

An X-Ray of the Implementation of Separation of Powers Within the Cameroon Political Regime

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doi: 10.63593/SSSH.2709-7862.2025.07.006

Abstract

Theoretically, the 1996 Constitution of Cameroon formally establishes a tripartite system of governance dividing powers among the executive, legislature and judiciary. However, the actual configuration of power reveals a dominance of the executive, a docile legislature, and a politicized judiciary. The central question addressed is to what extent does the Separation of Powers, as enshrined in Cameroon's constitutional framework, reflect the reality of governance and institutional practice? With an objective to evaluate the operational independence and functional integrity of state institutions vis-à-vis their constitutional mandates and to highlight the structural and political barriers hindering effective Separation of Powers. Anchored on the theoretical lens of Constitutionalism and checks and balances, the paper draws from scholarly literature, legal texts and contemporary political events to provide a grounded analysis of Cameroon's regime dynamics. The study reveals executive dominance, legislature subordination and judicial suppression. This analysis is given timely given Cameroon's democratic backsliding and institutional stagnation. It contributes to debates on governance reform by making recommendations.

Keywords: Separation of Powers, Cameroon constitution, political regime

1. Introduction

The theory of Separation of Powers stands as a cornerstone of modern constitutional democracies, rooted in the need to prevent the concentration of power and ensure institutional checks and balances. It refers to the division of government authority among the legislative, executive and judicial branches, such that no single branch encroaches upon the competencies of another. It ensures that power is not monopolized by one entity, thereby protecting liberty and promoting accountable governance. The classical definition traces back to Baron de Montesquieu, who in his book articulated the idea that "there can be no liberty where the legislative and executive powers are united in the same person or body of magistrates."¹ This enlightenment perspective heavily influenced the constitutions of liberal democracies and has been enshrined in numerous constitutional texts across the globe such as the US constitution (1787), the Constitution of the French Fifth Republic (1958), the constitution of the Republic of South Africa (1996).

The doctrine is also elaborated by authors like Fombad, who considers the Separation of Powers under African constitutionalism not just as a distribution of functions, but a deliberate constitutional mechanism to prevent tyranny and enhance accountability through institutional independence and inter-branch checks.² This understanding adds a normative dimension to the concept: separation is not only structural but instrumental in sustaining constitutional order. Therefore, for the purpose of this article, the Separation of Powers is considered

¹ Montesquieu, (1748). "The Spirit of the Laws".

² Fombad, (2019). *Separation of Powers in African Constitutionalism*. Oxford University Press, 78.

in the structural aspect which divides the arms of government into the executive, legislative and judiciary and the functional aspect which is separate their functions through mutual independence, checks and cooperation among branches.

This article seeks to analyze how the theory of Separation of Powers is implemented in Cameroon's current political regime, by assessing the consistency or lapses between constitutional norms and political practices. It seeks to reveal the tensions between constitutional design and authoritarian tendencies embedded in long-term incumbency, presidential overreach and weak institutional independence. The use of the Cameroonian system on the other hand is as a result of its centralized presidential regime, where the president is both the Head of State and Head of government, vested with expansive powers under the 1996 Constitution.¹ The current President has been in office since 1982, making him one of the longest-serving heads of state in the world. This long-term incumbency, coupled with amendments to remove term limits (like in the amended constitution of 2008), highlights the entrenchment of executive dominance.²

Also, Cameroon has experienced increasing constitutional tensions, especially in its failure to effectively implement decentralization, judicial independence and parliamentary oversight.³ These tensions are exacerbated by systematic suppression of dissent, politicization of state institutions and limited separation between ruling party interests and government machinery. Therefore, by conducting a critical X-ray of Cameroon's implementation of the Separation of Powers, this article will demonstrate how constitutional doctrines can be subverted by political structures and will question the functional legitimacy of formal democratic arrangements under authoritarian presidencies.

2. Theoretical and Legal Framework of Separation of Powers in the Cameroonian System

The Separation of Powers as developed by Montesquieu, advocates for a political arrangement where the legislative, executive and judiciary function independently. Montesquieu proposed that liberty is endangered when these powers are concentrated in one institution or individual, by stating that "when the legislative and executive powers are united in the same person... there can be no liberty."⁴ This theory was primarily designed as a safeguard against absolutism and the abuse of authority. A concept particularly relevant to postcolonial African States grappling with legacies of centralized rule. However, in the African context, the doctrine has evolved to reflect contextual peculiarities. Fombad offers an accurate framework suitable for analyzing systems like Cameroon's. He considers Separation of Powers as not only the division of government functions but also as an accountability mechanism. It is meant to enhance governance through autonomy of institutions, checks and balances and legal boundaries for each branch of government. In the African context the principle must include the functional ability of branches to oversee one another, not merely their structural division.⁵

In Cameroon, the Separation of Powers is given formal recognition through various constitutional, statutory and regulatory instruments. The foremost of these is the Constitution of 18th January 1996 as amended, which serves as the Supreme and legal authority. It articulates the distinct existence of the three branches of government and provides for their respective jurisdictions. Also, the Standing Orders of the National Assembly and Senate, contains internal legislative instruments that govern the organization, procedure and oversight functions of parliament. They enable the legislature to carry out its law-making and supervisory responsibilities and are crucial for maintaining its institutional autonomy.

