

THE POLITICIZATION OF THE CAMEROON JUDICIAL SYSTEM

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“[T]he great security against a gradual concentration of the several powers in the same department, consists in giving to those who administer each department the necessary constitutional means and personal motives to resist encroachments of the others. The provision for defense must in this, as in all other cases, be made commensurate to the danger of attack. Ambition must be made to counteract ambition. The interest of the man must be connected with the constitutional rights of the place.”

James Madison¹

1. ABSTRACT

Cameroon is a presidential republic with a peculiar twist to its political evolution and system of government. The Cameroon Constitution per Article 2(2) and Article 37(2) presents Cameroon to its citizens as a democratic nation with three distinct arms of government:

¹ THE FEDERALIST NO. 51 (James Madison).

the executive, the legislature, and the judiciary.² Since attaining its independence on January 1, 1960, Cameroon has had two presidents: Ahmadou Ahidjo (1960–1982) and Paul Biya (1982–present).³ The office of the president is the highest executive office in the nation. The prime minister is the head of government and manages the government at the pleasure of the president who appoints him. This writer asserts that the Cameroon judicial system has been deeply entangled in the political affairs of government such that it has lost its independence and is currently being run as an extension of the executive branch. As such, the judiciary since independence has been unable to effectively exercise its basic functions as prescribed by Article 37(1) of the Constitution: “Justice shall be administered in the territory of the Republic [of Cameroon] in the name of the people of Cameroon” and not the government.⁴ The most noticeable shortcoming of the justice system in Cameroon lies in its inability to check the excesses of the other arms of government as prescribed by the Constitution. The President of Cameroon is the chief executive officer, head of the Judicial Council (contrary to Article 37(3) paragraph 2 of the Constitution),⁵ and the Chairman of the Central Committee of the ruling Cameroon People’s Democratic Movement (CPDM) party⁶, which has a supermajority in both the Senate and the Lower House of Parliament⁷. This has created a very powerful executive at the expense of the judiciary and legislature. This can be considered the center point of this paper as the writer seeks

² CONSTITUTION OF THE REPUBLIC OF CAMEROON 1972, art. 2, § 2 & art. 37, § 2. Article 2(2) states: “The authorities responsible for the management of the state shall derive their powers from the people through election by direct or indirect universal suffrage, unless otherwise provided for in this Constitution.” *Id.* at art. 2, § 2. Article 37(2) states: “Judicial power shall be exercised by the Supreme Court, Courts of Appeal and Tribunals. The Judicial Power shall be independent of the executive and legislative powers. Magistrates of the bench shall, in the discharge of their duties, be governed only by the law and their conscience.” *Id.* at art. 37, § 2.

³ Victor Julius Ngoh, CAMEROON 1884-1985 A HUNDRED YEARS OF HISTORY 139-40, 160 (2d ed. 1988) (“On January 1, 1960, with UN Secretary General Dag Hammarskjöld looking on, Ahidjo [then prime minister of French Cameroon] declared French Cameroon an independent state under the name of the Republic of Cameroon with a green-red-yellow flag.”). The Republic of Cameroon reunited with the British Southern Cameroons in 1961 with Ahmadou Ahidjo as the president of the Federal Republic of Cameroon and Charles Assale as the Prime Minister of East Cameroon. *Id.* at 215–41.

⁴ CONSTITUTION OF THE REPUBLIC OF CAMEROON 1972, art. 37(1).

⁵ *Id.* at § 3, ¶ 2 (“He [the President] shall be assisted in this task by the Higher Judicial Council which shall give him its opinion on all nominations for the bench and on disciplinary action against judicial and legal officers.”).

⁶ Cameroon People’s Democratic Movement, *Presentation of the Central Committee*, RDPCDM, <http://www.rdpcdm.cm/presentation/pr%C3%A9sentation-du-comit%C3%A9-central> (last visited Oct. 28, 2014).

⁷ The Fomunyoh Foundation, *The State of Democracy in Cameroon*, TFF, <http://www.tffcam.org/foundation/democracy.htm> (last visited Oct. 28, 2014).

to peel back layer after layer of the executive entanglement in the judiciary, thereby rendering that arm of government mute to executive excesses. In conclusion, this paper examines pertinent socio-economic and political impacts of judicial dependence on the executive branch. The writer goes further by proposing important recommendations to bring about an era of mild balance of power, checks and balances, and judicial independence.

2. COUNTRY BACKGROUND: CAMEROON

Cameroon is located at the “armpit” of Africa. It is triangular in shape, stretching about 1,200 km to the north from a base 800 km wide, and covers an area of 475,440 km².⁸ It is located at 6° north and 12° east.⁹ It is bordered to the south by Equatorial Guinea, Gabon, and the Republic of the Congo, to the east by the Central African Republic, to the northeast by Chad, to the west by Nigeria, and to the southwest by 402 km of Atlantic coastline.¹⁰ Cameroon is characterized by a great diversity of the natural environments found in different parts of Africa. This feature has earned it the sobriquet “Africa in miniature.” The Cameroonian people are comprised of over 281 ethnic groups (only two tribes are recognized as indigenous: the Mbororo-Fulani and the Mbaka Pygmies)¹¹ divided into three cultural groups: the Bantu in the South, Littoral, Southwest, Centre, and Southeast regions; the Bantoid or semi-Bantu in the West and Northwest regions; and the Sudanese in the Adamaoua, North, and far North regions.¹² “The Pygmy population, which is not included in these larger groups, lives in the South, East and Centre provinces.”¹³

3. ORIGINS OF CAMEROON BIJURAL LEGAL SYSTEM

“Bijuralism is defined as the coexistence of two legal traditions within a single state.”¹⁴ Cameroon is said to be bijural because there

⁸ The World Factbook: Cameroon, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/cm.html> (last updated June 22, 2014).

⁹ *Id.*

¹⁰ *Id.*

¹¹ United Nations, Office of the High Comm’r for Human Rights, *Climbing Hills of Injustice in North-West Cameroon – Rahamatu the Mbororo-Fulani*, UNITED NATIONS HUMAN RIGHTS (July 2007), <http://www.ohchr.org/EN/NewsEvents/HFHR/Pages/StoryCameroon.aspx>.

¹² U.N. Int’l Human Rights Instruments, *Core Document Forming Part of the Reports of State Parties: Cameroon*, HRI/CORE/1/Add.109 (June 19, 2000) [hereinafter *Core Document*].

¹³ *Id.*

¹⁴ Marie-Claude Gervais & Maries-France Séguin, *Some Thoughts on Bijuralism in Canada and the World*, CANADA DEP’T OF JUST. 1, available at

exists both the common law and civil law systems in Cameroon. The history of Cameroon bijuralism is unique based on its history from 1884 to 1961. Over the years, prominent Cameroonian historians and researchers have written broadly and in-depth about the reunification between East and West Cameroon. East Cameroon is the portion of Cameroon that was administered by the French, while West Cameroon was the portion administered by the British as part of Nigeria.¹⁵ Several months after Nigeria became independent from Britain and due to reunification forces in the British West Cameroons, a U.N. plebiscite was held to determine whether British West Cameroon would join Nigeria or La République du Cameroun (already independent).¹⁶ The southern section of British West Cameroon joined La République du Cameroun, while the northern section chose to remain as a part of Nigeria.¹⁷

This means the British administered a portion split in two as a result of the plebiscite. Britain established a common law legal system in West Cameroon embedded in the indirect rule system of administration through Southern Cameroon High Court Law of 1955.¹⁸ On the other hand, the French, through the policy of assimilation, established the civil law system as the basic structure of justice in East Cameroon.¹⁹ The unification of East and West Cameroons resulted in the birth of the Cameroon bijural legal system.²⁰ Given that West Cameroon, a common law region, never gained its independence, it was unable to bargain from

<http://www.justice.gc.ca/eng/rp-pr/cs-j-sjc/harmonization/hfl-hlf/b2-f2/bf2.pdf> (last visited Oct. 3, 2014) [hereinafter *Gervais*].

¹⁵ Duane E. Sams, *The Legal Aspects of Doing Business in Cameroon*, 17 INT'L L. 489, 490 (1983).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ Joseph Nzalie Ebi, *The Structure of Succession Law in Cameroon: Finding a Balance Between the Needs and Interests of Different Family Members* 21, 22 (Oct. 2008) (unpublished Ph.D. thesis, University of Birmingham), available at http://etheses.bham.ac.uk/300/1/NzalieEbi09PhD_A1a.pdf. The Southern Cameroon High Court Law states:

Subject to the provisions of any written law and in particular of this section . . . of this law; -

a) the common law;

b) the doctrines of equity;

c) and the statutes of general application which were in force in England on the 1st day of January 1900, shall in so far as they relate to any matter with respect to which the legislature of the Southern Cameroons is for the time being competent to make laws, be in force within the jurisdiction of the court.

Id. at 23.

¹⁹ *Id.* at 25.

