



**CONSTITUTIONAL PROTECTION IN CAMEROON:
A CRITIQUE OF THE AMENDMENT MECHANISMS**

by

Malah Anna

(Comparative Constitutional Law Stream)

Submitted to

Central European University

Legal Studies Department

In partial fulfilment of the requirements for a Masters in Law (LL.M)

LL.M. SHORT THESIS

COURSE: Constitutional Adjudication: Courts Enforcing Rights

PROFESSOR: Renata Uitz

Central European University

1051 Budapest, Nador utca 9

Hungary

TABLE OF CONTENTS

TABLE OF CONTENTS-----	i
DEDICATION -----	ii
ABSTRACT-----	iii
GENERAL INTRODUCTION -----	1
CHAPTER ONE -----	7
GENERAL OVERVIEW ON CAMEROON CONSTITUTIONAL HISTORY, CONSTITUTIONAL COUNCIL AND CONSTITUTIONAL AMENDMENT MECHANISMS -----	7
1.1. <i>General Constitutional Background</i> -----	8
1.2. <i>Constitutional Council and the Courts</i> -----	9
1.3. <i>Constitutional amendment mechanisms</i> -----	12
CHAPTER TWO -----	16
IMPACT OF THE SILENT NATURE OF THE CONSTITUTIONAL COUNCIL ON THE CAMEROON CONSTITUTION -----	16
2.1. <i>Impact of three Constitutional articles amended during the 2008 Constitutional amendment</i> -----	17
2.1.1. <i>Article 6§2 (new)</i> -----	17
2.1.2. <i>Article 51§1(new)</i> -----	18
2.1.2. <i>Article 53§1-3 (new)</i> -----	19
2.2. <i>The effect of the Constitutional Council's silence during the 2008 amendment on the Constitution and on other Constitutional rights.</i> -----	20
2.2.1. <i>Effects on the Constitution</i> -----	21
Abuse of the Rule of Law -----	21
2.2.2. <i>Effects on other Constitutional Rights</i> -----	22
Abuse of Right of Expression: -----	22
Abuse of Right to Fair Trial: -----	24
Abuse of Right to Life-----	24
CHAPTER THREE -----	26
CONSTITUTIONAL COUNCIL IN CAMEROON AND THE FEDERAL CONSTITUTIONAL COURT IN GERMANY -----	26
3.1. <i>The Constitutional Council in Cameroon</i> -----	28
3.1.1. <i>Independence of the Council - Composition/membership</i> -----	29
3.1.2. <i>Jurisdiction and Access to the Council</i> -----	32
3.1.3. <i>Participation in Constitutional amendment</i> -----	36
3.2. <i>The Federal Constitutional Court in Germany</i> -----	37
3.2.1. <i>Independence of the Court - Composition/membership</i> -----	38
3.2.2 <i>Jurisdiction and Access to the Court</i> -----	40
3.2.3. <i>Participation in Constitutional amendment</i> -----	43
3.3. <i>Other contributing factors</i> -----	44
RECOMMENDATIONS-----	47
CONCLUSION-----	49
BIBLIOGRAPHY-----	51

DEDICATION

This research is dedicated to

God Almighty for His Love and Strength

&

To Each and Every Member of My Beloved Family

(My relatives and those I encounter in my daily life)

ABSTRACT

This research work examines the silent nature of the Constitutional Council¹ as regards Constitutional amendment mechanisms and considers its impact on the constitutionality of the Cameroon² constitution. This work looks at the undermined constitution of Cameroon caused by the inactive nature of the Constitutional Council and the resultant consequences on the supremacy of the Cameroon constitution. This thesis analyses Constitutional Council's creation, composition, jurisdiction, and the issue of *locus standi* to initiate a proceeding before the Constitutional Council. This research concludes on how the Constitutional Council could be empowered to take active participation in constitutional amendments for an effective protection of the Cameroon Constitution.

¹ The Constitutional Council in Cameroon is an organ of 11 members created in 1996 by Law No. 90-06 of 18 January 1996, which amended the Constitution of 2 June 1972 and has jurisdiction in matters pertaining to the Constitution; it can rule on the constitutionality of law and, it regulates the functioning of state institutions. In some countries, the Constitutional Court or the Supreme Court performed these functions. The courts in Cameroon are however, reluctant in adjudicating on Constitutional rights violation as most often when an individual brings a complaint against government violation of constitutional rights before the courts; the later usually refrained from taking serious action thereby allowing the executive to have its way.