Moreso, certain organic laws have been established relating to the structure and functioning of state institutions and they include the Constitutional council, the Judiciary and decentralized mechanisms which serve to clarify the constitutional provisions relating to institutional separation and interaction. Amongst others the various laws regulating certain bodies of government, also aid to reiterate of the separation of powers and they include: the law on the organization and functioning of the Higher Judicial Council, (its regulates the body responsible for judicial appointments, promotions and discipline. Its central feature defines the autonomy and integrity of the judiciary), the Electoral Code (it outlines the legal procedures for the election of members of legislative bodies and other elected officials. It affects the balance of power among the branches by determining the composition and representativeness of the Legislature and local authorities). Indirectly, the decentralization law especially law no. 2019/024 of 24 December 2019, indirectly contributes to the dispersion of executive authority through

¹ Cameroon's Constitution of 1996, Law No. 96-6 of 18th January 1996 to amend the constitution of 2 June, 1972 article 8 and 9.

² Fombad, (2004). Cameroon's emergency Powers: A Recipe for (Un)constitutional Dictatorship? *Journal of African Law*, 48, 165 and 189.

³ Chia N.C., Satumin K.T.N, and Nkeneh Y.C., (2020). The Cameroon Decentralization Project: Tool of Conflict Resolution or Seed of Discrepancies in the Governance of a Heterogeneous State. *EAS Journal of Humanities and Cultural Studies*, 110.

⁴ Montesquieu, (1748). *The Spirit of the Laws* op.cit Pg. 14.

⁵ Fombad 1 op.cit pg. 82.

the establishment of elected regional and local bodies, reinforcing the principles of accountability and horizontal distribution of powers. Also, the Law regulating the Constitutional Council tasks the council with constitutional adjudication and electoral dispute resolution. Thus together, these instruments constitute the theoretical and legal framework of the Separation of Powers in Cameroon.

Constitution of Cameroon

The 1996 Constitution of Cameroon, which revised the 1972 unitary constitution, is the foundational legal text that outlines the doctrine of Separation of Powers. It devolves power into three branches which are the executive, legislative and judiciary. The executive is headed by the President of the Republic, pursuant to section 8 and 9.¹

The Legislature comprises of a bicameral parliament which consists of the National Assembly and the Senate. Its powers are elaborated in section 15 to section 24, while the powers of the judiciary are elaborated from sections 37 to 42. Nevertheless, these arms of government do not function in isolation as they share powers which is also elaborated in article 26 of the constitution amongst others.

2.1 The Legislature

The Constitution of the Republic of Cameroon in its part 3 provides for the Legislative autonomy. It recognizes the legislative as an independent organ in its section 14(1), "Legislative power shall be exercised by the Parliament which shall comprise of two houses: the National Assembly and the Senate". This indicates that the Legislative power which makes laws, rest in the hands of Parliamentarians. Equally, according to section 4 of the Cameroon Constitution, State power is exercised by the President of the Republic and the Parliament meaning the Parliament acts independently in Carrying out state affairs.²

Despite the provision of section 2(1) of the Constitution which states that "National sovereignty shall be vested in the people of Cameroon who shall exercise either through the President of the Republic and members of Parliament or by way of Referendum. No section of the people or any individual shall arrogate to itself or himself the exercise thereof" the Parliament of Cameroon acts with consideration of national interest and not for the people, thus each member of the National Assembly represents the entire Nation and therefore protects the interest of the Nation at all times. This is backed by section 15(3) of the Constitution which states that "any imposed mandate shall be null and void".³ Thus, this section guarantees the independence of the legislative from the people and the executive.

Also, the legislative arm in Cameroon is governed by working manual which provides them with rules and regulations which prevents them from the control of the government; this is the Standing Order of parliament and is regulated by Law no. 73/1 of June, 1973 as amended by Law No. 2014/016 of 9th September 2014.⁴ The Constitutional council is responsible for disputes with Parliamentary election and the actions of the Parliament such that they have no influence from the executive in performing their duties which guarantees them their independence from the other arms of government. This could be seen where the Constitutional Council declared the Standing Orders of 2002 on the validation of Parliamentary mandates unconstitutional. Through this action, it shows that the Parliament are operating on a governing manual reserved for them without external influence from the other arms of government.