²⁰ Martha Simo Tumnde, *Harmonization of Business Law in Cameroon: Issues, Challenges and Prospects*, 25 TUL. EUR. & CIV. L.F. 119, 121–22 (2010).

a position of strength at the Fouban Conference (the conference wherein the unification terms were discussed and agreed upon) as an equal partner against its independent French-speaking counterpart.

This unification resulted in the civil law system taking a predominant position over the common law system with both bodies of law coexisting in an unstable marriage. The President and Vice President properly reflected this predominance after the unification of the Cameroons; the President of the Federal Republic of Cameroon (1st Republic) was Ahmadou Babatoura Ahidjo, who is from the French-speaking part of Cameroon, and the Vice President was John Ngu Foncha, who represented the English-speaking part of Cameroon. The office of the president had and still has the power to appoint cabinet ministers, including the Minister of Justice. As such, Ahidjo appointed Jean-Claude Victor Kanga who was from the French region. This meant that the common law always came in second place and would not be recognized as a legal system in its own right, equal in stature to the civil law system. This situation persists to date; since independence, there has never been a president from the former British-administered West Cameroon to recalibrate the status quo, which could be done by giving the common law equal status to the civil law as stipulated by the Constitution. The protracted inequality of the two bodies of law has been one of the fundamental issues undermining the proper functioning of the judicial system. Even though customary laws and practices are still a recognized body of law in Cameroon, this body of law will not be discussed in this paper due to its relative undeveloped nature. It should be noted that customary laws and practices supplement national laws in matters concerning village level disputes on land tenure, property, and people.²¹

In the English-speaking regions of Cameroon, customary law is recognized by virtue of Section 27 of Southern Cameroon's High Court Law of 1955 In the French-speaking regions of Cameroon, customary courts were integrated into the judicial system in 1959 through Ordinance No. 59-86 of December, 1959 Article 46 of the 1961 Constitution of the Federal Republic of Cameroon, now Article 1(2) of Law No. 96-6 of 18 January 1996, maintains the observance of "native laws and customs" as a source of Cameroonian law.²²

4. CONSTITUTIONAL WEAKNESSES AND EMPOWERMENT OF THE EXECUTIVE BRANCH

Black's Law Dictionary defines a constitution as "[t]he fundamental and organic law of a nation or state that establishes the institutions and

²¹ See Victor Emmanuel Bokalli, *La Coutume, Source de Droit au Cameroon* 28 REV. GEN. 37, 44-48 (1997).

²² Tumnde, *supra* note 20, at 122.

apparatus of government, defines the scope of governmental sovereign powers, and guarantees individual civil rights and civil liberties.”²³ Constitution-making in the pre- and post-independence periods in Africa were elite-driven, top-down, and non-participatory. In the former French colonies, constitution-making degenerated into the adoption of the constitutional platform offered by the French controlled colonies. In the British colonies, constitution-making was carried out by urban-based elites, many of whom were actually chosen by the colonial government instead of the people.²⁴ The outcome of such rule selection processes were institutional arrangements that failed to adequately constrain the state and did not provide a newly independent country’s diverse population groups with the mechanisms needed for peaceful coexistence. Specifically, the post-independence laws and institutions failed to protect the fundamental and human rights of the citizens, especially in the Francophone as opposed to their British-controlled counterparts who took human rights issues more seriously.²⁵

The first constitution of Cameroon was drawn on January 1, 1960. The 1960 Constitution was drawn under the stewardship of Ahidjo (then Prime Minister of French Cameroon) under tumultuous circumstances.

This political turmoil was the handiwork of French administrators who indulged themselves in the uphill task of exterminating anti-French Cameroonians. Prime Minister Ahidjo used the turmoil as a pretext to obtain emergency powers from parliament to design Cameroon’s [first] constitution. The constitution was adopted in a referendum while a state of emergency was in force, [and] the French army was protecting the Ahidjo government against its citizens.²⁶

In 1961, the second constitution, which was simply an upgrade of the 1960 Constitution, came into force. The third constitution is the 1972 Constitution, which has also been heavily amended. Cameroon has had at least three constitutions and numerous constitutional amendments. The most controversial issue with the Cameroon Constitution is the fact that there is great debate and uncertainty as to which constitution is officially and currently in force based on many amendments. This is mainly because courts and jurists have remained unsure, and most times are unable to determine with convincing clarity whether the 1996 constitutional amendment, increasing the number of articles from thirty-nine to sixty-nine, actually abrogated the 1972 Constitution. If the 1996

²³ BLACK’S LAW DICTIONARY 353 (9th ed. 2009).

²⁴ See generally Victor T. LeVine, *The Fall and Rise of Constitutionalism in West Africa*, 35 J. MOD. AFR. STUD. 181 (1997) (noting the constitution-making history of multiple African nations).

²⁵ *Id.* at 190.

²⁶ Nicodemus Fru Awasom, *Politics and Constitution-making in Francophone Cameroon, 1959-1960*, 49 AFR. TODAY, Winter 2002, at 3, 3.

Amendment truly abrogated the 1972 Constitution, the amendment was a complete overhaul and created a new constitution. Per Professor Charles M. Fombad, “[t]he 1996 constitutional amendment is essentially negative, defensive and merely [a] protective obfuscation of the ‘*status quo ante*’. Shrouded in obscurity, it is a moribund arrangement in which autocratic practices and policies are deeply embedded, and is marked by presidential absolutism and a feeble legislature.”²⁷

In 1996, the 1972 Constitution was amended by increasing the number of articles from thirty-nine to sixty-nine. For purposes of this paper, the 1996 amendments will be considered an abrogation of the 1972 Constitution because of the far-reaching effects of the amendments and also because it is considered the official constitution by most tribunals in Cameroon. In March of 2008, six articles of the 1996 Constitution were amended, the most notable of which was the modification of Article 6(2), which removes the two-term limit for current and future presidents of the republic.²⁸ “Article 2(1) [of the Constitution] vests national sovereignty in the people who exercise this [right] either through the President of the Republic and members of the Parliament or by way of referendum.”²⁹ Removing the term limit by way of a parliamentary super majority and not by referendum empowers any government in power to continue staying in power.

Articles 26 and 27 of the Cameroon Constitution draw a distinct line between executive power and legislative power: the legislature’s most important power is to legislate (Le Pouvoir Legislative) and the executive’s power is to issue decrees and administrative ordinances (Le Pouvoir Reglementaire).³⁰ These powers are further expanded in Article 28.³¹ Article 27 gives the government the authority to enact and pass laws on issues not within the jurisdiction of the legislature as defined by Article 26.³² The members of the executive empowered by Article 27 and enhanced by other articles include the President (Article 8(5)), the Prime Minister (Article 12 (3)), and other appointed government officials (including but not limited to the Governor and divisional officers).³³ This

²⁷ Charles Manga Fombad, *The New Cameroonian Constitutional Council In A Comparative Perspective: Progress or Retrogression?*, 42 J. AFR. L. 172, 173 (1998).

²⁸ Charles M. Fombad, *Researching Cameroonian Law*, GLOBALEX (2011), <http://www.nyulawglobal.org/globalex/cameroon1.htm> (last visited Oct. 3, 2014).

²⁹ *Id.*

³⁰ *Id.*

³¹ CONSTITUTION OF THE REPUBLIC OF CAMEROON 1972 art. 28 (“Parliament may empower the President . . . to legislate by way of ordinances for a limited period and for given purposes They shall be of a statutory nature as long as they have not been ratified They shall remain in force as long as Parliament has not refused to ratify them.”).

³² *Id.* at art. 27.

³³ *Id.* at art. 8(5) & art. 12(3).

article empowering the executive to make laws by decree is an important constitutional weakness, which will be further discussed in topic number five below.

The Cameroon Constitution guarantees judicial independence: “Judicial power shall be exercised by the Supreme Court, Courts of Appeal and Tribunals. The Judicial Power shall be independent of the executive and legislative powers.”³⁴ After stating unequivocally on one hand how independent the various arms of government should be, the Constitution on the other hand takes away the same by stating that “[t]he President of the Republic shall guarantee the independence of judicial power. He shall appoint members of the bench and of the legal department.”³⁵ This example points to an important contradiction in the Constitution that has created key weaknesses used by the executive to infringe on the independence of the judiciary by indirectly giving the executive power over the judiciary; the Constitution thereby takes away the power of judicial review of executive action.

By giving one branch of government the power to guarantee the independence of the other, the framers of the Cameroon Constitution could not have been thinking of a truly independent judiciary or separation of powers while drafting the Constitution, as posited by John Mukum Mbaku and supported by this research.³⁶ This is explained by the fact that the Constitution was framed (by Ahidjo under the auspices of the French colonial power) to create a presidential state in which the President of the Republic will hold the supreme power to manage the judiciary as he sees fit. This position has been properly illustrated in the build up to this point of the research wherein the executive has the prerogative to oversee the inner workings of the judiciary.

