

# **Emergency regimes in Cameroon: derogations or failures of law?**

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I am grateful to my supervisor Pr. Karin van Marle, for her advice and guidance during the preparation of this paper.

## **Abstract**

The paper engages with the issue of emergency regimes in Cameroon and compliance with the international standards on that matter. Emergency regimes which entail human rights violation and infringement of the rule of law have become over the years an essential technique of government in Cameroon. Authorities are inclined to invoke such regimes more in times of democratic competition than in times of real external threat. Emergency regimes being organised by a set of international instruments mainly from a treaty based system, the study focuses on the scale of compliance of the Cameroon emergency system with such international standards. These standards amount to a set of principles that states should comply with when confronted to emergency situations. For example, the UN Charter compels state parties to respect and protect human rights in all circumstances. Cameroon being subject to international law and to its international commitments towards state and non-state actors, this paper questions whether emergency regimes as currently designed in the country are mere derogations or failures of law.

**Keywords:** emergency regimes, state of siege, violence, human rights, governance, security.

## Introduction

The aim of this paper is to examine the international legal standards on emergency regimes and assess how much the Cameroon emergency system complies with them. There are a variety of international materials guiding emergency regimes and some of them amount to a set of soft laws and recommendations by experts and organisations.<sup>1</sup> Without denying the relevance of such materials, my main concern in this paper is to focus essentially on international provisions especially those from a treaty based system that are binding and compulsory among states. The concept of emergency regimes refers to a state of emergency, a state of exception and a state of siege. They are generally brought into being following exceptional circumstances such as war, insurrection, invasion and, general disorder threatening the existence of the state. The United Nations coined some events that may lead up to the enforcement of emergency regimes as follows:

International conflict, war, invasion, defence or security of the state or parts of the country; civil war, rebellion, insurrection, subversion, or harmful activities of counter-revolutionary elements; disturbances of peace, public order or safety; danger to the constitution and authorities created by it; natural or public calamity or disaster; danger to the economic life of the country or parts of it; maintenance of essential supplies and services for the community (UN Commission on Human Rights 1962:257).

The enforcement of emergency regimes vests the government with special powers and allows for the possibility to rule by decrees, establish curfews, restrict the movement of person and property to administrative permission, arrests without warrant and monitor meeting and publication. The *raison d'être* of these regimes is therefore to protect and guarantee the existence of the state through the suspension of law. However, owing to various abuses that they may bring about, these regimes are strictly regulated under international law. My assumption is that even though Cameroon is subject to international law, the country does not comply with its regulations when it comes to enforce a state of emergency or a state of exception. My starting point in this discussion is to place the Cameroon emergency system side by side with the international legal standards on emergencies and examine the level of compatibility among the two. In so doing my

assessment on emergency regimes in Cameroon and international standards stretches from the aftermath of independence in 1960 to the recent days.

Cameroon as a political unit was colonized consecutively by three countries, namely Germany on the one hand, England and France on the other. The latter countries succeeded in taking control of Cameroon following their victory over Germany in the First World War. As a result, the territory was divided into two sections, one placed under French control and the other under British control. Prior to the reunification of both sections in October 1961, England and France administered their respective spheres of influence differently. The British system of governance did not rely on draconian measures, as was the case with the Mau Mau in Kenya, instead they relied on the system of indirect rule characterised by a local administration of indigenous authorities over their own population. By contrast, the French system of governance heavily relied on brutal measures in the portion subjected to their influence. They applied the *politique d'assimilation*, which had more drastic implications for human rights and freedom of the people they governed. Such politics materialised through the introduction of emergency regimes in the early Cameroon institutions.<sup>2</sup> These institutions have consistently influenced and shaped the current political system which is more concerned by its own survival than to protect human rights and the rule of law.

A state of emergency and a state of siege as a legacy of colonialism in Cameroon have systematically been enforced by Franco-Cameroon authorities not for the sake of protecting the state but to impair the democratic game and brutally repress the struggle for independence and reunification led by the *Union des populations du Cameroun*, the leading nationalist movement (Kamdem Kamga: 2015). Charles Fombad observed that 'the frequent invocation of emergency powers on so many occasions in the past was used by Cameroonian presidents to rule without reference to the normal constitutional processes.' (Fombad: 2004) Emergency regimes therefore appear as a device for strategy of control and subjugation of the colonized people. Since the alleged independence on 1 January 1960 and its reunification on 1 October 1961, local authorities in Cameroon have been resorting to such regimes as in the colonial era: They are still not enforced in the framework of war and naturalism cataclysms as intended, but essentially during pre and post-electoral campaigns to sideline political opponents.<sup>3</sup> Yet in the history of the state there have been various exceptional circumstances that could have justified the enforcement of emergency regimes but authorities remained silent. Indeed experience shows that neither a

natural cataclysm such as the repeated volcanic eruptions (1959, 1982, 1989, 1999, and 2000) of Mount Cameroon, the deadly gas emission of lake Nyos in the northwest region of the country, which on 21 August 1986 suffocated over a thousand people and thousands of livestock, nor gas emission from lake Monoun in the western region that on 15 August 1984 resulted in the death of thirty seven people, nor the threat of invasion during the war between Cameroon and Nigeria regarding the Bakassi peninsula in the nineties have ever led to the declaration of a state of emergency. Similar observation applies also to the current terrorist attacks by the Islamic movement Boko Haram in the northern part of Cameroon resulting in hundreds of deaths. Even though administrative authorities of the area have imposed a curfew between 7 o'clock in the evening and 5 o'clock in the morning regarding transport activities by motorbikes,<sup>4</sup> emergency regimes have never been officially declared in the area. Currently these regimes refer to a state of emergency organized by law N° 90/047 of 19 December 1990 and the so called state of siege framed by section 9 of the constitution which 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.

