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Rethinking the façade of decentralisation under the 1996 Constitution of Cameroon

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Abstract: *The 1996 Constitution of Cameroon tried to put in place a decentraliased system of government in order to accommodate Cameroon's diverse communities. The constitutional and political evolution from the colonial era up to the present has a role to play in decentralisation efforts. The country today faces a number of serious challenges to governance which the decentralisation project in the 1996 Constitution was supposed to address. Some of these challenges that were discussed during the national dialogue that took place in the country from 30 September to 4 October 2019 include difficulties in dealing with the country's dual colonial heritage, particularly the perception of marginalisation by the Anglophone community. Other challenges include embracing constitutionalism; tackling minority concerns such as the rights of women and indigenous people; curbing ethnic tensions; and managing the transition from authoritarian to democratic governance. An examination of the constitutional and legal framework of decentralisation under the 1996 Constitution shows that these issues have not been adequately addressed under the current dispensation. There thus is a need for a fundamental constitutional overhaul that would provide a more effective decentralised framework for administrative, political and fiscal decentralisation. The new framework should equally entrench the basic elements of constitutionalism such as upholding human rights, fostering the separation of powers, the amendment of the Constitution and judicial independence. There equally is a need for legal safeguards, such as a constitutional court, to guard against the usurpation and the centralisation of powers by the central government. Only such elements can facilitate Cameroon's decentralisation efforts and thus ease the accommodation of diversity, enhance development, democracy and manage conflict.*

Key words: *decentralisation; federalism; constitutionalism; democracy; human rights; diversity management*

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1 Introductory remarks

The *raison d'être* of decentralisation varies from state to state especially as each design is instituted to solve the particular challenges that a country faces. In many respects, Cameroon reflects the paradoxes of decentralisation in Africa and the negative consequences it can have on development, democracy, constitutionalism, human rights and the rule of law, if it is not carefully designed to fully address a country's underlying problems.

The President of Cameroon, President Paul Biya, in a message to the country on 10 September 2019 announced the holding of a major national dialogue, in a bid to end the three-year long ongoing bloody conflict in the two Anglophone regions of the country, the north west and south west regions. Certain resolutions, including recommendations on a need for a special status arrangement granting autonomy to the Anglophone regions, under a decentralisation framework were arrived at (website of the Presidency of the Republic 2019; website of Major National Dialogue 2019). On 24 December 2019 a Bill to Institute a General Code on Regional and Local Authorities in Cameroon (2019 Decentralisation Code) was promulgated into law by President Paul Biya. By harmonising laws on decentralisation such as Law 2004/017 of 22 July 2004 to lay down the Orientation of Decentralisation (Decentralisation Orientation Law), Law 2004/019 of 22 July 2004 to lay down the Laws on Regions (Law on Regions) and Law 2004/018 of 22 July 2004 to lay down the Laws on Councils (Law on Councils), it is hoped that the 2019 Decentralisation Code will accelerate the decentralisation process in Cameroon. This article examines and proposes a more rationalised design for decentralisation in Cameroon, along the lines of some of the recent developments around this national dialogue and the recently-promulgated 2019 Decentralisation Code. The contribution commences with an analysis of the present challenges of governance in Cameroon. A summary of the key weaknesses of the present constitutional and legislative framework as well as an examination of the present Cameroonian identity crisis is made in part 2. Part 3 focuses on the present challenges within a rationalised decentralisation framework. This entails examining whether Cameroon should opt for a federal system or maintain its present decentralised unitary state form. Another important issue examined in part 3 is whether the decentralisation framework under the 1996 Constitution falls under a constitutionalised framework or a non-constitutionalised (legislative) framework and whether this aspect has contributed to constitutionalism and reduced the central government's quest for power. Other issues examined in part 3 include the need to reinforce political and administrative autonomy. Owing to the fact that fiscal arrangements are fundamental for a decentralisation design to succeed, part 4 focuses on this aspect. Part 5 examines supervision and the need for intergovernmental cooperation. Part 6 examines the

importance of managing diversity, ethnic and minority issues as well as constitutionally entrenching the role of women and traditional authorities in a rationalised decentralisation framework. Part 7 envisages dispute resolution and implementation mechanisms. The contribution ends with some concluding remarks. It is contended that the Cameroonian decentralisation process is failing because it was designed to protect rather than improve on the *status quo*.

2 The present challenges of governance in Cameroon

Cameroon has been faced with several governance challenges since independence. These challenges have persisted due to fundamental weaknesses of the present constitutional and legislative framework. One of the major challenges that impeded governance and democratic rule is the Cameroon identity crisis, dominated by the Anglophone problem. This part addresses a summary of these key weaknesses and particularly the Anglophone problem.

2.1 A summary of the key weaknesses of the present constitutional and legislative framework

A close examination of the constitutional and legal framework of decentralisation under the 1996 Constitution exposes the dominance of the powers of the executive, which trickles down through shared rule and self-rule elements of the governance architecture of the country. With respect to shared rule, the President of the Republic has the discretion of appointing 30 of the 100 senators in the country (article 20(2) of the 1996 Constitution). Most of those appointed are loyal to the Cameroon Peoples' Democratic Movement (CPDM) ruling party. This means that the President's control over shared rule is very strong and he can still influence many decisions of senators. Moreover, the Senate is considered by many as undemocratic and a cumbersome institution especially in a time of financial crisis.

The executive's influence is also strong over the institutions of self-rule such as the regional councils and municipal councils. The President of the Republic alone decides on how territorial units should be carved out. At the level of regional councils, the Secretary-General is appointed by the President, while at the level of municipal councils the Secretary-General is appointed by the minister in charge of local and regional authorities (referred to as the Minister of Decentralisation and Local Development as of 2018). This shows how powerful the executive is over the institutions of shared rule and self-rule in the country.

Concerning ethnic and minority issues, as will be examined, there is no operational plan and effective strategy to deal with diversity, minority

and ethnic issues especially as line ministries consider decentralisation as a threat to control over their influence as well as resources.

With respect to traditional leaders and traditional institutions, their role remains obscure and this seems to be deliberate. Generally considered auxiliaries of the administration, they are attributed limited functions or duties by the legal instruments regulating the decentralised system, especially the 2019 Decentralisation Code.

The 1996 Constitution does not accord financial autonomy to the regions. Financial decisions are taken by the central government and imposed on the regions. The main instrument governing financial issues under the decentralisation architecture is Law 2009/011 of 10 July 2009 relating to Financial Regime of Regional and Local Authorities (2009 Decentralisation Law). It purports in section 2 to provide local government authorities 'financial autonomy for the management of regional or local interests' (section 2 of the 2009 Decentralisation Finance Law). The regions are not consulted in the budget-drawing process and depend on the budget drawn up by the central government. Custom duties as well as major taxes are collected by the central government and shared to the regions and councils. The only source of revenue for local government is property tax, business licences, user charges and market fees. In many municipalities, there are huge gaps between reported and projected revenues. This is due to the many distorted and incoherent decentralisation laws, including the Decentralisation Code, related to finance as well as the poor administrative capacity at the levels of bodies such as the Special Council Support Fund for Mutual Assistance (with French acronym *FEICOM*) to enforce the payment of taxes.

Organised local government exists through the organisation and functioning of the United Councils and Cities of Cameroon (UCCC) (the local government system in Cameroon, country profile). The UCCC aims at instilling harmony between the councils and to promote development, taking into consideration the common interest of all. In this respect, councils in divisions may realise joint projects, upon the request from the supervisory authority (the state representative), or owing to joint deliberations from their respective executive councils. This includes the construction of rural roads to facilitate movement as well as other local services of importance. In reality the UCCC has not been effective in instilling harmony and equitable development in councils because serious disparities continue to exist in terms of development among councils.

Supervisory bodies include the National Decentralisation Board (Board) (section 2 of the 2008 Decree of the Board) and the Interministerial Committee on Local Services (Committee) (section 2 of the 2008 Decree of the Committee). Elections Cameroon (ELECAM) supervises the election process of parliamentarians, senators, regional councillors as well as

municipal councillors. The National Commission on the Promotion of Bilingualism and Multiculturalism (the NCPBM), although created in 2017, also has a role to play in the decentralisation framework of the country. A clear examination of the functioning of these bodies shows a significant degree of duplicity, overlap and confusion in the role these institutions play.

In an era that has seen the expansion of constitutional review, even in Francophone African states, Cameroon has remained reticent to change by adhering to a system that is not consistent with modern developments, but which covers state institutions from constitutional accountability for their inactions as well as actions. As transpires from part 7, the Cameroonian constitutional review system demonstrates that the design and functioning of the review mechanism can have a positive or negative effect on constitutional evolution as well as decentralisation in the country (Fombad 2017).

2.2 The present Cameroonian identity crisis as a major challenge

A problem of major concern that has become acute because of the weak constitutional framework on decentralisation is the current Cameroonian identity crisis particularly characterised by the Anglophone problem. The Anglophone area of Cameroon consists of two of the country's ten regions, the north west and the south west regions. It covers 16 364 square kilometres of the country's total area of 475 442 square kilometres and has approximately five million of Cameroon's 24 million inhabitants, roughly about 20 per cent of this population. It is the stronghold of the main opposition party, the Social Democratic Front (SDF), and plays an important role in the economy, especially its dynamic commercial and agricultural sectors. Most of Cameroon's oil, which accounts for one-twelfth of the country's gross domestic product (GDP), is located off the coast of the south west region (Crisis Group Report 2017: 2).