The parliament has the power to indict the President, and this is the strongest power Parliament has over the Head of State according to the Constitution, article 53(2) new where the Parliament acts as a State Counsel. Equally, according to article 43 treaties which fall within the jurisdiction of the Parliament are submitted to it for authorization to ratify. This means that the President has no constitutional right to ratify without authorization from the parliament, treaties and international agreements which fall within the competence of the Parliament.⁵

Parliament manages their own finances from the adoption of the budget to the control of the budget. This management is ensured by the President of each Chamber who is also the budgetary officer with the secretary general as the authorizing officer. The Quaestors are responsible for ensuring the preparation and control of Parliaments finances by preparing the draft budget and submitting it for consideration and vote by the finance committee. The Parliament has its own accounting officer appointed by order of the bureau who also makes payment of the expenses of the National Assembly and provides the necessary documents for the exercise of their control.

¹ Cameroon's constitution of 1996 sections 8 and 9 elaborate on the powers of the President of the Republic.

² Law no. 96/6 of 18th January 1996 to amend the Constitution of 2nd June 1972, section 14.

³ *Ibid.*

⁴ Law no. 2014/016 of 9th September 2014 on the Standing Orders of Parliament.

⁵ Law no. 2008-001 of 14th April 2008 amending and supplementing some provisions of the 1972 and 1996 Constitution.

Moreso, Parliamentarians enjoy immunity which enables them to express themselves without fear of prosecution and protection from external influence. Thus the immunity of Parliamentarians is established by Ordinance No. 72/12 of 26th August 1972 and section 9 of the Rules of Procedure of the Senate which distinguishes irresponsibility from inviolability.¹ Thus, section 1 of the above Ordinance no. 72/12 provides that no member of the National Assembly may be prosecuted, sought, detained or judged on the occasion of the opinions or votes cast by him in the performance of his duties. This irresponsibility covers all prosecutions whether criminal or civil, it takes into account all the acts carried out within the framework of the exercise of the mandate such as votes, deliberations, debates, reports. This irresponsibility is permanent because it continues even if the Assembly does not sit and continues after the end of the mandate but does not cover personal activities.²

According to this, Parliamentarians are protected from criminal prosecution from which they can arbitrarily be subjected. This is to prevent the Parliamentarian taken as an individual who is subject to intimidations or unjustified arrests by the government or its supporters, section 2 of Ordinance No. 72/2 above specifies that “except in case of *flagrante delicto* or crime and offense against internal and external security of the State as they are fixed by the Penal Code, no deputy may be prosecuted in criminal or correctional matters except with the authorization of the National Assembly during the sessions or the authorization of the office out of session”. This equally shows legislative autonomy from the executive. Inviolability is, however, temporary with limited protection unlike irresponsibility. It lasts only as long as the mandate itself.³ The parliament also has the power to indict the President and this is the strongest power Parliament has over the Head of State according to the Constitution article 53(2) new where the Parliament acts as a State Counsel. Equally, according to article 43 treaties which fall within the jurisdiction of the Parliament are submitted to it for authorization to ratify. This means that the President has no constitutional right to ratify without authorization from the parliament, treaties and international agreements which fall within the competence of the Parliament.⁴

The Parliament equally reserves as right to ratify ordinance in order for them to become Laws. That is according to article 28 of the Constitution. This means that in case where parliament refuses to authorize ratification of an ordinance, the ordinance will remain of a statutory nature as long as they have not been ratified. The authorization by Parliament to Ratify can be seen in the authorization by Parliament for the President to ratify the OHADA Uniform Act through Law no. 94/4 of 4 August 1994 authorizing the President of the Republic to ratify the Treaty on the Harmonization of Business Law in Africa, signed in Port Louis, Mauritius, on 17 October 1993 and was ratified in 1996 by way of a presidential decree that is Decree no. 96/177 of 5th September 1996.⁵

The Parliament reserves the right to grant amnesty according to article 26(6) of the Constitution.⁶ Article 31(2) equally reserves the President of the National Assembly the right to enact laws after expiry of the 15 (fifteen) days limit for the enactment of a law by the President.⁷ More so, article 63 of the Constitution gives Parliament power to amend the Constitution. That is the right to amend the Constitution does not only rest with the President of the Republic but also with the members of the Parliament.

According to article 34(1) of the Constitution, the government presents its economic, financial, social and cultural program to the National Assembly. Meaning the Finance bill which is prepared by the government is meant to be defended before the Parliament and it's subject to approval by the Parliament. The Parliament can equally request that the government review the Finance budget or make certain adjustments. Equally, the fact that Ministers commit their responsibility to the Parliament, gives room for Parliament to control the conduct of cabinet members and to check abuses of office, misconduct, mismanagement, and incompetence. This is very evident through the debate of motion of no confidence and motion of censure.