If these regimes are to be enforced in serious exceptional circumstances and should be subject to time and space limitation, it has not been always the case in Cameroon where they are usually brought to existence to impair the democratic game and protect the ruling class in power. Following these abuses, a particular attention is being paid to emergency regimes which are currently subject to a strict regulation by various international instruments. The United Nations Economic and Social Council consider these regimes to be mere derogations and prescribe that they should not happen in a legal *vacuum* (UN ECOSOC 1984: para.61 9). As a result, a set of rules that state-parties should comply with when confronted to emergency situations has been set out most importantly from a treaty based system. These rules entrenched in certain international

instruments are compulsory among state-parties and include the United Nations Charter, the Geneva Conventions, the International Covenant on Civil and Political Rights, the International Labour Organisation and the Convention against Torture.

The ceaseless resort to draconian measures by authorities in Cameroon since its inception has negatively effect and shaped the current state's structures to the extent that the crisis situation has merged with normality. This situation can be explained not only by a lack of freedoms and democracy but also by the tied control of the regime over a population completely anaesthetized by the repressive machinery that characterises authoritarian and totalitarian states. Yet this does not change the fact that being a fully-fledged protagonist in the international arena, Cameroon remains subject not only to international law, but also to its international commitments towards states and non-state parties. It is the meaning of the Latin maxim *pacta sunt servanda* which is to say agreements and clauses between parties to a contract must be observed. In addition, the Constitution of Cameroon provides for the predominance of the provisions of international treaties over domestic legislation. Section 45 of the supreme law provides that 'duly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implements the said treaty or agreement.'

Looking at the above developments one question arises:

To what extend does the institution of emergency regimes in Cameroon comply with the international standards on that matter?

In order to determine in light of the international standards whether emergency regimes as currently designed within the Cameroon context mere derogations or failures of law, I firstly account for the theoretical approach to emergency regimes. Secondly I proceed by assessing the international standards through the lenses of Cameroon experience and thirdly I provide some suggestions.

### **Theoretical approach to emergency regimes: the normative approach**

The normative approach to emergency regimes is the one that include these regimes within the realm of law and affirm their compatibility with the doctrine of constitutional democracy. There are various approaches to the doctrine of emergency and I chose to discuss the normative approach for the ideas developed by this approach are in line with the requirements prescribed by international law. According to the normative approach, emergency regimes should be

considered as an entire part of the legal sphere. The approach departs from the popular conception which considers emergency regimes to be the business of the executive only. It further argues that these regimes being part and parcel of the legal order are also from the spheres of the legislature and judiciary.

On the first point or the stand that a state of emergency is an executive affair, proponents of the normative approach consider such a situation to be a constitutional dictatorship. The tenants of this conception that include Clinton Rossiter (Rossiter 1948), claim that liberal democracy is complex, heavy and designed to function under normal circumstances and peaceful conditions. Accordingly, it is not adaptable to crisis periods which require celerity. Therefore, emergency regimes as constitutional dictatorship imply that drastic measures enforced by modern democracies in time of turmoil should be considered as part and parcel of the democratic process. According to Rossiter, the striking power of autocracy has many times been used to preserve democracy, and more than one constitution has been suspended so that it might not be permanently destroyed. The author went on to argue as follows:

Those republics which in time of danger cannot resort to a dictatorship will generally be ruined when grave occasions occur (Rossiter 1948: Title page).

On the second point or the view that emergency regimes are from the domain of the legislature, the normative approach stresses the necessity of parliamentary involvement in time of crisis. The argument was developed in Albert Dicey's legality approach (Dicey 1959:246). The author states that in time of turmoil, priority should be given to parliament which remains the only authority to give *carte blanche* to officials/executive when dealing with a threat. According to him:

If a sudden emergency arise, e.g. through the outbreak of an insurrection, or an invasion by a foreign power, the ministry ought, if they require additional authority, at once to have parliament convened and obtain any powers which they may need for the protection of the country (Dicey 1959:246).

However, further reading between Dicey's lines reveals a flexibility of the role granted to parliament. In this respect, when there is not enough time to obtain an act of parliament, ministers ought to take every step, even at the peril of breaking the law, which is necessary either

for restoring order or for repelling attack, and must rely for protection on parliament passing an Act of Indemnity (Dicey 1959:246).

On the third point or the view that the judiciary is an authority in emergency regimes, the normative approach emphasises the vital place of judges in the management of crisis. The idea is echoed by David Dyzenhaus who rejects all approaches to emergency regimes which rely essentially on the suspension of law and the use of draconian measures by the executive power. Legality or the rule of law provides a legal constitution which is the basis of the authority of those who have power to make law. If they should stray outside the limits of that authority, they lack not only legal authority, but also any authority at all (Dyzenhaus 2008: 35). Therefore, suspending law and allowing for special powers are at the origin of what the author refers to as 'legal black hole' and 'legal grey hole.' (Dyzenhaus 2006:3) Dyzenhaus considers the former to be a *legal vacuum* and the latter as a situation with inefficient legal mechanisms. To cope with these issues, he suggests the adoption of what he calls the rule-of-law project which denotes the substantial role allowed to judges and the necessary cooperation between the executive and the legislative branch of government.