The Anglophone problem dates back to Cameroon's independence period of 1961. However, before delving into the genesis of the Anglophone problem, it is important to examine Cameroon's colonial constitutional history.

The present-day Cameroon, as well as some sectors of its neighbours, was an outcome of the Berlin Conference of 1884, when it was declared a colony of Germany with the name 'Kamerun'. It was a German colony until a combined French and British military contingent defeated the German army in Cameroon in 1916 during World War I and divided the territory into two. The French took the larger part composed of about four-fifths of the territory, while the British took two small disconnected parts, which they labelled Southern and Northern Cameroon respectively. This partition

was later acknowledged by the League of Nations and its successor the United Nations (UN). The French administered its part via direct rule while Britain effectively governed its two disconnected portions as simply parts of its nextdoor Nigerian colony. However, under a plebiscite which was conducted by the UN on 11 February 1961, the Northern Cameroons decided to remain and is today part of the Federation of Nigeria, while the Southern Cameroons voted in favour of re-uniting with the former French Cameroon which had already gained its independence as the Republic of Cameroon on 1 January 1960 (Asuagbor 2004; Awasom 2002; Starks 1976; Bongfen 1995; Dent 1989; Kom 1995; Kamto 1995).

After the plebiscite that took place in Southern Cameroons, the then Prime Minister, Dr John Ngu Foncha, who led the Southern Cameroonian delegation, struggled to arrive at a new constitutional arrangement with Ahmadou Ahidjo, the then President of the Republic of Cameroon. This constitutional arrangement was to put in place a fairly loose and decentralised federation. The negotiating power of the Southern Cameroonians was very weak, leading President Ahidjo to make some concessions from their proposals by simply amending the 1960 Constitution by an annexure termed 'transitional and special dispositions'. This happened because the Southern Cameroonian delegation may have been politically inexperienced as compared to their Francophone counterparts who had the assistance from French constitutional law experts. In actual fact, what became the Federal Constitution of the Federal Republic of Cameroon was simply a law revising the Republic of Cameroon's Constitution of 4 March 1960. The reunification not only brought together people of different backgrounds inherited from the English and the French but also a multitude of about 250 ethnic groups with over 270 various languages. Faced with such a mixture of cultural, ethnic and linguistic groups having various aspirations and interests, at independence the then government needed to set up an institutional framework to manage diversity under an umbrella of unity, particularly between Anglophone and Francophone Cameroonians. Apparently diversity was not adequately managed under the 1961 Federal Constitution as well as under the 1972 Unitary Constitution. Anglophone Cameroonians again have not adequately benefited from the autonomy that was envisaged under this unity under the 1996 Constitution. Never before has tension around the Anglophone problem been so acute. It is thus important to examine events that reignited this problem.

From October to December 2016 lawyers and teachers from the north west and the south west region went on strike. The requests, especially from Anglophone lawyers, ignored until then by Cameroon's justice ministry, were related to the justice system's failure to adequately utilise the common law in the two Anglophone regions. The lawyers requested the translation into English of the Code of the Organisation for the Harmonisation of Business Law in Africa (with French acronym OHADA)

and other legal texts. They objected to the 'francophonisation' of common law jurisdictions (Crisis Group Report 2017: 9). Concerns of an intentional policy of assimilation and 'de-identification' gained serious ground before 2018, especially as Francophone prosecutors and judges with hardly any or very little knowledge of the English legal system were appointed to serve in the Anglophone regions (Cameroon 2015 Human Rights Report). The threatened elimination of the English legal system, widely considered one of the last vestiges of the inherited English culture in the country, probably is some of the clearest evidence that the overriding policy objective is one of unity pivoted on suppression and harmonisation of differences rather than the accommodation of such differences.

Administrative authorities of the deconcentrated administrative areas have over the years also been a cause for tensions between the Francophone and Anglophone communities in the country. Francophone officials from the lowest to the highest ranks, who often comprehend and speak very little English and usually have little understanding of the culture, are appointed to several areas, even remote parts of the Anglophone regions. Having very little understanding of the working environment, these authorities have loyally carried out political instructions from the central government and also served their own interests. In actual fact they have done very little to address the real issues of the community in which they are called upon to serve. This has over the years generated complaints as well as raised suspicion of a deliberate policy of imposing the Francophone culture and eradicating the Anglophone culture. Although the official policy of bilingualism in the country has for some time now meant nothing more than a type of 'bilingualism in French', in the last decade many Francophone Cameroonians have now made vital strides to not just study English but also to undergo their secondary education in the Anglophone regions (*Gunme & Others v Cameroon* (2009) AHRLR 9 (ACHPR 2009)).

Secessionist groups have also emerged since January 2017. They have taken advantage of the current Anglophone crisis to radicalise the population with support from a segment of the Anglophone diaspora. While the risk of dividing the country is minimal, the probability of a resurgence of the crisis in the form of armed violence is high, as some groups such as the Southern Cameroons People's Organisation (SCAPO), the Southern Cameroons National Council (SCNC) and the Southern Cameroons Ambazonia Consortium United Front (SCACUF) are now clamouring for that approach (Crisis Group Report 2017:15).

The government has taken several measures since March 2017 to address the Anglophone crisis. For instance, on 23 January 2017 the President created a National Commission on the Promotion of Bilingualism and Multiculturalism (Decree 2017 of the NCPBM). On 30 November 2018 the President also created the National Disarmament, Demobilisation and

Reintegration Commission (Decree 2018/719 of 30 November 2018 to establish the National Disarmament, Demobilisation and Reintegration Commission). However, Anglophone Cameroonians criticised the creation of these commissions as too little, too late and regretted that nine of especially the NCPBM's 15 members were Francophone Cameroonians, that most of them belonged to the older generation and that several were members of the ruling Cameroon Peoples' Democratic Movement (CPDM) party (Agbaw-Ebai 2017).

In May 2018 the NCPBM undertook missions to the Anglophone regions and held workshops with civil society groups and administrative officials. The aim was to listen to the concerns of the people especially with respect to the Anglophone problem, ethnic as well as minority issues. Concerns such as employment opportunities, underdevelopment, poor service delivery and the use of English as one of the national languages were raised. The NCPBM vaguely promised to channel these problems to the government for lasting solutions (Musonge 2018). It is feared that if some of these concerns are not taken seriously and incorporated into the decentralisation framework through constitutional means, the country will still be entangled in the Anglophone problem as well as ethnic and minority problems. The NCPBM is handicapped by its remit, which gives it no power to impose punitive measures, and restricts it to preparing reports and advocating bilingualism and multiculturalism. Some of its members have recognised this weakness. It is thus important for the role of the NCPBM to be entrenched constitutionally for its decisions to be given adequate constitutional importance.

Other measures taken by the government to curb the identity crisis include the creation of a common law section at the Supreme Court and a new department for common law at the National School of Administration and Magistracy with French acronym ENAM, as well as common law departments in some state universities. The government has equally recruited Anglophone magistrates mostly in the Anglophone regions and over 1 000 bilingual teachers (Crisis Group Report 2017: 12-13). However, the leaders of the Anglophone movement are not satisfied with these measures.

Another initiative undertaken by the government of Cameroon in a bid to address the Anglophone crisis is the major national dialogue, which was mentioned in the introduction of this contribution. The national dialogue convened by the President on 10 September 2019 commenced on 30 September 2019 and ended on 4 October 2019 with a closing ceremony presided over by the Chairperson of the dialogue, Prime Minister Joseph Dion Ngute. The five days of deliberations by some 600 delegates from home and abroad in eight commissions was sanctioned by recommendations that were presented to the public during the closing

ceremony. The major recommendations included the need to grant a special status to the north west and south west regions, in conformity with section 62(2) of the Constitution. Other recommendations included the need to take specific measures to ensure equality of the English and French languages in all aspects of national life; the need to reinforce the autonomy of decentralised local entities; the need to improve upon the infrastructure of judicial services throughout the country; the need to strengthen the humanitarian assistance to better serve internally displaced persons; the need for double nationality to be granted to the Cameroonian diaspora; the need to institute a special plan to reconstruct the conflict affected areas; the need to popularise the head of state's offer of amnesty to combatants who drop their weapons and enter the reintegration process; and the need to create a team responsible for mediation with radicalised members of the Cameroonian diaspora (Teke, Cameroon Radio Television 10/2019). The Prime Minister then dispatched delegations to the two Anglophone regions to sensitise the people on the need to accept these recommendations (Teke, Cameroon Radio Television 11/2019). There is no gainsaying that the national dialogue brought hopes for peace in the two Anglophone regions. It is important for some of these recommendations, especially the content of the suggested special status, to be defined and endorsed by the Cameroonian population and henceforth constitutionalised so as to give them value. If not, the national dialogue may be considered a waste of time and resources and may instead exacerbate more conflict.

