de mettre fin à la forme fédérale de l’Etat*). To consolidate his powers, the President kept renewing and implementing a state of emergency, thus increasing repression at the national and local level. The following table lists different emergency decrees issued in Eastern as well as Western Cameroon under the federal state.

Emergency decrees extending a state of emergency for six months from the year 1961 in eastern and western Cameroons

<i>Eastern Cameroon</i>	<i>Western Cameroon</i>
Decree 61/DF/31 a, 5 Nov 1961 ⁷⁷	Decree 23, 6 Nov 1961 ⁷⁸
Decree 62/FD/157a, 8 May 1962 ⁷⁹	Decree 62/FD/125, 7 Apr 1962 ⁸⁰
Decree 62/DF/382, 30 Oct 1962 ⁸¹	Decree 62/FD/373, 8 Oct 1962 ⁸²
Decree 63/DF/130, 24 Apr 1963 ⁸³	Decree 63/FD/131, 24 Apr 1963 ⁸⁴
Decree 63/DF/398, 14 Nov 1963 ⁸⁵	Decree 63/FD/368, 11 Oct 1963 ⁸⁶
Decree 63/DF/156a, 10 May 1964 ⁸⁷	Decree 64/FD/134, 13 May 1964 ⁸⁸
Decree 64/DF/442, 9 Nov 1964 ⁸⁹	Decree 64/FD/418, 14 Oct 1964 ⁹⁰
Decree 65/DF/168a, 11 May 1965 ⁹¹	Decree 65/FD/146, 17 May 1965 ⁹²
Decree 65/DF/500, 10 Nov 1965 ⁹³	Decree 65/FD/432, 12 Oct 1965 ⁹⁴
Decree 66/DF/221, 12 May 1966 ⁹⁵	Decree 66/FD/133, 17 Mar 1966 ⁹⁶
Decree 66/DF/545, 2 Nov 1966 ⁹⁷	Decree 66/FD/493, 8 Oct 1966 ⁹⁸

77 Eyinga (n 28) at 151.

78 Deltombe (n 14) at 485.

79 *Journal officiel de la République Fédérale du Cameroun* 1 May 1962 at 411.

80 *Idem* 15 May 1962 at 499.

81 *Idem* 1 Nov 1962 at 1252.

82 *Idem* 15 Oct 1962 at 1187.

83 *Idem* 15 May 1963 at 353.

84 *Idem* at 354.

85 *Idem* 15 Nov 1963 at 1164.

86 *Idem* at 1096.

87 Eyinga (n 28) at 151.

88 *Journal officiel de la République Fédérale du Cameroun* 15 May 1964 at 347.

89 *Idem* 15 Nov 1964 at 1284.

90 *Idem* 15 Oct 1964 at 1087.

91 *Idem* 15 May 1965 at 519.

92 *Idem* at 436.

93 *Idem* 1 Dec 1965 at 1329.

94 *Idem* 15 Oct 1965 at 1137.

95 *Idem* 15 May 1966 at 734.

96 *Idem* 1 Apr 1966 at 357.

97 *Idem* 15 Nov 1966 at 1765.

98 *Idem* 1 Nov 1966 at 1489.