² Cameroon is located in Central West Africa, it shares border with the Bight of Biafra (part of the Gulf of Guinea and the Atlantic Ocean) with a population of 20 million inhabitants, its official languages are English and French, it has more than 250 ethnic groups with an equal number of local languages. It exercises a republican type of government. It derives its name from the Portuguese word, Camaroes, named by a Portuguese sailor Ferdinando Poo in 1472 that discovered many shrimps in River Wouri in Douala and called it Rio Dos Camaroes (River of shrimps). The Germans in 1884 spelt it as Kamerun, whereas during the mandated period under the League of Nations, the French spelt it Cameroun and the British - Cameroon. See more at <http://www.nationsonline.org/oneworld/cameroon.htm>.

GENERAL INTRODUCTION

“In the absence of any limits or restrictions on the amendment of a constitution, it is extremely difficult for such a constitution to promote constitutionalism, respect for the rule of law, democracy, and good governance.”³

Constitutions are usually designed to express guiding national principles, to ensure political stability, to lay down the basic rules for a stable government. However, with the passage of time; they are subject to amendments or ratifications. Amar argues that the people retain the right to amend the Constitution and this right is inalienable⁴. Modern day society expects constitutional amendment to reveal constitutionalism, which demands, as one of its stronghold, the restrictions on the ability to amend the constitution⁵, the limitation of government powers and the observation of such limitations by its authorities, which represent the will of the people, arrived at through their consensus⁶. Many countries have entrusted this jurisdiction to the courts or a court-like institution: for instance, the Federal Constitutional Court in Germany or the Constitutional Council in Cameroon.

Constitutional protection during Constitutional amendments will therefore seek to ensure that amended constitutional clauses empower the notion of people’s sovereignty, supremacy of the law and the guarantee of human rights. A glance at the Constitution of Cameroon would puzzle any learned mind why such unconstitutional clauses still feature among the 21st century constitutions. It is a constitution undermined by its various amendments. A constitutional

³ Charles Manga Fombad, *Limit On The Power To Amend Constitutions: Recent Trend in Africa and Their Potential Impact on Constitutionalism*, (accessed 10 March 2009), at

<http://www.enelsyn.gr/papers/w9/Paper%20by%20Prof.%20Charles%20Manga%20Fombad.pdf>, page 1

⁴ David R. Dow *The Plan Meaning of Article V*, Responding to Imperfection: The Theory and Practice of Constitutional Amendment. Sanford Levinson, Ed. (1995), p. 123

⁵ FOMBAD, *id* note 1

⁶ Human Rights Correspondence School, *Lesson 1: Discussion of Constitutionalism and Its Relationship To Human Rights* (10 March 2009) at <http://www.hrschool.org/doc/mainfile.php/lesson49/187/>

history influenced by its legal heritage of Germany, France and Britain. The issue at stake is not just the supremacy of the constitution as a whole but why the Constitutional Council with the jurisdiction to adjudicate on constitutionality of amendments has never been consulted on such grounds or has it quashed any amendment for violating a constitutional protected right. This silent nature of the Constitutional Council in this domain brings to question the *raison d'être* of article 46⁷ of the Constitution which clearly states that the Constitutional Council shall have jurisdiction in such matters.

Article 46 of the Constitution states that “the Constitutional Council shall have jurisdiction in matters pertaining to the constitution (...) and shall rule on the constitutionality of laws⁸,” if this means the Constitutional Council has the right to quash any law or act of government, which violates the constitutional norm, then the same organ has the power to refuse any amendment, which seems to violate the rule of law, constitutional rights protected or the supremacy of the constitution, which are the basic tenets of any constitution. Where there are no rigorous amendment procedures, a constitution can become the victim of “incidental considerations at any time” (...) and the “blessed self-restriction dictated by the constitution would cease to exist”, whereas it is the task of the constitution to ensure it⁹.