Another step towards resolving the Anglophone crisis is the provision of a special status for the two Anglophone regions in the 2019 Decentralisation Code (section 327). As is subsequently examined, many argue that the putting in place of the special status did not respect the canons of the implementation of special regimes found elsewhere in the world. The special status under the Decentralisation Code provides in section 330 for a regional assembly and a regional executive council. The regional assembly is to be the deliberative organ of the two Anglophone regions. It will be made up of 90 regional councillors. It will be composed of a house of divisional representatives and a house of chiefs. The duties of the house of chiefs remain obscure. According to section 328 of the 2019 Decentralisation Code, the special status regime may allow the Anglophone regions to participate in the formulation of national policies relating the Anglophone education sub-system, decide on development projects in both regions and on issues on chiefdoms. However, the use of 'may' instead of 'shall' in section 328 of the 2019 Decentralisation Code denies the people of the two Anglophone regions the right to particpate in decision making on issues of fundamental importance to their existence.

The introduction of an ombudsman, otherwise referred to as an independent public conciliator, in sections 367 to 371 of the 2019 Decentralisation Code is a welcome innovation and should be applauded.

However, his or her appointment should not depend on proposals from the representative of the state and the president of the regional council (section 368), since most complaints by the people of both Anglophone regions are likely to be against these two officials. Some analysts, especially members of the major opposition party, the SDF, think that the involvement of the representatives of the state (appointed governors, senior divisional officers and divisional officers) in the affairs of the Anglophone regions is unwelcome. Despite this view, it is argued that there must be some control and not usurpation over some mayors, most of whom are interested in enriching themselves at the expense of the people.

Another important innovation in the 2019 Decentralisation Code is the eradication of the position of appointed government delegate, to be replaced by an elected super mayor of the City Council, to be elected from his or her peers from councils in the concerned region (section 246 to 249). This indeed is a positive step in the decentralisation process as this will guarantee some certain degree of autonomy in the managment of council affairs than before. Despite this positive move, the 2019 Decentralisation Code restricts the position to an indigene or autochtone of the region which may to some extent eliminate potential candidates who are not autochtones of that region.

International pressure has been muted, but has nevertheless pushed the government to put in place the measures described above (Caxton 2017). Measures equally from religious leaders and civil society groups have been muted (Crisis Group Report 2017: 15-16). The central government of Cameroon seems more sensitive to international than to national pressure. Without coordinated, persistent and firm pressure from its international partners, it is unlikely that the government will seek lasting solutions to the ongoing crisis.

Being an Anglophone Cameroonian means that there is a need for well-defined mechanisms to be put in place for their administrative and political autonomy, which is not the case under the current decentralisation dispensation. There is a need for the state to recognise the legal culture and identity of Anglophone Cameroonians, something that is not the case under the *status quo*.

The politicisation of the Anglophone crisis and the radicalisation of its protagonists is due mainly to the government's response, particularly the disregard, denial, repression and intimidation of Anglophone Cameroonians. There has been diminishing trust between the government and the Anglophone population. The identity crisis has been exploited by political actors who have aggravated the population's resentment to the point that probably most Anglophone Cameroonians now view secession or a return to federalism as the only feasible way out of the identity crisis.

The Anglophone crisis is a classic example of excessive control from the centre. First, the crisis has led to restrictions on civil liberties, which have become more pronounced since 2013, particularly with the banning on demonstrations. It has even served as an excuse for repression, with the use of anti-terrorist legislation for political ends, threats against journalists and greater control over social media (Crise Anglophone 2017). Second, it reveals major governance failures accentuated by a false decentralisation and a political system that relies on co-opting traditional chiefs and local elites (Crisis Group Africa Briefing 101 2014).

3 Addressing the present challenges within a rationalised decentralised framework

In addressing the present challenges within a rationalised decentralised framework we first consider whether Cameroon should opt for a federal system or maintain its current decentralised unitary state form. It is equally important to examine whether the decentralisation framework for Cameroon is of a constitutionalised or a non-constitutionalised (legislative) nature, as well as whether this has contributed to constitutionalism and reduced the central government's quest to centralise power.

3.1 Opting for federalism or maintaining the unitary state framework?

The current crisis has increased support for secession and or federalism among the Anglophone Cameroonian population. This point of view demonstrates how complicated the Anglophone problem has become. School closures and ghost town operations could not have continued for long without the adherence of a large part of the population (Crisis Group Report 2017: footnote 70 page 8). An issue that needs to be addressed is whether federalism or the current unitary state disposition may resolve the governance issues, including the Anglophone problem.

Although most Anglophone Cameroonians advocate federalism, there is no consensus about the number of administrative units or regions in a future federation. Much confusion remains as to returning to a two-state federation, as before unification. Some Anglophone Cameroonians are in favour of a four or six-state federation to better reflect the sociological composition of the country and to make the idea of federalism acceptable to Francophone Cameroonians. There equally are other Anglophone Cameroonians who are in favour of a ten-state arrangement to copy the current pattern of Cameroon's ten regions. There equally is a view that however many federated states are created, the political capital, Yaoundé, should not be made the federal capital or included among the federated states (Crisis Group Report 2017: 18; Asuagbor 2004: 497; Awasom 2002: 427; Starks 1976: 429; Bongfen 1995: 22; Dent 1989: 172; Kom 1995:

143-152; Kamto 1995: 10-11). For another category of activists, federalism seems to be a better negotiating option in order to achieve at least an effective decentralisation, with adequate political, administrative and financial autonomy in all of the country's ten regions. This also necessitates a complete revision to and the full application of the country's current laws on decentralisation (Crisis Group Report 2017: 18; Yusimbom 2010).

In as much as several states have opted for a federal system and others have opted for a decentralised unitary state arrangement, it is argued that in the case of Cameroon, due to several factors especially historical, political and most importantly cultural factors, a decentralised unitary arrangement is preferable. Maintaining the current 10 regions, 58 divisions and 360 subdivisions, may be important for the country to promote democracy, enhance development, manage diversity, ethnic issues as well as minority issues. Such an arrangement may also be important in incorporating traditional authorities as well as effective for the enhancement of constitutionalism and respect for the rule of law. For such a decentralised system to work, however, it may be necessary, as was recommended during the national dialogue, to have a constitutionalised asymmetrical arrangement or special status arrangement as will be analysed in part 3.3. It may equally be important to have strong regions with the effective establishment of regional councils and also a strong local government system, as in the case of South Africa (Powell 2015: 32-52).

3.2 A more conducive framework: Constitutional versus legislative framework

Assessing the nature and importance of the trend towards the constitutional entrenchment of decentralisation in Cameroon is necessary. This trend raises important questions and has implications not only for efforts towards the constitutional entrenchment of devolved government but is equally important for constitutional and democratic governance in the country as a whole.

Regarding the constitutional entrenchment of decentralisation, the 1996 Constitution of Cameroon, with perhaps the exception of the Constitution of the Democratic Republic of the Congo (DRC) of 2005, has one of the most exhaustive provisions on decentralisation that can be found in any civilian-style or Francophone constitution in Africa. The present decentralisation framework under the 1996 Constitution of Cameroon indeed is a constitutional one, but a closer look at the provisions therein, especially provisions on decentralisation, reveals that there are many claw-back clauses. Many very important issues on decentralisation are allowed to be determined by subsequent legislation, especially the 2019 Decentralisation Code. The 1996 Constitution of Cameroon barely provides for powers to be shared between the state and the regions but

leaves the exact form and nature these are to take to subsequent legislation. In fact, although the decentralisation provisions are found in only six articles, in at least 13 clauses within these six articles fundamental issues of the process are left to be determined by subsequent legislation. For instance, article 55(1), after stating that the regional and local authorities of the country shall be composed of regions and councils, adds that 'any other such authority shall be created by law' (article 55(1) of the 1996 Constitution of Cameroon).

It is also important to examine whether the number of tiers of government in Cameroon is constitutionalised or left to be determined by subsequent legislation. Several constitutions are silent on the number of tiers of government a country should have. Although this is a common phenomenon in Francophone countries, it equally is a growing trend in some Anglophone countries. The 1996 Constitution of Cameroon provides for two tiers of government, the regional government and local government (article 55). It is argued that the security of lower spheres of government is guaranteed where their existence is upheld through adequate constitutional restraints that have been instituted to check against arbitrary usurpation by the central government (Fombad 2018: 15).

With respect to political decentralisation, as is examined in part 3.3, the 1996 Constitution of Cameroon provides for a mix of appointed and elected officials at the lower tiers of government (articles 57-60). Concerning administrative decentralisation, the degree of administrative decentralisation is low, due to the cumbersome level of supervisory and discretionary powers the 1996 Constitution grants to central government over lower tiers of government (article 55(3)). Unlike the Constitutions of South Sudan (sections 168 and 175-179 of the 2011 Transitional Constitution of the Republic of South Sudan), South Africa (sections 213-230 of 1996 Constitution of South Africa) and Uganda (articles 178 A and 190-197 of 1995 Constitution of Uganda) that provide for a high degree of fiscal decentralisation, the 1996 Constitution does not exhaustively focus on fiscal decentralisation. This is left to subsequent legislation.

Regarding elements of constitutionalism, particularly the promotion and protection of human rights, the 1996 Constitution, unlike most post-1990 constitutions, lays emphasis almost completely on civil and political rights, although some mention is made of some social and economic rights (Preamble). Almost all the fundamental rights outlined in the 1996 Constitution are only found in the Preamble.

Some major UN treaties have been ratified by Cameroon (Office of the High Commissioner for Human Rights). Cameroon has signed and ratified the African Charter on Human and Peoples' Rights (African Charter) (Okafor 2007: 248; Diwouta 2012: 21). The country has opted for a monistic system with respect to international law: All international treaties

Cameroon has approved and duly ratified and published are supposed to become part of domestic law. International law does not necessarily need to be domesticated into national law by another legal instrument since the act of ratifying immediately converts the treaty into domestic law. Article 45 of the 1996 Constitution furthermore confers a higher normative status to such agreements or treaties so that they could trump any domestic legislative that goes against them, not excluding the 1996 Constitution (article 45).