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Decree 67/DF/179, 26 Apr 1967 ⁹⁹	Decree 67/FD/139, 6 Apr 1967 ¹⁰⁰
Decree 67/DF/469, 3 Nov 1967 ¹⁰¹	Decree 67/FD/375, 28 Aug 1967 ¹⁰²
Decree 68/DF/122, 27 Mar 1968 ¹⁰³	Decree 68/FD/123, 29 Mar 1968 ¹⁰⁴
Decree 68/DF/389 27 Sep 1968 ¹⁰⁵	Decree 68/FD/390, 27 Sep 1968 ¹⁰⁶
Decree 69/DF/102, 27 Mar 1969 ¹⁰⁷	Decree 69/FD/101, 27 Mar 1969 ¹⁰⁸
Decree 69/DF/413, 3 Oct 1969 ¹⁰⁹	Decree 69/FD/412, 3 Oct 1969 ¹¹⁰
Decree 70/DF/140, 31 Mar 1970 ¹¹¹	Decree 70/FD/139, 31 Mar 1970 ¹¹²
Decree 70/DF/494, 12 Oct 1970 ¹¹³	Decree 70/FD/495, 12 Oct 1970 ¹¹⁴
Decree 71/DF/123, 15 Mar 1971 ¹¹⁵	Decree 71/FD/124, 15 Mar 1971 ¹¹⁶
Decree 71/DF/498, 14 Oct 1971 ¹¹⁷	Decree 71/FD/499, 14 Oct 1971 ¹¹⁸
Decree 72/DF/151, 23 Mar 1972 ¹¹⁹	Decree 72/FD/150, 23 Mar 1972 ¹²⁰

On 20 May 1972, at the behest of President Ahidjo, a referendum was held on the abolition of a federal form of government. The referendum was held in clear violation of the first paragraph of section 47 of the Constitution of 1961, which prohibited “any proposal for an amendment of the unity and the integrity of the federation”. The referendum appeared to be a farce, aimed at hypocritically and despotically ending the federation. Citizens were left with no choice, for the referendum was structured in such a way that there was no outcome other than the establishment of a new constitution. As reported by Enoch Meyomesse:

- 99 *Idem* 1 May 1967 at 695.
 100 *Idem* 15 Apr 1967 at 561.
 101 *Idem* 15 Nov 1967 at 2261.
 102 *Idem* 1 Sep 1967 at 1905.
 103 *Idem* 1 Apr 1968 at 703.
 104 *Idem* 1 May 1968 at 1968.
 105 *Idem* 1 Nov 1968 at 1678.
 106 *Idem* 1 Oct 1968 at 1679.
 107 *Idem* 1 Apr 1969 at 483.
 108 *Idem* 1 Apr 1969 at 482.
 109 *Idem* 1 Oct 1969 at 1936.
 110 *Idem* 15 Oct 1969 at 1935.
 111 *Idem* 15 Jun 1970 at 371.
 112 *Idem* 31 Mar 1970 at 371.
 113 *Idem* 1 May 1971 at 632.
 114 *Ibid.*
 115 *Idem* 15 Jun 1971 at 857.
 116 *Idem* at 858.
 117 *Idem* 1 Dec 1971 at 2633.
 118 *Idem* at 2634.
 119 *Idem* 1 Apr 1972 at 585.
 120 *Ibid.*

We end up ourselves being subjected to the famous referendum of 20 May 1972, for which there were only two types of ballots, *Oui* [meaning ‘Yes’] and YES in the polling stations, and consequently, a new constitution.¹²¹

The federal form of state was then abolished and replaced by a unitary structure. By Decree 72/270 of 2 June 1972, the Constitution of the United Republic of Cameroon was proclaimed and like the previous constitutions, contained provisions on emergency regimes. Section 11 gave the president exceptional powers to enforce a state of emergency and the so-called state of siege. Ahidjo then enacted Ordinance 72/13 of 26 August 1972, which repealed the Ordinance of 4 October 1961 relating to a state of emergency.¹²² The provisions of this ordinance largely repeated the previous ones on the infringement of human rights and on various administrative matters. The Ordinance of 1972 also provided in section 7 that when a state of emergency was proclaimed within a division of the country, the prefects of the other divisions would be automatically clothed with prerogatives similar to those of the prefect in charge of the area subject to a state of emergency. The following table lists some emergency decrees issued by President Ahidjo in the United Republic of Cameroon.