The issue of constitutional protection against unconstitutional amendments or review of constitutional amendment is of vital importance to legal scholars. Gilmar Mendes¹⁰ affirms that

⁷ Cameroon Cont. amend. 1996

⁸ Cameroon cont. art. 46

⁹ András Sajó, *The Constitution as Fear and Acceptance. Limiting Government*. Central European University Press (1999). p. 39-40

¹⁰ Gilmar Mendes, *New Challenges of Constitutional Adjudication in the 21st Century: a Brazilian Perspective*, (accessed 10 March 2009) at

the Federal Supreme Court is compelled to act when faced with administrative and legislative omissions. Kemal Gözler¹¹ is of the opinion that once a Constitutional Court has declared it competent to review the constitutionality of constitutional amendments, it can as well review the procedural and formal regularity of constitutional amendments.

Constitutional Courts or court-like institutions, in adjudicating in constitutionality of amendments, must ensure that the sovereignty of the law is protected, safeguards fundamental rights or concepts, protects constitutional democracy, check the laws passed by the legislature, which might mean declaring unconstitutional a law adopted by a large majority in the democratically elected parliament¹². Thus the constitutional courts or the courts in adjudicating or for better adjudicating purposes must be independent from the other legislative group of the government and must adjudicate in the best interest of the nation and must not be partial.

This research presents evidence that the silent nature of the Constitutional Council and the courts with regard to constitutional amendment mechanisms in Cameroon has greatly undermined the supremacy of the Cameroon constitution. It examines the reasons why the Constitutional Council since its creation in 1996 has been so silent and almost inactive in protecting the constitutionality of amendments or supremacy in the Cameroon constitution. This research further examines the impact on the Constitution of the 2008 Constitutional amendments carried out on the 1996 Constitution, which amended the 1972 Constitution. It also examines the

http://www.stf.jus.br/arquivo/cms/noticiaArtigoDiscurso/anexo/Jurisdicao_Constitucional_no_Seculo_XXI_v__Ing.pdf, p 2.

¹¹ Kemal Gözler, *Judicial Review of Constitutional Amendment: A Comparative Study*. EKIN Press, Bursa – 2008, p 100

¹² Dorsen, Rosenfeld, Sajo & Baer, *Judicial enforcement of the Constitution and Models of Constitutional Adjudication*, Comparative Constitutionalism: Cases and Materials, American Casebook Series, (2003) p 112.

reasons why the Constitutional Council remained silent in 2008 despite the taxi drivers strike¹³ over fuel prices provoked by President Paul Biya's plan to change the Constitution to extend his 26-year rule, which resulted in destruction and killing of about 100 people¹⁴. This research seeks to answer questions/hypothesis: i) what has been the effect of the inactive nature of the Constitutional Council in Cameroon, ii) why have the Constitutional Council and the courts been silent in Cameroon, and how can the German example be used to empower this body to take active participation when constitutional amendments are being carried out. In answering these questions, the research will analyse the effects of such a silent on the Constitution, scrutinize the possible causes of such a silence, and examines how the Constitutional Council can be empowered to take active participation when constitutional amendments are carried out. By so doing, the following issues shall be considered: the creation, competence, jurisdiction of the Constitutional Council and who has standing before this body. Recommendations will be made for its empowerment.

The above stated hypothesis will be answered in three stages, by analysing Cameroon's legal heritage, examining the various occasions where the Constitutional Council has been silent when constitutional amendments have been carried out and making a comparative study with the German Federal Constitutional Court in order to make recommendations. The German Federal Constitutional Court¹⁵ has been selected for this study firstly because it has a wide scope of

¹³ The Taxi drivers strike started on 23 February 2008 and lasted until early March 2008 due to an increase in fuel prices and it soon turned a political strike because of President Biya's intention to push forward a draft proposal for the amendment of the Constitution in the next Parliamentary meeting slated for March 2008 which will enable him stand for re-election. The whole nation was already sick with his 26 years in power coupled with hardship and did not want to hear anything about him amending the constitution in order to stand for re-election in 2011.

¹⁴ Tansa Musa, *Cameroon activists say riots kill more than 100*, (accessed 21 March 2009), at <http://www.reuters.com/article/worldNews/idUSL0521512320080305?pageNumber=2&virtualBrandChannel=0>

¹⁵ German Basic Law. art. 93

standing and secondly because, just like the Cameroon Constitutional Council¹⁶, it does not have any express clause regarding constitutional amendments. However, since both have jurisdiction over constitutionality of laws, the Federal Constitutional Court of German takes an active part in constitutional amendments. Another reason for this selection is that, just like France and Britain, Germany was once a colonial master of Cameroon. However, the French Constitutional Council could not be taken for this study because it is similar to that of Cameroon, with a limited access to the Constitutional Council whereas Britain has an unwritten constitution.