The scope of application and enforceability of human rights under the 1996 Constitution thus is limited. Instead of having these rights in a well-structured bill of rights, these rights are outlined in the Preamble of the 1996 Constitution. The enforceability of human rights under the 1996 Constitution is definitely wanting. Entrenching provisions of decentralisation has not effectively led to the promotion and protection of human rights.

On the important issue of constitutionalism such as the amendment of the Constitution, the 1996 Constitution provides two ways through which a constitutional amendment can be initiated. Article 63(1) stipulates that amendments to the Constitution may be proposed either by the President or by Parliament. Any amendment proposed either by the President or Parliament shall be signed by at least one-third of the members of the House of Assembly (article 63(2)). According to article 63(3) 'Parliament shall meet in congress when called upon to examine a draft or proposed amendment. The amendment shall be adopted by an absolute majority of the members of Parliament. The President of the Republic may request a second reading; in which case the amendment shall be adopted by a two-thirds majority of the members of Parliament' (article 63(3)). Article 63(4) goes further to state that the President may decide to submit any Bill to amend the 1996 Constitution to a referendum. An amendment may only be adopted if a simple majority of the votes cast in the referendum is in favour of the amendment.

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

It thus is possible for amendments, under the 1996 Constitution, to be readily approved by Parliament which before 2013 was solely composed of the National Assembly. In the National Assembly there are no concrete measures in place for other political parties such as the major political

party, the SDF, to veto unconstitutional amendments. Unlike in the case of South Africa, where one level of government cannot unilaterally amend the 1996 Constitution of South Africa to its advantage (Steytler 2005: 340), the 1996 Constitution in the case of Cameroon, before 2013, allowed for unilateral constitutional amendments by the executive. Although the Senate now is operational, the executive retains the final decisions of amendments before Parliament. This is a weakness with respect to governance especially in relation to the principles of constitutionalism. The executive still has powers over the amendment of the 1996 Constitution despite the entrenchment of provisions of decentralisation therein.

A constitution is only as good as the *modus operandi* put in place for ensuring that its provisions are respected by all citizens and violations of it are promptly sanctioned. An independent judiciary is provided for in articles 37 to 42 of the 1996 Constitution. The notion of judicial independence is expressly stated in article 37(2) of the 1996 Constitution, which provides that 'the judicial power shall be independent of the executive and legislative power'.

Although the 1996 Constitution professes to institute for the first time what it terms 'judicial power', judicial independence is effectively neutralised due to the President's unlimited power to appoint and dismiss judges. Perhaps most serious is the fact that the 1996 Constitution does not have the force of a supreme, overriding law and as a result there is no guarantee of respect for the rule of law.

As is discussed in part 3.7, the lack of an efficient and effective system of constitutional review also is one of the principal loopholes of the 1996 constitutional framework (Fombad 1998: 172-186). Articles 46 and 47 of the 1996 Constitution give the Constitutional Council the jurisdiction to regulate the way in which institutions operate and to mediate on any 'conflicts between the state and the regions, and between the regions'. However, only the presidents of regional executives may forward any conflict related concerns to this organ 'whenever the interests of their regions are at stake'. However, there is no efficient and effective system for constitutional review under the 1996 Constitution, despite the entrenchment of provisions on decentralisation.

It thus is evident from the above analysis that such entrenchment of decentralisation has not significantly reduced the central government's capacity to centralise power. Despite the entrenchment of provisions of decentralisation in the 1996 Constitution, the central government is still domineering over the affairs of the other branches of government as well as local government.

3.3 Reinforcing political autonomy

Reinforcing political autonomy is important with respect to Cameroon's decentralisation process. A rationalised decentralisation system ought to promote political autonomy at lower tiers of government if it is to realise development, promote democracy, manage diversity, minority as well as ethnic issues, incorporate traditional authorities, promote constitutionalism and preserve the rule of law. Reinforcing political autonomy has several dimensions, which the Cameroonian decentralisation system may be tested against.

In as much as article 14(2) of the 1996 Constitution stipulates that both the National Assembly and the Senate, acting as Parliament for the enhancement of shared rule, 'shall legislate and control government action', they do not operate on an equal basis. The National Assembly and the Senate do not possess the same powers. The Senate has less influence and powers than the National Assembly. This is comprehensible, since the senators represent just the regional and local authorities and are either elected by indirect universal suffrage or appointed by the President of the Republic (articles 20(1) and (2)), whereas all the members of the National Assembly are selected through direct and secret universal suffrage and represent the entire country (articles 15(1) and (2)).

Although the principle of bicameralism was introduced in the 1996 Constitution, the Senate only became operational in 2013. The Cameroonian Parliament is considered an organ that simply rubber stamps what the government tables before it and thus is of little importance to the concerns faced by the ordinary populace on a daily basis. The re-introduction of multi-partysm has not really changed the *status quo*, especially as several of the rules and regulations utilised by the National Assembly were introduced during the one-party system era. Another reason for this melee is because the tensions among the opposition parties and their insignificant numbers as compared to the large majority enjoyed by the CPDM, the ruling party, has prevented any serious alterations to parliamentary procedure.

There thus is a need for the role of the second chamber to be redefined so as to give more meaning to shared rule. For instance, appointing 30 out of 100 senators is absurd. As in the case of South Africa, some members of the second chamber may be elected by the provincial executives while others are elected by their respective regional assemblies (Ghai 2015: 11-12). There may be a need for a special veto power with respect to laws concerning the decentralised units in Cameroon as in the case of South Africa (sections 76(5)(b)(i) and (ii) of the 1996 Constitution of South Africa). If adopted in the case of Cameroon, this may go a long way towards reinforcing the autonomy of the senate and subsequently in promoting democracy and development.

There is no rational, legal or logical explanation for the way of distribution of councils *vis-à-vis* the population. The gerrymandering of council and sub-divisional council boundaries is an issue decided upon by the President of the Republic based purely on political opportunism in which the wishes of the people as well as their welfare are purely incidental. According to article 61(2) of the 1996 Constitution, the President has the absolute discretion to create, recreate, change, name, re-name and modify the geographical boundaries of all the administrative and political sub-units. The only qualification to this, if it could be read as one, is article 62(2) of the 1996 Constitution which stipulates that he may 'take into consideration the specificities of certain regions with regard to their organisation and functioning'. Articles 2 to 5 of the 2004 Law on Councils, article 2 of the 2004 Law on Regions, section 6 of the 2004 Law on the Orientation of Decentralisation and the 2019 Decentralisation Code all reaffirm the constitutional rights of the President of the Republic to create and change administrative and political entities at will without consulting anybody or institution. This indeed is a method that is not in accordance with contemporary trends of democracy especially as observed in states such as Kenya (Murui 2015: 105).

Two elements are identified by Watts in a boundary demarcation exercise: First, there must be participation by the concerned population via referenda or other means of making the views of the affected persons heard. Second, the process must be objective and transparent (Watts 2008: 78). In Cameroon where ethnicity is magnified, it may be necessary to use ethnic identity as a main element in carving the borders as was done in Ethiopia (article 46 and 47 of 1995 Constitution of the Federal Democratic Republic of Ethiopia). It may also be important to use other non-identity factors such as economic viability in demarcating the borders. It is also prudent for states to entrust an exercise such as boundary demarcation to an autonomous body. In South Africa, for instance, boundary demarcation is entrusted to the Municipal Demarcation Board (Fessha & De Visser 2015: 87). It is also necessary to have such an institution oversee issues of boundary demarcation in Cameroon.

The composition of regional councils is also a major concern hampering effective self-rule. For instance, article 57(2) states *inter alia* that 'the Regional Council shall reflect the various sociological components of the region', and in clause 3 that 'the Regional Council shall be headed by an indigene of the region elected from among its members'. The regional bureau is also supposed to reflect the 'sociological components of the region'. Once again, the 1996 Constitution and the applicable laws dealing with these issues contain glaring contradictions and anomalies.

First, the requirement of respecting the sociological composition of the regional council as well as who qualifies as an indigene applies only

to regions and not to councils. How can this be upheld when a similar condition is not imposed on councils, especially as it is from the council membership that the regional council is elected through indirect means?

Second, the 1996 Constitution as well as other subsequent legislation do not give any further definition on exactly what is meant by 'sociological component of a region' or who is an 'indigene' ('autochthony' is the actual word utilised in the French texts). The question as to who qualifies as an indigene has also been raised by authors such as Guimdo (Kamto also ponders on the issue of who is an indigene mentioned in Guimdo 1998: 90). Issues concerning autochthony in the form of politics of place, belonging and identity open flood gates to some of the most controversial issues in African politics in that they mostly favour exclusion rather than inclusion. This in actual fact leads to fragmentation and polarisation rather than fostering national consciousness and unity. In cases where autochthonous representation is imposed by the central government at the local government level, especially in municipalities, decentralisation may not necessarily promote democracy (Moudoudou 2009: 37). Such autochthons are more liable to serve the central government's political interests as well as their personnel interests rather than the interests of the people. In such a situation decentralisation may instead hamper democracy. It thus is important for the issue of autochthony to be well defined under the 1996 Constitution.