This situation is made clearer by the fact that judges and magistrates see themselves as civil servants reporting to the executive branch, and not as part of an independent branch of government. As the main law of the land, the Constitution puts the responsibility of assuring the independence of the judiciary in the hands of the executive. Together with the format in which judges and magistrates are trained in Cameroon, this lends itself to the idea that judges and magistrates feel a false sense of justification in making politically sound but legally

³⁴ *Id.* at art. 37(2).

³⁵ *Id.* at art. 37(3).

³⁶ *See generally* John Mukum Mbaku, *The Separation of Powers, Constitutionalism and Governance in Africa: The Case of Modern Cameroon* (Mar. 2013) (unpublished manuscript), http://works.bepress.com/john_mbaku/7/ (discussing how the separation of powers doctrine is simply an abstract constitutional construct in the Cameroonian Constitution).

untenable decisions because of the fear of either losing their jobs or being sent to prison.

After reviewing the inherent weaknesses built into the Cameroon Constitution, there is no gainsaying the fact that a constitution's integrity depends as much on its content as on its proper interpretation and execution.

5. THREE DECADES OF LEGISLATIVE SUPERIORITY AND ITS EFFECT ON THE JUDICIARY

The Lower House of Parliament currently has a total of 180 members, 153 of whom are members of the CPDM party.³⁷ On April 14, 2013, Senatorial elections were held for the first time in Cameroon.³⁸ Out of the seventy elected seats, CPDM members won fifty-six senate seats.³⁹ The president, as stipulated by the Constitution, appointed the remaining thirty senators.⁴⁰ The president appointed three from each of the ten regions of the country to bring the total number of senators to one hundred, eighty-six of whom are currently members of the CPDM party.⁴¹ Given the current supermajority in the upper and lower houses of Parliament, it is rather unlikely that the constitutional loopholes empowering the executive to make laws can be restricted via crafting new laws or passing amendments to check executive excesses. As a result, whichever laws are enacted by the one party legislature in favor of the executive branch would have to be upheld by the judiciary.

Cameroon is currently ranked number 144 out of 177 countries surveyed by Transparency International, a non-governmental watchdog which surveys countries to determine corruption perception index or CPI.⁴² A CPI score of 25 out of 100 based on a recent survey puts Cameroon on the world stage as one of the countries with the most

³⁷ *Election of Members of Parliament*, ELECTIONS CAMEROON, <http://www.elecam.cm/en/civic-education/election-of-members-of-parliament.html> (last visited Nov. 15, 2014).

³⁸ *News: 2013 Senatorial Elections*, ELECTIONS CAMEROON (May 24, 2013, 4:54 PM), <http://www.elecam.cm/en/news/news/article/senatoriales-2013.html>.

³⁹ Tansa Musa, *Cameroon Ruling Party Sweeps Senate Elections*, REUTERS (Apr. 29, 2013, 10:42 AM), <http://www.reuters.com/article/2013/04/29/us-cameroon-senate-results-idUSBRE93S0JK20130429>.

⁴⁰ *Id.*

⁴¹ Valentine Mulango, *Cameroon: These Are the 30 Senators Appointed by Paul Biya*, CAMEROON INFO NET (May 8, 2013), <http://www.cameroon-info.net/stories/0,45919,@,cameroon-these-are-the-30-senators-appointed-by-paul-biya.html>.

⁴² *Cameroon*, TRANSPARENCY INTERNATIONAL, <http://www.transparency.org/country/#CMR> (last visited Oct. 5, 2014) (showing Cameroon's score, the score indicating the perceived level of public corruption on a scale of 0–100, where 0 means that a country is perceived as highly corrupt and 100 means it is perceived as very clean).

corrupt public sectors.⁴³ The public sector in Cameroon includes the government, judiciary, and the legislature.

Through alleged corruption and election manipulation, the President of Cameroon has managed to stay in office since 1982. From 1982 to the present era, he has also succeeded to keep in place his party as the supermajority in the legislature. This has made it remarkably difficult for the legislature to pass unbiased laws. This has, in turn, had a waterfall effect on the types of laws interpreted and upheld by the judiciary, another important indication of how the legislature's actions have weakened the judiciary. A good illustration of governmental influence on the legislature was the overwhelming support by the parliament for the amendment to Article 6(2) of the Constitution, which removed the two-term limit for current and future presidents of the republic.

"Since 1961, Cameroon has been ruled primarily by opportunistic politicians—individuals whose main goal has been to subvert existing laws to enrich themselves and their supporters. This type of political opportunism earned Cameroon the title of the most corrupt country in the world in the late 1990s."⁴⁴ Joseph Takougang "argues that the ability of Ahidjo and his successor, Paul Biya, to single-handedly determine the nature and structure of politics in the country was due to the existence of relatively weak and nonviable constitutions," in which the drafting process has been controlled by the elites without the participation of the relevant stakeholders.⁴⁵ The only year the CPDM "lost" its parliamentary (legislative) majority was in 1992, and that was also the same year the ruling CPDM allegedly rigged the election in their favor to stay in power.⁴⁶ Hence, the control of the legislature has really never been lost since the advent of multi-party politics in the 1990s in Cameroon.

Cameroon has 10 regions, 58 divisions, 269 sub-divisions, and 53 districts.⁴⁷ There are ten regional governors and fifty-eight divisional officers.⁴⁸ These administrative officials are appointed by the President and organized under the Ministry of Territorial Administration and Decentralization (MINATD). These administrative officers represent the President in the local regions in an effort to decentralize the seat of government from the capital city Yaoundé.

⁴³ *Id.*

⁴⁴ THE LEADERSHIP CHALLENGES IN AFRICA: CAMEROON UNDER PAUL BIYA 8 (John Mukum Mbaku & Joseph Takougang eds., Africa World Press 2004).

⁴⁵ *Id.* at 10.

⁴⁶ Joseph Takougang *The 2002 Legislative Election in Cameroon: A Retrospective on Cameroon's Stalled Democracy Movement*, 41 J. MOD. AFR. STUD. 421, 421–25, 428 (2003).

⁴⁷ *Core Document*, *supra* note 12.

⁴⁸ *Id.*

All duly appointed administrative officers, including cabinet ministers are empowered by the President through their appointment with the authority via delegation to govern by use of decrees and ministerial ordinances (executive decree authority). While this power is important and necessary for the administrator to carry out his duties,⁴⁹ there is very little constitutional limitation as to how they can be used. Hence, administrative officers have, since independence, used this authority to make controversial laws, challenge court decisions, and the Constitution.

Based on three decades of legislative superiority and constitutional weakness, it is safe to conclude that the use of executive decrees for permanent, rather than temporal lawmaking undermines the standard legislative process. In the context of Cameroon, the extensive and uncontrolled use of executive decrees is evidence that the legislature is being marginalized and democratic institutions are ineffectual.

6. THE CAMEROON COURT SYSTEM AND INSTANCES OF EXECUTIVE OVERREACH

Per Article 37 of the Cameroon Constitution, “justice shall be administered in the territory of the Republic in the name of the people of Cameroon. Judicial power shall be exercised by the Supreme Court, the Courts of Appeal and Tribunals.”⁵⁰ The judiciary per the constitution should be independent of the executive and the legislature.⁵¹

There is a serious overlap between which laws apply in what circumstances and in what areas of the country. Article 43 of the Constitution holds that “[t]he President of the Republic shall negotiate and ratify treaties and international agreements.”⁵² Article 45 goes on to add that “[d]uly approved or ratified treaties and international agreements shall, following their publication, override national laws.”⁵³

⁴⁹ See John Locke, *THE SECOND TREATISE OF CIVIL GOVERNMENT* 92 (Thomas P. Peardon, ed., Macmillan Publ’g Co., 1952) (1690).

This power [executive decree authority] to act according to discretion for the public good, without the prescription of the law and sometimes even against it, is that which is called ‘prerogative’; for since in some governments the lawmaking power is not always in being, and is usually too numerous and so too slow for the dispatch requisite to execution, and because also it is impossible to foresee, and so by laws to provide for, all accidents and necessities that may concern the public . . . therefore there is a latitude left to the executive power to do many things of choice which the laws do not prescribe.

Id. While Locke looked more to the advantages of executive decree authority, Cameroon is an example of a country where this authority is used for wrong reasons.

⁵⁰ CONSTITUTION OF THE REPUBLIC OF CAMEROON 1972 art. 37(1)–(2).

⁵¹ *Id.* at art. 37(2).

⁵² *Id.* at art. 43.

⁵³ *Id.* at art. 45.

Through Decree No. 2012/344 of July 16, 2012,⁵⁴ regarding the ratification of the treaty relating to the revision of the treaty on the Harmonization of Business Law in Africa (OHADA), the President, by said decree, ratified important treaty changes of the OHADA treaty without going through Parliament. While the president was within his rights under the Constitution, it is worthy of noting that in more advanced democracies, such as the United States, this type of action must be reviewed and discussed by Congress. This is to safeguard the democratic process and maintains the rigorous checks and balances that exist between the various arms of the government.

