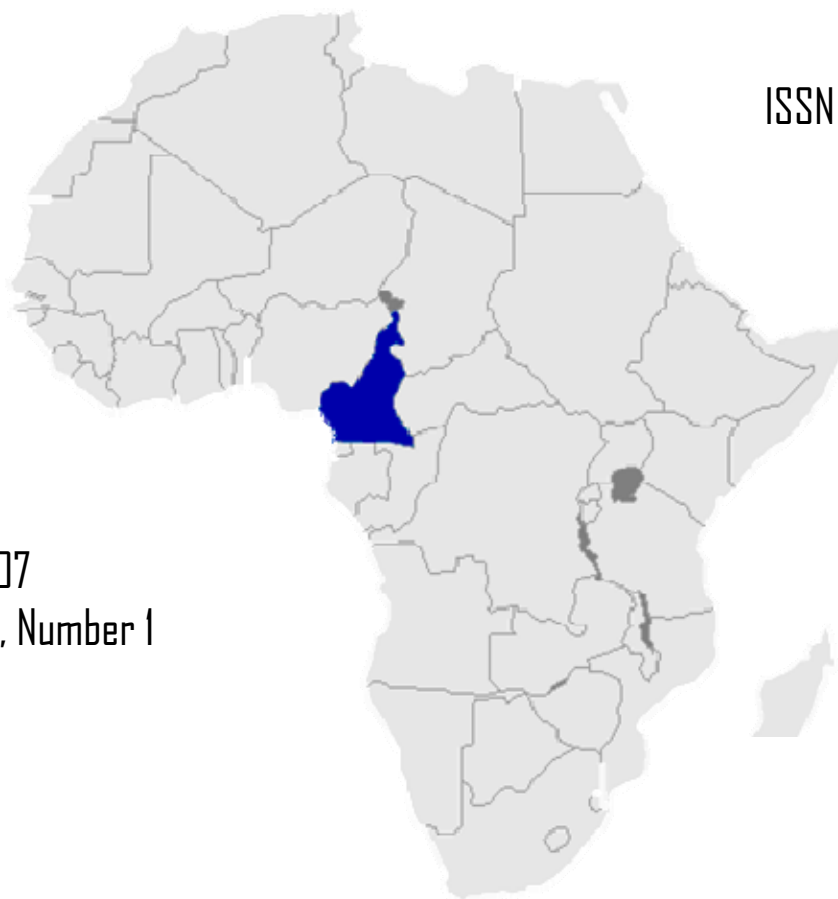


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THE PROSPECT OF A PRESIDENCY FOR LIFE IN CAMEROON: FACING THE REALITY OF THE NEO/MINATD CHARADE

Eric NGONJI NJUNGWE*

1. Introduction

There is a growing call for the implementation of the law creating Elections Cameroon (ELECAM). Amazingly, this call is most heard among opposition political parties. While some are adamant about having this new electoral institution put in place before the July 2007 Municipal and Parliamentary elections, others have gone beyond the request for the establishment of ELECAM to the postponement of the July elections if ELECAM is not the official body to organize and supervise these elections.

2. NEO and MINATD

However, this relentless call by major opposition parties is baffling. It appears they are now convinced that ELECAM could do a better job than the National Elections Observatory (NEO) and the Ministry of Territorial Administration and Decentralization (MINATD). Opposition parties had opposed the establishment of an electoral body as weak as ELECAM, and rightly so because ELECAM is a farce. But more surprising is the fact that the government seems frightened to set in motion the steps needed to get this new electoral body in place before the June elections. Whatever the outcome of this wrangling, the government has until June 2009 at the latest to get ELECAM operational, according to Law No. 2006/011 of 29 December 2006 creating ELECAM.

Section 42 (3) of this law states that:

“As and until Elections Cameroon is effectively put in place, over a period which should not exceed 18 (eighteen) months, the National Elections Observatory

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(NEO) and other relevant electoral state bodies shall continue to carry out their respective electoral duties”.

If effect, this law, which was drafted by the government and rubber-stamped by the country's docile and applauding parliamentarians, bestowed upon the government the latitude to legally manipulate the organization, management, and supervision of the July 2007 elections without having to set up ELECAM.