Added to the above, the Parliament can question the responsibility of the government through a motion of censure. According to article 34(4) of the Constitution, a vote of no confidence is considered when the government gives request to some reformation according to article 34(2). The Prime Minister in this case commits the responsibility of the Government before the National Assembly on a program or as the case may be, on a general policy statement. And where the National Assembly adopts the motion of censure or passes the vote of no confidence, the Prime Minister is expected to immediately tender the resignation of the government to the

¹ Ordinance no. 72-12 of August 1972 establishing the system of immunities for members of the National Assembly Art. 14(6).

² *Ibid.*

³ *Ibid.*

⁴ Law no. 2008 op.cit amending and supplementing some provisions of the 1972 and 1996 constitution.

⁵ Official Gazette of the Republic of Cameroon, 15 November 1997.

⁶ Law no 2008/001 of 14 April 2008.

⁷ *Ibid.*

President of the Republic.¹ Again article 35 of the Constitution gives the Parliament the right to control government action through oral and written questions during Plenary sessions.²

Despite, Parliaments' struggle to control the executive, it has proven futile because most of the provisions of the Constitution which empower the Parliament are contradicted by the same constitution. These contradictions have proven so far to empower the executive such that it performs most of the functions of the Legislative and even hinders the control method which is meant to be implemented.

2.2 The Executive

The executive power in Cameroon as enshrined in the Constitution is stated in Part Two of the Constitution. It consists of the powers of the President of the Republic and the Government. The executive branch is responsible for the enforcement of laws passed by the legislative branch.

The President of the Republic who is considered as the symbol of national unity is the Head of state, the guarantor of the independence of the state, and also the continuity of the State and the respect of international treaties and agreements. He defines the policy of the nation and ensure the respect for the Constitution.³

Equally, he represents the state in all acts of public life, and he ensures the internal and external security of the state, he enacts laws passed by Parliament unless he requests a second reading. He is the Head of the Armed Forces, he sets up and organizes the administrative services of the state, he exercises statutory authority, and he exercises the right to clemency (pardon) after consultation with the higher judicial council. He is responsible for conferring the decorations and honorary distinctions of the Republic. He has the power to declare a state of emergency, in case of threat to the nation's territorial integrity. He is responsible for appointing the Prime Minister.⁴ He has the right to decide when to create regional councils, their powers and he can equally dissolve the regional council according to Article 59(2) of the Cameroon Constitution when he deems fit.⁵

More so, article 53(2) of the amended 2008 Constitution states that "Acts committed by the President of the Republic in pursuance of articles 5, 8, 9 and 10 of the above law shall be covered by immunity and he shall not be accountable for them in the exercise of his functions."⁶ This means the President cannot be indicted on account of actions and decisions taken other than treason during his term of office. This makes the President to be completely immune from the prosecution for any and all criminal acts committed while in office.⁷

The Government here has to do with the Prime Minister who is considered as the Head of Government, and responsible for the enforcement of the Laws so enacted. He may delegate some of his powers to members of the government and also to senior state officials. He may propose the members of his government to be appointed by the President of the Republic.⁸

2.3 The Judiciary

The judicial power of the State of Cameroon is enshrined in the Constitution in its part 5 governed by Law no 2006/015 of 29 December 2006 on Judicial Organization in Cameroon. The Judicial Organization of the State comprises of the Supreme Court, Courts of Appeal, and Lower courts of Administrative litigation, lower audit Courts, Military Courts, High Courts, Courts of First Instance, and Customary law courts.

The Court of First Instance is established in every sub division, and handling matters which fall under its jurisdiction. The High Court is established in each division and handling matters which fall under its jurisdiction while the Court of Appeal is established in each Region responsible for hearing appeals of all judgments delivered in courts with the exception of the Supreme Court and the Court of Appeal itself.⁹ The law on judicial organization, Law no 2006/001 of 14 April 2006 governs only the Court of First Instance, the High Court and Court of appeal with the exclusion of the others.

More so, the Supreme Court is the highest court of Cameroon, just like in the Constitution, it is above the courts

¹ *Ibid.*

² *Ibid.*

³ Law no 2008/001 of 14 April 2008 to amend some provisions of the Constitution of 1972 section 8.

⁴ *Ibid.*

⁵ Law no 2008/001 of 14th April 2008 amending and supplementing some provisions of the 1996 constitution, art 59(1).

⁶ *Ibid.*

⁷ Mbaku, (2014). Judicial Independence and Governance in Cameroon, 387.

⁸ *Ibid.*

⁹ Law no 2006/015 of 29th December 2006, section 22(a).

of Appeal, and the tribunals.¹ It is nominally independent of the executive and legislative branches of government, subject only to the oversight of the Higher Judicial Council.² It was created in 1961 to replace the Federal Court of Justice.³ It is governed by Law no. 2017/014 of 12 July 2017 to amend and supplement some provisions of Law no. 2006/016 of 29 December 2006 to lay down the organization and functioning of the Supreme Court. Equally, the law regulating Military Justice is also different from the 2006 law. Rather it is the Law no 2017/012 of 12 July 2017 to lay down the code of Military Justice in Cameroon.