The OHADA, for instance, was created by a treaty on October 17, 1993.⁵⁵ The aim of OHADA is to create a harmonized business law, known as the Uniform Acts, to be relied upon by signatory countries in internal and cross-border trade. Seventeen African countries, including Cameroon, have signed the OHADA treaty.⁵⁶

The adoption of the OHADA Uniform Acts has made the current landscape of the Cameroon judicial system even more complex based on the already uneasy coexistence of the common and civil law legal traditions, which have distinct business legal philosophies. Cameroon, like other signatories to the OHADA treaty, mainly enforces the Uniform Acts of the OHADA in circumstances where there are either formal legal structures or provisions that conform to existing norms. Most times, the OHADA provisions will be completely ignored because they are incompatible with social norms. Over time, the social realities will either reinforce or trigger modification to the OHADA uniform provisions.⁵⁷ On the other hand, “if the laws have any practical reality, they will influence

⁵⁴ *Decree No. 2012/344 of 16 July 2012 on the Ratification of the Treaty Relating to the Revision of the Treaty on the Harmonization of Business Law in Africa (OHADA), Signed in Quebec (Canada) on the 17 October 2008*, REPUBLIC OF CAMEROON - PRESIDENCY OF THE REPUBLIC, available at <https://www.prc.cm/en/news/the-acts/decrees/219-decree-n-2012-344-of-16-july-2012-on-the-ratification-of-the-treaty-relating-to-the-revision-of-the-treaty-on-the-harmonization-of-business-law-in-africa-ohada-signed-in-quebec-canada-on-the-17-october-2008?highlight=WyJvaGFkYSJd> (last visited Oct. 4, 2014).

⁵⁵ *L'Organisation pour l'Harmonisation en Afrique du Droit des affaires*, OHADA.COM, <http://www.ohada.com/traite.html> (follow “Learn More” link under “Presentation de l’OHADA”) (last visited Oct. 9, 2014).

⁵⁶ Sharif A. Touray, *The OHADA Treaty: Recent Developments Will Spur African Investment and Project Financings*, FindLaw (Mar. 26, 2008), <http://corporate.findlaw.com/business-operations/the-ohada-treaty-recent-developments-will-spur-african.html>; *The Democratic Republic of Congo Joins OHADA*, NORTON ROSE FULBRIGHT (July 2012), <http://www.nortonrosefulbright.com/knowledge/publications/69441/the-democratic-republic-of-congo-joins-ohada>.

⁵⁷ *OHADA*, *supra* note 55 (stating that on October 17, 2008, fifteen years after its creation, the OHADA Uniform Acts and procedures were revised).

social realities.”⁵⁸ While the OHADA law can be seen as a means of harmonizing the dichotomy of business laws (civil and common law business procedures) in Cameroon into a more uniform source of business law, this is not the reality because the existing legal foundation is not stable enough to accept a foreign piece of legislation, especially when internal legal systems are not in harmony with each other. Such paradox will cause more confusion concerning the existing complexity in the Cameroon judicial system. This shows how unilateral decisions by the executive can have far-reaching effects on the entire legal system. It is note-worthy that had the treaty revisions been discussed in parliament, suggestions would have been brought up about regularizing the existing legal framework before introducing the legal system to a new legal framework on business practices.

The first attempt to organize the court system in Cameroon occurred in 1969 with a reform project known as “l’avant projet Comte-Quinn.”⁵⁹ In 1972, more concrete steps were taken to this effect with Article 42 of the 1972 constitution, “empower[ing] the President of the Republic for a period of one year to set up the new institutions” via decrees, ordinances, or statutes.⁶⁰ As a result, Ordinance No. 72/4 of August 26, 1972 on judicial organization was officially passed, putting together the Cameroon court system as it is today. This system has remained practically the same to date, but for the fact that in 1995, the 1972 Constitution was given a major facelift. Additional courts were added to the court system due to the government giving in to pressure from rival political parties in the 1990s—when Cameroon moved from a one-party state to a multi-party state, an event which threatened to bring down the status quo which had persisted and still thrives in Cameroon since its independence in 1960.⁶¹

This political upheaval led to major changes to the 1972 Constitution, leading to the ratification of the 1996 constitution. Major changes to the 1996 Constitution included texts creating new courts. These new texts included:

Law No. 2006/017 of 29 December 2006, to lay down down the organi[z]ation, duties and functioning of regional audit courts; Law [N]o. 2006/016 of 29 December 2006 to lay down the organization and functioning of the Supreme Court[;] Law [N]o. 2003/005 of 21 April 2003 to lay down the jurisdiction, organization and function of the audit bench of the Supreme Court; Law [N]o[.] 2004/004 of 21 April 2004, to lay down the organization and functioning of the

⁵⁸ Claire Moore Dickerson, *The Cameroonian Experience under OHADA: Business Organizations in a Developing Economy*, 112 BUS. & SOC’Y REV. 191, 192 (2007).

⁵⁹ Fombad, *supra* note 28.

⁶⁰ *Id.*

⁶¹ Mbaku, *supra* note 36, at 52.

Constitutional Council; Law [N]o[.] 2004/2005 of 21 April 2004, to lay down the rules and regulations concerning membership of the Constitutional Council; and Law [N]o[.] 2006/015 of 29 December 2006 on judicial organi[z]ation.⁶²

The decentralization of the Cameroon court system was originally aimed at bringing justice closer to the people. The only courts with a territorial jurisdiction are the Supreme Court and the State Security Court, which both seat in Yaoundé, the political capital. The court system in Cameroon can be classified under three main categories namely; courts with ordinary jurisdiction, administrative courts, and courts with special jurisdiction.⁶³

After reviewing the Cameroon judicial system, it must be reiterated at this juncture that the Supreme Court in principle and per Article 38 (1) of the Constitution remains the highest court of the land.⁶⁴ This is made possible by the fact that the Supreme Court has different benches that specialize in receiving a variety of judgment reviews from the lower courts per Article 38 (2): the judicial bench, the administrative bench, the audit bench, and the panel of joint benches.⁶⁵

After the signing of the OHADA treaty and its entering into force, the Supreme Court of Cameroon, like the supreme courts of the other signatory countries to the OHADA treaty, now shares jurisdiction with the Common Court of Justice and Arbitration (CCJA) in Abidjan, Ivory Coast.⁶⁶ This has resulted in situations wherein jurists have taken upon themselves, as allowed under the OHADA treaty, to bypass the national Supreme and Appeals Courts directly to the CCJA from lower courts.⁶⁷ This is the case because Article 45 of the Constitution holds that “[d]uly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implements the said treaty or agreement.”⁶⁸

Claire Moore Dickerson, a renowned scholar on the OHADA treaty, noted that “[w]hen a legal system is unreliable, the ‘shadow of law’ is faint to non-existent.”⁶⁹ “Section 8(1) of the judicial organi[z]ation ordinance of 1972 provides that judicial decisions and orders are

⁶² Fombad, *supra* note 28.

⁶³ *Id.*

⁶⁴ CONSTITUTION OF THE REPUBLIC OF CAMEROON *amended* by Law No. 96-6 of 18 January 1996, art. 38(1) (“The Supreme Court shall be the highest court of the State in legal and administrative as well as in the appraisal of accounts.”).

⁶⁵ *Id.* art. 38(2).

⁶⁶ Fombad, *supra* note 28.

⁶⁷ *Id.*

⁶⁸ CONSTITUTION OF THE REPUBLIC OF CAMEROON 1972 art. 45.

⁶⁹ Dickerson, *supra* note 58, at 191.

enforceable throughout the Republic of Cameroon.”⁷⁰ Hence, rather than bringing some stability within the Cameroon legal system, OHADA has instead made the system more unstable all because of the unilateral decision by the President to enter into the treaty without first organizing the Cameroon legal system.

The Ministry of Justice is responsible for setting, coordinating, and supervising government policy regarding to the administration of justice, including the management of its key actors.⁷¹ The key actors in the justice system include judges, magistrates, notaries, judicial police, attorneys, and court registrars.⁷² The Higher Judicial Council (HJC) makes recommendations to the President of the Republic on matters of promotion, appointment, transfer and discipline of magistrates and judges.⁷³

The connection between the judiciary and the executive in effect is the most important reason why the Cameroon judiciary is so entangled with the politics of the day and rendered dependent on the executive arm of government. Magistrates and judges are trained and integrated into magistracy directly from the National School of Administration and Magistracy known commonly by its French acronym ENAM.⁷⁴

Important judicial officers such as judges of the Supreme and Appeals Courts do not have life tenures. These judges are not guaranteed a stable and reasonable compensation, which together will serve as a buffer preventing the judges from being influenced in their decisions. Giving a Supreme Court or Appeals Court judge a guaranteed compensation and life tenure will take away the lingering fear of being dismissed or having their compensation suspended for unpopular decisions which do not directly or indirectly favor the executive arm of government.

The legislature does not have the ability to appoint a special prosecutor to investigate alleged government wrongdoing. In most developed countries with well-established legislatures and judiciaries, it is customary for the legislature to either appoint a special prosecutor who is a highly regarded lawyer to investigate the government,⁷⁵ or an

⁷⁰ Henry Samuelson, *The Force of the Cameroon Legal System*, HG.ORG LEGAL RESOURCES, <http://www.hg.org/article.asp?id=7156> (last visited Oct. 4, 2014).