Third, the Cameroonian Constitution builder is concerned about having persons and indigenes reflecting the 'sociological components of the region' when it concerns decentralised political areas but instils no such condition when referring to the origins of personalities such as administrative authorities. These authorities hold far more powerful and important posts in the deconcentrated administrative areas and predominantly control and supervise the activities of decentralised areas. It is these administrative authorities of deconcentrated administrative areas that have over the years been the main reason for tensions between the Francophone and Anglophone communities in the country. There thus is a need for conditions on the origins of these administrative authorities to be well defined under the 1996 Constitution.

In addition, the President of the Republic's enormous powers to appoint some of the top government officials in the decentralised political administrative units may actually influence the decision to create administrative units. In the appointment of these officials and authorities, the President or his Ministers have no obligation to either consult anybody or to consider the political composition of the local government area. The consequence therefore is that the people of an administrative unit or council area may vote for one party but the President of the Republic and his ministers may appoint members from the ruling party, the Cameroon

Peoples' Democratic Movement (CPDM), to act either as general manager or executive head of the local government executive as well as accounting officer even in local government areas controlled by opposition parties. This is worth comparing with a country such as Zambia, which has taken serious strides in lessening the influence the ruling party and central government have over local government administration. Through the Local Government Act of 1991 and the Public Sector Reform Programme of 1993, the country has opted for local government choosing competent managers rather than relying on political appointments from the central government (Chikulo 2008: 1). Amadou thus argues that appointing executive heads, particularly government delegates in local government areas, as in the case of Cameroon, is a regression to the principle of democracy (Amadou 2011: 16; Division for Public Administration and Development Management and UN Department of Economic and Social Affairs 2004: 5-6). Cameroon may want to opt for such a model as in Zambia where competence is given priority to in selecting officials at the local government level.

In a rationalised decentralisation design it is equally necessary to examine how powers may be dispersed symmetrically and asymmetrically throughout the country. Symmetric decentralisation entails equally dispersing the same powers and authorities from the central government equally to all lower spheres of government (Anderson 2010: 54-55). Asymmetric decentralisation entails according special autonomy to certain regions or a region within a country (Anderson 2010: 54-55). An asymmetrical decentralised framework or a special status arrangement, as was recommended during the major national dialogue, and included in the 2019 Decentralisation Code, may go a long way in addressing the Anglophone problem in that such a design will recognise and protect the two English-speaking regions' autonomy. The people of the concerned regions or units to be granted a special status must take part in the process and design of such special status. If well designed and subsequently implemented, it may also go a long way towards constitutionally entrenching a right to a continuation of their legal system, culture, language and other issues such as education. There is a need for a mechanism that warrants concurrent and shared powers to exist between the central government and local government (articles 146(2)(c), 146(3)(a), 146(3)(b) and 146(5) of the 1996 Constitution of South Africa). In the current dispensation, the decentralisation design has intensified a system in which Anglophone Cameroonians feel as if they are second-class citizens with very limited chances of entering into the deconcentrated administrative system. With such a decentralisation framework, Anglophone Cameroonians have no autonomy whatsoever. Development in the two Anglophone regions, as a result of poor governance and central government indifference, has lagged further behind than in the other eight regions of the country. Most

Anglophones are also appointed as assistants to Francophone bosses (Yusimbom 2010: 27).

Having an inclusive electoral system is necessary in a rationalised decentralisation system. The electoral system is considered 'the most powerful lever of constitutional engineering for accommodation and harmony in severely divided societies' (Wolf 2011: 7). An electoral system therefore can be designed in such a way so as to facilitate interdependence between groups in a fragmented society, as well as cross-communal cooperation (Reilly 2004: 2).

With regard to several indicators of good governance and democracy, Cameroon happens to be one of the few African states that is far from being classified as democratic. For the presidential election, the system used is the first-past-the-post system (FPTP), while for electing members of parliament a complex system constituted of FPTP and party list proportional representation (PR) system is used. In fact, since 1972 when Freedom House began investigating and providing its findings on Freedom of the World, Cameroon remains one of the few African states that has never been classified as a 'not free' zone, even in the 1990s when many African states made many efforts to be democratic by instituting strong constitutions (Sisk 2017). Since the 1990s, Cameroon has lagged behind other African states with respect to putting in place a system of government that is transparent, devoid of corruption and accountable to its people (2015 Ibrahim Index of African Governance Country Insights, Cameroon).

There are approximately 300 registered political parties in Cameroon. While several African states continue to make progress towards good governance and multiparty democracy, it is argued here that Cameroon's sole genuine effort at organising transparent, free and fair elections began and ended in 1992. Since then, elections in the country have been tainted with serious fraud and election rigging, as postulated by international and national election observers.

In as much as there are several electoral systems from which Cameroon may select, it is argued that the PR system may be preferable as it prevents a clear majority from emerging, thus facilitating inclusive decision making and creating room for the creation of coalition governments (Wolf 2005: 62). Cameroon may want to adhere to such an electoral system than retaining a complex electoral system that has only led to election rigging and, thus, bad governance.

Another important component of a rationalised decentralisation system embraced by most states is the rule of law. The rule of law dictates that accessible and comprehensible written laws, be they constitutional or legislative, should guide government actions as well as decisions.

Moreover, these laws must be fairly and consistently applied to everybody by government, including government officials, and everyone must have access to justice and the enforcement of the laws. Therefore, a commitment to the rule of law also necessitates vigilance against the abuse of power and corruption (Hedling 2011:17). A commonly practical and agreed rather than theoretical conception of the rule of law includes an element of justice. Therefore, in addition to the law being predictable, universally applicable and accessible, the just legal system gives impetus to the rule of law. Apart from merely adhering to the law or the valid enactment of law, it must encompass equality and human rights and must not discriminate unjustifiably among various classes of people (Hedling 2011:17).

Cameroon may promote the rule of law in several ways, most importantly by adopting a coherent legal system. The doctrines of judicial review, constitutional supremacy and independent oversight bodies can indeed solidify such a framework. For instance, the Preamble as well as a separate provision of the Constitution of Rwanda accord importance to the supremacy of the Constitution and the rule of law (Preamble and article 200 of the 2003 Constitution of the Republic of Rwanda). Any conflicting legislation is considered null and void. Supremacy, therefore, protects and gives importance to the rule of law via ample legal structures, checks and balances, and the guarantee of rights.

The judiciary, which applies the law to individual cases, acts as the guarantor and the guardian of the rule of law. Therefore, a properly operating and independent judiciary is essential for the rule of law, which necessitates a legal system that is just, promotes the right to fair hearing and accessibility to justice (Hedling 2011: 18).

3.4 Strengthening administrative autonomy

Strengthening administrative autonomy is very important for the reinforcement for political autonomy as well as the effectiveness of fiscal autonomy. For administrative autonomy to be strengthened there is a need for administrative authority over the setting up of internal procedures, over the firing and hiring of own staff as well as over the salaries of personnel.

There is no gainsaying that administrative autonomy is weak especially at lower tiers of government in Cameroon. Regions as well as councils do not have authority over their personnel. The hiring and firing of staff is still coordinated by the central government. Most mayors do not have academic qualifications that allow them to carry out their demanding duties especially as there is no provision for this in the 1996 Constitution as well as in subsequent legislation. Likewise, the internal procedures of local government in Cameroon are still influenced by central government (Amadou 2011: 28, 37-50; Division for Public Administration and

Development Management and UN Department of Economic and Social Affairs 2004; Ndiva 2011: 513-530; Fru 2016: 2-3). Furthermore, the central government still influences the determination of the salaries of local government authorities and officials (Decree 2015/406 of 2015 relating to Indemnities of Government Delegates and Mayors; AIMF 2015: 7).

For administrative autonomy to be reinforced there is a need for administrative authority over the setting up of internal procedures. If lower spheres of government in Cameroon are given the mandate to put in place their own internal procedures, there is a chance for them to respond to the demands of their localities (OECD & Mountford 2009: 26-27). For instance, countries such as South Africa have put in place efficient modalities for lower spheres of government to establish their internal procedures, which have gone a long way towards enhancing better service delivery and thus the enhancement of democracy, development as well as in curbing conflict (Sokhela 2006: 211-220). Such a measure may be very necessary in Cameroon for more efficient administrative autonomy.

There equally is a need for administrative authority over firing, training and hiring of own staff. Lower spheres of government may not effectively and efficiently deliver on their mandate if they use employees from the public sector especially those over whom they have no control. Nevertheless, for lower spheres of government as in the case of Cameroon which may find difficulties in retaining and attracting skilled staff, it may be important for the central government to step in and put in place a deployment scheme whereby some national government staff are sent to these lower spheres of government. Once these lower spheres of government have put in place their personnel structure, setting up a code of conduct, which needs to be made public, is necessary, which will go a long way towards ensuring that these public officials are disciplined and assiduous (UN Habitat 2007 mentioned in Chingwata 2014: 70). Countries such as Kenya and Uganda have accorded administrative authority to local government with respect to hiring, training and firing staff and this has gone a long way in enhancing development, democracy and equally in curbing conflict (Department of International Development 2002: 4-7). Professionalisation through the training and adequate staff recruitment for efficient local government that may accommodate diversity, manage minorities, enhance development as well as promote democracy is also important in Cameroon. Therefore, it is instrumental to improve on the curriculum of Cameroon's Local Government Training Centre with French acronym CEFAM, created by Presidential Decree 77/497 of 7 December 1977. Mayors need a combination of academic as well as professional training to accomplish their very demanding task at the local government level.