Emergency decrees under the unitary state from the year 1972

Decree 72/550, 14 Oct 1972 ¹²³
Decree 73/174, 16 Apr 1973 ¹²⁴
Decree 73/634, 11 Oct 1973 ¹²⁵
Decree 74/248, 2 Apr 1974 ¹²⁶
Decree 74/832, 3 Oct 1974 ¹²⁷
Decree 75/266, 19 Apr 1975 ¹²⁸
Decree 75/720, 17 Nov 1975 ¹²⁹
Decree 76/199, 19 May 1976 ¹³⁰
Decree 76/553, 23 Nov 1976 ¹³¹
Decree 77/128, 9 May 1977 ¹³²

121 E Meyomesse *Une nouvelle constitution pour le Cameroun et par les Camerounais eux-mêmes* available at <http://enoh-meyomesse.blogspot.com/2008/04/une-nouvelle-constitution-pour-le.html> (accessed 12 Oct 2012).

122 *Journal officiel de la République Unie du Cameroun* 1 Sep 1972 at 81.

123 *Idem* 15 Oct 1972 at 1291.

124 *Idem* 1 May 1973 at 1186.

125 *Idem* 15 Oct 1973 at 3053.

126 *Idem* 15 Apr 1974 at 902.

127 *Idem* 15 Oct 1974 at 1838.

128 *Idem* 1 May 1975 at 560.

129 *Idem* 12 Dec 1975 at 1497.

130 *Idem* 1 Jun 1976 at 1542.

131 *Idem* 15 Dec 1976 at 2928.

132 *Idem* 15 May 1977 at 1004.

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Decree 77/532, 27 Dec 1977 ¹³³
Decree 78/268, 5 Jul 1978 ¹³⁴
Decree 78/490, 15 Nov 1978 ¹³⁵
Decree 79/183, 16 May 1979 ¹³⁶
Decree 79/468, 13 Nov 1979 ¹³⁷
Decree 80/161, 1 Jun 1980 ¹³⁸
Decree 80/466, 18 Nov 1980 ¹³⁹
Decree 81/200, 15 May 1981 ¹⁴⁰
Decree 81/474, 27 Nov 1981 ¹⁴¹
Decree 82/195, 2 Jun 1982 ¹⁴²

On the evening of 4 November 1982 Ahidjo announced his resignation and offered power to the then Prime Minister Paul Biya. President Biya's power was shaken on 6 April 1984 following an attempted coup. As a result, a state of emergency was declared in the capital city Yaounde, and more than a thousand people were imprisoned and dozens executed. The Biya regime was once again tested in the nineties by uprisings and democratic claims when the winds of democratisation were blowing over Africa. A set of laws was then enacted concerning a state of emergency,¹⁴³ in particular Law 90/047 of 19 December 1990, which repealed Ordinance 72/13 of 26 August. The provisions of this legislation are similar to those of the previous ordinances on the state of emergency and restrict freedom and human rights. The following table represents some emergency decrees issued after regime change in the country.

Emergency decrees under the unitary state following regime change

Decree 83/8, 11 Jan 1983 ¹⁴⁴
Decree 83/257, 7 Jun 1983 ¹⁴⁵
Decree 83/616, 2 Dec 1983 ¹⁴⁶
Decree 84/159, 18 May 1984 ¹⁴⁷

133 *Idem* 1 Jan 1978 at 39.

134 *Idem* 15 Jul 1978 at 1365.

135 *Idem* 15 Nov 1978 at 2263.

136 *Idem* 1 Jun 1979 at 661.

137 *Idem* 15 Nov 1979 at 1651.

138 *Idem* 1 Jun 1980 at 886.

139 *Idem* 15 Dec 1980 at 2352.

140 *Idem* 1 Jun 1981 at 1204.

141 *Idem* 1 Dec 1981 at 2666.

142 *Idem* 15 Jun 1982 at 1261.

143 *Idem* 1 Jan 1991 at 8-10.

144 *Idem* 1 Feb 1983 at 163.

145 *Idem* 15 Jun 1983 at 1478.