⁷¹ Fombad, *supra* note 27.

⁷² *Id.*

⁷³ Charles M. Fombad, *Endemic Corruption in Cameroon: Insights on Consequences and Control*, in *CORRUPTION AND DEVELOPMENT IN AFRICA: LESSONS FROM COUNTRY CASE-STUDIES* 234, 247 (Kempe Ronld Hope, Sr. & Bornwell C. Chikulo eds., 2000).

⁷⁴ *Id.*

⁷⁵ See Katy J. HARRIGER, *THE SPECIAL PROSECUTOR IN AMERICAN POLITICS* 161–63 (rev. 2d ed. 2000). Harriger notes that the Office of Special Prosecutor in America was facilitated by three executive branch scandals prior to 1978. They included the 1950’s tax

investigative committee composed of non-governmental subject matter experts to carry out elaborate findings on alleged government wrongdoing. In the landmark American case of *Marbury v. Madison*,⁷⁶ the court formed the basis for the exercise of judicial review in the United States under Article III of the American Constitution. The *Marbury v. Madison* decision helped define the boundary between the executive and judicial branches in the American form of government. The case also established the American judiciary as being independent and as having the last word on issues of the application and interpretation of the provisions of the Constitution.

Both of Cameroon's post-independence chief executives have enjoyed absolute power and control over the judicial branch through the control of the appointment and promotion of judiciary officers, and budgetary allocations to the judiciary. In addition, Fombad noted that shortly before the elections of 1996 and 1997 President Paul Biya issued a decree doubling the salaries of judicial officers and raised the compensation rates for the Supreme Court justices, who had the authority to certify the results of each election, including the presidential election.⁷⁷ This is a good example of the government's pay to play arrangement when it comes to politically influencing the outcome of court decisions.

Mbaku strongly contends that Cameroon, since reunification and the formation of what is now the Republic of Cameroon, has had a Constitution that does not provide for an effective separation of powers.⁷⁸ As a consequence, the universally accepted elements of the rule of law do not actually exist under the terms of Cameroon's 1996 Constitution; the guarantee of security of tenure, financial security, and institutional independence of the judiciary have all been left to the discretion of the political process, and specifically to the discretion of the President of the Republic. This system of executive absolutism was deeply entrenched in the Gaullist era (Charles de Gaulle was a president of France during colonial times) constitution model that was adopted by La République du Cameroun at independence.⁷⁹ The same constitution was maintained and remained in effect when La République du Cameroun unified with

scandals, the Teapot Dome, and Watergate, which led to the appointment of ad hoc special prosecutors. One of the outcomes of the Watergate Scandal was the passage of the Independent Counsel Provisions of the Ethics in Government Act. The institution of such an independent judiciary investigative apparatus in Cameroon will greatly help to curb executive excesses. *Id.*

⁷⁶ See *Marbury v. Madison*, 5 U.S. (1 Cranch) 137 (1803).

⁷⁷ Fombad, *supra* note 73, at 247–48.

⁷⁸ Mbaku, *supra* note 36, at 1.

⁷⁹ *Id.* at 4.

Southern Cameroon administered by the British on October 1, 1961, to form what is now the United Republic of Cameroon or just Cameroon.⁸⁰

7. EXECUTIVE INFLUENCE ON THE PRACTICE OF LAW AT THE CAMEROON BAR

Per Article 5 of the Laws Organizing the Profession of Law in Cameroon, a person must meet the following criteria to practice law: be a Cameroonian citizen, be at least twenty-three years of age, have a law degree from Cameroon (or an equivalent from a university recognized by the Cameroon Bar at the time of the submission of the application), good moral character, hold a law license duly issued by the Bar, have taken the oath as prescribed in Article 15, have valid professional insurance coverage, have an office address acceptable to the Bar, and be a member of the roster of active lawyers.⁸¹

Article 3 of the Laws Organizing the Practice of Law in Cameroon allows individuals unrepresented by an attorney to represent themselves in all courts with the exception of the Supreme Court.⁸² Also, a person could represent his or her spouse, descendants and collaterals.⁸³ Auxiliary officers in the judicial system who help to facilitate the judicial process include; notaries who draft and notarize legal documents, process servers who are responsible for judicial notifications and bailiffs who appraise and value property for sale.⁸⁴

According to Article 45, the Cameroon Bar Association is a professional organization, which organizes and supervises the activities of attorneys in Cameroon.⁸⁵ The state bar associations in a majority of states in the United States is an administrative arm of the State Supreme Court.⁸⁶ The Cameroon Bar Association is not affiliated with the Supreme Court but it works under the supervision of the Ministry of Justice per Article 45.⁸⁷ The Cameroon Bar Association is comprised of a General Assembly and a Council of the Order per Article 46.⁸⁸

⁸⁰ *Id.*

⁸¹ Law No. 90/059 of December 19, 1990, Organisation De La Profession D'Avocat, art. 5, available at <http://barreaucameroun.org/fr/articles/lois.pdf> (last visited Oct. 4, 2014).

⁸² *Id.* art. 3(1).

⁸³ *Id.*

⁸⁴ Fombad, *supra* note 28.

⁸⁵ Law 90/059, Organisation de la Profession D'Avocat, at art. 45(1) ("Lawyers are grouped into a professional organization called the Order of Lawyers or bar and placed under the jurisdiction of the Minister of Justice.")

⁸⁶ See generally Amy Yarbrough, *Local Bars Smooth Over Some Attorney-Client Clashes*, CALIFORNIA BAR JOURNAL (Aug. 2012), <http://www.calbarjournal.com/August2012/TopHeadlines/TH2.aspx> (last visited Oct. 4, 2014).

⁸⁷ Law 90/059, Organisation de la Profession D'Avocat, art. 45(1).

⁸⁸ *Id.* at art. 46.

The Cameroon Bar Association, which was established by Law No. 87/018 of 15th July 1987, after independence, was born crippled.⁸⁹ This was mainly because the existing diversity in the Cameroon legal system (common law and civil law). The bijural nature of the Cameroon judicial system has always been a thorn in the side of the Bar Association. This was made even worse given the fact that the University of Buea (a purely Anglo-Saxon university) trained lawyers mainly in the English common law with very little emphasis on the civil law system of practice. The reverse is true in universities in the French-speaking regions of Cameroon.

This imbalance in instruction has made it very difficult for judges and lawyers alike to properly and effectively navigate the diverse landscape under which they practice. Legislators who did not have the vision to establish clear guidelines by either harmonizing the two legal traditions or codifying the regional limitation of each legal system aggravated the situation.

Given the current fragmentation, the Cameroon Bar Association has been weak from the start and has never been able to take a united stance against the corruption and excesses of the executive arm against the people and judiciary. Finally, by being organized as part of the Ministry of Justice and not an extension of the administrative arm of the Supreme Court, the executive has managed to maintain a strong political influence over the operation of the Bar Association and the practice of law in Cameroon. The government decides when the bar exam will be launched and can interfere in the General Assembly of the Bar Association thereby limiting the independence of the Bar Association which receives a substantial amount of funding for its operations from the state.

8. EFFECTS OF AN EXECUTIVE CONTROLLED JUDICIARY ON THE RULE OF LAW AND LEGAL SYSTEM

a) *EFFECTS ON THE RULE OF LAW*

Albert Venn Dicey defined the “Rule of Law” as embodying the following three important concepts: the law is supreme; all citizens are equal before the law; and a recognition and acceptance of the principle that the rights of individuals must be established through court decisions.⁹⁰ The long-term result of the absence of the rule of law in a country is the country becoming a legally failed state.

⁸⁹ Law 90/059, Organisation de la Profession D’Avocat, art. 78 (repealing Law No. 87/018 of July 15, 1987, which laid down the modalities for the practice of law in Cameroon).

⁹⁰ ALBERT VENN DICEY, INTRODUCTION TO THE STUDY OF THE LAW OF THE CONSTITUTION 188–96 (10th ed., MacMillan & Co. Ltd. 1959) (1885).

The U.S. Supreme Court has contributed significantly to the development of modern rule of law jurisprudence. In *U.S. v. United Mine Workers*, the U.S. Supreme Court held that:

In our country law is not a body of technicalities in the keeping of specialists or in the service of any special interest. There can be no free society without law administered through an independent judiciary. If one man can be allowed to determine for himself what is law, every man can. That means first chaos, then tyranny.⁹¹

Professor Erwin Chemerinsky, a well-known constitutional law expert, argues on the other hand that in order to formulate a practical and workable definition of the rule of law, one must consider or address a specific set of principles. These principles include that “[t]he rule of law requires the formation of general laws according to set procedures; secondly, [l]aws must be general, prospective, and clearly stated”; and lastly, that “[t]he government must obey the law in its [every] action.”⁹²

After the above examination of the extensive political and executive influence on the Cameroon judicial system in light of its effect on the rule of law, it is important at this time to discuss Hans Kelsen’s Pure Theory of Law⁹³ and how it captures and attempts to brilliantly explain the encroachment by the executive branch in the law making and adjudication process, which resulted in a very weak constitution and hence, a weak judicial system in Cameroon.