Administrative authority over salaries of personnel of lower tiers of government in Cameroon is also very important. This entails having authority over putting in place the salary scales of local employees which may go a long way in attracting and retaining skilled personnel (Rodriguez & Tijmstra 2005: 6). For instance, a lower sphere of government such as local government may vary salary levels on the basis of scarcity of a specific skill, performance or with respect to profession. However, the power to put in place salary scales at lower spheres of government should be exercised with caution so as to avoid resource wastage and corruption (Siegle & Mahony 2006: 138). Therefore, in a rationalised decentralisation design for Cameroon it may be necessary for central government to clearly define modalities whereby lower spheres of government, especially local government, may set salary levels for their staff. Countries such as Kenya (Department for International Development 2002: 4-7) and South Africa (Rodriguez & Tijmstra 2005: 6) have accorded powers to lower spheres of government with respect to setting salary scales for personnel. This has contributed to administrative efficiency at the local government level.

4 The necessity for fiscal and resource management autonomy

Fiscal arrangements are also important for a rationalised decentralisation design because without enough financial resources it would be impossible for lower spheres of government to carry out their duties judiciously. Fiscal decentralisation refers to the degree to which certain central executives give lower spheres of government financial autonomy (Anderson 2010 : 2-5). Delaying or omitting fiscal decentralisation renders political and administrative decentralisation ineffective. It is important for the assignment of expenditure to accompany the assignment of competencies and tasks. This part thus examines the importance of fiscal and resource management autonomy in a rationalised decentralisation design especially in Cameroon.

The financing *modus operandi* provided under the decentralisation framework in Cameroon is not working. Book five of the 2019 Decentralisation Code focuses on the financial regime of regional and local authorities. The distorted way in which revenue is distributed and the widely differing nature of municipal and urban councils have resulted in serious inequalities in development and have led to conflict in some parts of the country (World Bank 2011: 8-16). The consequences of this is that smaller councils with very limited resources are faced with difficulties in carrying out their fundamental statutory responsibilities, especially the responsibility under section 28 of the Financial Regime Law to issue certain compulsory payments (World Bank 2011: 11-14). In addition to this, lower spheres of government do not have adequate financial raising and borrowing powers. Intergovernmental transfers also remain weak. It

thus is important to bring in the example of South Africa with respect to how adequate fiscal and resource autonomy may interplay in a rationalised decentralisation design for reinforced political and administrative autonomy. This may better inform constitution builders in establishing a rationalised decentralised design for Cameroon.

Some states such as South Africa allow lower spheres of government to raise their own finances. The 1996 Constitution of South Africa states that the designation of administrative and political functions and powers to lower spheres of government must be accompanied by adequate financial means (section 214(2)(d); Conyers 1986: 91; the local government system in Rwanda, country profile). This therefore implies that local government should be endowed with adequate fiscal powers and authority to carry out the duties and functions attributed to it by the Constitution. This in no way means that that central government should relinquish control over its main financial instruments by highly devolving fiscal autonomy to local government as argued by Bahl and Lin (Bahl & Linn (1992) mentioned in Stanton 2009: 246). Should this happen, it may be difficult to adjust levels of inflation that may be aimed at reducing imports or stimulating imports. It also becomes complicated to pass structural tax reforms or to increase revenue in order to reduce the national budget deficit (Bahl & Linn (1992) mentioned in Stanton 2009: 246).

It therefore is important to take into consideration three major elements in enhancing a fiscal decentralisation design for Cameroon. The first element is the assignment of responsibility to lower levels to raise revenue (Shah 1994: 15-18). The second element is the assignment of responsibility for expenditure or in other words assigning responsibility to a level or levels to pay out money for services. The third element is intergovernmental transfers, which focuses on how various tiers of government equalise imbalances and share revenues. To ensure that the administration effectively carries out its duties, the propensity to assign competencies and tasks must follow or accompany the assignment of responsibility for expenditure. If all taxing authority is vested in the national government, this may result in undesirable consequences (Anderson 2010: 2-3). For instance, by separating spending powers from the revenue-raising authority may obscure the nexus between the gains or benefits of public expenditure and its cost, which are the taxes levied to finance them, so that the separation does not encourage fiscal responsibility among politicians and their electorate at the local level (Shah 1994: 15-18). If the Constitution confers too much responsibility for raising taxes to local government, the central government may have difficulties with macro-economic development planning (Anderson 2010: 2-3).

It thus is important for constitution drafters to further take into consideration two major elements when deciding whether to give the

tax raising and spending responsibility to local government. First, local government should be allowed to collect sub-national revenues from their local residents linked to benefits obtained from local services. Ensuring that there is a nexus between benefits received and taxes paid fortifies the accountability of local administrators and equally governmental service delivery (Anderson 2010: 41). Second, revenues allocated to the local governments should be adequate to finance all locally-provided services that mainly profit local residents (Anderson 2008: 35-36).

An imbalance often exists between spending and taxing at the levels of government, especially lower spheres of government, in that the central government usually collects the greatest share of taxes but assigns enormous spending duties to the local level (Anderson 2010: 34). Horizontal imbalances, which are imbalances between sub-national levels, exist (Anderson 2010: 6). Pre-transfer fiscal deficits, also known as vertical imbalances, equally occur (Anderson 2010: 6). Usually lower tiers of government are not entrusted with the same revenue raising capabilities, especially as wealthy residents cannot live in every region, nor do they all have the same needs. Some regions demand more services than others while some are more populated than others. To adjust such imbalances, there thus is a need for intergovernmental transfers, vertically (Bird 2010: 1), if the payments are from the central government to lower spheres of government and horizontally (Ahmad 1997: 6), if these transfers are between sub-national governments. There may equally be grants transferred from the central government to lower tiers of government, which may go a long way towards making local government in countries autonomous (Anderson 2010: 58).

It also is important for the role of the Presidency, the Prime Ministry, the Ministry of Territorial Administration (MINAT), the Ministry of Decentralisation and Local Development, the National Anti-Corruption Agency with French acronym CONAC, the directorate-general of taxation, budget and customs to reinforce the role of FEICOM in the fiscal decentralisation agenda of the country so as to curb corruption and resource wastage for efficient administrative and political decentralisation.

5 The need for supervision and intergovernmental cooperation

A meaningful consultative mechanism between central and local government is important in a rationalised decentralisation design. Cooperative governance and consultative mechanisms have become imperative for an efficient and effective local government system to ensure that the concerns as well as the views of the community are fully reflected and catered for in local governance. This part examines the importance

of supervision and intergovernmental cooperation in a rationalised decentralisation design.

In Cameroon there is no exhaustive chapter for intergovernmental relations in the 1996 Constitution. The President of the Republic and the Minister of Decentralisation and Local Development are in charge of driving the entire decentralisation agenda. This is done with a National Decentralisation Board (Board) chaired by the Prime Minister, which is supposed to be monitoring and assessing the implementation of decentralisation (section 78 of 2004 Law on the Orientation of Decentralisation Law; Composition of National Decentralisation Board in official website of the Presidency of the Republic of Cameroon). An inter-ministerial Committee on Local Services (Committee) is responsible for the preparation and monitoring of the allocation of powers and resources to local government entities. What is disturbing again here is that all these bodies for supervising and monitoring the decentralisation process are primarily constituted of authorities nominated by central government with very limited opportunities accorded for the views of other stakeholders, the community or even local government. Their functions overlap, leading to a waste of funds and corruption.

Some countries have constitutionally entrenched such cooperative governance and consultative mechanisms; some have put in place institutions to oversee cooperative governance and others have developed it through practice. A case worth emulating is Zimbabwe, where consultative mechanisms are entrenched in the 2013 Constitution. Chapter 3 of the Constitution of South Africa focuses on cooperation, and has even gone further to put in place the Intergovernmental Relations Framework Act 13 of 2005 which governs the functioning of the provincial premiers' intergovernmental forums, the functioning of district intergovernmental forums and the functioning of the technical support structures controlling political intergovernmental structures (Intergovernmental Relations Framework Act 2006: 5).

In Cameroon both the Board and the Committee are supposed to play a supervisory role by ensuring that the decentralisation process is effectively carried out, especially the equitable development of impoverished areas. These bodies also have the responsibility to ensure that issues such as minority, ethnic and diversity concerns, as well as the incorporation of the traditional governance system into the decentralisation agenda, are upheld. These structures, however, simply extend the powers of the executive and operate as deconcentrated units. Cameroon may want to emulate the example of South Africa for effective supervision and intergovernmental relations.

On the important issue of organised local government, Part VII of the 2019 Decentralised Code focuses on decentralised cooperation,

groupings and partnerships. In this respect, organised local government or decentralised cooperation is feasible where there is an agreement between two or more councils, especially when they decide to merge their different resources with an aim of attaining common objectives (section 94(1) of the 2019 Decentralisation Code). Such a cooperation may be carried out between Cameroonian councils or between Cameroonian councils and councils of foreign states (section 94(2) of the 2019 Decentralisation Code).