This research on the silent nature of the Constitutional Council and the Courts in Cameroon as regards Constitutional amendment mechanisms is to demonstrate how in present days of constitutionality, the country as recent as in April 2008 carried out a Constitutional amendment, which as Member of Parliament (MP) Paul Abine Ayah declares, “will take us 200 years back” and to the Social Democratic Front (SDF), Members of Parliament who walked out of the parliament when the bill was being passed, “the whole issue is a complete fraud. We do not want to legitimise it by taking part”¹⁷. The research will also analyse why despite all these remarks the Constitutional Council did not adjudicate on the constitutionality of the amendment.

The research is conducted through a desk review of existing literature, which is however scared. It moves from a general introduction to Chapter One that deals with the general background of political and constitutional history in Cameroon and amendment mechanisms in Cameroon. Chapter Two examines the impact of the silent nature of the Constitutional Council on the Cameroon constitution and on other Constitutional rights. Chapter Three answers the hypothesis

¹⁶ Cameroon Cont. art. 46

¹⁷ Will Ross, BBC West Africa correspondent, *Cameroon makes way for a King*, (accessed 18 March 2009), at <http://news.bbc.co.uk/1/hi/world/africa/7341358.stm>

why the Constitutional Council has been silent by looking at its creation, jurisdiction and standing before the Council. This chapter also examines the German Federal Constitutional Court in order to show how their example could be used to improve the Constitutional Council in Cameroon. Finally, there is a recommendation and conclusion on how the Cameroon Constitutional Council could be empowered to take active participation in constitutional amendments.

CHAPTER ONE

GENERAL OVERVIEW ON CAMEROON CONSTITUTIONAL HISTORY, CONSTITUTIONAL COUNCIL AND CONSTITUTIONAL AMENDMENT MECHANISMS

One of the major constitutional problems in Cameroon today emanates from the nature of its colonial legal practice and heritage. Cameroon in its pre-independent stage witnessed several administrations under different administrators or colonial masters¹⁸. The Germans colonised Cameroon (before the First World War) and the British and French (after the First World War) as will be seen below. This constant change of administrators introduced changes in their various constitutions and earned Cameroon a dual legal system of government – Civil and Common law system¹⁹.

The courts were, however, silent in matters of constitutional adjudication as the colonial masters never legislated for an independent judiciary and there was no court vested with jurisdiction over constitutional matters. Instead, under German colonial rule, two parallel courts existed on a racial basis – one for the Germans, where German laws applied, and the other for the indigenous population where traditional laws under the control and supervision of the Germans existed²⁰. It was only during the 1996 Constitutional amendment that a Constitutional Council with

¹⁸ Charles Manga Fombad, *Researching Cameroonian Law*, (accessed 11 March 2009) at <http://www.nyulawglobal.org/Globalex/Cameroon.htm>

¹⁹ Under the Germans, German laws passed in the Reichstag was administered in Cameroon and when Cameroon moved under the French and British administration, the French administered their Civil law system on Cameroon while the British administered the Common law. At any given time, Cameroon's Constitutional law has to be changed to suit that of the colonial master at the time.

²⁰ The German colonial role was very strict although honest and characterized by a lot of forced and free labour, which really annoyed the indigenous population and it was one of the reasons they vigorously joined forces with the allied against German to oust the Germans out of Cameroon during the First World War. See FOMBAD, <http://www.nyulawglobal.org/Globalex/Cameroon.htm>

jurisdiction over constitutionality of laws and an independent judiciary was introduced and the outcome of the council till date is nothing but a name without any action. This research in the subsequent chapter will examine the impact of such a silent nature of the Constitutional Council in quashing unconstitutionality in amendment mechanisms on the Cameroon Constitution and on other constitutional rights. This chapter will fleetingly look at the constitutional background in Cameroon, the Constitutional Council and Constitutional mechanisms in Cameroon.

1.1. General Constitutional Background

Cameroon's constitutional history has gone through three major phases of administration and at least through five profound political and constitutional changes²¹. The first runs from the period of the protectorate from 1884 to 1914 when German troops in Cameroon were finally defeated during the First World War, the second phase lasted from 1914 to 1960 when Cameroon was under French and British rule until its independence in 1961²². The third phase covers the period from independence until date.