Austrian jurist and legal practitioner Hans Kelsen (1881–1973) propounded the Pure Theory of Law.⁹⁴ Kelsen used the word

⁹¹ *United States v. United Mine Workers*, 330 U.S. 258, 312 (1947).

⁹² Erwin Chemerinsky, *Toward a Practical Definition of the Rule of Law*, *JUDGES J.*, Fall 2007, at 4, 6–7.

⁹³ HANS KELSEN, *THE PURE THEORY OF LAW* 1 (Max Knight trans., Univ. of Cal. Berkeley Press 1967) (1934).

The [Pure Theory of Law] attempts to answer the question what and how the law *is*, not how it ought to be It is called a “pure” theory of law, because it only describes the law and attempts to eliminate from the object of this description everything that is not strictly law: Its aim is to free the science of law from alien elements Yet, a glance upon the traditional science of law as it developed during the nineteenth and twentieth centuries clearly shows how far removed it is from the postulate of purity; uncritically the science of law has been mixed with elements of psychology, sociology, ethics, and political theory The Pure Theory of Law undertakes to delimit the cognition of law against these disciplines, not because it ignores or denies the connection, but because it wishes to avoid the uncritical mixture of methodologically different disciplines (methodological syncretism) which obscures the essence of the science of law and obliterates the limits imposed upon it by the nature of its subject matter.

Id.

⁹⁴ *Id.*

“Grundnorm” to denote the basic norm,⁹⁵ order, or rule that formed the underlying foundation of any legal system. Kelsen, a legal purist, fought relentlessly to promote a pure structure of law which was void of reductionist endeavors; he thought that political ideologies and rules of morality contaminated the law as it was (current and past), preventing the law from becoming what it ought to be—a body of rules without contaminants that reduce a pure form of law.⁹⁶

The Pure Theory held that any good functioning legal system should have a specific point of origin of all its laws (Constitution) which was unadulterated by political ideologies.⁹⁷ Despite the fact that this position was strongly criticized by other legal scholars such as H.L.A. Hart, who questions the fact that reductionism cannot be fully attained because it is inevitable for law to evolve isolated from other rules of society.⁹⁸

In light of Kelsen’s theory, Cameroon, like many independent states, looks to the Constitution as the main source of law that gives authority to and animates the bodies of law in the legal system as drafted based on the socio-cultural, political and economic landscape of the country. In Cameroon, like many other countries, the constitution can be amended.⁹⁹ The procedures for these amendments are almost always clearly specified in the Constitution to maintain the authority and legitimacy of the amendments. In the case of Cameroon, only the President and Parliament are empowered to amend the Constitution.¹⁰⁰

After pointing out the importance of the Constitution as the most important source of law in a given legal system, it is also worthwhile to note that when the source of law is contaminated or ill-conceived, the laws in the system themselves become bad laws. This is the case with the Cameroon Constitution, wherein modification of the Constitution by numerous amendments instigated by political motives had the effect of diluting the authority of the legislature and judiciary.

The high level of political interference in the judiciary was partly caused by the executive branch’s lack of respect for specific articles of the Constitution. This environment makes it extremely difficult for the judiciary branch to enforce the Constitution—a duty borne by the judiciary against those who swore an oath to uphold the Constitution.¹⁰¹ In the words of Nfamewih Aseh, “Cameroon presents itself as a classical

⁹⁵ BLACK’S LAW DICTIONARY 1160 (9th ed. 2009) (“In the legal theory of Hans Kelsen, the law from which all the other laws in society derive.”).

⁹⁶ Kelsen, *supra* note 93, at 1.

⁹⁷ Andrei Marmor, *The Pure Theory of Law*, STAN. ENCYCLOPEDIA OF PHIL. (last updated July 7, 2010), <http://plato.stanford.edu/archives/fall2010/entries/lawphil-theory/>.

⁹⁸ H.L.A. HART, *THE CONCEPT OF LAW* 100–10 (2d ed. 1994).

⁹⁹ CONSTITUTION OF THE REPUBLIC OF CAMEROON 1972 arts. 63–64.

¹⁰⁰ *Id.* at art. 63(1).

¹⁰¹ *Id.* at art. 37(2).

example of an adhoc [sic] state; a state that is governed by way of contingency political arrangements by a few individuals with the 'constitution' kept at bay to be revised or selectively applied according to the shifting ambitions of the head of state [or] his allies, both local and foreign."¹⁰²

I agree with Nfamewih and his position that the executive branch has breached its duty of good faith and trust by building a local hegemony to ensure the continuous power grasp by the executive branch. However, I disagree with his position that there are western countries that stand to benefit from the current judicial stalemate in Cameroon.¹⁰³ Such would have been a fair argument prior to the independence, as most western countries were interested in setting the stage to exploit the developing countries for economic resources. But post-independence, western countries have only selectively intervened in troubled developing countries to promote democracy in order to eradicate terrorism and promote democracy (seen as a deterrent for extremism and a healthy base for future economic relationships). A recent example of a western intervention is the current intervention of the U.S. in Nigeria to recover more than 200 girls captured by Boko Haram (an Islamic terrorist group in the Niger Delta).¹⁰⁴

Furthermore, as developing countries become more stable with strong infrastructures, the amount of aid distributed to them will decrease. It is worth mentioning here that most of the financial aid seldom reaches the people for whom it was intended due to corruption, executive overreach, and failure of the judiciary to take appropriate actions to bring corrupt government officials to trial. This is demonstrative of the breakdown of the rule of law placing competing political and executive interests against the need for an effective establishment of the rule of law.

b) *EFFECTS ON THE LEGAL SYSTEM*

As Claire Moore Dickerson's expose of the effects of the OHADA Uniform Acts in Cameroon demonstrates, under certain circumstances of judicial uncertainty, law inevitably has a limited impact.¹⁰⁵ From executive overreach in the judiciary, to the non-harmonization of laws under the two main judicial systems, the economic, social, and political

¹⁰² NFAMEWIH ASEH, A CONSTITUTIONAL HOLD-UP IN CAMEROON; A PARADIGM FOR UNDERSTANDING THE DILEMMA OF UNDERDEVELOPMENT IN BLACK AFRICA 26 (2011).

¹⁰³ *Id.* at 26–27.

¹⁰⁴ Daniel Magnowski & Chris Kay, *Nigeria Violence Raises Risk in Africa's Biggest Economy*, BUSINESSWEEK.COM, (May 8, 2014), <http://www.businessweek.com/news/2014-05-07/nigeria-bloodshed-increases-risk-in-africa-s-biggest-economy>.

¹⁰⁵ Dickerson, *supra* note 58, at 192.

realities become very important in shaping the rule of law in society. The socio-economic and political impacts are analyzed below.

i. Economic Effects

Over the past thirty years, the Cameroonian economy has experienced an economic growth at a very slow rate, with the peak of the Cameroon economic crises occurring in the early 1990s.¹⁰⁶ Despite gradual improvements, the economy has still not taken off like the economies of one of Cameroon's closest neighbors, Nigeria.¹⁰⁷ The economies of neighboring countries, such as Ghana and Nigeria, have seen their GDP and per capita income grow rapidly mainly due to reforms and infrastructural development. In addition to democratic reforms, Ghana has been able to record such positive growth because, in part, of the codification of tax laws, more stringent laws and sanctions for people engaged in corruption, the simplification of laws to facilitate the creation of companies, and the empowerment of courts to review and adjudicate properly on business and political disputes.¹⁰⁸

These, in a nutshell, have facilitated both local and foreign investments, thereby boosting the economy and leading to the creation of jobs for youth and those leaving institutions of higher learning such as polytechnics, universities, and trade schools. On the other hand, Cameroon has increased layers of bureaucracy, increased government involvement in the private sector, and still maintains a complex tax code. These have all discouraged small and medium-size business owners and innovators from venturing into business because of the increased level uncertainty and risk involved in running a business in Cameroon.

This has resulted in a continuous decline in foreign and local investment and the expansion of the informal sector. Dealing extensively with the informal sector (black market economy) has far-reaching consequences such as: "uncertainty of enforcement [of business deals leading] to self-help measures; the consequences of informal contracts being illegal either *ex facie* or as performed and; the vulnerability to

¹⁰⁶ *Cameroon: Overview*, RESAKSS, <http://www.resakss.org/region/monitoring-progress/cameroon> (last updated July 2013).

¹⁰⁷ Magnowski, *supra* note 104 (noting that Nigeria became Africa's biggest economy as of April 12, 2014); *see also* Drew Hinshaw & Patrick McGroarty, *Nigeria's Economy Surpasses South Africa's in Size: Nigeria's GDP Measured at \$510 Billion in 2013*, WALL ST. J. (April 6, 2014), <http://online.wsj.com/news/articles/SB10001424052702304819004579485360572851126>.