Meanwhile, in spite of the fact that ELECAM falls far short of the Independent Electoral Commission Cameroonians had called for, it seems preferable to the nightmare of again having the NEO/MINATD squadron oversee the conduct of elections in Cameroon. NEO is highly dependent and manipulated by the government while MINATD is directly answerable to the chairperson of the ruling party who is also the President of the country. Under such circumstances, it is doubtful how these institutions could ever organize even the semblance of a free and fair election in Cameroon. They are in existence to serve the President and his ruling party and have always achieved their fraudulent objectives with distinction.

Whatever the case, Cameroonians may have to wait until after the July 2007 elections for the government to begin the process of getting ELECAM operational. By that time, NEO/MINATD would have given the President and his ruling party victory in the Municipal and Parliamentary elections with complete control of the National Assembly. With a majority in parliament, the other elements of the “Grand Agenda” will then be set in motion. This will include an amendment to the country's constitution to satisfy President Biya's insatiable quest for power.

3. Issue of Constitutional Amendment

Part XI of the Cameroon Constitution (Law No. 96-6 of 18 January 1996) deals with amendments. Article 63 states as follows:

(1) Amendments to the Constitution may be proposed either by the President of the Republic or by Parliament.

(2) Any proposed amendment made by a Member of Parliament shall be signed by at least one-third of the members of either House.

(3) Parliament shall meet in congress when called upon to examine a draft or proposed amendment. The amendment shall be adopted by an absolute majority of the members of Parliament. The President of the Republic may request a second reading; in which case the amendment shall be adopted by a two-third majority of the members of Parliament.

(4) The President of the Republic may decide to submit any bill to amend the Constitution to a referendum; in which case the amendment shall be adopted by a simple majority of the votes cast.

Article 64 states that:

“No procedure for the amendment of the Constitution affecting the republican form, unity and territorial integrity of the State and the democratic principles which govern the Republic shall be accepted”.

According to Article 6(2) of the constitution:

“The President of the Republic shall be elected for a term of office of 7 (seven) years. He shall be eligible for re-election once”.

In sum, article 63 gives the President or the Parliament the power to propose an amendment to the constitution. Such an amendment could include anything not prohibited under article 64, including an amendment to extend the term of office of the President. Any proposed amendment would just require a majority vote of the Members of Parliament (which is dominated by the President’s party). The fact that the July 2007 Parliamentary elections will be organized by NEO/MINATD almost certainly guarantees victory for the President’s party. With their Parliamentary majority maintained, an amendment to article 6 of the constitution becomes easy. The term of office of the President of the Republic will be extended and Paul Biya will legally have the opportunity of running for office at the end of what is supposed to be his last term in 2011. This prospect

leaves open the possibility of him becoming “President for Life” (King Biya) of Cameroon.

The feasibility of this prospect lies in the fact the survival of most corrupt politicians and pro-ruling party business persons is highly dependent on maintaining the status quo. Their whole machinery will crumble in the absence of the Paul Biya apparatus. Accordingly, they may proactively engage in getting him to stay longer than required because it is their interest to do so. Therefore, the struggle for democracy in Cameroon should not be limited to getting one person out of the way of development and progress of the country. It should be holistic and focused on dismantling the entire corrupt autocratic apparatus that has been sinking the country into despair for the past quarter century. This should then be followed by the delivery of justice, which must involve holding people accountable for their actions through appropriate legal channels.

4. Conclusion

The road to genuine democracy in Cameroon is at stake of being prolonged. There is an exigency to put a stop to the move towards "president for life" in Cameroon. Cameroonians may have waited too long to get over the words “President Biya”, but certainly, they do not want to learn the new words - “King Biya”. It is time for positive action from every segment of the population. Education is the key in this effort. I implore every Cameroonian to be his neighbor’s teacher. Information sharing and communication on issues of concern to our country should dominate all other discussions. Civil society organizations, the clergy, intellectuals, students, and every concerned Cameroonian must make a concerted effort towards making Cameroon a just and democratic society.

Cameroonians have the right to a government that works for their best interest. The regime of Paul Biya will absolutely fail any test of a good government and it is just sensible and ethical for this government to relinquish power as soon as possible, if feasible, before the expiration of its term in 2011. For the past 25

years, the Biya regime has failed to meet the aspirations of Cameroonians and any move towards the institutionalization of a presidency for life will not only agitate Cameroonians further, but will actually aggravate the already rickety socio-political situation and possibly provoke unforeseeable and regrettable consequences.

A BRIEF OVERVIEW OF THE MEANING OF DEMOCRATIC ELECTIONS

Joseph TANYI MBI^{*}

Jeane Kirkpatrick, Scholar and former US Ambassador to the United Nations define Democratic Elections as not merely symbolic....