Overall, the normative approach argues for the legality of a state of emergency (state of siege or state of exception) and incorporates such a state into the legal architecture of the nation. Linking these developments to the Cameroon context, it can be argued that despite the existence of three powers as provided for by the Constitution,<sup>5</sup> the president remains the only authority involved in the declaration of a state of emergency and the so called state of siege. The legislature and the judiciary cannot intervene especially at the level of declaration of a state of emergency and a state of siege. Parliament may be consulted only in case of extension of a state of emergency and it is not clear whether its view is binding. Similarly, the involvement of the judiciary in emergency situations is completely inexistent in the country. The reason is that the act declaring a state of emergency or a state of siege in Cameroon falls under the category of acts of state. Such an act, which is characterised by political motive is above the competence of judges and therefore is not subject to judicial review.

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

There are several documents from a treaty based system which provide for the international standards on emergency regimes. These include the United Nation Charter, the Geneva Conventions, the International Covenant on Civil and Political Rights, the International Labour Organisation and the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. A crossed reading of these documents highlights a set of principles that states must comply with when dealing with emergency situations. These principles include the principle of exceptional threat, notification and proclamation, proportionality, non-discrimination, non-derogable rights and good faith motivation.

### The principle of proportionality

The limitation of rights under normal circumstances has been always one of the main concerns of international law. The United Nations Charter compels state parties to respect and protect human rights in all circumstances. It is suggested that a reasonable construction of the requirement to uphold human rights in all times would be that emergency regimes cannot serve as a pretext for human rights violation, because state of emergency can never function in a void (Wessels 2001:112). With regard to a state of emergency especially, standards to be respected by state-parties were established by the Economic and Social Council (ECOSOC), Commission on Human Rights, and Sub-commission on the Prevention of Discrimination and the Protection of Minorities. One of the most important standards set out is the principle of proportionality.

This principle ‘acquires paramount importance, being the main substantive criterion employed to assess the legality of the derogating measures taken by states in situation of emergency’ (Wessels 2001:78). Fitzpatrick observes the following on the principle of proportionality:

Along with the threshold of severity, the principle of proportionality is the most important and yet most elusive of the substantive limits imposed on the privilege of derogation (Fitzpatrick 1994: 60).

The principle of proportionality means that a declaration of a state of emergency would be illegal in a situation where ordinary legislation could bring adequate solutions to the crisis. In other

words, the enforcement of emergency regimes would be valid only if the existing legal order is inefficient in addressing the situation. The derogation measures shall be such as are strictly necessary to deal with the threat to the life of the nation and should be proportionate to its nature and extend (UN ECOSOC 1984: para.51-8). The government shall have a duty to assess individually the necessity of any derogation measure taken or proposed to deal with the specific dangers posed by emergencies (UN ECOSOC 1984: para.51-8). These clarifications were emphasised in the case of Marion by the Conseil d'Etat (5 Mars 1948). Moreover, it was ruled in the case of Laughier (Conseil d'Etat: 16 Avril 1948) that exceptional measures should be taken at the time of the peril threatening the life of the nation. The derogation measures according to the case of Entreprise Chemin (Conseil d'Etat: 4 Juin 1947) should be implemented for general interest and safety of the state. The principle of proportionality also requires that the enforcement of emergency regimes be limited in time and place, and thus that such regimes be repealed as soon as the threat is over. The Conseil d'Etat expresses this exigency in the Rhodes case by referring to *circonstances exceptionnelles de temps et de lieu*, [exceptional circumstances in time and place] (18 Mai 1983).

The enforcement of emergency regimes in Cameroon in relation to the principle of proportionality remains questionable since the aftermath of the alleged independence of the country. For example, on 12 March 1962 President Ahmadou Ahidjo enacted Ordinance N° 62/OF/17 that included some provisions of Ordinance N° 61/OF/5 of 4 October 1961 relating to a state of emergency.<sup>6</sup> The first section of this ordinance provides that 'when a state of emergency will be declared in a part of the territory, the following provisions of ordinance N° 61/OF/5 of 4 October 1961 relating to a state of emergency will be automatically applicable on the entire federal territory...' Later in 1972, a new Ordinance<sup>7</sup> relating to a state of emergency was issued. Section 7 of this legislation underlines the generalisation of a state of emergency in the whole country, as did the provisions of the first section of the repealed legislation. Moreover, the provisions of the new text succeeded in removing the temporal dimension of a state of emergency. In so doing the text provided for the indefinite extension of a state of emergency across the country. Under the current regime of Paul Biya, the ordinance of 1972 was repealed in 1990 by law N° 90/047 of 19 December on the state of emergency. If section 2 of this law moves a little step forward by providing that the act of enactment of a state of emergency should identify the area of the country subject to the emergency and its duration, a crossed reading of

section 5 and 6 shows a poor compliance with the principle of proportionality. Section 5 is about the competence of local authorities, in other words, the authorities of the area subject to a state of emergency. If it is assumed that these authorities have an appropriate knowledge of the local situation owing to their proximity, it is hardly conceivable that the minister in charge of territorial administration is according to the provisions of section 6 entitled to implement a state of emergency at the same time. The law lacks clarity in this case, for it does not specify the area of competence of the minister. There is a double set of measures applicable in case of a presidential declaration of a state of emergency; one for local authorities and the other for the central authority which is the minister in charge of territorial administration. The law remains silent as to know whether these measures are cumulative or alternative. As it stands, a combination of the provisions of sections 5 and 6 would be similar to the repealed provisions of ordinances N° 61/OF/5 of 4 October 1961 and N° 72/13 of 26 August 1972 both on the state of emergency which prescribed that when a state of emergency was declared in a part of the territory, its effects automatically spread over the entire territory. The law of 19 December 1990 does not specify whether the competence of the minister applies only in the area subject to a state of emergency or outside that area. In any case, nothing prevents him from extending the effects of a state of emergency in areas that originally were not included in the presidential decree of declaration.