Under the German colonial masters, Cameroon was administered on the bases of a Reichstag law, which empowered the Kaiser to legislate, by decree for a better administration of the protectorates²³. Under the British and the French, the indigenous population were gradually introduced to their legal systems and while the "British retained traditional institutions and laws, which were not repugnant to natural justice, equity and good conscience or incompatible with any existing laws, the French implemented the principle of assimilation"²⁴. There was no

²¹ Charles Manga Fombad, *The New Cameroonian Constitutional Council in a Comparative Perspective: Progress or Retrogression?* Journal of African Law, Vol. 42, No. 2 (1998), pp. 172-186 , pp 173-174

²² Charles Manga Fombad, *Cameroon*, International Encyclopaedia of Laws, Vol. 2 Constitutional Law, 2000, p 19

²³ *Id.* at 20

²⁴ *Id.*

economic, social, or judicial independence and the indigenous population were not given the power to decide in these matters.

East Cameroon got independence from the French and had its first constitution in 1960 while in 1961 West Cameroon followed suit by achieving its independence from Nigeria where it was under the British rule. And West Cameroon decided during a plebiscite in 1961 to join East Cameroon to form the Federation Republic of Cameroon²⁵. This union brought about the second constitution of Cameroon of 1 September 1961 and one of its provisions was the creation of a Federal Court of Justice empowered to decide on jurisdictional conflict between the two highest courts of the federated states and to review legislative action and give advisory opinion²⁶ on matters referred by the President. However, in 1972, the two Cameroons (Southern and West) united during the 20 May 1972 Unification to form a United Republic of Cameroon and adopted the 20 May 1972 constitution, which was promulgated on 2 June 1972, which, though amended several times, forms the base of the current Cameroon constitution.

1.2. Constitutional Council and the Courts

Constitutions can never last forever and so must be updated from time to time to live up to changes in the political circumstances and citizens' values. However, the question remains which institution or process should be entrusted with the authority to do the updating²⁷ and how can this process be controlled? A constitution, as Prof. Charles Manga Fombad argues²⁸, is only

²⁵ Tamfuh Wilson, *Constitutional Law and Political Systems*, Y.N. 2006, pp 72-74

²⁶ Articles 14, 19 and 33 of the Federal Constitution of 1961. See C. Anyangwe *The Cameroon Judicial System*, Yaounde, 1987, 137-139, and H. N. A. Enonchong, *Cameroon Constitutional Law: Federalism in a Mixed Common-Law and Civil-Law System*, Yaounde, 1967, 223-234, quoted by Charles Manga Fombad, *supra* note 16 at 174

²⁷ Adrian Vermeule, *Constitutional Amendments and the Constitutional Common Law*, The Law School – The University of Chicago, 2004, p 1

²⁸ FOMBAD, *Supra* note 21 at 175

as good as the mechanism provided for ensuring that it is properly implemented and its violations are promptly sanctioned. The introduction of the Constitutional Courts with jurisdiction to review, to strike legislation, and to adjudicate conflicts among state branches is a vital development of the twentieth century²⁹. This has led to the wide acceptance of the idea of judicial review as a guardian of the legitimacy of laws³⁰ in the constitutional world. Constitutional democracy, which entails that adopted constitutions should embrace the notion of individual right and limiting government power has been on the rise.

Until 1990, though the situation is not much different now, Cameroon has had a highly centralized, autocratic political system with a strong executive, a judiciary under the control of the executive, and a National Assembly dominated by the ruling party. Economic mismanagement, pervasive corruption, a harsh and authoritarian system of government, and a challenging business environment retarded the economy of Cameroon. This led to discontent and frustration among the citizens and exploded into a series of strikes (ghost town campaigns), killings³¹, and a nationwide call for constitutional and political reforms. A Constitutional Council was introduced in Cameroon in 1996 by Law No. 96/6 of 18 January 1996 which amended the Constitution of 2 June 1972 with jurisdiction over constitutionality of laws.

“Art. 46. The Constitutional Council shall have jurisdiction in matters pertaining to the constitution. It shall rule on the constitutionality of laws. It shall be the organ regulating the functioning of the institutions”³².