"They are competitive, periodic, inclusive in which the chief decision makers in a government are elected by citizens, who enjoy broad freedom to criticise government, to publish their criticism and to present alternatives."

Jealous of the above definition, article 2(2) of the Cameroon Constitution states that "the authorities responsible for the management of the State shall derive their powers from the people through elections by direct or indirect universal suffrage, unless otherwise provided for by the constitution". Article 2(3) states that "the vote shall be equal and secret, and every citizen aged 21 years and above shall be entitled to vote".

On the other hand, article 3 states that "political parties and groups shall help the electorate in the making of voting decisions. They shall be bound to respect the principles of democracy, national sovereignty and unity. They shall be formed and shall exercise activities in accordance with the law".

According to the learned scholar, Kirkpatrick, democratic elections are competitive, when opposition parties and their candidates enjoy the freedom of speech, assembly and movement necessary to voice their criticism of the government openly and to bring alternative policies and candidates to the voters. Simply permitting the opposition access to ballot is not enough. Elections in which the opposition is barred from airwaves, has its rallies harassed or its newspapers censored are not democratic. The party in power may enjoy the

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advantage of incumbency, but the rules and conduct of the election contest must be fair.

Democratic periodic elections do not mean electing dictators, or Presidents-for life. The elected officials must return to their voters at prescribed intervals to seek their mandate to continue in office. Those who failed in the execution of their democratic duties run the risk of being voted out of office.

Furthermore, in democratic election, the population of the citizens of the voting age in the country must include a large portion of the adult population. A government chosen by a small exclusive group is not democratic. Another important element in democratic elections is that voters should be permitted to cast their votes in secret to minimize the effect of intimidation. Ballot boxes and vote counting should be conducted openly as possible so that the citizens are confident that the results are accurate.

Accepting the results of the polls is also an important ingredient to be respected in democratic elections by the actors concern. No matter who wins, both sides should accept the results and strive to contribute to solving the common problems of the country. If the incumbent party loses, it should be readily and peacefully turn down power and vice versa. After all, democratic elections are not a fight for survival, but a competition to serve.

The above notwithstanding, the losers always find it difficult to accept undemocratic election results. Civil wars, uprisings, demonstrations and coups d'états are some of the products of undemocratic elections. Democracy in itself guarantees nothing. It offers instead the opportunity to succeed as well as the risk of failure. It is a promise that free human beings, working together, can govern themselves in a manner that will serve their aspirations for personal freedom, economic opportunity, and social justice. In the words of late Josef Brodsky, Russian-born poet and Nobel Prize winner, "A free man, when he fails,

blames nobody." The citizens of democracy must take responsibility for the fate of the society in which they themselves have chosen to live.

Commenting on the imposition of candidates against the principle of democracy, the first magistrate of the Buea Municipality (Lord Mayor), a soft-spoken, apocalyptic and refined politician who also doubles as the current Section President for CPDM Fako III said "any attempt by Yaounde to "doctor" the official and democratically elected councilors' list for the upcoming elections for his constituency will be considered as suicidal by the militants."

Free and democratic elections, therefore, is the central institution of a democratic representative government. And the principal mechanism for translating that consent into governmental authority is the holding of free and fair elections. Election rigging, fraud, intimidation and commercialisation of votes are not within the concept of democratic elections. The use of unorthodox means to achieve political power is therefore unacceptable.

PAUL BIYA BI MVONDO: DISCIPLE OF MACHIAVELLI OR A SHEER RUTHLESS AND CAREFREE DICTATOR?

Edmond R. NSHEUKO*

Reading through the book “THE PRINCE” by Niccolo Machiavelli, Images of my country and its political landscape dangled in my mind. I could see how well the principles described by Machiavelli apply to this African nation and how the government’s control over the country is so overwhelming. I wouldn’t be surprised if this book was used as a “Bible” by our leaders. They have managed to maintain their power for the past 24 years and there is too much similarity between the principles laid out by Machiavelli in his book and the way the country is being run by the Cameroonian hawks. I selected two of the principles at random, just to see how they apply to the Biya regime.