The failure of Cameroon emergency legislation in relation to the principle of proportionality is a fact. In various occasions, even though the threat to the life of the nation was not evident the ordinary legal framework has been silenced not for the sake of protecting human rights and the rule of law but to guarantee the survival of the regime. For example, the year 2008 was marked by a global financial crisis resulting in inflation and international uprisings. In Cameroon two events emerged: the general inflation that led to what has been labelled 'hunger's riots' and a governmental bill regarding the constitutional amendment of the section that prevented President Biya in power since 1982 to run for another term. In February of that year several people peacefully demonstrated in the streets to express their disagreement. In retaliation a *de facto* emergency was enforced and the army was brought in to restore 'peace' and 'order'. As a result, more than one hundred and thirty-nine people were gunned down according to a report by the National Committee of Human Rights, hundreds more according to NGOs. The situation clearly accounts for the use of draconian measures by the regimes to guarantee its own survival.

## The principle of severity or exceptional threat

With regard to the principle of severity or exceptional threat the Geneva Conventions are one of the most important provisions of international humanitarian and international law which aims to frame the conduct of armed conflict and seek to limit its effects. It is then by nature designed to be applied during emergency situations involving armed conflict (Wessels 2001:113). The most important standards are set out in section 3 common to the four Geneva Conventions of 1949 that provides for principles applicable in all times in case of internal conflict or ‘armed conflict not of an international character, occurring in the territory’ by the High Contracting Parties.

The meaning ‘exceptional threat’ may vary from one country to another. The Geneva Convention refers to this concept as ‘internal conflict’ or ‘war without international character’ and it denotes the seriousness and the level of gravity of a situation which may lead up to the declaration of a state of emergency or a state of siege. Accordingly, minor disturbances cannot justify the enforcement of a state of emergency and human rights restriction under the pretext of saving the state. More important, the concept of ‘state’ should be understood from a constitutional law perspective. According to this discipline, the state refers to a group of individuals living in a territory and subject to a government. Thus an exceptional threat to the life of the nation implies that, some or all of the features that constitute statehood (territory, population and government) should be threatened. It is suggested that a threat to the life of the nation is one that on the one hand affects the whole of the population and either the whole or part of the territory of the state, and on the other hand, threatens the physical integrity of the population, the political independence or the territorial integrity of the state or the existence or basic functioning of institutions indispensable to ensure and protect the rights recognised in the Covenant (UN ECOSOC 1984: para. 29 7).

With regard to Cameroon, the idea of exceptional in emergency matters is highly questionable. Indeed, between the colonial period and 1992 the country has recorded more than one hundred decrees of declaration of a state of emergency (Atemengue 1999:146) and these only reflect the cases that were declared as such, as provided for by local and international legislation on that matter. A step back in the fifties during the struggle for independence shows that French authorities and their local collaborators notably Ahmadou Ahidjo repeatedly implemented draconian measures to retaliate against nationalist tendencies. In so doing emergency decrees

were never repealed during Ahidjo's tenure of office, which ended in 1982; they were only repealed by President Biya in 1991 (Awosom 2002:10). The advent of Paul Biya in 1982 did not change much to the vagueness characterising the concept of 'exceptional threat' in the country's legislation. By virtue of the provisions of the first paragraph of Section 9 of the Constitution, a state of emergency may be declared by the president 'where circumstances so warrant.' The formula may result in various interpretations where anything can be qualified as an exceptional threat and lead up to the enforcement of a state of emergency. Similar vagueness also appears in the second paragraph of Section 9 on the so-called state of siege. Following its wording, a state of siege may be proclaimed by the president in case of 'serious threat to the nation's territorial integrity or to its existence, its independence or institutions.' The expression 'serious threat' is deprived of any proper content and is open to all sorts of abuse. It is still unclear as to know what a 'threat' really is, and how such a 'threat' can become 'serious'. Similarly, the first paragraph of Section 9 of the Constitution provides for a state of emergency, whereas the second paragraph is about 'a state of siege'. Indeed although a state of emergency is emphatically different to a state of siege and even a state of exception,<sup>8</sup> there is not any specification of a substantial difference between these emergency institutions in the supreme law. Moreover, when a legislation framing a state of emergency in Cameroon (law of 19 December 1990) is available, the so-called state of siege remains a presidential matter, as there is no law regulating it. This situation has given rise to a sort of hybrid regime in emergency matters. For instance, whereas the first paragraph of Section 9 of the Constitution provides for special powers conferred to the president by law upon the declaration of a state of emergency, the second paragraph of the same section allows the president to 'take any measures as he may deem necessary' in the case of a state of siege. Therefore, as there is no clear delineation between a state of emergency and a state of siege, it will be easy for the president not to embarrass himself with the first option where his powers are conferred by law.

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

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

- in case of an occurrence which by its nature and gravity is deemed a national disaster;
- in case of a series of disturbances undermining public order or the security of the state;
- or
- in case of foreign aggression.