146 *Idem* 15 Dec 1983 at 3603.

147 *Idem* 1 May 1984 at 951.

Decree 84/619, 28 Jun 1984 ¹⁴⁸
Decree 85/110, 17 Jan 1985 ¹⁴⁹
Decree 85/847, 1 Jul 1985 ¹⁵⁰
Decree 85/1711, 9 Dec 1985 ¹⁵¹
Decree 86/462, 10 May 1986 ¹⁵²

This table appears to be short, but that does not mean that the enforcement of draconian measures in the country has diminished. On the contrary, these measures have increased and have entered the sphere of ordinary laws to such an extent that there is no need for formal declarations as required by national and international instruments. On 18 January 1996, a new Constitution drafted by a “technical committee” appointed by President Biya was proclaimed. The main emergency regimes as provided in section 9 (cited above) remain the state of emergency and the state of siege or so-called “*état d’exception*”.

4 The impact of emergency regimes on the current politico-legal system in Cameroon

In emergency situations, it is only the president who may declare a state of emergency and a so-called state of siege. This presidential exclusivity has slowly emerged from the country’s successive constitutions. In terms of the first Constitution of 4 March 1960, for instance, presidential decrees enforcing emergencies had to be issued in a council of ministers and countersigned by parliament.¹⁵³ In the subsequent Constitution of 1 September 1961, features of parliamentary government had disappeared. Thus the office of prime minister and the practice of countersignature by deputies were abolished and the federal government was no longer accountable to parliament in emergency matters. Today a presidential act declaring a state of emergency in Cameroon is an act of state. Such an act is of a political nature and as such is subject neither to parliamentary approval nor to judicial review.

Even in the absence of emergency situations, the ordinary institutions in Cameroon are permanently subject to the powers of the president, the vertebral column of the system. The Constitution of 1 September 1961 established a hierarchy and order of importance of power in the state. The Constitution of 4 March 1960 had referred to the legislature before anything else,¹⁵⁴ but all the subsequent constitutions speak

148 *Idem* 15 Jul 1984 at 1814.

149 *Idem* 1 Feb 1985 at 364.

150 *Idem* 15 Jul 1985 at 2390.

151 *Idem* 1 Jan 1986 at 4349.

152 *Idem* 1 Jun 1986 at 1019.

153 Section 20 of the Constitution of 4 Mar 1960.

154 Constitution of 4 Mar 1960: Title 2 on the Legislative Power, and Title 3 on the President of the Republic.

firstly of “president of the republic”.¹⁵⁵ The expression “president of the republic” in the context of Cameroon is significant because it refers to what most constitutions around the world refer to as “executive power”. Referring to the “president of the republic” rather than “executive power” is a choice that has recurred since then in subsequent constitutions, demonstrating the wish to classify power within the state according to a certain hierarchy of importance.¹⁵⁶ In all Cameroonian legal and historical documents, the phrase “executive power” appears only twice. It appeared firstly in the Constitution of the former federated state of the Southern Cameroon in the era of federalism.¹⁵⁷ The phrase “executive power” in this Constitution did not relate to the president of the republic but to the prime minister. This phrase appeared for the second time in the Constitution of 18 January 1996, and this time referred to both the president and the government allegedly led by a prime minister.¹⁵⁸ In reality, the government and the prime minister are subject to the wishes of the president. Thus, for example, the General Instruction of 1973 on the organisation of governmental office applicable to the ministers and the prime minister stated that “ministers are responsible only before the president” and they are not entitled to any power whether individual or administrative except that delegated to them by the president. The document further provided as follows:

- (a) It will be unconstitutional directly in a bill to empower a minister to issue certain rules;
- (b) Delegation by a minister is strictly prohibited unless there is provision for it in a presidential decree;
- (c) The president of the republic is permanently entitled to make personal decisions on any executive matters.¹⁵⁹