Machiavelli says that, as a leader you cannot be loved by everyone, so try to be loved and feared at the same time, but of the two, choose to be feared. Biya tried love at one point, but obviously he wasn’t that good at it. So, he settled for FEAR and it seems to be working, at least for the time being. After 24 years in power, his sadism has reached a point where no sordid action cannot be justified. As long as he stays in power, the rest of the people can die:

- Students are killed in for protesting a patent abuse of authority by the Minister of Higher Education;
- Prison warders are being put in jail for reclaiming their rights as workers;
- Plantation workers tortured and jailed for demanding back pay and better working conditions;
- Student leaders banned from attending state schools for leading peaceful protest;
- Business forced to liquidate because their owners sympathize with opposition parties;

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- Opportunities shunned for some because of the language they speak and the region they come from;
- Excessive force and fear is being used to shut the people up. Etc;

“Le Cameroun, c’est le Cameroun” our leader once said, and we are seeing it.

Machiavelli also states in his book that a ruler cannot please everybody all the time, so therefore, he has to be cunning in order to maintain control. Biya is cunning and he is also a coward. It is obvious he is not there to please anyone other than himself. He uses absence and manipulation to control his people. Biya's constant absence creates a void between him and the Cameroonian people. No one knows where he is at any particular time or what he is doing. No one knows where he stands on certain issues and people usually do not know how to contradict him. How can one debate a man without opinion? The best one can do under such a situation is to speculate.

The relationship between Biya and the Cameroonians people is now characterized by some sort of disdain and resilience. Everybody is sick and tired of him and secretly prays that he should collapse and die as soon as God can allow that to happen. Other pray that someone should actively help in this process, but very few are willing to take action. Some have tried and failed, some are still trying and it is obvious that this status quo cannot stand forever. Every year we listen to the same speeches, marked by an obvious disconnect with reality. If Biya can be proud about the country being classified as a Heavily Indebted Poor Country (HIPC), then it says a lot about the direction he plans to take the country in the future.

The Biya regime is like a huge roadblock to the socio-economic and political well being of the Cameroonian people. Corruption, embezzlement, incompetence and above all lack of interest for the future of the country are the main characteristics of his government. The country has been plunged into a jungle warfare, where

only the most corrupted and corruptors are able to survive. Morality, virtue, and ethics have been systematically neutralized.

We Cameroonians are also to be blamed for this situation. We are the ones in the offices, in the hospitals, in the market and above all we are the ones corrupting the officials on a daily basis. We always say we had no choice but to corrupt the authorities in order to get the services that we need. But remember one person is enough to start a revolution. That person may be you, it may be me. Together lets stand up and fight the ills of our society. Now is the time.

CHINA AND THE NEW SCRAMBLE FOR AFRICA

Moses NJEI TIMAH^{*}

The Chinese president Hu Jintao began his eight-nation African tour in Cameroon Tuesday. Cameroon is his first stop in a journey over the next 12 days that will take him to such other African countries like Sudan, Liberia, Namibia, South Africa, Zambia, Mozambique and the Seychelles. As he has always done in previous trips, the Chinese leader is going to sign many trade agreements with his African counterparts. Most of the agreements will be connected to securing uninterrupted supply of African natural resources to China.

As her economy enjoys uninterrupted growth for more than a decade, China's appetite for raw materials has become insatiable. The Chinese leadership recognizes the strategic importance of African resources in their economic equation. That is why they are doing everything to court the Africans. Currently, a third of China's oil import comes from Africa. Hu Jintao is making his third visit to the continent and it comes on the heels of the recently organized Sino-African Summit that took almost all African heads of states to Beijing last November.

The Chinese will publicly tell you that they are expanding trade and extending foreign aid to Africa. Yes, trade with Africa last year exceeded \$55 billion. Just like the trade with the Europeans that came before them, the African side of the trade involves exporting mostly 'cheap' but very valuable raw materials in exchange for manufactured consumer products. As for the aid, it can be generally said that the Chinese are aiding Africans. They are involved in building infrastructure and extending soft loans to Africa. Whether that is aid, or an inducement, or a tip or even a bribe will depend on who analyses it. Africans have been receiving this stuff called 'AID' before but have never succeeded to

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come out of poverty or avoided falling into the debt trap. Some resource-rich nations amongst them actually graduated with an Heavily Indebted Poor Countries certificate (HIPC) to show for their many years of receiving 'aid' from the West.

In the 1870s and 1880s the Europeans scrambled for Africa principally because of African resources. This led to the partition of Africa to the benefit of the Europeans without due regard to the interest of the Africans. Incompatible people were fused together under one country and some ethnic groups and even families were divided and their members found themselves on different sides of international borders. Today, some of the contradictions created by the colonialists are still resonating in different forms.

