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The Changing Character in the Electoral System in Cameroon: From ONEL to ELECAM

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Abstract

The electoral system and election management seem to be a major impediment to democracy in most democratised African societies. The situation seems endemic and calls for concern, especially when the political party in power still exercises some rights over the body mandated by this. In Cameroon, and in the context of modern democracy as witnessed in the 1990s, there had been a series of transitions in the management of elections. In this regard, we noticed this evolution from the Ministry of Territorial Administration and Decentralization (MINATD), the National Elections Observatory (ONEL), and Elections Cameroon (ELECAM). The main objective of this paper is to assess the changes that took place between ONEL and ELECAM from 1990 to 2018. This work was fascinated by the consortium of data collected from both primary and secondary sources embodied in the historical analytical approach. Resulting from our findings, it's quite evident that the two managing election bodies differed in the field of operationalization. The first appears to be a blindfold, whereas the later appears to be more operational, both in theory and in the practical sense of its raison d'être, but still with numerous challenges.

Keywords: *Elections, Political Party, Democracy, ONEL, ELECAM*

INTRODUCTION

The presentation of the legal framework for elections in Cameroon was, until recently, a real challenge. This is because, after a little more than thirty years of elections without choice, the wind of democratisation that blew over the country at the turn of the 1990s brought with it the need to restore the mechanisms of free political competition experienced in the country before independence. Consequently, it became necessary to revise the legal rules governing national and local political elections in order to create formal conditions for the holding of pluralist, free and fair elections, in line with constitutional law No. 96/06 of January 18, 1996, which enshrined the terms of the new social contract for a democratic political society in Cameroon. This led to an inflationary production of electoral laws relating to institutional aspects as well as material rules governing each type of election. These texts are poorly coordinated and, moreover, are affected by a high degree of instability, reflecting the retreat of the legal regulation of elections in the face of an omnipresent but rather impotent political rationality due to the lack of consensus between the main political forces involved in the process of producing electoral standards. The result is a legal framework that is fairly obscure due to its fragmentation, redundancies, and cross-references. However, can we really talk about the mode of change between ONEL and ELECAM? To answer this question in this paper, we will first of all present the political context and the creation of ONEL, then moving on from ONEL to ELECAM and ending with the disputes of its organs.

I- The Political and Historical Context of the Creation of ONEL

This part will consist of presenting the political context, the foundation of ONEL and its functioning (joint commission), and ONEL.

1- The Political Context

Almost three decades ago, Cameroon broke with the political monolithism irrigated by the ideology of national construction and converted, formally at least, to liberal democracy and its requirements: the rule of law; multiparty politics and pluralist elections; fundamental rights; and protection of minorities. However, despite the significant progress made on these different levels, the democratic transition thus initiated has come up against three major obstacles that cover Cameroon's political future with a halo of uncertainty: cautiously framed rights and freedoms (A), an unfulfilled presidential alternation (B), and a national construction that needs to be perfected (C). In all respects, one of the highlights of the democratic renewal of 1990 was the dismantling of the legal arsenal of the authoritarian period during a single parliamentary session

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known as the "session of freedoms", which saw the consecration of all the fundamental texts currently applicable in terms of civil and political freedoms.[1]

Freedom of association, freedom of assembly, and freedom of expression in particular were to contribute to the establishment of a legal environment conducive to the development of a multi-party system and political liberalism more generally. In fact, the proliferation of political parties, 300 of which were legalised between 1985 and 2016, as well as the dynamism displayed in the communication sector, both in terms of the diversity of print, audio-visual, and internet media, and in terms of the content, with the manifestation of a particularly strong freedom of expression, suggest a real and fairly unbridled exercise of the rights enshrined in an environment of renewed freedom.

2- Basis of the ONEL

The creation of the ONEL came as a surprise in view of its attributions, which are very similar to those of the various electoral commissions. In short, the fundamental difference between the two structures lies more in their composition.

The birth of the National Elections Observation Office (ONEL) in Cameroon put an end to nine years of controversial management of electoral consultations while amply fuelling political debate and controversy in our country during the year 2001. The law establishing this body was passed by the National Assembly in a row. The opposition political parties massively boycotted the vote, demanding an independent national electoral commission (CENI), rather than a pale copy of the Senegalese model. According to the protesters, the 11 members of ONEL, appointed on October 10, 2001 by the Head of State, Paul Biya, belong for the most part to the Cameroonian People's Democratic Movement (CPDM), despite the law which stipulates that ONEL members are chosen for their intellectual honesty, moral integrity, probity, impartiality, objectivity, and sense of fairness and justice.[2]

The creators, on the other hand, foresee a new political era, that of the establishment of the democratic game, to which it gave birth on December 2, 2001. The diversity of stakeholders in the electoral process did not work for a better exercise of this fundamental right of the citizen at the time of the ONEL's creation. Consequently, an urgent reform of the law that institutes it is necessary, if not the restructuring of the electoral system as a whole. At the end of this analysis of the difficulties encountered in the effective implementation of human rights in some of legislative, legislative, and socio-cultural aspects, it seems appropriate to take a forward-looking look at their future, in a pedagogical approach that will be called perspectives. The founding text of the ONEL contains compositions that are likely to compromise its independence as intended by the legislator. The manifestation of this amputation of certain powers of ONEL in a matter as sensitive as the electoral process, appears from the definition of its decision, and extends to its composition and its functioning.