²⁹ John Ferejohn and Pasquale Pasquino *Constitutional Adjudication: Lessons from Europe*, (accessed 11 March 2009), at <http://www.tafjapan.org/english/forums/pdf/john-pasquale.pdf>, p 1

³⁰ Igor I. Kavass, *The Emergence of Constitutional Courts in Europe*, Supranational and Constitutional Courts in Europe: Functions and Sources, 1992, p 6

³¹ Between May 1990 and October 1991, more than 400 Cameroonians were killed in direct confrontation with the armed forces during mass civil demonstration organized by the opposition parties.

³² Cameroon Cont. art. 46

This council has, however, been very silent in its activities especially as regards constitutional amendments. This has greatly affected the constitution of Cameroon (In chapter three, more will be explained on the Constitutional Council and why the Council has been silent will be answered).

Access to a “subjectively or objectively impartial”³³ and independent court is an essential element in a democratic society and having a Constitutional Council where standing is restricted is as good as having none at all since it does not serve the purpose. Access to constitutional protection through judicial review of the constitutional amendments or through adjudication has been a problem in Cameroon as far back as the colonial rule as seen in the 1 September 1961 Federal Constitution. In that constitution, only the President of the Republic had absolute discretion to refer constitutional controversial on the constitution to the Federal Court of Justice³⁴. It was only in 1996 that the constitution provided for an independent judiciary in its articles 37 to 42.

Art. 37§1 Justice shall be administered in the territory of the Republic in the name of the people of Cameroon.

§2 Judicial power shall be exercised by the Supreme Court, courts of Appeal and the Tribunals. The Judicial Power shall be independent of the executive and legislative powers. Magistrates of the bench shall, in the discharge of their duties, be governed only by the law and their conscience.

§3 The President of the Republic shall guarantee the independence of judicial power. He shall appoint members of the bench and of the legal department.

He shall be assisted in this task by the Higher Judicial Council which shall give him its opinion on all nominations for the bench

³³ R. Clayton, H. Tomlinson, *The Law of Human Rights*, Oxford University Press, 2000, p 657

³⁴ Charles Manga Fombad, *The New Cameroonian Constitutional Council In a Comparative Perspective: Progress or Retrogression?* Journal of African Law, Vol. 42, No. 2 (1998), pp. 172-186, p 175

and on disciplinary action against judicial and legal officers. The organisation and functioning of the Higher Judicial Council shall be defined by law³⁵.

The courts, however, have proven not to be independent and have been unable to take major decisions in constitutional adjudication because of the contradictory nature of the Constitution. Despite numerous instances of Constitutional rights violation by the government, the few instances where individuals have challenged these actions before the courts the later had generally refrained from intervening and left the executive to have its way³⁶. If the judiciary is independent, as according to article 37§2, then the president does not need to guarantee its independence as stated in article 37§3, or should he be involved in appointing members of the bench and of the legal department. This makes them political appointees, as such they turn to owe their allegiance and job security to the government in power³⁷, rather than serving the interests of the people. Hence, it will be very difficult for the judiciary to come out with any legislation in the interest of the population that might violate the interest of their employer. This however, indirectly makes the judiciary subject to the executive and therefore fails to meet one of the reasons of constitutionalism, which is limiting government powers on constitutional matters by the courts.

1.3. Constitutional amendment mechanisms

Anne Twomey affirms that “mechanisms by which a constitution can be amended or repealed³⁸” is of vital importance to a constitution and the body responsible for such a duty needs to carefully execute such powers. The method of amendment or the body vested with the power to

³⁵ Cameroon Cont. art. 37

³⁶ FOMBAD, *supra* note 34, at p 186

³⁷ John Mukum Mbaku and Joseph Takougang, *The leadership Challenge in Africa: Cameroon Under Paul Biya*, African World Press, 2004, p 37

³⁸ Anne Twomey, *The Involvement of Sub-national Entities in Direct and Indirect Constitutional Amendment Within Federations*, (accessed 9 March 2009) at

<http://camlaw.rutgers.edu/statecon/workshop11greece07/workshop11/Twomey.pdf>, p 1

initiate amendments varies from one country to the other though most constitutions usually state specific requirements and procedure for such an operation. In some countries, this power vested in the people is exercised through a referendum or through the sovereignty of the people, whereby the citizens legislate on the issue, while in others it is initiated by the President or by a percentage of the parliamentarians.

The 1996 constitution of Cameroon provides for two ways through which a constitutional amendment can be initiated namely:

“Art. 63§1 amendments to the Constitution maybe 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.”