The Chinese are coming to Africa at the time that some of the legacies of Africa's colonial past have manifested themselves in very dramatic ways. Typical examples are the Rwandan genocide and the crisis in Sudan. Just like the Europeans before them, the Chinese seem to give the impression that they do not particularly care about the interest of the Africans as they pursue their quest for resources on the continent. It was, to say the least shocking for Africans to see Mao's China trying to block the sanctioning of Sudan at the United Nations for her role in the ongoing genocide in the Darfur. The behavior of China (a permanent member of the UN Security Council) places her firmly on the side of the al-Bashir regime in Sudan that has been accused of crimes against humanity. This type of diplomacy is tarnishing the image of a China that Africans were expecting her to be the voice of the oppressed at the UN Security Council.

The demand for African resources can only skyrocket with the passage of each day. If you consider the sheer size of the combined population of China and India (both of whose economies are expanding rapidly) and their needs for resources to feed their industries, you will then easily appreciate the magnitude of the pressure. The eyes of the West and the East are all focused on Africa and a new

sophisticated and desperate scramble for Africa is already in progress. As it happened with the previous scramble, Africans are emerging as the losers.

The availability of resources in Africa has fanned most of the continent's wars. Corruption, bad governance, insecurity and instability are other characteristics of a continent reeling under the effects of multiple influences and pressures. As different contending powers try to have an edge over each other, they do everything to ensure that their local allies gain political power usually by unfair methods. Those African rulers that eventually emerge usually work to satisfy their godfathers abroad to the detriment of their citizens' interests.

As Hu Jintao comes calling, ordinary Africans watch from the sidelines as they did with the West. Like their parents before them, Africans will listen to sugar coated speeches about an imminent bright future that will hardly materialize. The only things they surely will see after Jintao's visit are more trucks and trains ferrying timber, diamonds, bauxite, copper, etc, to the seaports. They will feel the impact of more environmental degradation and underdevelopment and should begin to understand why some of us say that natural resources are a curse to Africa.

JAUNDICED LAWS AND THE 2007 TWIN ELECTIONS IN CAMEROON

Dr. Michael A. YANOU*

Here comes another twin election for parliament and the councils and another moment to reflect with fellow folks on the management of elections in our beloved country. Will the opposition accept the verdict of Ministry of Territorial Administration and Decentralisation (MINATD) or will it still be the usual lament that victory had been stolen? No one can of course dispute that we are amongst the few nations who adhere to the right of the people to have the opportunity to choose their leaders in periodic elections. Agreed, this is the bright side to the story but what is in this right if the people cannot guarantee the protection of the outcome of the exercise? Further still, what if some poor folks are excluded from the elections as has been the experience in the past?

MINATD is at it again disqualifying candidates of opposition parties across the country while turning a blind eye on the CPDM list containing the names of people who did not as much as even present themselves for primaries in their constituencies! The signs are ominous that there will be significant disputes concerning the transparency of this election. Although I respect NEO and its publicity obsessed Ntumfor who has been boring us with empty newspaper declarations, most Cameroonians doubt the credibility of this organization. Why has NEO never ever brought any legal action to sanction any election official for violating the electoral law in spite of the expertise it has in a lawyer clothed with authority from the Fons and the state?

Election remains such a source for concern that contri-people need to receive legal advice on what needs to be done in case of any eventuality. Why? Because Law No. 2006/010 of 2006 (Election Law) which asserts that the results of the

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elections can be challenged by any voter, candidate as well as a representative of the government gives the average Cameroonian a strategic role in determining the destiny of this country. Excellent liberal provision you may say! Wait a minute because it may not be as glistering as it seems at first sight.

This same Law says that every Cameroonian aged 20 years and above has a right to vote at the elections. However, as you go to check whether your name has been posted as a registered voter at the D.O.s office, you may wish to trim your expectations as this right has been seriously curtailed. The law which gives you the right to vote at the same breadth allows the electoral officers to decline to register you for a matter as simple as the fact that a warrant of arrest has been issued against you! Indeed, a businessman declared by a court as bankrupt (poor and or incapable of paying his debt) may be refused the right to vote. Strange when compared to a country like South Africa where convicts are registered to vote.

Candidates, political parties and ordinary voters could from a broad interpretation of section 77 of the 2006 law object to a variety of irregular actions of electoral officials. Good in principle but of what use is a complaint by someone who has been refused registration by a district officer to a commission under this same officer's influence? Getting results for protest over election irregularities is no easy task in this country. Lawyers in Kumba will for ever remember how their case challenging the administration in the town's high court for insisting that potential voters get a certificate of residence from a local chief was conveniently "adjourned" for hearing after the election.