It is against the background of these provisions that presidential intervention is possible in various spheres. Thus the current Constitution of the country gives parliament exclusive legislative competence in section 26 of Title 3. However, in terms of section 28 the president of the republic may issue ordinances that have the force of law once they are ratified by Parliament.¹⁶⁰ It is worth recalling that the Cameroonian parliament, currently with 180 seats, is strongly dominated by the

155 Title 3 of the Federal Constitution of Cameroon of 1 Sep 1961 and Title 2 of the Constitution of 2 Jun 1972.

156 Constitution of 1 Sep 1961: Title 3 on the President of the Federal Republic and Title 4 on the Federal Legislative; Constitution of 2 Jun 1972: Title 2 on the President of Republic and Title 3 on the National Assembly; Constitution of 18 Jan 1996: Title 2 on the Executive Power and Title 3 on the Legislative Power.

157 Chapitre 3, Le pouvoir executif, Loi 61/LW/1 du 26 Oct 1961 portant Constitution de l'Etat Fédéré du Cameroun Occidental.

158 Part 2 of Law 96/06 of 18 Jan 1996 to amend the Constitution of 2 Jun 1972.

159 As quoted by J-F Bayart *L'état au Cameroun* (Paris, 1985) at 153.

160 Ruling through ordinances already features in the previous Constitutions: s 25 of the Constitution of 4 Mar 1960, s 24 of the Constitution of 1 Sep 1961, and s 21 of the Constitution of 2 Jun 1972.

ruling party headed by the president.¹⁶¹ It would therefore be unrealistic to expect a presidential ordinance not to be ratified.

Secondly, the current Constitution reaffirms the dominance of the president over Parliament in financial matters. In successive Cameroonian constitutions, Parliament was deemed to be the prime authority in financial matters.¹⁶² However, these provisions have yielded to those on the prerogative of executive power in such matters. Indeed, by virtue of section 16 (2) (b) of the Constitution, the president of the republic is entitled to proclaim the state budget by ordinance. This happened in at least one case, where the entire state budget was proclaimed by Ordinance 72/1 of 23 June 1972 on the financing of the United Republic of Cameroon.¹⁶³

Fourthly, under the current Constitution the president is not bound by the rule of law and relevant procedure. For example, according to the provisions of section 2 of three previous Constitutions:

The authorities in charge of the state shall derive their powers from the people by way of election by universal suffrage, direct or indirect.¹⁶⁴

This provision clearly involves the people in the management of the state, but this concept was discarded by the authoritarian provision of the Constitution of 18 January 1996. The new section 2 read as follows:

The authorities responsible for the management of the state shall derive their powers from the people through election by direct or indirect universal suffrage, unless otherwise provided for in this Constitution.

The last fragment of the provision “unless ...” aims to reduce the scope and judicial force of an election. In addition, with regard to the senate, section 20(2) of the Constitution provides that 70% of senators are to be elected, while 30% are to be appointed by the president. This came about in May 2013 following general elections: 70% of the senators were effectively elected while 30%, including the chairperson of the Senate, were appointed by President Biya. It was the first time in the history of Cameroon that the senate became operational, as in the past, Parliament contained only one chamber, the National Assembly. With 30% of their members being appointed it is open to question whether the appointment and the election of a senator carry the same weight.

The previous Constitutions had made provision for two authorities, namely the President of the republic and the legislature. However, the new Constitution of 18

161 In the current legislature, the ruling party is dominant with 148 seats out of 180 seats. In the previous legislature, the same ruling party controlled parliament with 153 seats.

162 Section 23 of the Constitution of 4 Mar 1960; s 23(4) of the Constitution of 1 Sep 1961; s 19 of the Constitution of the Federated State of Southern Cameroon of 26 Oct 1961; s 20(4) of the Constitution of 2 Jun 1972; s 26 (2) (d) of the Constitution of 18 Jan 1996.