3- The Functioning of Election Control Bodies

The functioning of the commissions has not always been regular. They suffer from the control of administrative authorities and insufficient logistical means. The electoral law stipulates that the commissions for the revision of the electoral roll and for the control of the establishment and distribution of electoral cards are chaired by a representative of the administration designated by the prefect. In practice, it is the sub-prefects, their deputies, and the district chiefs who assume this responsibility. They exercise it according to a unilaterally elaborated calendar, and therefore the execution depends entirely on their will. It is therefore an extremely controlled process, the direction of which ultimately depends on the authorities concerned. Synonymous with the confiscation of the Commission's powers, the concentration of electoral tasks by these authorities does not rule out the possibility of errors characterised by omissions, whether voluntary or not, of citizens' registrations on the electoral lists. How can this be remedied? It is up to the prefects to be more attentive to the behaviour of their subordinates by taking appropriate sanctions each time they impose sanctions when they annihilate the exercise of the right to vote. This is all the more necessary as they have to concentrate their efforts on another crucial problem: that of insufficient logistical means. These means concern, in particular, the transport of the members of the Commission as well as their motivation.[3]

On the one hand, not all administrative authorities have a means of transport that can serve the needs of the Commission. And even for those whose transport issues have been resolved, the difficulty has not been completely resolved due to the limited capacity of these means of transport to receive all the members of the Commission on board.

On the other hand, the voluntary nature of the work of the electoral commissions is a source of demotivation since it is work of general interest. Hence their lack of commitment and the total restitution of all powers to the administrative authorities. The solution to these two problems lies in providing the administrative authorities with vehicles appropriate to the needs of their various functions. Furthermore, the provision that proclaims the voluntary nature of the members of the commissions in their electoral tasks should disappear in favour of a remunerated approach to the personnel involved. This would guarantee not only the desired motivation but, above all, the right to register voters due to their permanent presence within the group.[4]

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[1] *Alain-Didier Olinga, Le nouvel environnement juridique et institutionnel des élections au Cameroun, Yaoundé, PUA, 2007, p.221.*

[2] *ONEL, Reflection on the Cameroonian Law of December 19, 2000 Establishing a National Election Observation, 2nd Edition, Yaoundé, Presses de l'UCAC, 2002, p.74.*

[3] *Law No 2000/016 of December 19, 2000 to Establishing the National Elections Observatory.*

[4] *Z. Ould Ahmed Salem, "Gouvernance électorale et invention de la neutralité: La création de l'Observatoire national des élections (ONEL) au Sénégal", Paper presented at the conference Bilan des*

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Can we think that the inadequacies of the Mixed Electoral Commissions in terms of guaranteeing the right to vote, as outlined above, partly justify the creation of a National Elections Observatory (ONEL) in Cameroon by Law No. 2000/16 of 19 December 2000?

4- Structure of the ONEL

One would have expected that, as an independent body, ONEL would have a pluralist composition (administration, political parties, civil society, and independent personalities) and/or that its members would be appointed by different authorities, as is the case in some countries. The mode of appointment thus chosen constitutes a breach of its independence and implies for its members an allegiance to the authoritative person who appoints them, even in the case of a presidential election for which he is a candidate.

Consequently, sending its report to the President of the Republic, who has it published, is one of the manifestations of the influence of the executive on this body, which in the end is similar to an advisory body to the government and whose report will have no influence on the outcome of the election, regardless of the extent of the dysfunctions and irregularities.[5]

The sensitive point that really undermines the credibility of ONEL is its composition. According to Article 3 of the law, this body is composed of 11 members appointed by the President of the Republic from among independent personalities known for their moral integrity, intellectual honesty, morality and impartiality. This unilateral composition confers discretionary power on the President of the Republic, and this unilateral composition gives the President of the Republic discretionary power and makes him the sole judge of the qualities required to be appointed.[6]

The ONEL should be a permanent structure, endowed with its own resources by virtue of a law voted by parliament. Such autonomy would not only allow it to be independent of the government, but would also include the training of independent electoral officials and support staff who would be ready to go as soon as the circumstances demanded it. This approach implies a reform of the law on ONEL; otherwise, its influence in guaranteeing the right to vote in Cameroon will remain limited for a long time and its independence a fiction. It will not contribute to addressing the so-called conjunctural limitations that hamper the exercise of the right to vote.[7]

II- From ONEL to ELECAM

The presentation of this part will be structured around 4 sub-axes: the foundation of ELECAM; the structuring of ELECAM; the functioning of ELECAM and the particular issue of the coexistence of the electoral commission.

1- Reasons for the Transition from ONEL to ELECAM

Initially created by Law No. 2006/011 of December 29, 2006 on the creation, organisation and functioning of Elections Cameroon (ELECAM), which was amended several times before becoming the subject of Title II of Law No. 2012/001 on the electoral code, ELECAM is the structure in charge of organising, managing, and supervising electoral and referendum processes in Cameroon. As far as one can remember, the advent of this institution in 2006 was the result of a laborious but ultimately relatively fruitful dialogue between the opposition political forces and Cameroon's bilateral partners on the one hand, and the governing majority on the other, as regards the identification of an institutional solution for the organisation of elections outside the state administration.[8]

The strong political demand in this sense was first expressed at the initiative of the opposition. It was formally expressed by the tabling of a bill on the desk of the National Assembly in 1996 to create an Autonomous National Electoral Commission (CENA), at the initiative of the deputies of the National Union for Democracy and Development.