Some will cite examples of successful petitions at the Supreme Court annulling fraudulent elections in the past as evidence of the democratic strength of our system. Although this may well be the case, there are problems with this kind of thinking. Recall the drama in 1996 involving the refusal of government to surrender three councils in Yaounde won by the SDF in spite of the court's

decision affirming the party's victory? Howsoever you see the Supreme Court's inability to ensure respect for its decision, this impotence by a court which openly concedes that its "hands are tied" does not inspire confidence in the electoral process.

Added to the above disturbing feature is the strange requirement that the petitions be brought at the court in Yaoundé within five days from the publication of the result being challenged. Can a candidate who feels that the results of an election conducted somewhere in a council in Maroua is fraudulent be said to have a realistic opportunity to challenge the exercise in five days? When will the facts supporting the fraud be collected? How about the actual preparation of the petition by his/her lawyer and the trip by road and rail from the Far North to file the petition in Yaounde?

Besides, the idea of having the case done at the Supreme Court is rather suggestive. It runs counter to the need to ensure that an election dispute be resolved in the court of the place where the people voted. In real democracies even within Africa, challenges to undo election results that have been challenged are heard in local courts or tribunals where the people directly involved will be in a position to appreciate how their vote has been ultimately determined. Does this read like a pen bashing outburst against our particular brand of advanced democracy? You are entitled to your views in the same way as an individual voter whom the law expects to travel from Akwaya to complain about a fraudulent publication of result in Yaounde is deserving of his nightmare.

ADMINISTRATIVE DETENTION AS A HUMAN RIGHTS VIOLATION IN CAMEROON

Joseph TANYI MBI^{*}

The liberty of every human being has always been considered in criminal law and by human rights activists across the globe as fundamental. The Universal Declaration of Human Rights adopted by resolution 217 A (111) of 10th December 1948 of the General Assembly of the UN states in its article 8 thus: No one shall be subjected to arbitrary arrest, detention or exile.

The Cameroon Constitution and the harmonized Criminal Procedure Code has clearly defined the conditions under which any individual being suspected of having committed any offence can be arrested and detained. This consists of pretrial detention and post trial period. Criminal investigation is the prerogative of the Legal Department and the forces of law and order or some public servants who have been assigned judicial police duties by a special instrument. Is there any such instrument?

However, Law No. 90/054 of December 19, 1990, on the Maintenance of Law and Order clearly spelt out when and how law and order should be maintained by administrative authorities.

Section 2 states that Administrative authorities may at all times and depending on the circumstances, take the following measures within the framework of operations for the maintenance of law and order:

- Control the movement of persons and goods;
- Requisition persons and goods according to law;
- Requisition the police and the gendarmerie to maintain or restore order;

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- Take measures to detain persons for a renewable period of 15 days in order to fight banditry.

Succinctly speaking, while the law authorizes administrative authorities to control the movement of persons and their property, requisition of the forces of law and order, the powers to order the arrest and detention of any individual is strictly limited to cases of fighting banditry. Therefore the arrest and subsequent detention of any person by an overzealous administrative authority under the guise of maintenance of law and order to my mind is illegal. Maintenance of law and order does not per se require arrest and detention.

Meanwhile, the above cited law sounds like a mockery of the entire Cameroon criminal judicial system. Banditry or organized robbery is a very serious offence punishable under Cameroon's penal code. The legal department is charged with the responsibility of directing criminal investigation. Can the administrative authorities direct investigation under the Cameroon law? What happens to the bandits arrested pursuant to the instructions after the statutory renewal period?

It is for this reason and in a bid to check over-zealousness that the new Criminal Procedure Code has provided for a special and speedy procedure before the competent High Court to hear applications for the immediate release of persons arrested or illegally detained without observing the formalities prescribed by law or against administrative remand measure.

This Procedure is commonly referred to as HABEAS CORPUS. A writ of *Habeas Corpus ad Subjiciendum* is a Latin maxim meaning, "that you have the body to submit to" or a writ directed to someone detaining another person and commanding that the detainee be brought to court. Frequently, it is used to ensure that the party's imprisonment or detention is not illegal.