The Judicial power in Cameroon is responsible for settling all court issues falling within its jurisdiction depending on the matter. This shows that the judiciary in Cameroon has its own functions which are reserved for it by the Constitution thereby indicating Separation of Power.

Added to the above, the Constitutional Council is responsible for handling matters pertaining to the Constitution. It was first created by Law no 9606 of 18th January 1996 on constitutional revision of 2nd June 1972.⁴ Section 46 of the constitution grants its competence for all matters concerning the Constitution. It is governed by law no 2004/004 of April 21 2004. It gives the final ruling on the Constitutionality of Laws, conflict of powers between state institutions, laws and treaties which are prior to enactment may also be referred to the Constitutional Council.

Again, it is responsible for ensuring the regularity of certain elections which include: the Presidential election, the legislative elections, and referendum operations.⁵ The C.C is also responsible for checking the constitutionality of the Standing Orders of the National Assembly.

Finally, the rulings of the Constitutional Council are not subject to appeal and are binding on the public, administrative, military, and judicial authorities as well as natural persons and corporate bodies.⁶ The Constitutional Council in Cameroon is however not a court unlike in Germany which bears the name the Constitutional Court rather in Cameroon, it is made up not only of Judges but of persons of different works of life for example Professor Joseph Owona who is an expert in Constitutional Law. Having evaluated the powers of the arms of government as enunciated by the Constitution it is worthy to analyze if this tallies with the practical aspect to better conclude on the implementation of Separation of Powers in Cameroon.

3. Institutional Reality of Separation of Powers in Cameroon

With regards the institutional reality, the Cameroon Constitution of 1996 formally adopts the doctrine of Separation of Powers by delineating the functions of the Executive, Legislative and Judicial branches in Articles 4, through 8. However, the implementation of this doctrine remains largely symbolic in practice. Chefor argues that “Cameroon constitutional text exhibits the structural framework of a tripartite government, but this rigidity masks a deep concentration of power within the Executive.”⁷ Also the amendment in 2008, which removed presidential term limits, further escalated executive dominance. The president’s role as Head of State, head of government, and commander of the armed forces gives him sweeping powers that undercut the equilibrium envisioned by separation of doctrines.⁸ This section examines each institution, the practical deviations from constitutional theory and provides academic evidence throughout.

3.1 Executive Dominance: The Hegemony of the Presidency

Cameroon’s executive branch has amassed disproportionate powers that dwarf the other arms of government. The President acts as Head of State, Head of government, Commander-in-chief of the Armed Forces and the ultimate appointing authority for most high-level public officials.⁹ The President has the power to appoint judges, governors, university rectors, ambassadors, regional delegates, and heads of public institutions.¹⁰ According to article 5 of the Constitution, the President is the Head of State, the symbol of national unity that is

¹ Law no 2008/001 of 14 April amending some provisions of the Constitution of 1972.

² Supreme Court of Cameroon available at <https://www. July 31st 2020>.

³ *Ibid.*

⁴ Constitutional Council available at, <https://www.prc.cm/en/cameroon/institutions/171-constitutional-council>

⁵ Law no 2008/001 of April 14th 2008 amending some sections of the 1972 Constitution.

⁶ *Ibid.*

⁷ Chefor. A.A., (2021). *A Rigid, Pure Tripartite Separation of the Organs of the Government and the Cameroonian Constitution: A Critical Appraisal. International Journal of Law*, 181.

⁸ *Ibid.*

⁹ *Ibid* section 8.

¹⁰ Yanou M.A., (2013). *Democracy in Cameroon: A Socio-Legal Appraisal. Nomos Verlagsgesellschaft mbH*, 6.

some kind of Kingly figure, he defines the policy of the nation, he ensures the respect of the Constitution, he ensures through arbitration the proper functioning of public authorities, and he is the guarantor of the independence of the State and its territorial integrity, its permanency, and the respect for international treaties and agreements. This shows that the President incarnates the Cameroonian State.¹

Although the executive arm is comprised of two bodies, that is the President and the government headed by the Prime minister, most of the executive dominance can be seen on the path of the President of the Republic. This Presidential hypertrophy confines the Prime Ministers simple *primus inter pares* (the first amongst the equal). Therefore, the Constitution gives the President of the Republic the power to reign and rule.² Thus, this Presidential supremacy at the head of the executive finds its justification in the Constitution which empowers the President of the Republic who is elected by direct universal suffrage and thus enjoys a popular legitimacy that authorizes him to implement the policy proposed to voters and validated by them.³ Key laws and policies are enacted through presidential decrees without effective parliamentary checks.⁴

Also, decentralization policy since 1996, local governance is supervised by presidential appointees.⁵ Thus, according to Yanou, “The President, in practice, wields quasi-imperial powers that dwarf the institutional independence of both Parliament and Judiciary” making the reality of Separation of Powers a fiction.