In a bid to achieve inter-council cooperation, councils of the same division or region may, by at least a two-thirds majority of the decision of each council, create a union (section 104(1) of the 2019 Decentralisation Code). Such a council union shall be set up by agreement by the mayors of the concerned councils (section 104(2) of the 2019 Decentralisation Code). The bodies of the council union shall be constituted of a union board and a union chairman (section 106 of the 2019 Decentralisation Code).

The United Councils and Cities of Cameroon (UCCC) is an association created by the councils and cities in Cameroon in 2003. The UCCC was formed from the merger of the Cameroon Union of Towns and Councils and the Cameroon Association of Towns (local government system in Cameroon, country profile). From its appellation, city councils and councils constitute the membership of the UCCC and are represented therein by government delegates in the case of city councils, and by mayors in the case of councils. These members put together, constitute the UCCC assembly at the national, regional and divisional levels, from which is elected the executive bureau at that level. In reality the UCCC has not been effective in playing a role in the development of councils because serious disparities continue to exist in terms of development among councils. There therefore is a need for Cameroon to follow the examples of South Africa and Zimbabwe, of which the most salient features were set out earlier, for effective organised local government.

6 Redefining the role of women, ethnic and minority groups as well as traditional rulers in the decentralisation process

This part advocates the need to redefine the role of women, ethnic and minority groups in a rationalised decentralisation design. The part equally examines the need to redefine the role of traditional rulers in a rationalised decentralised design.

6.1 Reinforcing the role of women

The status of women and their active involvement in the decentralisation process are not adequately addressed by the 1996 Constitution. It has been

established that Cameroonian women indeed face many cultural barriers as far as being involved in decentralisation is concerned. The poor rate at which women participate in public life and especially politics is further complicated by the fact that men are given more attention when it comes to higher educational opportunities and are favoured for administrative duties, while women, even those who went to school, are prepared to be better housewives (Mufua 2014; Lauzon & Bossard 2005: 8). For women to actively take part in the decentralisation process – especially decision-making positions – as well as in politics in Cameroon, they need to seriously participate in the registration and voting process for elections in the country.

There is no gainsaying that women in Cameroon outnumber men with respect to population statistics, which already gives them an added advantage. However, they are less active in the political domain (Mufua 2014). Women's underrepresentation in issues of governance, especially with respect to political affairs and development at the national as well as lower spheres of government, will only get worse if concrete measures are not taken for the constitutional entrenchment of their role in these domains. Apart from the case of South Africa, countries such as Zimbabwe and Kenya have already taken steps in this regard (sections 3, 13, 14, 17, 24, 56, 68, 80, 124, 157, 194 and 269 of the 2013 Zimbabwean Constitution; articles 21, 27, 97, 98, 100, 127 and 232 of the 2010 Kenyan Constitution).

6.2 Emphasising the importance of diversity, minority and ethnicity issues

The Preamble to the 1996 Constitution stipulates that the 'state shall ensure the protection of minorities and shall preserve the rights of indigenous populations in accordance with the law'. Article 1(3) of the 1996 Constitution adds that the official languages of the country shall be English and French with both having the same status (article 1(3)).

Section 2(2) of the 2004 Orientation of Decentralisation Law states that the Cameroonian decentralisation framework is designed to act as a major medium for the promotion of diversity issues at the local level. It is argued that the scope for the decentralisation framework under the 1996 Constitution to serve as a platform from which to resolve diversity issues, as well as ethnic and minority issues, is limited (World Bank Report 63369-CM 2012: 31).

In opting for a top-down centralised symmetrical decentralisation design, the Cameroonian Constitution builder fails to address diversity, minority and ethnic issues, particularly the Anglophone problem as well as discrimination faced by disabled and indigenous people, women and the

youth. An important aim of a good constitutional system, especially the design of the decentralisation framework, is to ensure that issues of equity, inclusion, diversity, equality and differentiation of all citizens are catered for. For instance, the 1996 South African Constitution indirectly protects marginalised cultural and linguistic groups (section 9(3)). Recognition is officially accorded to 11 languages (section 6(1)). Even though some other languages are not officially recognised as such, the Pan-South African Language Board (PanSALB), created under the South African Constitution, has the duty to promote and create conditions for the development and use of these languages, such as the Khoi, Nama and San languages (section 6(5)). The 1996 Constitution of Cameroon in several instances is weak in addressing some of these issues but for the major part completely ignores them while hoping that they would be resolved automatically or fortuitously. Therefore, equally entrenching the promotion and protection of the rights of these groups in the 1996 Constitution of Cameroon is important. Ensuring that the rights of these minority groups are adequately protected and promoted in practice is equally, if not more, important.

6.3 Asserting the role of traditional authorities

Traditional authorities in Cameroon are classified under the existing legal framework into three categories, namely, first-degree chiefs, second-degree chiefs and third-degree chiefs. Also generally considered as auxiliaries of the administration, they are not attributed any particular functions or duties by any of the legal instruments regulating the decentralised system. Under the Special Status arrangement (Part V of the 2019 Decentralisation Code) the 2019 Decentralisation Code provides for a House of Chiefs in both Anglophone regions (section 337 of the 2019 Decentralisation Code).

In the author's view traditional authorities have to play an important role in accelerating the decentralisation process in Cameroon. A reform of traditional chiefdoms is underway in Cameroon (Josué 2018). The current reform of traditional chiefdoms aims to confer on the traditional chiefs a status compatible with the specific nature of their missions and adapted to the institutional evolution of the country (Josué 2018). Traditional authorities will henceforth be important actors in the supervision of socio-economic and developmental activities of the populations, under the supervision of the administrative authorities (Josué 2018). If the role of traditional authorities in Cameroon is constitutionalised and well defined as in the case of South Africa (Bizana-Tutu 2008: 7; sections 211(1) & (2) of the 1996 Constitution of South Africa; the Traditional Leadership and Governance Framework Act 41 of 2003) and also Zimbabwe (Makumbe 2010: 88; Chingwata 2016: 20), they may indeed become important actors in helping local government in development, conflict management and service delivery.

7 Envisaging dispute resolution and implementation mechanisms

An important element for enhancing constitutionalism, the respect of the rule of law and hence adequate decentralisation is the presence of an umpire (usually the courts and/or a referendum). This umpire – usually the Constitutional Court or council, as the case may be – is entrusted with the duty of upholding the Constitution and ruling on disputes between the various spheres of government (Kincaid 2011: xxvii). This part suggests a rationalised design for the composition and functioning of the Constitutional Council (Council) of Cameroon.

7.1 The composition of the Constitutional Council

According to article 51 of the 1996 Constitution, the 11 members of the Constitutional Council are appointed by the President of the Republic. Besides the 11 members mentioned above, former presidents of the Republic shall be *ex officio* members of the Constitutional Council for life. In case of a tie, the president of the Constitutional Council shall have the casting vote.

Three observations may be made about these constitutional provisions with respect to who can be nominated, on what basis such appointments are made and who makes these appointments. First, the competence, effectiveness and independence of a Constitutional Court judge depend on an appointment procedure with clearly transparent criteria and established objectives that are based on elements such as integrity, qualifications and competence. Copying from the 1958 design, article 51 of the 1996 Constitution of Cameroon simply states that the 'members shall be chosen from among personalities of established professional renown' and 'must be of high moral integrity and proven competence'. This means that they need not be jurists to qualify as judges (Fombad 2017: 84). It is thus argued that, because of their training in and capacity for analytical critical legal thinking and reasoning, jurists will make more rational and effective judges than merely personalities of established renown who are not jurists.

Second, the original 1996 Constitution's formulation of article 51(1) stipulated that members of the Council were to be designated for a 'non-renewable term of office of 9 (nine) years'. This provision was revised in 2008 by the President of the Republic, in favour of an open term, when he decided to remove the two-term presidential term limit from the Constitution. This is a drift from the 1958 French design which, at first glance, gives the impression that this encourages the general will to expunge term limits from the Constitution. In spite of the open term, section 18 of Law 2004/004 of 21 April 2004, which lays down the rules and regulations concerning the membership of the Constitutional Council

(2004 Law on Membership of the Council) provides that the Council 'by a majority vote of two-thirds of its members may, of its own motion or at the request of the designating authority and following an adversarial procedure, terminate the appointment of a member'. This demonstrates that although it seems that the members of the Council have an open term limit, their term limit can be terminated not only by the President of the Republic but also by the Council.

Third, unlike in several states such as South Africa and Brazil (Shankar 2013: 92-93), all 11 members of the Council are appointed by the President. Although it is stated in the provision that the President of the Republic directly appoints only three members and the others are to be 'designated' by other personalities such as the president of the National Assembly, the president of the Senate and the Higher Judicial Council, the reality is that the President through the ruling CPDM influences the appointment of all members of the Council. Similarly, the Higher Judicial Council is chaired by the President and co-chaired by the Minister of Justice. They both decide on its agenda and when it is to meet. In a nutshell, the President of the Republic finally decides on who qualifies as a member of the Council (Fombad 2017: 84; Bastos 2016: 176-179). This should not be the case. It may be necessary for leaders of political parties represented in the National Assembly to complement a well-constituted Higher Judicial Council in the selection of members of the Council.

Before 2018 the Supreme Court played the role of the Council. The legality of having this body play the role of the Council was questionable. Article 51(5) of the 1996 Constitution expressly states that '[t]he duties of members of the Constitutional Council shall be incompatible with those of members … of the Supreme Court'. However, for 22 years judges of the Supreme Court acted as the Council without any consideration of this express prohibition. More difficulties arose from the various ways in which the judges of the Supreme Court were selected.