Section 584 of the Criminal Procedure Code states:

- 1) The President of the High Court of the Place of arrest or detention of a person or any other judge of the said court shall have jurisdiction to hear applications for the immediate release based on grounds of illegality of arrest or detention or failure to observe the formalities provided by law”.
- 2) He shall also have jurisdiction to deal with applications filed against administrative remand measures. Administrative authorities have no immunity against criminal prosecution.

Therefore, any administrator who, without just cause illegally cause or deprives another of his liberty may face the arm of justice under section 291 of the penal code without prejudice to civil action for the claim of damages. The penalty for any deprivation of liberty is between five to ten years in prison and with a fine from FCFA 20,000 to 1 000, 000 and where the loss of liberty last for more than a month, the penalty is between 10 to 20 years.

A BRIEF COMPARISON BETWEEN THE SOUTH AFRICAN AND THE CAMEROON NATIONAL HUMAN RIGHTS COMMISSIONS

Eric NGONJI NJUNGWE*

1. Introduction

National Human Rights Commissions are national institutions created to monitor human rights situations within countries. Although some national commissions have been created in compliance with recommendations of the United Nations Human Rights Committee, others have only been established following citizens' pressure and demand for greater democracy. This is the case of the National Commission on Human Rights and Freedoms of Cameroon, which was created in 1990 as part of an involuntary response by the government to the citizens' call for accountability. On the other hand, the South African Human Rights Commission was established in 1995 following a period of transition from a racial regime to democracy. While both Commissions have similar objectives, they differ extensively in their ability to carry out their duty.

2. Similarities of the Commissions

Just like any other national human rights institution, both the South African and the Cameroon Human Rights Commissions seek to achieve two broad objectives: to promote and protect human rights nationally. Both commissions are realizing their promotional objective by organizing workshops, seminars, and conferences. They hold sensitization programs on radio and television, and they encourage the integration of human rights courses in school curriculum. They are equally accomplishing their protection mission by hearing complaints of human rights violations, making inquiries and investigations into abuses, and visiting detention centers, police cells, and prisons.

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3. Difference of the Commissions

3.1. Autonomy

Despite the fact that both Commissions have done a substantial job in achieving their objectives, they differ extensively in authority and their ability to effectively and efficiently perform their mission. Concerning their autonomy, the South African Commission was created by an Act of Parliament passed by the National Assembly. Accordingly, the Commission is responsible solely to the National Assembly not to the executive branch of government. The Commissioners are elected by the National Assembly through an open and transparent process, including public interviews and scrutiny, which ensure that Commissioners are elected from among the most competent persons. The fact that the Commission is only accountable to the National Assembly provides sufficient basis for its independence.

By contrast, the Cameroon Human Rights Commission was created by a Presidential decree. The Commission is solely accountable to the President who has the power to appoint and dismiss Commissioners at his discretion. The executive's decision on the appointment of Commissioners is mostly influenced by political inclinations rather than competence. This enables the executive to maintain tight control over the Commission, thereby compromising its independence.

3.2. Investigative Power

Both the Cameroon and South African Human Rights Commissions do have the authority to investigate human rights abuses. However, there exist great discrepancies in the actual extent of these powers. The South African Human Rights Commission has clear authority to fully investigate allegations of human rights violations, including the power of search and seizure, and the power to subpoena anybody to testify in an investigation. In addition, all state organs are obliged to render such assistance to the Commission as it may require in carrying out its task, even if the government is the subject of such investigation.

In disparity, the Cameroon Human Rights Commission's power in performing its protection mandate is extremely weak. It does not have the power of search and seizure; neither can it subpoena anyone to testify in an investigation of human rights abuse. Generally, it may seek cooperation when undertaking investigations but state organs are in no way obliged to render such assistance especially if the government is the subject of the investigation.

3.3. Legislative Interventions

Regarding legislative interventions, the South African Commission carries out high level advocacy to affect policies and legislations by reporting to different parliamentary committees on various human rights issues. It also makes submissions on legislation to promote open and accountable government. Unlike the South African Commission, the Cameroon Commission is a passive institution, playing no active role in the legislative process. The Commission is not consulted, and does not have the ability to make unsolicited recommendations to the National Assembly even on legislation affection human rights issues.

3.4. Decisions and Reports

Both the South African and the Cameroon Commissions do render decisions on investigations into human rights abuses they carry out. They equally prepare annual reports of their activities. Nonetheless, there is a profound difference in the effect of the outcome of the activities of these institutions. The South African Human Rights Commission's decisions on investigations of human rights abuses are binding on all parties involved; be they private individuals, corporations, or the government. Also, the Commission reports on an annual basis to the National Assembly. This annual report which includes all human rights abuse investigations are published and the information publicly accessible.