According to Fombad, the excessive powers conferred on the President effectively reduce the legislature and judiciary to mere appendages of the executive.⁶ The president can dissolve Parliament, appoint judges and rule by decree. In practice, presidential decrees are more common than Parliamentary legislation. This phenomenon is not just theoretical observed that “in a state where executive directives carry more legal and political weight than court rulings, the Separation of Powers becomes a constitutional myth.”⁷

Furthermore, Cameroon’s emergency laws allow the President to rule by decree in times of crisis. Fombad argues that these laws provide a “legal pathway for authoritarianism”, and have been invoked to suppress opposition under the pretext of national security.⁸ The executive’s capacity to bypass other institutions through legal instruments undermines democratic governance.

3.2 Parliamentary Subordination

Despite its formal constitutional role, the Parliament which comprises of the National Assembly and the Senate, the legislature still suffers high level subordination. According to section 8(12) of the Constitution, where the President finds it “necessary” after consultation with the Government, the Bureaux of the National Assembly and the Senate, he may dissolve the National Assembly.⁹ He equally has the right according to section 15(4) of the constitution, in cases of serious crises “the President after consultation with the Constitutional Council and the Bureaus of the National Assembly and Senate request the National Assembly by law, to extend or abridge its term of office”. It is on this basis that the previous legislative and municipal election of 2019 were pushed forward to March 2020. Section 8(8) of the constitution grants the President of the Republic with ‘statutory authority’ that is authority to legislate on behalf of the Parliament. And it is upon this right that the President issues out Presidential decrees and Ordinances. Section 27 of the same Constitution provides that matters not falling within the jurisdiction of the Legislature shall come within the jurisdiction of the authority empowered to do so.¹⁰ And this provisions of the Constitution empower the President as a superior to every other arm of government with possible suppression as it is the case.

Similarly, this still give him grounds to issue presidential decrees. An example of such decree is the 1976 decree pertaining to National Lands. Also Decree no 2011/2582/PM of 23rd August 2011 defining the conditions for protecting the atmosphere, Decree no 2011/2583/PM of 23rd August 2011 regulating sound and odour nuisance,

¹ Charles Manga Fombad, *Cameroon Country Report*, 14.

² *Ibid.*

³ *Ibid.*

⁴ Anyefru E., (2011). The Refusal to Belong: Limits of the discourse on Anglophone Nationalism in Cameroon. *Journal of Third World Studies*, 297.

⁵ Bene C., et al., (2009). Democratic Decentralisation and Local Struggles.

⁶ Fombad, (2016). *Separation of Powers in African Constitutionalism*. Oxford University Press, 87.

⁷ Kamga, (2019). The Political (In)dependence of the Juidicary in Cameroon. *African Law review*, 46.

⁸ Fombad, (2004). Cameroon’s Emergency powers: A recipe for (Un) Constitutional Dictatorship? *Journal of African Law*, 13.

⁹ Law no 2008/001 of 14th April 2008 amending some sections of the 1972 Constitution of Cameroon.

¹⁰ *Ibid.*

Decree no 2011/2584/PM of 23rd August 2011 defining the conditions for soil and subsoil protection and also Decree no 2011/2585/PM of 23rd August 2011 establishing the list of harmful and dangerous substances and the system discharging them into inland waters.¹

Added to the above, the President can exercise his regulatory power in the field normally reserved for Parliament by way of Ordinances. Although according to section 28 of the Constitution, parliament may empower the President to legislate by way of ordinance, it is a right of Parliament which may be granted to the President.² But looking at almost all the ordinances on land tenure, it shows gross interference of the executive over the legislative power. This is because article 26(2) places certain provisions under the authority of the parliament exclusively like issues concerning Land. This could be seen in the enactment of Ordinance no74/1of 6th July 1974 on land tenure which was enacted by the President with consultation of the Parliament. This shows the Presidents interference in the powers reserved for Parliament.

Further, looking at article 53 of the Constitution which gives Parliament the power to indict the President, it looks like a bonus point to the Parliament until you read further to 53(1 and 2) where the impeachment of the President is to be done through an open ballot meaning the vote of everyone is seen and will only be passed by a four-fifth majority of members.³ This means after combining the members of the National Assembly and the Senate which gives over 280 Parliamentarians, there is meant to be at least 200 members who vote in favor of indicting the President. The indictment of the President of the Republic is to be done at the Court of Impeachment.