163 J Owona “L’institutionnalisation de la légalité d’exception dans le droit public camerounais” (1975) 6 *Revue Camerounaise de droit* 104-123 at 113

164 See s 2 of the Constitutions of 4 Mar 1960, 1 Sep 1961, and 2 Jun 1972.

January 1996 made provision for three such authorities. What was formerly termed judicial authority has now become “judicial power”.¹⁶⁵ The judiciary has even become “independent of the executive and legislative powers” according to section 37(2). Yet the concepts of “judicial power” and “independence” are meaningless, since the new judicial power is no wider in scope than the former judicial authority. Section 37(3) of the constitution provides:

The President of the Republic shall guarantee the independence of judicial power. He shall appoint members of the bench and for the legal department.

The above provision repeats section 31 of the Constitution of 2 June 1972. Olinga mentions that section 37(2) and (3) are incompatible, since it is hardly conceivable that one authority, which is independent of the other two, is guaranteed independence by one of the others.¹⁶⁶ This problem is highlighted by the fact that the bearers of judicial power, including the chief justice of the Supreme Court (the highest judicial organ in the country pending the setting up of the Constitutional Council) are appointed by the president. In addition, the president of the republic is the chairperson of the Higher Judicial Council, and the Minister of Justice the Deputy Chair.

5 Conclusion

This study aimed to investigate the origin and development of emergency regimes in Cameroon and their impact on the current institutions of the state. It appears that these regimes have become the mechanism to which Cameroonian institutions owe their survival. Essentially, emergency regimes have been implemented in the framework of colonialism, and of pre- and post-electoral disputes, in order to repress political opponents and deny democratic claims. Emergency regimes in Cameroon remain the device through which the ruling class evades the requirements of legitimacy and popular sovereignty. It is not possible to distinguish between presidential prerogatives in peacetime and during times of crisis. For most of the rules that govern the institutional life of the state there is another equivalent set of rules, whose purpose is to neutralise the first ones and allow the president to exercise functions which normally belong to entities such as parliament and the judiciary.

It is submitted that true democratic reform is necessary in the country. There should be a genuine separation of the powers of organs of state. In emergency situations, the president of the republic should no longer be the only one involved in the declaration of a state of emergency and a state of exception. A relationship of complementarity needs to be established among the three powers. The declaration of a state of emergency should no longer be considered as an act of state not subject to judicial review and parliamentary approval. The judiciary should have greater

165 Part 4 of Law 96/06 of 18 Jan 1996 to amend the Constitution of 2 Jun 1972.

166 D Olinga *La constitution de la République du Cameroun* (Yaounde, 2006) at 147.

independence, for instance as in 1960 when judges could not be removed in terms of section 41 of the Constitution of 4 March 1960.

ABSTRACT

The purpose of this study is to trace the origin and development of emergency regimes in Cameroon, to address their negative impact on the current structure of the political system and to highlight the need for change in the country. Emergency regimes are generally brought into being in exceptional circumstances and allow states to (legally) suspend law and infringe human rights when confronted by threats to their existence. They generally include a state of emergency, a state of exception, a state of siege and martial rule. In the case of Cameroon, these regimes are a legacy of French colonialism, and were introduced into the country's legal system to sustain harsh imperialist policies. Traditionally it is believed that a state of emergency and a state of exception are declared in response to circumstances threatening the state's existence (such as natural cataclysms, invasions, and general insurrections), but the peculiarity of these regimes in Cameroon is that they have been and still are used as a political device. Indeed, in the context of colonialism and war of independence between French colonial authorities, their local acolytes and indigenous Cameroonians, emergency regimes played a key role in eliminating political challengers, increasing the powers of the executive, and absolving it of any accountability and responsibility. However, in the process, these measures ended up losing their exceptional character as they entered the sphere of normalcy. The current hypertrophy of the powers of the executive entity in Cameroon dates back to that period, and it is consequently difficult to distinguish between a Cameroon society in crisis and one in peacetime.