Looking closely at these provisions, it is worth highlighting some important points: Firstly, the concept ‘national disaster’ has no clear meaning and no criteria at all. The jurisprudence has attempted to clarify this concept. Since the Rhodes case, it is assumed that the concept ‘national disaster’ refers to a natural cataclysm, such as a volcanic eruption (Conseil d’Etat *18 Mai 1983 Rhodes*).<sup>9</sup> In the Rhodes case the judge admitted exceptional circumstances in a situation where in 1976 the *Préfet* of Guadeloupe undertook drastic measures to prevent the eruption of a volcano called la Soufrière.

Secondly, the concept ‘disturbances undermining public order or state security or foreign invasion’ are also characterised by a lack of precision. Any fact or event even vested with legal attributes may in certain cases be considered as a threat to public order or state’s security. The reason is that the ‘expression “state security” is general and refers to both the internal and external security of the state as one can hardly be defined without the other.’ (Nforbin 1998: 68) This was ruled in a case where the court acknowledged exceptional circumstances following a strike by civil servants in November 1938 (Conseil d’Etat *18 Avril 1947 Jarrigon*). The notion ‘state security’ is not part of public law lexicon, which rather refers to the concept ‘public safety’ (Nforbin 1998: 68). Indeed ‘state security’ belongs to the penal law vocabulary and is characterised by repressive measures, whereas public safety is characterised by preventive measures. In Cameroon if the main legislation to deal with the concept of ‘state security’ is the penal code, it is worth mentioning that this concept is yet to be defined.<sup>10</sup>

Thirdly, another unclear notion within the emergency legislation in Cameroon is ‘foreign aggression’ or *agression venant de l’extérieur* as stated by the French version of the text. The English version rather refers to ‘foreign invasion.’ English and French being the two official languages of Cameroon and having the same authoritative status,<sup>11</sup> it is not clear whether the law refers to foreign aggression or foreign invasion. For example, if it is assumed that Cameroon law refers to ‘foreign invasion’, the concept will still lack precision, for it is subject to controversy. Under the statute of the International Criminal Court, for example, the definition of ‘the crime of

aggression' is yet to come.<sup>12</sup> In return Section 1 of the UN definition of aggression provides that 'aggression is the use of armed force by a state against the sovereignty, territorial integrity or political independence of another state, or in any other manner inconsistent with the Charter of the United Nations, as set out in this definition'(UN General Assembly Resolution: 1974). The problem of clarification of the concept of 'exceptional threat' remains therefore unresolved within the Cameroon context. This lack of precision generally characterises authoritarian societies where all the powers are concentrated in the president's hands. Franz Neumann rightly observed that:

Common to these institutions in most countries is the fact that the discretionary power of those who declare an emergency cannot be challenged. It is they who determine whether an emergency exists and what measures are deemed necessary to cope with it (Neumann 1953:917).

Instead of assessing and identifying the conditions of declaration of a state of emergency, the president in Cameroon is vested with 'special powers as may be provided for by the law.' Thus everyone has no other choice but to trust the presidential interpretation in that matter. As it is currently argued:

In Cameroon to know if an occurrence amounts to a national disaster or not is easy at constitutional level. If the president of the republic calls it a national disaster, then it is one (Nforbin 1998: 66).

This statement is in connection with the presidential declaration of a state of emergency in the capital city Yaounde following the failed coup d'état of 6 April 1984. After acknowledging a 'complete victory' by loyal forces, the resumption of normal activities and the calm that prevailed all over the national territory, President Biya unexpectedly enforced a state of emergency on 18 April, nearly two weeks following the attempted coup. Such a situation leads to the question to know whether an attempted coup d'état could be included in the events considered as 'exceptional threat to the life of the nation' or 'circumstances so warrant' to the nation's territorial integrity. As a response 'the commentary to the draft guidelines for the development of legislation on states of emergency suggests that even serious disruption of the organised life community would not constitute sufficient grounds for a state of emergency if the

disruption would not present a serious danger to the life, physical security, or other vital interests of the population.’ (Fitspatrick 1994: 56)

#### The principle of notification and proclamation

Section 4 of the Covenant provides for a clear set of standards that state parties have to comply with when dealing with derogating measures from their obligations under the Covenant. Among these provisions those of section 4(3) relate to the principle of notification and proclamation. Indeed, with regard to this principle, a state of emergency entails human rights violations and infringement of the rule of law. Therefore, it must be officially proclaimed to inform the population about the new political, civil and economic climate in the society. The principle of notification is flexible, for a formal notification is admitted as the other state parties should be notified through the intermediary of the secretary general of the UN. Emergency regimes that are not officially proclaimed remain deprived of any legal attribute and internationally reprehensible (UN ECOSOC 1984: para.42&43 7). The principle of notification and proclamation are publicity mechanisms which aim at preventing a *de facto emergency*.<sup>13</sup>

Cameroon experience attests to the fact that compliance with the principle of proclamation and notification are questionable. The outcome of the controversial presidential elections on 12 October 1992, which resulted in the defeat of the opposition, led to crackdown and uprisings in some areas of the country. Gross violation of human rights and drastic security measures were deployed. Political leaders, especially the head of the opposition party, were placed under house-arrest. People came to realise that the north-west province, the stronghold of the main opposition party was under a state of emergency. The peculiarity of such a situation lies in the fact that a state of emergency that submerged the north-west province was never proclaimed officially, as provided for by law. Indeed, within the Cameroon context and from a legal perspective, a state of emergency must be declared by a ‘presidential decree.’<sup>14</sup> In this situation, the information was simply read on television on the evening of 27 October 1992.