National Electoral Commission (CENA) at the initiative of the deputies of the National Union for Democracy and Progress (UNDP). But, far from being halted, the dialogue continued and took a decisive turn with the creation of a National Elections Observatory (ONEL) by law n° 2000/016 on December 19, 2000, as a government response to an increasingly pressing political demand.[9]

However, faced with a real question, that of the need for an alternative to the administration in the organisation of elections in Cameroon, ONEL only provided an extremely limited response due to numerous congenital flaws. These were linked to a fundamental problem: ONEL was not envisaged as an operational body responsible for the concrete organisation of elections; this mission remained the exclusive competence of the state administration, especially the Ministry of Territorial Administration. The Observatory, as for it, was confined precisely to a mission of observation or, more technically, by using the semantics of the legislator, of supervision and control. Hence, an extremely loose organic apparatus with uncertain durability outside electoral periods, relatively weak material and financial resources, and limited prerogatives, led to its being described as a monument of normative illusionism and institutional filling.[10]

On the basis of the above, and in all respects, the creation of ELECAM was therefore aimed at making up for the shortcomings and weaknesses of its predecessor, ONEL.

conférences nationales et autres processus de transition démocratique, February 19-23, in Cotonou, Benin, 2000.

[5] *Ibid.*

[6] *A. Nkarimou, La pratique des élections au Cameroun, 1992-2007: Regards sur un système électoral en mutation, Yaoundé, Ed. Clé, 2010, p.324.*

[7] *Ibid., p.326.*

[8] *A. D. Olinga, "La naissance du juge constitutionnel camerounais: la commission électorale nationale autonome devant la Cour suprême", Juridis, n° 36, oct.-nov-déc., 1998, pp.71-77.*

[9] *Law No 2000/016 of 19 December 2000 to Establishing the National Elections Observatory.*

[10] *ONEL, Reflection on the Cameroonian Law of December 19, 2000 establishing a National Elections Observance, p.7.*

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2- The Structuring of ELECAM

In terms of ELECAM's structure, two points rather than one should be considered. The first concerns ELECAM's institutional status (I), while the second relates more specifically to its organic architecture (II).

ELECAM's Status as an Independent Body

Since the creation of ELECAM took place in a context of disinvestment of the administration in the organisation of elections against the backdrop of the contestation of its neutrality towards the government, the question of the status of the new body, particularly from the point of view of its institutional link with the administration, appears to be central. The solution provided by the legislator in this area can be summed up in one word: independence. ELECAM has been given the status of an independent body. This independence is asserted both by the structure itself and by its members.

The Organs of ELECAM

Unlike its predecessor, ONEL, ELECAM is based on a dense and well-stocked organic apparatus with two clearly superimposed levels. Above are the central organs, the driving force of the institution. The lower level is made up of the territorial branches of ELECAM.[11]

The Central Organs

According to Article 8 of the Electoral Code, "For the execution of its missions, Elections Cameroon has the following organs: an Electoral Council (EC); a Directorate General of Elections (DGE)". These are the bodies that ensure the proper management of ELECAM. The authorities that embody them benefit by law from a certain number of guarantees of independence, which are not enough to completely erase the feeling of a form of dependence of their status on the decision-making power of the Head of State. This observation applies to both the Electoral Council and the General Directorate of Elections.[12]

The Electoral Council (EC)

The Electoral Council is the supreme organ of ELECAM. It is composed of 18 members, including a Chairman and a Vice-Chairman, who act as Chairman and Vice-Chairman of ELECAM. The members of the EC are all appointed by decree of the President of the Republic.

In principle, the power of appointment thus enshrined is framed both formally and substantively. At the formal level, the appointment of the members of the Executive Committee must take place after consultation with the political parties represented in the National Assembly and civil society (art. 12 (3) of the code). But, apart from the fact that the extension and limits of the civil society thus designated remain vague, the modalities of the consultation have not been specified. Moreover, it results in the formulation of opinions that are merely mandatory and not compliant.

In other words, although the President of the Republic is obliged to carry out the consultations provided for by the law, he is not bound by the results of these consultations. At the substantive level, his power of appointment is also framed by a set of rules in the electoral code which tend to define the profile of the members of the ELECAM Executive Committee in order to guarantee their integrity and impartiality. This is the case with section 12 (2), according to which the members of the Electoral Council shall be chosen from among personalities of Cameroonian nationality, recognised for their competence, moral integrity, intellectual honesty, sense of patriotism, and spirit of neutrality and impartiality. However, the administrative judge refused to exercise a control of legality on the presidential decree appointing members of ELECAM. The latter, qualified as an act of government, escapes, as such, the competence of the judge since, according to the law, no court or tribunal can deal with acts of government. This is so even though the decree appointing the members of ELECAM does not correspond to the definition given to the act of government by more than constant administrative jurisprudence as an act taken by the executive power in the order of the relations with the legislative power or the diplomatic relations with foreign governments.[13]

In any case, the members of the Executive Committee are appointed for a term of four years. This term may be renewable, which creates a risk of capture of appointed personalities who may be inclined to orient their actions in a direction favourable to the renewal of their mandate by the Head of State. The members of the EC take an oath before taking office. Their term of office ends early in the case of resignation or death. The President of the Republic also has the power to terminate the functions of a member of the EC before the end of his or her term. Finally, the integrity of the functions of an EC member is protected by a fairly broad regime of incompatibility, in particular with membership of a political party or a group supporting a political party, a list of candidates or a candidate. It is not superfluous to observe that these incompatibilities do not prevent the appointment to the EC of a person holding an incompatible position; they only require the latter to resign from the said position in order to be able to exercise his or her mandate on the EC of ELECAM. Many of these statutory provisions apply identically to the officials of the DGE.[14]

The Directorate General of Elections (DGE)

According to article 22 of the electoral code, the DGE is responsible for the preparation and material organisation of electoral and referendum operations under the authority of the Electoral Council. It is, in a way, the linchpin of ELECAM. The DGE is placed under the authority of a Director General, who may be assisted by a Deputy Director General. Both are

[11] *A. Schedler, "The logic of electoral authoritarianism", in Electoral Authoritarianism: The Dynamics of Unfree Competition, Boulder: Lynne Reinner Publishers. Inc; 2006, pp.1-23.*