Generally the Supreme Court, while it acted as the Council, sat in a panel of joint benches, which in principle was composed of at least 19 judges. The way in which the judges were appointed was not based on transparent and objective criteria that relied on elements such as integrity, competence and qualifications. The appointments were made by the President of the Republic, supposedly based on recommendations from the Higher Judicial Council, which is chaired by the President of the Republic with the Minister of Justice as deputy chair. The judges were usually selected from among those who had reached the highest rank in the judiciary (usually from the fourth grade to the exceptional grade). Attaining the grade that qualifies a judge to be appointed to the Supreme Court, however, does not depend on integrity, competence or even proven record, but rather on loyalty to the CPDM, the party in power. Similarly, although senior judges are

supposed to retire at the age of 65, this requirement may be waived by the President of the Republic especially in his favour. Such absolute powers of the President extend to determining the allowances and salaries of judges. As in other states in Francophone Africa, the salaries and allowances of judges have been unrealistically increased to influence the decisions of judges with respect to electoral disputes (Fombad 2004: 361-397).

The 1996 Constitution allows for a situation whereby the Council is composed of personalities who are appointed in a particular way. Before 2018 the judges of the Supreme Court virtually served at the pleasure of the President of the Republic and doubled as members of the Council. It could hardly be predicted who among the many judges was to sit in the panel of joint benches, which carried out the duties of the Council because the president of the Supreme Court had the free will to appoint who he wanted to be a member of any of the divisions and benches. For a state that claims to be democratic, there is a need for a provision that the composition of these bodies should reflect not only integrity but equally the ethnic, religious and gender diversity of the country.

7.2 The functioning of the Constitutional Council

In making suggestions on how the Council may better function it is important to address the scope of its review powers, access to this body and the nature of opinions and decisions. With respect to the scope of review powers reserved for the Council, one of the major factors to an effective system of judicial review is the powers accorded to such a body. The ambit of matters that the Council is empowered to handle is regulated by articles 46 to 48 of the 1996 Constitution and Law 2004/004 of 21 April 2004 on the organisation and functioning of the Council. An overview of these laws demonstrates that the Council has been accorded jurisdiction over advisory and contentious issues. The provisions on contentious issues are more elaborate and provide that the Council may carry out constitutional review in three major areas: First, it can intervene in the situation of conflicts of competence between certain state institutions; second, it can ensure the regularity of elections; and third, it has a general power of review of the constitutionality of laws, agreements and treaties. The Council has not been effective in carrying out these objectives. There thus is a need for the Council to be effective in carrying out these objectives.

With respect to access to the Council, the issue of constitutional justice happens to be one of the major weaknesses of the French 1958 Constitutional Council design adopted by Cameroon in all its constitutions (Fombad 1998: 186). In general, cases may only be referred to the Council by the President of the Republic, the presidents of both the Senate and National Assembly, one-third of members of the Senate or one-third of members of the National Assembly. The major exception here relates to electoral disputes. In this respect, article 48(2) of the 1996

Constitution stipulates that any cases in respect to electoral disputes, or parliamentary or presidential elections may be brought before the Council by 'any candidate, political party that participated in the election in the constituency concerned or any person acting as government agent at the election'. When confronted with cases involving electoral disputes, the Council instead has focused on procedural loopholes and sanctioning non-compliance with filing requirements than with carefully investigating and sanctioning violations of electoral laws as well as other violations that emanate from the electoral process (AD Olinga mentioned in Fombad 2017: 92). There is a need for the Council to go beyond such a scope and examine more substantive issues involving electoral disputes.

Concerning the nature of opinions and decisions, rulings of the Council may take the form of a decision or an advisory opinion. However, the way in which this provision was drafted leaves a lot to be desired. For instance, article 50(1) of the 1996 Constitution stipulates that decisions of the Council are not subjected to appeal and are binding on all judicial authorities, military officials, administrative officials, public officials as well as all corporate bodies and natural persons. Article 50(2) further states that 'a provision declared unconstitutional may not be enacted or implemented'. The utilisation of the permissive 'may' appears to mean that the Council is not obliged to nullify legislation that is inconsistent with the 1996 Constitution, yet the purpose of the whole section is to ensure that any legislation found to be inconsistent with the 1996 Constitution is not adopted. From all indications this means that the powers of the Council with respect to constitutional review are limited, which should not be the case.

8 Concluding remarks

Cameroon's constitutionally-entrenched mechanism needs to intentionally provide a clear direction of the scope and nature of decentralisation and not by way of claw-back clauses, in order to allow important issues of constitutional importance to be decided by the President of the Republic, as this indeed is a recipe for failure. It may therefore be necessary to suggest certain mechanisms to be put in place.

First, although the decentralisation process seems to have taken power and politics closer to the people, especially with the putting in place of a special status in the two Anglophone regions, the distortion and micromanagement of the process at the local level have to ensure that it has an impact and provide the improvement and self-development in actual governance that should accompany it. This is so because high hopes have been raised by the process and there is too much potential danger in not making sure that it comes to fruition. The current failed experiment contains the ingredients for what is needed in the future.

Second, decentralisation is unlikely to help in promoting development, democracy, constitutionalism and respect for the rule of law if the central government that presides over the process is not aspiring to be genuinely democratic. The decentralisation process needs to alter the way in which the authoritarian regime operates. As it stands, at its very core the present system is personally-based authority based on a patron-client network. The ruling CPDM and government positions need not be used as a medium from which to manipulate and control its followers who hold strategic posts throughout central and local government administration in order to fortify its grip on power.

It thus is evident from a critical examination of the constitutional and legal framework with respect to the central government in Cameroon that the executive is domineering over shared and self-rule arrangements. With respect to shared rule, the President should not have the discretion of appointing 30 out of 100 senators in the country. If the powers of the President are limited, this would give more meaning to shared rule. Senators would be able to make decisions independently with little coercion from the executive.

Likewise, the influence of the executive should not be so dominant over the institutions of self-rule such as the regional councils and municipal councils. The President should not on his own decide on how territorial units are carved out. He should also not have extensive powers to appoint personalities such as government delegates and secretary-generals of regional councils. There also is a need for the issue of who an indigene is to qualify as a regional councillor, to be revisited. This may lead to better management of diversity.

For better self-rule and thus political autonomy, in line with developments from the national dialogue, there also is a need for an efficient electoral system. The PR system may be preferable as it prevents a clear majority from emerging, thus facilitating inclusive decision making and creating room for the creation of coalition governments.

In addition, for better self-rule, promoting the rule of law is important. This may be done in several ways, the most important of which is by adopting a coherent legal system. The doctrines of judicial review, constitutional supremacy and independent oversight bodies can indeed solidify such a framework.

Local government should have autonomy over the hiring and firing of its staff so as to ensure better administrative autonomy. There also is a need for professionalisation of especially executives such as mayors and government delegates. Autonomy over the internal procedures of councils is also important for administrative autonomy. Local government should

have authority over putting in place the salary scales of local employees. This may go a long way in attracting and retaining skilled personnel.

There is a need to revisit the many distorted and incoherent decentralisation laws related to finance as well as to improve on the poor administrative capacity at the levels of bodies such as FEICOM to enforce the payment of taxes. There also is a need to improve on the poor administrative capacity to assess the revenue base; eradicate corruption, such as the embezzlement of revenues; to lessen or better still to eradicate external pressure on the local finance department to furnish optimistic projections; and weaken political pressure on the local tax administration to relax on revenue collection, especially during election periods.

Supervisory bodies such as the National Decentralisation Board (Board) and the Interministerial Committee on Local Services (Council) need to be effective. Elections Cameroon (ELECAM), the body that supervises the election process of parliamentarians, senators, regional councillors as well as municipal councillors needs to be transparent and efficient. The National Commission on the Promotion of Bilingualism and Multiculturalism (NCPBM), created in 2017, which has a role to play in the decentralisation framework of the country, must be constitutionalised and be made to function effectively. Central government should limit the duplicity, overlap and confusion in the role these institutions play.

A meaningful consultative mechanism between central and local government is important in Cameroon's decentralisation design. For cooperative governance and for efficient consultative mechanisms, there is a need for an exhaustive chapter for intergovernmental relations in the 1996 Constitution. Organised local government, especially the role of the UCCC, should also be strengthened so as to better oversee the decentralisation process.

Reinforcing the role of women, ethnic and minority groups as well as traditional rulers in the decentralisation process also is fundamental. There is a need to constitutionalise the role of women in the decentralisation process. Emphasising the importance of diversity, minority and ethnic issues in the Constitution also is fundamental. Officially recognising the languages and culture of minority groups and Anglophone Cameroonians is very important, and constitutionally asserting the role of traditional authorities in the decentralisation process is also necessary.

Cameroon's constitutional review system should be modernised in order to supervise the decentralisation process. Several issues need to be addressed. First, denying ordinary citizens the right to access the Council, especially in a situation where their constitutional rights have been violated, amounts to the refusal of constitutional justice and cannot be justified. Ordinary citizens need to be given access to the Constitutional

Council. Second, in the absence of an independent judiciary respect for the rule of law, constitutionalism and hence decentralisation has remained an illusion in the country since independence. This is exacerbated by the lack of an effective, credible and efficient system of constitutional review, which upholds the rights of citizens.

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