Connecting this event with the principle of proclamation of public emergency, as required by the Covenant, it is hardly difficult to exclude any idea of failure of law in that matter. My argument is that emergency provisions in the previous Cameroon constitutions, especially those of 1960, 1961 and 1972 were always written in three paragraphs. The first paragraph was devoted to a state of emergency, the second one to the so-called state of siege, and the third one to the

president's proclamation. The question has been asked whether the proclamation as provided for by the third paragraph was limited to a state of siege or a state of emergency, or whether it was applicable to both. In 1995 a year before 'Law N<sup>o</sup> 96/06 of 18 January 1996 to amend the constitution of 2 June 1972' was published, Eric Nforbin, a local scholar, met the late François Sengat Kuo, one of the drafters of the Constitution of 1972 to request an answer. The answer provided by Sengat Kuo was that paragraph 3 of the proclamation was to be read in connection with both preceding paragraphs on a state of emergency and the so-called state of siege (Nforbin 1998: 64). On 18 January 1996, the constitution was amended and the emergency provisions were to be released this time with two paragraphs instead of three as had always been the case in the previous constitutions. The former third paragraph on the proclamation was merely cut and pasted at the end of the second paragraph on the state of siege. Therefore, one of the interpretations could be that the proclamation would only be limited to a state of siege and would no longer concern a state of emergency.

#### The principle of non-discrimination

This principle is emphasized by section 4(1) of the Covenant which mentions that certain discrimination clauses may not be imposed in a manner that discriminates solely on the grounds of race, color, sex, language, religion or social origin. The adjective 'solely' in the text raised some controversial issues on the nature of discrimination itself. Notwithstanding it is suggested that even without this term, the reference to discrimination in section 4 conveys the implication that only arbitrary and unjustifiable distinctions in the application of emergency measures would be outlawed (Fitspatrick 1994: 63).

In Cameroon the constitution prohibits discrimination based on sex, race, and religion.<sup>15</sup> However there is a recorded case where the country failed to comply with the principle of non-discrimination during emergency situations. As a matter of fact, the country is part of a complex multicultural landscape with nearly three hundred local languages, a principal division between Anglophones (around 20% of the population) and Francophones. Democracy in Cameroon is strongly influenced by tribal and linguistic affiliations. The current president of the republic, Paul Biya comes from the Beti/Yezoum tribe that is located in what is currently referred to as the Big South, formed by three regions including the south, the east and the centre. The president mostly gains support from this area of the country irrespective of the political agenda. The other

portions of the state (until recently) were presumed to belong to the opposition and were by definition considered hostile to the president and his tribe. For example, in June 1991 following the *operation ville morte*<sup>16</sup> [ghost town operation], due to a poor response to growing democratic demands and his refusal to organize a national conference, President Biya enforced a *de facto* emergency in the entire country, except in the three provinces that supported his politics. This emergency was implemented by placing seven of the ten provinces (currently regions) of the country under a *statut special*, by setting up what was called ‘*Commandement Militaires Operationnels*’ to ‘pacify’ the country. This resulted in the deployment of harsh measures, tightening of security, human rights violations, and army brutality committed in taking control of the cities, a situation that normally characterises a state of siege. The exception enforced by the presidential decree draws a line between the inhabitants of the same country, displaying them as unequal before the law. People that do not belong to the president’s geographical area and do not support his politics found themselves living in an area that had suddenly been outlawed and abandoned by law. Those who stood for the president and his politics were the true Cameroon citizens vested with patriotic attributes, the law’s protection, and the enjoyment of rights. This situation could lead to serious ethnic consequences across the state, such as the genocide experienced in Rwanda, Burundi, or former Yugoslavia. In this scenario, any opposition or any contestation from other tribes could be interpreted as a threat to the ‘life of nation’ or a ‘crime against the national territorial’s integrity.’ This stand is evident in the following observation:

Thus, where an identifiable racial or religious group poses a distinct security threat not posed by other members of the community, presumably, emergency measures could be deliberately targeted against the group, despite the non-discrimination clause (Fitspatrick 1994: 63).

#### The principle of non-derogable rights

The principle of non-derogable appears in section 4(2) of the Covenant which mentions that ‘no derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.’ This refers to the right to life, freedom from torture or cruel, inhuman or degrading treatment or punishment, slavery or to be held in servitude, imprisonment on the grounds of inability to fulfill a contractual obligation, arbitrary detention, right to recognition everywhere as

a person before the law, and freedom of thought, conscience and religion. Non-derogable rights refer to those rights attached to human beings and which cannot be subject to limitation by states, even during emergency situations.<sup>17</sup> It was reported that the drafters of the Covenant touched on the basic issue when defining whether non-derogable rights should proceed from the perspective of identifying those rights most vital to human integrity and most likely during abusive emergencies, or whether those rights should include all provisions whose suspension could not conceivably be necessary during times of public emergency (Fitspatrick 1994: 64). Similarly, the Convention against torture and other Cruel, Inhuman or Degrading Treatment or Punishment underlines this principle in its non-derogable clause provided by section 2(2) which reads:

No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.

This section expressly targets emergency situations which most of the time are deemed a legal excuse for torture and other gross violation of human rights. The state's experience of an emergency is irrelevant by virtue of non-derogability of the prohibition on torture, but committee against torture's reviews are likely to be influenced by the frequent association of widespread torture practices with public emergencies (Fitspatrick 1994:113). It is reported that the ten members Committee against Torture (CAT) seeks compliance primarily through the review of periodic state reports under section 19 of the treaty.