[12] *ELECAM (Elections Cameroon), General report on the Evolution of the Presidential Elections from October 7, 2018, Yaoundé, SOPECAM, 2019.*

[13] *A. Nkarimou, La pratique des élections au Cameroun, p.330.*

[14] *Decree no 2008/470 of December 31, 2008 on the Appointment of Officials of Elections Cameroon.*

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appointed by decree of the President of the Republic for a term of five years, which may be renewed after consultation with the Executive Committee. The functions of the Director General and the Deputy Director General end in the case of non-renewal of the mandate, resignation, or death. It may also be terminated before the end of the term in the case of physical or mental incapacity or gross misconduct duly noted by the Executive Committee or in the case of final conviction for a disgraceful or infamous sentence. The functions of the Director General and Deputy Director General of ELECAM are also incompatible with the statutes listed in Article 17 as incompatible with the functions of the Executive Committee: - Member of the Government and assimilated; -Member of the Constitutional Council; -Active magistrate.

The General Director of a public establishment or a public and para-public sector company; - Director of a central administration and assimilated; - Person exercising a national, regional or local elective mandate; - Governor, Secretaries General and Inspectors General in the Governor's services; - Prefect, Sub-Prefect and their Deputies; - Traditional chiefs; - President of a consular chamber; - Officials or staff of law enforcement agencies in active service; - Persons who are ineligible or incapacitated for election; - Candidates in elections monitored by Elections Cameroon; - Members of a political party or a support group for a political party, a list of candidates or a candidate.[15]

Finally, in addition to the Director General and the Deputy Director General, the Chief Electoral Officer's Office comprises support structures which constitute, in a way, the central administration of ELECAM and operate under the hierarchical authority of the Director General. These structures comprise, in addition to the Cabinet of the Chief Executive Officer and that of the Deputy Chief Executive Officer, four major divisions, which are themselves subdivided into cells. These are the division of electoral and referendum operations; the division of information technology; the electoral file and statistics; the division of administrative and financial affairs; and the division of communication and public relations. This central superstructure is complemented by a network of territorial branches.[16]

The Territorial Branches

As provided for in Article 30 (1) of the Electoral Code, ELECAM has territorial branches at the regional (Regional Delegation), departmental (Departmental Agency) and communal (Communal Antenna) levels. The organisation and functioning of these bodies were set by a resolution of the EC No. 0004/ELECAM/CE of May 4, 2009 on the organisation and functioning of the territorial branches of ELECAM. As for the heads of these territorial branches, their appointment falls within the competence of the Executive Committee on the proposal of the Chief Electoral Officer for the regional delegates and of the Chief Electoral Officer on the approval of the Executive Committee for the heads of departmental agencies and communal antennas.[17]

3- The Functioning of ELECAM

The density of its organic apparatus cannot fail to pose challenges to ELECAM at the functional level. In this regard, if we consider the importance of the missions devolved to ELECAM in terms of organisation, management, and supervision of electoral processes in Cameroon. One immediately deduces that the capacity of the body to achieve its ends is closely correlated with the means put at its disposal (II).

The Powers of ELECAM

Under the cover of the overall mission devolved to it in terms of organization, management, and supervision of elections, ELECAM exercises a wide range of functions. Some of them fall within the competence of the Executive Committee (A) and others within the prerogatives of the Chief Electoral Officer (B).

Powers of the Executive Committee

The GB has particularly wide-ranging powers, which are essentially defined in Articles 10 and 11 of the Electoral Code. They can be classified into two main categories: The first category concerns the administration of ELECAM itself. In this regard, the Executive Committee is the body that controls and guides the actions of the DGE. Within this framework, the Executive Committee: adopts the internal regulations of Elections Cameroon; examines and approves the draught budgets prepared by the Chief Electoral Officer; approves the programme of actions prepared by the Chief Electoral Officer; approves the activity reports prepared by the Chief Electoral Officer; approves the appointment proposals of the Chief Electoral Officer in cases where such approval is required by law; and determines, on the basis of a proposal by the Chief Electoral Officer, the organisation and modalities of operation of the branches. A second category of competences of the GB concerns more specifically the organisation of elections. In this regard, according to the general directive established by the legislator in Article 10 (1) of the electoral code, the Executive Committee, and consequently ELECAM, shall ensure compliance with the electoral law by all stakeholders so as to ensure the regularity, impartiality, objectivity, transparency, and sincerity of the elections.[18]

[15] *Decree no 2008/463 of December 30, 2008 on the Appointment of Members of the Electoral Board of Elections Cameroon.*

[16] *Law No 2006.011 of December 29, 2006 to set up and lay down the Organization and Functioning of Elections Cameroon.*

[17] *L'Actu, "Listes électorales: Le Sous-préfet d'EboIowa II opte pour des inscriptions forcées dans les villages", in http://www.cameroon-info.net/stories/0,40206,@,listes-electorales-le-sous-prefet-d-eboiowa-ii-opte-pour-des-inscriptions-forcee.html, retrieved June 23, 2021.*

[18] *K. Yuh, "The Shortcomings of elections Cameroon within the electoral dispensation of Cameroon", in Cameroon Journal of Democracy and Human Rights, 2010, p.4.*