In stark contrast, the Cameroon Human Rights Commission's decisions are not binding. In proper terms, they are merely referred to as recommendations, which may or may not be adhered to without any consequence. Also, the Cameroon Commission does not make any annual report to the National Assembly. Instead, it submits a confidential report to the President of the Republic, the sole person to whom the Commission is responsible. In addition, the Commission is not authorized to make this report public, hence enabling maximum executive scrutiny of the Commission's activities.

4. Conclusion

It is logical to conclude that the promotion and protection of human rights nationally involves much more than just the existence of a national human rights institution. While the South African and the Cameroon Human Rights Commissions have implemented similar programs with respect to their promotional mandate, they differ significantly in the extent of their powers to investigate abuses; the impact of their decisions; and the effect of their annual reports. The autonomy enjoyed by the South African Human Rights Commission makes it an effective institution to protect the rights of its citizens, whereas the dysfunctional and ineffective Commission established by the Cameroon government is merely window-dressing, aimed at deceitfully securing the approbation of the international community.

TORTURE AS A HUMAN RIGHTS VIOLATION IN CAMEROON

Joseph TANYI MBI*

There has been a gradual trend towards the protection of human values by the State of Cameroon as can be seen in the ratification of international instruments dealing directly or indirectly with issues of human rights or adopting such instruments into local legislation. Besides these international conventions, the Cameroon Constitution of 18th January 1996 states its preamble that:

“Every person has the right to life, to physical and moral integrity and humane treatment in all circumstances. Under no circumstance shall any person be subjected to Torture, to Cruel, Inhuman or Degrading Treatment”.

Also, pursuant to the provision of section 45 of the 1996 Cameroon constitution;

“Duly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implement the said treaty or agreement”

One of the international conventions dealing directly with the above subject is the Convention Against Torture, Cruel and Other Inhuman or Degrading Treatment or Punishment (CAT) of 10th December 1984 which defines torture in its article 1 as:

“Any act by which severe pain or suffering, whether physical or mental, is internationally inflicted on a person for such purposes as obtaining from him or a third person information or confession, punishing him for an act he or a third person has committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of, or with the consent or acquiescence of a public official or other person acting in an official capacity, it does not include pain or suffering arising only from inherent in or incidental to lawful sanction. ”

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To show her commitment towards the protection of human rights and values and pursuant to the provisions of law No. 97/007 of 10th January, 1997 the State of Cameroon through the President of the Republic ratified the above cited UN Convention. To further compliment issues, Cameroon promulgated law No. 97/009 of 10th January 1997 to modify certain provisions of the Cameroon Penal Code by revising section 132 and 133 relating to torture to meet up with international standards. It is on this basis that the definition of torture as per the Cameroon Penal Code is mutatis mutandis to that referred to in the Convention Against Torture supra.

Section 132 of the Cameroon Penal Code prescribes the penalty for torture as follows:

“Where torture results in the unintentional death of the victim, it shall be imprisonment for life; where as a result of torture, the victim is permanently deprived of the use of the whole of part of the limb, organ or sense, the punishment shall be imprisonment from ten to twenty years. Exceptional circumstances, such as a State of War, Internal Political Instability or any other public emergency may not be invoke as a justification for torture or the orders of a superior or public authority“.

Section 122(2) of the new Criminal Procedure Code (CPC) promulgated pursuant to Law No. 2005/007 of 27th July 2005 states that:

“The suspect shall not be subjected to any physical or mental constraints, or to torture, violent, threats or any pressure whatsoever, or to deceit, insidious manoeuvres, false proposal, prolonged questioning, hypnosis, the administration of drugs or to any other method which is likely to comprise or limit his freedom of action or decision or his memory or sense of judgment”.

Section 315 (2) of the CPC further states that:

“A confession shall not be admissible in evidence if it is obtained through duress, violence, or intimidation or in exchange of a promise for any benefit whatsoever or by any other means contrary to the free will of the maker of the confession”.

The above notwithstanding, the use of torture and other forms of cruel and inhuman degrading treatment by government forces of law and order on suspects, accused persons, and defendants is still a major concern to human rights advocates in Cameroon. In most cases, their atrocities go unpunished because they are actually implementing an intimidation policy of the government. It is hoped that the above delineation of the law prohibiting the commission and punishing the crime of torture would be a useful step toward addressing the prevalence of torture in Cameroon.

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