The real situation in Cameroon accounts for the lack of consideration of these fundamental rights, especially during states of emergency. With regard to the right to life for instance, one can recall the mockery of trial that happened during a state of emergency under Ahidjo's tenure and that led to the summary execution in January 1971 of Ernest Ouandie, the last link in the chain of resistance against French colonialism in Cameroon and their local acolytes. This execution followed the cowardly assassination in September 1958 of Ruben Um Nyobe, the secretary general of the UPC and that of Roland Felix Moumie in 1960 president of the same party. Similarly, in the aftermath of the failed coup d'état of 6 April 1984 'the most obvious steps were a tightening of security all over the country with a six-month state of emergency declared in the Yaounde area. Trials of those convicted begun as early as 1 May and by mid-May the government admitted that one thousand and fifty-three persons has been arrested and that forty-

six had been executed. Amnesty International has claimed that as many as one hundred and twenty executions took place.’(Delancey 1989: 72) Many others were imprisoned and died in their cells due to bad treatment after state confiscation of their heritage.<sup>18</sup>

In the same vein by decree N° 2000/0027 of 24 February 2000, president Biya enforced the Operational Command to fight large-scale banditry (grand banditisme) in the city of Douala. This institution that transferred the security of the city from administrative authorities (governor and prefect) to the army amounts in fact to a state of siege and led to searches, arrests without warrants, tortures and extra-judicial executions of more than a thousand people.<sup>19</sup> On 23 November 2000 the United Nations committee against torture grew concerned about this situation and urged the government to ‘consider dismantling the Special Forces set up in the framework of the fight against large-scale banditry, to strongly continue the investigations about gross human rights violation and to launch immediate and impartial investigations.’<sup>20</sup>

The situation does not differ when it comes to the freedom from torture or cruel, inhuman or degrading treatment, or punishment, which has become routine in many police stations. The late Jean Fochive, former chief of the intelligence services under presidents Biya and Ahidjo did not deny such allegations, since he possessed a unique conception of torture:

Torture is without a doubt a speedy process to obtain confessions or information; to convince a man to bear the responsibility of a crime and to have some guarantee that he will adhere to this responsibility upon his release from the police premises. The most efficient way is to show him that his guilt is logically compelling, and that all overwhelm him; that he is insane to persist denying the evidence (Fenkam 2003: 166).

This quotation reflects the climate within the prisons of the country before and after the alleged independence. In 1992 the abuse of torture during a state of emergency by Cameroon authorities was acknowledged by judges in an unprecedented case where the plaintiff nearly died due to mistreatment (retired Justice Nyo Wakai & 172 others v People).

The principle of good faith motivation

A state of emergency entails the suspension of public liberties and freedoms, including freedom of association and freedom of assembly with trade unionists as frequent target of harsh measures. The principle of good faith motivation means that emergency regimes declared in order to

destroy a democratic system of government cannot be considered as genuine. It is currently reported that ‘many governments imposing emergency measures will suspend trade union rights and arrest and subject trade union leaders to torture, arbitrary execution or exile.’ (Fitspatrick 1994: 109) The ILO (International Labour Organisation) conventions that govern freedom of association (the right of association and protection of the right to organise convention, 1948 (N<sup>o</sup> 87) and the right to collective bargaining (the right to organise and collective bargaining convention, 1949 (N<sup>o</sup> 98)) do not allow derogation from them. State parties to these conventions can therefore not rely on state of emergency measures when they suspend these rights (Wessels 2001:140). In 1983 the committee of Experts on the Application of Conventions and Recommendations referred to the Greek case in restating the limited basis for restricting labour rights in times of emergency. The committee coined that the freedom of association Conventions do not contain any provision permitting derogation or any suspension of their application, based on a plea that an emergency exists (Fitspatrick 1994: 110).

The appreciation of good faith motivation in emergency matter remains subjective especially in a society like Cameroon where the president of the republic is the only authority involved in the declaration of a state of emergency or the so called state of siege. It has been recorded that emergency regimes reach their peaks in the country during periods of highest democratic demands. For example, in relation to the struggle for independence and reunification of the country led by the UPC in the fifties, it is reported that by May 1959 after the enactment for the first time of two emergency legislation namely a state of alert and a state of warning by the Legislative Assembly of Cameroon, special criminal tribunals were soon set up in various areas of Cameroon and large numbers of suspects were arrested. Six opposition newspapers, including Bebey Eyidi’s *L’opinion au Cameroun*, also were suppressed (Awasom 2002:9-10). Abel Eyinga considers these emergency regimes to be administrative measures at the disposal of the executive power (Eying 1978:14). After independence and especially after the (re) instauration of political pluralism in 1990, the declaration of a state of emergency (or the enforcement of a *de facto* emergency) occurred essentially during popular contestations especially during pre and post-electoral campaigns. Such was the case when a state of emergency prevailed in the north-west region of the country following the outcome of the controversial presidential elections of October 1992. It was also the case in February 2008 when people went on strike owing to the undesirable constitutional amendment that allowed president Biya to remain in power.

Compliance with good faith motivation in implementing draconian measures in Cameroon remains therefore questionable.

## **Conclusion**

This paper aimed at assessing the international standards on emergency regimes through the lens of the Cameroon experience. These international standards essentially from a treaty based system are located inside a set of international instruments and are compulsory among state parties. The paper shows a significant inadequacy between the Cameroon emergency system and the principles laid down by international instruments. The country hardly complies with the principles of proportionality, exceptional threat, non-derogable rights, notification, non-discrimination and good faith motivation. As a result, rather than being mere derogations, it can be said that emergency regimes in Cameroon materialise in a complete *legal vacuum* and are therefore to be considered as failures of law.