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To do so, the EC exercises three types of competences. Firstly, it has operational competence in the field of the organisation of elections in that it : carries out the verifications and controls it deems appropriate; examines the candidacy files and publishes the list or final lists of candidates for the presidential, legislative, senatorial, regional and municipal elections; transmits the minutes of the elections to the Constitutional Council or to the bodies provided for by the law; ensures that the list of members of the local voting commissions is published and notified, within the time limit, to all those who, according to the electoral law, must receive it, in particular the representatives of the lists of candidates; controls the setting up of the electoral material and the electoral documents within the time limit set by the law; Secondly, a contentious competence in matters of settlement of disputes and claims relating to pre-electoral and electoral operations, subject to the attributions of the Constitutional Council and the competent jurisdictions or administrations; power being given to it to order rectifications made necessary following the examination of claims or disputes received relating to the elections; thirdly, an advisory competence through which the EC is empowered to: issue an opinion or make suggestions on any draught text submitted to it in the field of elections; submit reports and/or proposals to the competent authorities on issues relating to elections; organise consultations with the administration, the judiciary, political parties and possibly civil society, within the framework of managing the electoral process.[19]

Responsibilities of the Chief Electoral Officer

Generally speaking, the Chief Electoral Officer ensures, on behalf of ELECAM, the preparation and material organisation of elections. Thus, under the authority of the EC, it is responsible for the constitution, management, updating, and conservation of the national electoral register as well as electoral documents and materials; and the acquisition and distribution of electoral materials and documents.

The establishment of the electoral lists, in liaison with the competent joint commissions; the publication of the electoral lists; the establishment of the electoral cards; the distribution of the electoral cards, in liaison with the competent joint commissions; the organisation or supervision of the training of the staff in charge of the polls; the preparation of the draught budget for the elections; the execution of the budget of the General Directorate of Elections and the budget for the elections; the reception and transmission to the Electoral Council of candidacy files for the presidential election and the legislative, senatorial, regional, and municipal elections; the receipt and transmission to the Electoral council of applications to participate in the referendum campaign; the reception and transmission to the Electoral or referendum campaigns; the coordination of the actions of observers accredited by the competent national authorities; the electoral or referendum campaigns; the electoral or referendum campaigns; the electoral or referendum campaigns; the electoral or referendum campaigns; the electoral or referendum campaigns; the electoral or referendum campaigns; the coordination of the actions of electoral or All these things make it necessary for ELECAM to have adequate means at its disposal.[20]

4- The Coexistence of the Electoral Commissions and ELECAM

In their present form, the electoral commissions were mostly created under the legislation prior to the creation of ELECAM, when elections were organised by the Ministry in charge of territorial administration. In this particular context, the electoral commissions, through their mixed structure of administration and political parties, were called upon to be the major guarantors of the sincerity of the operations carried out under their direct control in the pre-electoral and electoral phases up to the counting of votes and the proclamation of the results. The numerous irregularities that occurred during these phases of the elections and whose traces can be found in the decisions of annulment or reversal of election results pronounced by the Supreme Court, as well as in the observation reports emanating from society or even the ONEL, clearly show that the electoral commissions did not achieve the purpose for which they were created.[21]

Under these conditions, the maintenance of the commissions in the current institutional system, even though the elections are now under the jurisdiction of a supposedly independent administration, is even less justified. They are simply deprived of their raison d'être as separate entities from ELECAM and could have been integrated purely and simply into the organic apparatus of ELECAM. By turning away from this solution, the legislator has condemned himself to the establishment of a confused system made up of a disordered tangle of redundant and poorly articulated competences in the absence of a clear option between a vertical logic of hierarchy or a horizontal logic of coordination in the ordering of the competences of ELECAM and the electoral commissions. This is the case, for example, in the area of voter registration, where the competence of the territorial branches of ELECAM makes the existence of electoral card revision commissions superfluous, except possibly to control the work done at the grassroots level by the said territorial branches, which are themselves controlled by the DGE in this area.[22]

III- Pre-Election Disputes

The operations and acts preparatory to the election weigh heavily on the final outcome of the polls and their sincerity. However, when brought before the election judge within the

[19] *Ibid.*

[20] *S. Voufo Tiwoda, "ELECAM: Sociogenèse d'un Organe Électoral", DEA Thesis in Political Science, University of Yaoundé 2, 2011, p.43.*

[21] *Citizen Election Observation Mission (CDES), "Cameroon Releases Critical Observation Report on Cameroon's September 30, 2013 Legislative and Municipal Elections", in http://recorderline.blogspot.com/2013/11/cdes-cameroon-releases-critical.html, accessed July 22, 2021.*

[22] *J. Tingueu, Multipartisme et Démocratie au Cameroun, les Grandes Occasions Manquées pour l'alternance, Paris, l'Harmattan, 2017.*

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framework of post-electoral litigation, the defects that taint these operations may not receive any sanction. This is because, once the vote is over, the challenges raised leave the judge with only one alternative: the invalidation of the entire operation or the confirmation of the result despite the defects. Consequently, irregularities relating to the pre-voting phase should be examined and settled before the vote is held within the framework of so-called pre-electoral litigation, that is, classically, litigation relating to the material operations and legal acts preparatory to the voting phase and opened prior to it. Thus conceived, pre-electoral litigation is a relatively complex litigation because it is composite. First of all, the rules that structure it have not been grouped together in the code and are relatively scattered, which does not make them easy to understand. The litigation regime applicable to each category of preparatory operation in each type of election is not set out in the subdivision relating to litigation linked to the said election, but rather merged with the material rules relating to the operation concerned.[23]

Moreover, the electoral code explicitly provides for the litigation rules to be applicable to only part of the preparatory acts. Many decisions taken by the executive authorities in the preparatory phase of elections have no judge, at least not one formally designated by the electoral code. The guidelines of the related litigation were ultimately drawn by the jurisprudence of the two judges involved in the settlement of disputes related to electoral operations, namely the administrative judge and the constitutional judge. The intervention of the criminal judge is in some ways peripheral, and thus excluded from the scope of the analysis, because it is devoted to the repression of offences committed during the course of the said operations, rather than the control of the regularity of electoral operations themselves.[24]

For these reasons, an appropriate approach could consist of examining, under the heading of pre-electoral disputes, on the one hand, the disputes governed by the electoral code and, on the other hand, the disputes not governed by the electoral code.