Equally, the Court of Impeachment which is provided for by law, is not operational in Cameroon. Section 53(4) of the Constitution which states that “the organization, composition and the conditions under which matters shall be referred to as well as the procedure applicable before the court of impeachment shall be laid down by law”, this provision has not been fulfilled till date. There is no laid down law which provides the composition, organization and conditions for matters to be referred to the Court. Thus, the Constitution creates a ghost court whose realization is far-fetched. As Chefor critiques, “Most legislative sessions are reduced to the formal endorsement of bills drafted and proposed by the executive, making Parliament a ceremonial rubber stamp.”⁴ For Instance, during the 2008 constitutional revision, the legislature approved the removal of term limits without any substantial debate, raising concerns about legislative Independence.⁵

3.3 Judicial Weakness and Executive Influence

The Judiciary’s independence is gravely undermined by executive interference. The Cameroon Constitution guarantees judicial independence in its article 37 which indicates that “judicial power shall be exercised by the Supreme Court, Courts of Appeal, and tribunals.”⁶ After an unequivocal statement has been made by the Constitution, it goes further to and takes away that right stating that, “the President of the Republic shall guarantee the independence of judicial power. He appoints the members of the bench and the legal department.”⁷ This is clearly stated in its article 37(3) and this makes a very strong point on a contradiction been made by the Constitution which has created weaknesses used by the executive to infringe on the independence of the judiciary by indirectly giving executive power over the judiciary.⁸ This makes the power of judicial review to rest in the hands of the executive.

The 1996 constitution introduced the concept of an independent judiciary, and it is further stipulated in the 2008 amended constitution, but the same constitution grants the President of the Republic virtually unlimited powers to appoint and dismiss judicial officers.⁹ The Constitutional council (cc), provided for in the 2008 Constitution,

¹ Republic of Cameroon summary of environmental and social impact assess, available at, https://www.afdb.org/.../Cameroon-Transport_sector_Support_Programme_Phase_2-Yaounde_Bamenda_section-Summary_ESIA-11_2015.pdf assessed on the 26th February 2024.

² *Ibid*, 14.

³ Law no 2008/001 of 14th April 2008 amending some provisions of the 1972 Constitution.

⁴ Chefor, op.cit pg.

⁵ Fombad, *Separation of Powers in African Constitutionalism*, op.cit, 16.

⁶ *Ibid*.

⁷ *Ibid*.

⁸ The Politicization of the Cameroon Judicial system. Available at, bonaventurefon.com/.../The-Politicization-of-the-Cameroon-Judicial-System-Journal-of-Global-Justice-and-Public-Policy-Regent-University-School-of-Law-2015.pdf pg.9 8th April 2025.

⁹ Law No. 2008/001 of 14th April 2008, to amend some provisions of the Constitution op.cit.

was granted the power to determine the Constitutionality of Legislative acts.¹ But the Constitutional Council is not expected to function independently and effectively since the President of the Republic is reserved with the right to appoint members of the Constitutional Council in article 51(2) of the Constitution.

Moreover, like in many other countries, judicial officers have to take an oath before they commence service.² This oath requires judicial officers to be impartial when they render justice, they are to perform their jobs without fear, favour or malice.³ However, section 126(a) of the Cameroon Penal Code sanctions in a rather vague way, “the representative of the executive authority” who issues any order or prohibition of any court.⁴ Meaning that there is no definitive punishment to be meted on an executive member who violates such law, bringing the judiciary to be dominated by the executive organ.⁵ Thus, despite the provisions of the 2008 Constitution, the President of the Republic continues to “appoint, transfer, dismiss, suspend and can interfere with the so-called judicial power with no constitutional provisions to control and ensure that it is done in a fair, rational, objective and predictable manner.”⁶ The Constitution and although the right is not reserved to him alone, he reserves the majority right.⁷

Moreover, the President of the Republic is the one who chairs the Higher Judicial Council which is the body responsible for managing the career of magistrates, and is responsible for their appointment, promotion grading, and sanction. He equally benefits from the means that may allow him hinder either an ongoing judicial procedure or the application of a court decision (right to pardon).

However, the Higher Judicial Council in Cameroon (HJC) has not evolved from its merely advisory role into one that can actually help to secure the independence of the judiciary.⁸ The Higher Judicial Council of Cameroon shall meet once a year and has a right to its expression but the final decision still rest in the hands of the President of the Republic and he may as well disregard the advice given by the Council.⁹ Also the HJC has not made any significant contributions to the independence of the Cameroon judiciary. According to article 37 (3) of the amended 2008 constitution, the Higher Judicial Council is given advisory powers and the Council is governed by Law No. 82-14 of November 26, 1982 and subsequent amendments to the latter.¹⁰ Thus, although this advisory role is bestowed on the HJC, the President of the Republic still reserves the right to its final decisions meaning the advice of the HJC can be ignored.¹¹