¹⁰⁸ *See Ghana Overview*, THE WORLD BANK (last updated Apr. 10, 2014), <http://www.worldbank.org/en/country/ghana/overview> ("Ghana has evolved into a stable and mature democracy throughout the last two decades. The country continues to show good performance on democratic governance, arising from strong multi-party political system, growing media pluralism and strong civil society activism.").

criminal sanctions.”¹⁰⁹ So, it has to be said that comprehensive business laws and codification of laws is what Cameroon needs to become more attractive to foreign investments, given Cameroon’s vast amounts of natural resources and skilled man power.

Despite the fact that since the 1990s Cameroon’s political economy has changed significantly and the country now has a functioning multi-party “democratic” system of governance, the rule of law and hence, the supremacy of law remain elusive. Cameroon has not been able to provide itself with a legal system in which the law is supreme. As a result, most high-ranking civil servants and political elites consider themselves above the law and act with impunity. Citizens are unable to hold their leaders accountable, and corruption is pervasive, effectively constraining investment in productive activities leading to the country’s inability to create wealth.

ii. Social Effects

On the social front, it should be mentioned that a country without clear and unambiguous laws guiding the privacy, security, and protection of the citizens breeds instability. The ineffectiveness of the courts in Cameroon is a major cause for concern as it provides a suitable breeding ground for social unrest in society. Judges and magistrates trained at ENAM but who have never practiced law are politically appointed to serve in courts. This has led to uncountable cases of the miscarriage of justice either consciously due to corruption, tribalism, and favoritism or unconsciously due to the lack of adequate training and experience by the officers of the law. This, in turn, has had very catastrophic effects on the population.

A good example is the people’s complete loss of confidence in the judicial system, wherein the people resort to self-help.¹¹⁰ Self-help will

¹⁰⁹ Charles Manga Fombad, *Legal Aspects of The Informal Sector in Cameroon*, 6 *AFR. J. INT’L & COMP. L.* 504, 508 (1994). “It can be concluded that a combination of legal uncertainty and excessive state control over the economy plays a decisive part in pushing people into informality.” *Id.* at 507.

¹¹⁰ See Susan Dicklitch, *Failed Democratic Transition in Cameroon: A Human Rights Explanation*, 24 *HUMAN RIGHTS Q.* 152, 167 (Feb. 2002). The self-help practice in Cameroon is known locally as either “jungle-justice” or “mob/vigilante justice.” Susan Dicklitch states that the practice was “on the rise, partly because the rule of law is not enforced, and people are becoming frustrated and disillusioned by the lack of recourse to justice.” She went further by observing that the “police and gendarmes routinely stop cars for bribes, thieves are able to buy their way out of prison, and traditional rulers rule with impunity as long as they support the CPDM” [party in power since 1982]. This, she asserted, had helped fuel the growth of “mob justice and cases of necklacing, and the beating to death of suspected thieves.” “Corruption” [in Cameroon], the author contends, “undermines the fabric of trust and working together by Cameroonians for the common good in a society. The depth of corruption in Cameroon has resulted somewhat in a ‘free-for-all.’” She concludes this trend of thought by saying that,

result in social instability wherein individuals decide to take the laws into their hands, becoming the police, jury, and judge. This explains the rising crime wave in Cameroon fueled in part by high levels of unemployment and the inability of the justice system, including the police, to effectively and efficiently do their job.¹¹¹

In the 1980s, Gould and Mukendi conducted a study of corruption in Zaire [now the Democratic Republic of Congo], and determined that wealthy and politically-connected individuals considered themselves above the law. Under the legal system existing in Zaire at the time, these highly-placed individuals, all of whom were politically well-connected to the regime of President Mobutu Sese Seko, considered themselves “untouchables” and hence, not subject to the country’s known and standing laws. Thus, it was rare to find a high-ranking civil servant or politician, or an individual of high wealth status in Zaire who was either subject to the law or who did not consider himself or herself above the law. Such well-placed individuals were regularly involved in corrupt deals, but were rarely prosecuted. Even if they appeared before a court of law, they were not likely to be convicted because, as determined by Gould and Mukendi, adjudication of court cases was not based on established legal rules and the facts presented in court, but on the wealth and political status of the individual.¹¹²

Gould and Mukendi’s findings are not unique to Zaire because they mirror a similar situation in Cameroon.

iii. Political Effects

The executive and legislative branches, as noted earlier, are controlled by the CPDM party, which is headed by the President.¹¹³

[in Cameroon] [o]nce you get the opportunity to take advantage of “eating” [taking advantage of the system] you do so, whether you are a gendarme, a teacher, or a lowly civil servant. This is reflective of an overall “collective weariness and discouragement” among the general population and the lack of elite investment in democracy and human rights. As one analyst observed, “the problem in Cameroon is not that one group has its hand in the public till-but that all of them do!”

Id. at 67–68.

¹¹¹ CAMEROON: NGO REPORT ON THE IMPLEMENTATION OF THE ICCPR (REPLIES TO THE LIST OF ISSUES CCPR/C/CMR/Q4) GEN. EMPOWERMENT AND DEV. 18 (Ndichia T. Kumichi ed., 2010), *available at* http://www2.ohchr.org/english/bodies/hrc/docs/ngos/GeED_Cameroon_HRC99.pdf (“Mob violence is largely due to public frustration over police ineffectiveness and the release without charge of many individuals arrested for serious crimes . . .”).

¹¹² John Mukum Mbaku, *Providing a Foundation for Wealth Creation and Development in Africa: The Role of the Rule of Law*, 38 BROOK. J. INT’L L. 959, 998–99 (2013) [hereinafter *Mbaku Rule of Law*] (footnotes omitted).

¹¹³ *Election of Members of Parliament*, *supra* note 37.

Concerning the political future of the country, the opposition parties have had much to say, but little support.¹¹⁴ This weakness, or a lack of political capital by the opposition parties, is reflected in the parties' inability to have a say in important political decisions that affect the future of the Cameroonian people. As described before, this is mainly because the minority parties have neither the majority in Parliament nor a significant political office from which to leverage their views.¹¹⁵

A good example of such action by the government is the ratification of the OHADA treaty. The OHADA treaty, which hinged mainly on the French civil law (because it was sponsored in part by France to benefit its former colonies), has disenfranchised the common law regions of Cameroon; common law was imposed on these regions without important adjustments. For example, Article 42 of the OHADA treaty expressly states that the official language of business under the OHADA treaty is French.¹¹⁶ While Cameroon is a bilingual country per the Constitution with both French and English as the official languages, people from the English section of Cameroon already face an uphill task doing business under the OHADA uniform provisions. While there are other examples of political maneuvers by the executive branch that have affected the political wellbeing of the country, the OHADA treaty comes up so often because of the long-lasting effect it will have on the political and judicial landscape of Cameroon.

9. BENEFITS OF AN INDEPENDENT LEGAL SYSTEM

It is very difficult to maintain the rule of law in Cameroon when the judiciary does not operate independently of the other branches of government. Judicial independence is a multifaceted concept that specifically requires that judicial officers be granted security of tenure, financial security, and institutional independence.¹¹⁷

Judge Louraine C. Arkfeld notes that there are five principles of judicial independence and impartial courts:

Decisional independence allows fair and impartial judges to decide cases pursuant to the rule of law and the governing constitutions

¹¹⁴ Valentine Mulango, *Opposition Stages Useless Mini-Comeback in Cameroon' Parliamentary Elections*, THINK AFRICA PRESS (Oct. 18, 2013, 5:43 PM), <http://thinkafricapress.com/cameroon/opposition-stages-big-useless-comeback-cameroon-parliament>.

¹¹⁵ *Election of Members of Parliament*, *supra* note 37.

¹¹⁶ Nelson Enonchong, *The Harmonization of Business Law in Africa: Is Article 42 of the OHADA Treaty a Problem?*, 51 J. AFR. L. 95, 95 (2007) ("Article 42 of the OHADA Treaty states that French is the working language of the organization. This is perhaps not surprising since most of the current 16 member states are French-speaking.").