1- Disputes Regulated by the Electoral Code and Suffrage Litigation

Pre-electoral operations are plural. The disputes likely to arise during the course of these operations are likewise plural. In fact, very concretely, in the pre-electoral phase, there are as many litigation systems as there are categories of operations. For the sake of clarity, we can distinguish at this level between the litigation of the vote and the litigation of the electoral campaign.

Technically, the right to vote has two components: the right to elect and the right to be elected. At the procedural level, the first requires registration on an electoral roll and the possession of a voter's card. As for the second, it is subordinated to the satisfaction of the conditions of eligibility which determine the possibility of standing for election. Consequently, the litigation of suffrage covers all the disputes likely to arise from these different operations, that is, the litigation of electoral lists and cards and the litigation of eligibility and candidacies.[25]

2- Litigation on Electoral lists and cards

The dispute over electoral lists and cards is a summary of the vagueness and procedural disorder that the electoral code maintains on the distribution of contentious competences in electoral matters. Under the terms of Article 10 (2) of the code, the Electoral Council is competent to hear disputes and claims relating to pre-electoral operations, including disputes and claims relating to registration on the lists and the distribution of electoral cards, subject to the powers of the Constitutional Council and the competent jurisdictions or administrations. On this account, it has the power to order the rectifications made necessary following the examination of the complaints or disputes received. At the same time, Article 63 provides that the CDS shall deal with complaints concerning the electoral cards and lists, ensure the control of the distribution of the cards, and order all rectifications deemed necessary following the examination of the requests and complaints.[26]

Symmetrically, specifically concerning the electoral lists this time, Article 78 (3) establishes the alternative competence of the Revision Commission or the CDS to rule on irregularities or omissions noted following the publication of provisional electoral lists, upon referral by any voter or political party. Article 81 even gives the EC the competence to examine requests for complaints or disputes relating to an omission, an error or the registration of a voter several times on the national electoral list. The right of referral belongs in this case to any voter, any representative of a political party or a candidate. In the event of the rejection of the application, the person concerned may appeal to the Court of Appeal of the jurisdiction of Elections Cameroon, which shall give a final ruling, without costs or form of procedure, within five (5) days of the referral. These provisions clearly pose a problem of internal coherence in the litigation of electoral lists and cards on several points. Firstly, the competences of the various bodies involved in the settlement of this dispute are not articulated between them, whether it is the relationship between the electoral commissions on the one hand (Commission for the revision of the electoral roll) and the electoral commission on the other, and between the latter and the EC on the other.[27]

Secondly, the rules of referral are not set out in an exhaustive manner. In particular, the deadlines for lodging challenges or

[23] *A. Bagui Kari, Le Contentieux Electoral en Questions, Yaoundé, Presses de GCC, 2004, p.142.*

[24] *Ibid., p.143.*

[25] *B. Giblin, "Géopolitique interne et analyse électorale", in Hérodote, n° 146-147, 2012, pp.71-89.*

[26] *Institut National de la Statistique, "Annuaire statistique du Cameroun. Recueil des séries d'informations statistiques sur les activités économiques, sociales, politiques et culturelles du pays jusqu'en 2013", Yaoundé, 2017.*

[27] *C. Fombad, "Election Management Bodies in Africa: Cameroon's National Elections Observatory in perspective", in African Human Right Law Journal, 2003, pp.25-51.*

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complaints concerning the electoral lists and cards are not specified. Similarly, as far as standing is concerned, the law refers only to voters, even though disputes over electoral lists may concern the refusal of a citizen to become a voter by refusing to register him or her on the list. Finally, the means of appeal are also imperfectly rationalised; only the appeal against the decisions of the EC ruling on the electoral roll dispute is formally provided for. The question therefore remains open as to what authority is attached to the decisions of the CDS and the Electoral Roll Revision Commission in this matter. If an attempt is made to clarify these rules relatively, it could not be done without recourse to analogy, which would make it possible to extend the rule applicable to the immediately neighbouring case to a case that is not clearly defined. On this basis, the current state of litigation concerning electoral lists and cards could be presented as follows: As far as the electoral cards are concerned, complaints or challenges can be introduced either before the competent CDS or before the EC, the law not providing any criterion of preference between the competing competences of the two bodies.[28]

As for the electoral lists, the related litigation has two levels. The first level takes place when the provisional lists are published at local level. Complaints and disputes can be lodged alternatively before the commission for the revision of electoral lists or before the competent CDS, again without the law specifying a criterion of preference or hierarchy of competence. Then, at a second level, this time concerning complaints and disputes relating to the national list, complaints and disputes are lodged before the ELECAM EC. In the event of dissatisfaction, the electoral code can be interpreted in two ways. Either the solution enshrined in the law on appeals against decisions of the EC is extended directly by analogy to the decisions of the Electoral Roll Revision Commission and the CDS; or in this case, once the decision of either of these electoral commissions has been rendered, the petitioner refers the matter to the Court of Appeal with territorial jurisdiction. Or, it is considered that the petitioner must necessarily obtain a decision of the EC, which is the only one that can be challenged before the Court of Appeal. In this case, after the decision of the list revision commission or the CDS, in case of dissatisfaction, the applicant must refer the matter to the EC, which in turn decides.[29] The applicant then has the possibility to appeal against the decision of the EC before the competent court of appeal in accordance with the law. This second interpretation is less favourable to the applicant in that it could lead to a lengthening of the duration of the litigation, the time limit for settling the dispute having been fixed imperatively only before the Court of Appeal, which has a period of five days in which to rule. However, this reading seems more consistent with the prevailing institutional logic, which results in placing the electoral commissions under the control of ELECAM.[30] In any case, the litigation on eligibility and candidature appears to be much less foggy, although not free of some slagging.