As suggestion, firstly the institutions of emergency regimes need to be entirely redesigned with details clarification. Secondly, the presidential act of declaration of a state of emergency should no longer be considered as an act of state vested with judicial immunity. The president should no longer be the only entity involved in the enforcement of such regimes; in other words, Parliament and the Judiciary should be granted a place of choice in emergency matter. Thirdly the mechanism of national and international supervision of the management of emergency situations should be reinforced in order to enhance some accountability process.

## **NOTES**

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<sup>1</sup> This include among other the Universal Declaration of Human Rights (1948), the Martins Study (1966), the Resolution 1503 procedure (1970), the Questiaux Report (1982) , the International Commission of Jurists (1983), the Siracusa Principles on Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights (1984), the Paris Minimum Standards of Human Rights Norms in a State of Emergency (1985), Oslo Statement on Norms and Procedures in Times of Public Emergency or Internal Violence (1987), Gasser's Proposal for a Code of Conduct (1988), Turku/Abo Declaration of minimum humanitarian standards (1990) and Experts non-derogable Rights (1995).

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<sup>2</sup> For further information on this, see Deltombe T. & al. *Kamerun! Une guerre cachée aux origines de la Françafrique 1948-1971* (2011) Paris, éditions de la découverte. See also Delancey M. W. *Cameroon dependence and independence* (1989) United States of America, Boulder, Great Britain, Dartmouth. Further Neville R, *Cameroun an African federation* (1971) London, Pall Mall Limited.

<sup>3</sup> For example, following the controversial presidential elections of 1992, a state of emergency was imposed in the North-West region of Cameroon, stronghold of the main opposition party by the president as a response to massive electoral frauds that the current regime was accused of.

<sup>4</sup> It seems owners of these motorbikes have been using their engines to transport Boko Haram members throughout the region.

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

<sup>6</sup> *Journal Officiel du Cameroun Archives National Yaoundé* 1962, 232.

<sup>7</sup> Ordinance N° 72/13 of 26 August 1972.

<sup>8</sup> If their common denominator is a crisis situation, the three institutions differ from each other in the following ways: a state of emergency entails an extension of the legal prerogatives of the authorities in charge of the executive branches of the state, whereas a state of exception calls into question the principle of the separation of powers. A state of siege transfers power from civil authorities to the army, which takes control over a city. For further information on this see G.E. Kamdem Kamga *l'Etat d'exception* and/or a state of siege: what is really wrong with section 9(2) of the constitution of Cameroon? *Fundamina a journal of legal history*, Vol.19, 2 2013.

<sup>9</sup> The jurisprudence of the French council of state is enforceable in Cameroon.

<sup>10</sup> Cameroon Penal Code book 2 chapter 1 'Felonies and misdemeanors against the state'.

<sup>11</sup> Section 3 of the Constitution.

<sup>12</sup> Under section 5(1) (d) of the ICC Statute, the International Criminal Court is competent to deal with the crime of aggression. Notwithstanding, as mentioned by section 5(2) of the International Criminal Court Statute, the Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with sections 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime.

<sup>13</sup> For more information on the principle of proclamation see see 'section (A) Emergency: declaration, duration and control' Lillich B. 'The Paris Minimum Standards of Human Rights Norms in a State of Emergency'. *The American Journal of International Law*, Vol. 79, 4 (1985): 1072-1073.

<sup>14</sup> Section 9 of the constitution and section 2 (1) of the law of 19 December 1990 relating to a state of emergency in Cameroon.

<sup>15</sup> Preamble, section 7 of the Constitution of 1996

<sup>16</sup> In 1990 following the democratisation's wind over the African states and then Cameroon, a rise of democratic demand led to the requirement of a national conference from the people. As president Biya found the demand '*sans objet*' [useless], people and the opposition party launched what was called *opération ville morte*, [ghost town operation] characterised by the cessation of every activity around the country.

<sup>17</sup> For more information on non-derogable rights during states of emergency see 'section (c) non-derogable rights and freedoms' Lillich B. 'The Paris Minimum Standards of Human Rights Norms in a State of Emergency'. *The American Journal of International Law* Vol. 79, 4 (1985): 1074-1075. See also United Nations Economic and Social Council, Commission on Human Rights, 41 Session, E/CN.4/1985/4, 28 September 1984, Status of the international covenants on human rights, para.53, 8. Further, declaration of minimum humanitarian standards, International Symposium Turku/Åbo 30 November – 2 December 1990.

<sup>18</sup> *Cameroun, 6 Avril 1984 - 6 Avril 2010 : 26 ans après, les putschistes étaient-ils des visionnaires dans leur état ?*

<http://www.camer.be/index1.php?art=9613&rub=6:1> (accessed on 15 September 2012).

<sup>19</sup> A full account of a state of siege as well as the Operational Command to fight large scale banditry in the city of Douala are available in a previous article on the same topic. See Gerard Emmanuel, Kamdem Kanga. *l'Etat d'exception* and/or a state of siege: what is really wrong with section 9(2) of the constitution of Cameroon? *Fundamina a journal of legal history*, Vol.19, 2 2013.

<sup>20</sup> *Au Cameroun : Forces de l'ordre hors contrôle ?* [http://www.wagne.net/csp/csp2003/cahier\\_animation/ec2.htm](http://www.wagne.net/csp/csp2003/cahier_animation/ec2.htm) (accessed 31 Oct 2015).

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