Thus, the HJC since its founding cannot be said to have advanced the cause of independence of the judiciary in Cameroon. The lack of the independence of the Higher Judicial Council is the reason why the council hasn't sat within the last four years because the President of the Republic has not been available to preside over the council. To this effect, Magistrates from the last four badges from ENAM, (National School of Administration and Magistracy in Cameroon) were posted through a communique by the Director of General Affairs of the Ministry of Justice and have been deployed to courts in various regions majority of which do not have offices to carry out their duties.¹² Therefore, it remains essentially an institution which is under the control of the President of the Republic and has not acquired the independence to operate effectively to advance Constitutional Justice in the Country.¹³

Thus, this institutional reality in Cameroon presents a stark contrast to the theoretical principles of Separation of Powers. The dominance of the executive, the weakness of parliament, and the subservience of the judiciary demonstrates a constitutional framework hollowed out in practice. Genuine democratic consolidation in

¹ *Ibid.*

² Mbaku, *op.cit* pg. 370.

³ *Ibid.*

⁴ Circular No. 3-DL-1129 of the 15th March 1966 concerning the application of the new Penal Code (Promulgated by Law No. 65-LF-24 of the 12th November, 1965) pg. 111.

⁵ Mbaku, *op.cit* pg. 371.

⁶ *Ibid.*

⁷ *Ibid.*

⁸ Mbaku, *op.cit* pg, 371.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*

¹² Service Note Number 013 and 014 of 13th December 2024.

¹³ *Ibid.*

Cameroon will require substantive institutional reform that ensures independence and accountability across all branches.

4. Conclusion: Revaluating the Architecture of Power in Cameroon

The Implementation of the principle of Separation of Powers in Cameroon, though constitutionally enshrined, remains largely symbolic. An x-ray of the Cameroonian regime reveals a constitutional façade that conceals deep structural imbalances. Despite the formal establishment of the three branches of government; the executive, legislative and judiciary, the practice of governance in Cameroon is characterized by hyper-presidentialism, weak institutional autonomy and a culture of executive supremacy. While the Constitution of 1996 outlines the framework for a modern democratic state with delineated functions for each branch, its operationalization is undermined by routine sluggishness and entrenched political practices. The executive branch, led by the President, wields disproportionate power through decree-making authority, appointment control, and emergency powers. Legislative institutions often act as ceremonial bodies, lacking the political will or independence to hold the executive accountable. The judiciary, despite its constitutional role as guardian of legality and protector of rights, suffers from politicization, inadequate funding and structural subordination to the executive.

The key challenges as elaborate above basically indicate the enormous powers given to the President of the Republic by the constitution, which creates executive overreach over the other arms of government and constitutional manipulation. Also, legislative docility and control of the ruling party which is a dominant party (CPDM) in the Legislature maintaining overwhelming control of Parliament, this has produced a rubber-stamp legislature that rarely exercises oversight or introduces independent legislative initiatives. Also vaguely defined emergency powers provisions in the Constitution allow the executive to invoke national security and public order to justify expansive powers, often without judicial or legislative review, as well as the existence of a limited civic engagement, and opposition voices face systematic restrictions, reducing external checks on power and limiting citizen participation in governance reforms.

5. Recommendations

Based on the above findings, the following recommendations are made for effective distribution of functions to state organs in order to improve the Separation of Powers in Cameroon.

- Reinforce Judicial Independence: in reinforcing judicial independence, there is a need for the restructure of the Higher Judicial Council to be more representative and independent, institute a merit-based, non-partisan judicial appointments and secure tenure for judges as well as increase judiciary funding to reduce executive dependence.
- Also, to revitalize the Legislature's role, there is a need to grant Parliament increased budgetary authority and committee oversight powers, enhance legislative transparency and allow independent members to introduce private bills, reduce party dominance through electoral reforms to ensure diverse representation.
- Also, restoring Constitutional term limits and executive accountability, will warrant to reinstate presidential term limits and institutionalize accountability measures such as mandatory parliamentary reporting and public policy results, and also promote a decentralized governance structure that empowers local institutions.
- Furthermore, empowering civil society and media by strengthening legal protections for press freedom and civic organizations, supporting civic education initiatives that promote constitutional literacy and democratic participation.
- Finally, to leverage regional and international norms by engaging with African Union bodies like African Peer Review Mechanism and global partners to align domestic institutions and international democratic standards and also encourage regional peer benchmarking on governance and judicial reforms.

Thus, for Cameroon to evolve into a constitutional democracy governed by checks and balances, it must transcend the symbolic adoption of Separation of Powers and embark on substantive institutional reforms. As political scholar Fombad aptly notes, "Constitutionalism in Africa will not thrive until institutions are insulated from personal rules and grounded in a culture of accountability."¹ True Separation of Powers is not merely the presence of institutional structures, but the effective functioning and independence of those structures. The Cameroonian regime stands at a crossroads: either deepen institutional capture or enhance reform. The choice will define not only the future of governance in Cameroon but the legitimacy of its democratic project.

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