3- Litigation on Eligibility and Nomination Papers

As provided for by the electoral legislation, the candidacy for any election implies that the candidate is not ineligible and that he/she submits a candidacy file whose regularity is assessed by the competent services and sanctioned by a decision of acceptance or rejection. The electoral code then provides for two forms of litigation that may arise during the candidacy filing phase: litigation concerning the finding of ineligibility and litigation concerning the acceptance or rejection of the candidacy. In both cases, it is true, the systematic nature of the code is not beyond reproach. At the formal level, there is a phenomenon of redundancy and cross-referencing, which does not help the readability of the code. In any case, and in the end, from reference to reference, it turns out that in terms of litigation on eligibility and nomination papers, the law establishes, for the five types of elections governed by the electoral code, two litigation systems. One governs the litigation of candidacies for the presidential election and is applicable by reference to the legislative and senatorial elections; the other can be identified as the litigation of candidacies in national political elections, which falls within the competence of the Constitutional Council.[31] The other system, provided for the election of municipal councillors, also applies by reference to the election of regional councillors: it can be identified as the litigation of candidacies in local political elections, which falls within the competence of the administrative judge.

With regard to national political elections, the Constitutional Council is competent to determine the ineligibility of a candidate for the presidential election (Art. 118 (2)), for the election of deputies to the National Assembly (Art. 158 (2)), and for the election of senators (Art. 221). To this end, according to the Electoral Code, the matter may be referred to the High Court by any interested person or the public prosecutor. One cannot fail to observe that this legislative distribution of the right of appeal raises some difficulties: on the one hand, the notion of "interested person" does not have an immediately intelligible concrete content. Undoubtedly, the candidates and political parties involved in the election have an undeniable interest in the action. Should the same be said of the state in the name of the defence of legality? And on this basis, should the voter not also be considered an "interested person" in respect of the eligibility rules imposed on candidates? Finally, everything will depend on the policy of opening or closing the courtroom that the constitutional electoral judge will implement in the interpretation of the provision in question. This provision has another flaw in relation to the reference to the "public prosecutor": this body

[28] *E. Acha, "The Cameroon voters register: Electoral Apathy or Electoral Gimmicks?", in Cameroon Journal on Democracy and Human Rights (CJDHR), Volume 05, Number 1, June 2011, pp.4-24.*

[29] *O. Holtved, "Biometrics in Elections: Georgia: De-duplication or voter register and verification of voter identity using biometrics", 2012, in https://www.ifes.org/sites/default/files/biometrics_in_elections_2011, accessed July 23, 2021.*

[30] *Ibid.*

[31] *N. Gwaibi, Decentralisation and Community Participation: Local Development and Municipal Politics in Cameroon, Bamenda: Langaa RPCIG; 2016, p.36.*

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is simply non-existent within the Constitutional Council as organised by law no. 2004/004 of April 21, 2004 on the organisation and functioning of the Constitutional Council. Even though the practise of the Supreme Court acting as the Constitutional Council involves the Public Prosecutor's Office at the Supreme Court of constitutional litigation.[32]

Furthermore, in the context of national political elections, the Constitutional Council is also competent to hear appeals against decisions to reject candidacies or to publish the list of candidates for the presidential election (Art. 125 (3)), the legislative elections (Art. 167), and the senatorial elections (Art. 231 (new) (2)). Within this framework, the Constitutional Council must be seized within a maximum of two days following the publication of the lists by any candidate, any political party having taken part in the election or any person having the status of government agent for the said election. The appeal, which does not have suspensive effect, is lodged on a simple request and must specify, under penalty of inadmissibility, the facts and the alleged means. The petition is communicated to all interested parties by any rapid means, leaving a written trail, and then posted at the Constitutional Council within 24 hours of the filing of the petition. The statements in response are filed within 24 hours following the communication or posting of the petition. The Constitutional Council shall give a receipt to them. The latter gives its decision within a maximum of 10 days following the filing of the petition.[33]

With regard to local political elections, the competence to establish the ineligibility of a candidate belongs rather to the administrative judge, both for municipal elections (art. 176 (2)) and for regional elections (art. 252). Here too, as in the case of national political elections, the judge may be seized at the request of any interested person or the public prosecutor and shall give a ruling within three days of the referral. In addition, it is also up to the administrative judge to deal with disputes concerning the rejection of candidacies in municipal and regional elections. The matter may be referred to it by any candidate or any representative of a list or of the list concerned. In addition, in the case of municipal elections, any voter registered on the list of the municipality concerned and, in the case of regional elections, any member of the Electoral College may vote. Applications are made by simple request within five days of notification of the decision to reject or accept (regional) or the publication of the lists of candidates (municipal). In the framework of the regional election, the administrative judge rules within 07 days following the filing of the petition. This period is reduced to 05 days in the litigation of candidatures for the municipal election, without it being clear why this difference in regime. The decision of the administrative judge is immediately notified to ELECAM for execution as well as to the interested parties.[34]

4- Litigation of the Electoral Campaign

The electoral code regulates the settlement of certain types of disputes related to the electoral campaign. These are precisely the litigation of colours, acronyms, and symbols on the one hand (A), and the litigation of attacks on honour during the electoral campaign on the other hand (B).