¹¹⁷ *See* Valente v. R., [1985] 2 S.C.R. 673, 673 (Can.) (noting the standard for judicial independence).

unaffected by personal interest or threats or pressure from any source. Institutional independence recognizes the judiciary as a separate and co-equal branch of government charged with administering justice pursuant to the rule of law and as a constitutional partner with the executive and legislative branches authorized to manage its own internal operations without undue interference from the other branches . . . Fair and impartial courts require competent judges who have been selected for their merit, who represent the diversity of their community, and who are provided with access to the law and continuing legal education provided by nonpolitical sources. An independent judiciary must have adequate resources including a budget that provides for adequate facilities and equipment, security, and just compensation for judges. In developing countries, the ability to provide security protections for judges is essential to their ability to decide without fear. There also must be a system of accountability for judges including a judicial code of ethics as well as a process for citizens to file complaints against judges for illegal or unethical conduct and an impartial disciplinary system that allows for a range of sanctions and removal of errant judges.¹¹⁸

10. RECOMMENDATIONS TO THE CONSTITUTIONAL COUNCIL

The Constitutional Council is one of the newest institutions created by Law No. 96/06 of 18th January 1996 on constitutional revision of 2nd June 1972. In Section 46, the Constitution defines the said institution as competent authority as regards constitutional matters it rules on the constitutionality of laws. It is the regulatory organ for [the] institution's functioning. It rules supremely in its domain of competence, which focuses among others on the following points: [t]he constitutionality of laws, treaties and international agreements; [t]he internal regulations of the National Assembly and Senate; [and] [c]onflicts of competence between the State's institutions; between the State and Regions; and between Regions . . . The Supreme Court presently exercises the attributions of the Constitutional Council, until the latter becomes functional (Section 67).¹¹⁹

It is important to note that while the Constitution prescribes the existence of a Constitutional Council, the enabling laws needed to lay down the infrastructure still have not been authorized by the President eighteen years thereafter. The recommendations below are suggestions for the administrative bench of the Supreme Court acting in lieu of the Constitutional Council.

¹¹⁸ Louraine C. Arkfeld, *The Rule of Law and an Independent Judiciary*, JUDGES J., Fall 2007, at 4, 12.

¹¹⁹ *Constitutional Council*, REPUBLIC OF CAMEROON: PRESIDENCY OF THE REPUBLIC, <https://www.prc.cm/en/cameroon/institutions/171-constitutional-council> (last visited Oct. 4, 2014).

The general effect of the separation of powers is to institutionalize conflicts amongst the three branches of government and such conflicts must be expeditiously resolved in order to bring peace and stability. “The crux of genuine constitutionalism is therefore that there should be an effective and efficient mechanism for ensuring that the letter and spirit of the constitution is respected.”¹²⁰

One of the first steps to liberalize the choking effect of the political influence on the Cameroon judicial system is to draft a new constitution. This can be done by members of an ad hoc committee made up of intellectuals, members of the civil society, various political parties representatives, constitutional law experts, and other important stakeholders. This is an important first step because without a good source of law from which all the other laws derive their authority, the Cameroon judiciary will continue to be highly influenced by the government of the day. A new Cameroon Constitution must have, amongst its most important provisions, a number of articles ensuring the balance of power and independence between the various arms of the government, without entrusting the independence of one branch of government to the other as is the current case with Article 37 of the Constitution.

The uncharacteristically complex nature of the Cameroon judicial system has been facilitated by the un-harmonized legal heritage of the bijural legal system. In order to solve this problem, Cameroon can choose to adopt the strategy adopted by Canada, which has succeeded in harmonizing its distinct legal systems (civil and common law systems) into a hybrid (not a merger) national system with traits of both the English and French traditions.¹²¹

In addition, Cameroon can adopt a system wherein the French-speaking regions enforce primarily the civil law and the English-speaking regions enforce primarily the common law. This will facilitate where and when each type of law is to be used. Then, it will make it difficult for people to take advantage of currently existing weaknesses or loopholes to evade justice or prevent the effective dispensation thereof.

As rightly held by Canadian Senator Gerald A. Beaudoin, “[i]n this era of the globalization of markets and the internationalization of individual rights and freedoms, our two legal traditions of common law

¹²⁰ Fombad, *supra* note 27, at 172.

¹²¹ See Louise Maguire Wellington, *Bijuralism in Canada: Harmonization Methodology and Terminology*, CANADA DEPT OF JUST., available at <http://www.justice.gc.ca/eng/rp-pr/csj-sjc/harmonization/hfl-hlf/b4-f4/bf4.pdf> (last visited Oct. 4, 2014) (“The objective of harmonization is not to merge the common law and the civil law into one legislative norm, but rather to reflect the specificity of each system in federal law.”).

and civil law lend weight to us on the international scene.”¹²² Justice Micheal Bastarache of the Supreme Court of Canada goes further to say that, “[t]here are relatively few countries where two fundamentally different legal systems coexist.”¹²³ Canada and Cameroon fall into this small category. Thus, it is not an overstatement that like Canada, Cameroon could harmonize its dual legal system to its benefit, foster the rule of law, promote the separation of powers and by so doing attract public-private investment which will go a long way to create wealth and lift people out of poverty.

It is important to note that a well-drafted constitution that is improperly interpreted and executed is worthless. However, a poorly drafted constitution that is properly interpreted and executed will yield better results. The provisions of a constitution must be enforced based on the intent and spirit envisioned by the drafters of the constitution, guided by the context in which it was drafted. In other words, the constitution cannot be used as a ceremonial document; the executive, judicial, and legislative branches should be able to refer to the document for guidance in making decisions on the constitutionality of governmental, legislative, and judicial action.

In 1978, the [Canadian] federal government began drafting its bills and regulations using a team of two drafters, generally a Francophone jurist (usually a civil law drafter) and an Anglophone jurist (usually a common law drafter). In this way, co-drafting produces a final product that better reflects Canada’s two legal systems.¹²⁴

The ratification of treaties by the President must be subject to review and approval by the Parliament. Given that a signed treaty supersedes national law, it is only normal that the treaty will have to be reviewed and approved by the Parliament who represents the interests of the people. This will give parliamentarians the opportunity to receive feedback from their constituents, to conduct the requisite research to make sure that such treaties are beneficial to the country, and determine whether they are contrary to the Constitution and good judgment.

The laws guiding the formation of political parties in Cameroon are in dire need of review.¹²⁵ Persons or organizations interested in starting a political party need to meet certain reasonably high standards that will serve as a deterrent to those whose sole interest is free campaign

¹²² Debates of the Senate, 36th Parliament, 2nd Sess., 138 Hansard 58, 1440 (2000) available at http://www.parl.gc.ca/Content/Sen/Chamber/362/Debates/058db_2000-05-18-e.htm (last visited Oct. 4, 2014).

¹²³ Wellington, *supra* note 121, at 1.

¹²⁴ Wellington, *supra* note 121, at 2.

¹²⁵ See FRANCIS B. NYAMNJOH, MASS MEDIA AND DEMOCRATISATION IN CAMEROON IN THE EARLY 1990S 3 (2011). One such law is Law No. 90/056 of 19 Dec. 1990 (Cameroon).

money (tax payer money) from the government during elections, to those who cause unnecessary confusion, and to those who have no clear and concise political agenda.

There are unprecedented numbers of political parties in Cameroon for a country with a population of fewer than 25 million people.¹²⁶ Moreover, the main political parties will have to review their by-laws to permit members in good standing to have opportunities to hold leadership positions through free and fair elections that are not based on favoritism. In Cameroon, most, if not all, of the main actors (presidents and chairmen) of these parties use party resources as if the resources were their personal property that may be transferred from one family member to the other. This is a practice that must be put in check. There is no doubt that well-run political parties will produce great legislators, administrators, and administrative officers.

11. CONCLUSION

As aptly put by John Mukum Mbaku:

[M]ost African countries . . . have not yet transformed their political economies well enough to create institutional environments capable of promoting and sustaining significant improvements in human development. To promote genuine and sustained human development in Africa, each country must undertake necessary reforms to provide itself with institutional arrangements that . . . adequately constrain civil servants and political elites, provide the wherewithal for the effective management of ethnic and religious diversity, and promote entrepreneurial activities and the creation of wealth, especially among historically marginalized and deprived groups. Such a set of institutional arrangements is characterized by a general adherence and fidelity to the rule of law.¹²⁷

Cameroon does not have a rigid application of separation of powers, wherein various arms of the government will not be allowed to interfere with one another to better serve the people. Instead, what Cameroon needs is for the various branches of the government to check and balance each other such that no one branch becomes so powerful that the independence of the other branches depends on its will. The case of the politicization of the Cameroon judicial system can be contrasted with that of Botswana. Professor Fombad commented that, despite Botswana having a powerful executive and presidency, their “courts regularly

¹²⁶ *Data: Cameroon*, THE WORLD BANK, <http://data.worldbank.org/country/cameroon> (last visited Oct. 4, 2014) (noting a population of 22.25 million people. as of 2013); *The World Factbook: Cameroon*, CENT. INTELLIGENCE AGENCY, <https://www.cia.gov/library/publications/the-world-factbook/geos/cm.html> (last updated June 22, 2014).

¹²⁷ *Mbaku Rule of Law*, *supra* note 112, at 964.

review and invalidate irregular and illegal executive and legislative acts.”¹²⁸ As such, Botswana is an example that a country like Cameroon would want to emulate given their similar socio-economic, political, and geographical situations. All is not lost in Cameroon because there is still a chance for the liberalization of the judiciary. It will go a long way to reinforce the rule of law and hence attract skeptical investors, who are worried about government absolutism fostered by a one-party supermajority.

¹²⁸ Charles Manga Fombad, *The Separation of Powers and Constitutionalism in Africa: The Case of Botswana*, 25 B.C. THIRD WORLD L.J. 301, 341 (2005).