The Dispute over Colours, Acronyms, and Symbols

According to the established rules, the choice of colours, acronyms, and symbols used by political parties and candidates is made at the time of filing the application. However, it can happen that more than one political party chooses the same or similar iconography. The resulting dispute is intellectually linked to the electoral campaign since these colours, acronyms, and symbols will be used in particular for the printing of campaign documents. For national political elections, however, the law deals with it simultaneously with the dispute over the declaration of candidacy and subjects the two disputes to exactly the same rules. However, the situation is quite different for local political elections. Here, on the one hand, as far as regional elections are concerned, the litigation of acronyms and colours obeys different rules from those of candidacy declarations, both as far as the time limit for referring the matter to the competent administrative court is concerned, which is three days from the date of publication of the candidacies or the observation of the alleged facts, and as far as the time limit granted to the judge to give a ruling is concerned, that is four days from the date of the referral.[35] No precision is made concerning the holders of the right of action, even if one can consider that the candidates or political parties whose colours and acronyms have been duplicated naturally have an interest in giving them standing to act. But, on the other hand, surprisingly, the electoral code does not contain any provision concerning the litigation of colours, acronyms, and symbols in municipal elections. In practice, it goes without saying that the confusion that would be caused among voters by lists of candidates with the same colours and acronyms would be likely to call into question the sincerity of the ballot. We must therefore reason by analogy to fill what appears to be a real legal vacuum by applying to municipal elections the rules laid down for disputes over colours, acronyms, and symbols in the context of regional elections.[36]

Litigation Concerning attacks on honour during an election campaign

Attacks on the honour of candidates, as well as all other offences, are prosecuted before the ordinary court, which is seized on a simple request. The ordinary court shall rule within a maximum period of four (4) days from the date of

[32] *M. Tchinngankong Yanou, "Le champ politique camerounais "à l'étranger" au travers des rivalités entre partis politiques", in Revue internationale de politique comparée, vol 26, 2019, pp.83-105.*

[33] *Directorate General of Elections, General Report on the conduct of the October 9, 2011 Presidential Elections, A Publication of the Directorate General of Elections. SOPECAM: Yaoundé, 2011, p.6.*

[34] *Directorate General of Elections, General Report on the Conduct of the Twin Legislative and Municipal Elections of September 30, 2013, A Publication of the Directorate General of Elections. SOPECAM: Yaoundé, 2013.*

[35] *Ibid.*

[36] *Ibid.*

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referral. It may pronounce the disqualification of one or more candidates. This text is in itself unequivocal. In an electoral campaign period, not all tricks are allowed. In particular, it is hardly permissible to attack the honour of a candidate. By virtue of Article 260 (2), the victim of such acts has a remedy before the criminal court, which rules in the conditions indicated above. In the event of proven facts, the sanction takes the form of the disqualification of the guilty candidate or candidates. The real question, because there is a question, concerns the scope of application of this article 260 (2). Indeed, it is combined with article 260, which is part of chapter IV (preparatory operations for the ballot) of Title IX of the electoral code on the election of regional councillors.[37]

Clearly, according to this indication, the scope of application of Article 260 (2) does not extend beyond the election of regional councillors. In other words, from this point of view, an attack on honour in other types of elections cannot be punished on the basis of Article 260(2). Such an interpretation is obviously too inconsistent to be accepted and must bow to the a fortiori argument: if the legislator intended to punish, by authorising their disqualification, candidates guilty of offences against the honour of competitors in the context of regional elections, all the more reason must it be considered that he intended to punish such behaviour in elections with more important stakes, such as the presidential, legislative, and senatorial elections. The reasoning by analogy allows the criminalisation of municipal elections to be extended to the criminalisation of Article 260 (2) in the context of regional elections. In any event, recourse to interpretation is inevitable here, as it is in the case of disputes not covered by the electoral code.

Disputes not regulated by the electoral code

The pre-electoral litigation as organised by the electoral code does not cover all the disputes likely to arise during the period of preparation for the voting phase itself. A number of legal acts occurring at this key moment of the electoral process have not been the subject of any indication as to their contentious regime. Despite the fact that their regularity, and thus that of the ballot on which they are one of the legal supports, is likely to be contested. Thus, whether it is a matter of the decree convening the electorate or the special division of electoral districts, or even decisions less high up in the hierarchy of enforceable administrative acts but no less decisive for the proper conduct of a poll, such as the acts establishing the composition of electoral commissions, identification of polling stations, allocation of airtime in the media for the electoral campaign, etc., no provision of the electoral law specifies either the body to be referred to in case of dispute or the procedure to be followed if necessary. Under these conditions, it seems useful to first look at the options that can be envisaged at the theoretical or speculative level (I) before dwelling a little on what can be considered at present as the solution enshrined in positive law based on an extrapolation of the existing jurisprudence.[38]

Conclusion

The main aim of this paper was to examine the political changes noted between ONEL and ELACAM all organs created by the head of state to manage elections in Cameroon within their time intervals. The early part of this paper duelled on the political context which favoured the creation of ONEL to manage elections in Cameroon. But it rather appears that ONEL been the first elections management body in Cameroon did not meet up with its aspirations for which it was mend during its creation in 2000. Some of its shortcomings resulted from its poor functioning, as ballot boxes were not transparent at the time, and there were numerous disputes and litigations during and after elections in his reign. In view of his failures to manage elections in Cameroon, the President of the Republic of Cameroon was obliged to introduce an innovation by creating ELECAM in 2008 to replace ONEL. From our analysis, the newly created elections body have upper hands in managing elections in Cameroon from its creation to present as opposed to the later. Some of the changes drowned from this new body is independency in its activities, not direct controls from the ministry of territorial administration as was the case with ONEL. It should however be noted that, the institutional and legal framework creating ELECAM was brutes with more powers as oppose to ONEL who operated as an organ placed by then within the ministry of territorial administration and decentralisation.

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