This shows how difficult it is for any member of the parliament to initiate any constitutional amendment as a one-third approval of either House is required. Because of this rigid clause, the President usually initiates constitutional amendments, which are usually in his favour and the Parliamentarians, are blocked especially the opposition who do not make up to one-third of the members of the National Assembly. This has always caused all their initiative towards a constitutional amendment to fail. When an amendment procedure is initiated through one of the methods stated above, the constitution stipulates that it can be carried out through parliamentary sessions or a referendum.

Art. 63§3 Parliament shall meet in congress when called upon to examine a draft or proposed amendment. The amendment shall be adopted by an absolute majority of the members of Parliament. The President of the Republic may request a second reading; in which case the amendment shall be adopted by a two-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.³⁹

When either the President or the parliament has initiated an amendment, an absolute majority of the members of parliament in congress must adopt the draft or proposed amendment or else the bill may not go through. The president has the right to ask for a second reading of the bill and in such a situation, a two-thirds majority is needed for it to go through. The reason why the President should be taking active part in constitutional amendment is not stated when it should purely be the job of the legislators. This makes it easier for an amendment proposed by the president to go through than those proposed by the parliament⁴⁰ since he has the majority party in the parliament and will always count on their support. In line with article 63§4, the president may submit any draft bill to amend the constitution to a referendum and when this is the case, the bill will require a simple majority of the votes cast. There is no explanation as to what classification the President considers when tabling a bill before the Parliament or whether to put it by referendum and the whole amendment centres around the President. The Constitutional Council who has the jurisdiction to legislate in matters of constitutionality is not mentioned anyway and equally there is nothing said about how the proposal from the President is controlled. He comes up with a draft proposal and select the method best to him and the legislature and judiciary or the constitutional council are all dormant. Chances of such an amendment upholding constitutional rights are very slim and almost impossible since there is no check on the executive.

³⁹ Cameroon 1996 Const. art. 63 §3-4

⁴⁰ Charles Manga Fombad, *Cameroon*, International Encyclopaedia of Laws, Vol. 2 Constitutional Law, 2000, p 52

This amendment mechanisms clearly show that something need to be done to improve it if constitutionality of amendment and the upholding of fundamental rights are to be protected by the Constitutional Council or the courts.

After analysing the constitutional background of Cameroon, and seeing the inactive nature of the courts in matters of constitutionality of law under the colonial rule, the next chapter will answer the first hypothesis of this research work, by analysing the impact of the silent nature of the Constitutional Council in matters of Constitutional amendments on the Constitution.

CHAPTER TWO

IMPACT OF THE SILENT NATURE OF THE CONSTITUTIONAL COUNCIL ON THE CAMEROON CONSTITUTION

When the legislative and executive powers are united in the same person or body, (...) there can be no liberty, because apprehensions may arise lest *the same* monarch or senate should *enact* tyrannical laws to *execute* them in a tyrannical manner. (...) Were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for *the judge* would then be *the legislator*. Were it joined to the executive power, *the judge* might behave with all the violence of an *oppressor*⁴¹.

As seen from the above quote, the three arms of the government must act independently of each other and serve as a check on one another. This will be difficult to achieve if one government branch encroaches upon another or the others. When the constitution makes it easier for constitutional amendment initiated by the President than those initiated by the Parliament⁴² and when the Constitutional Council is silent in the face of constitutional amendments, which undermined the rule of law and constitutionality of amendments, the life and liberty of the subjects would be exposed to arbitrary control.

This chapter will examine three articles amended in 2008. It will show the effect of the 2008 Constitutional amendments carried out on the 1996 Constitution that amended the 1972 Constitution. This chapter addresses the question of what has been the impact of the silent nature of the Constitutional Council on the Constitution of Cameroon and how this has affected fundamental or constitutional right. For this to be done, the chapter will show how these

⁴¹ The Federalist No. 47

⁴² The Constitution stipulates for a one-third approval of either House of Parliament as seen in article 63§2 for all amendments initiated by the Parliament.

amendments have undermined the constitutionality of law in the present day Cameroon Constitution and how, despite this, the Constitutional Council failed to adjudicate on the Constitutionality of the amendments. If the Constitutional Council, which is the guarantor of the Constitution, with jurisdiction in matters pertaining to the Constitution failed to protect the people against unconstitutionality in amendments, the masses must look for another means of airing their grievances.

2.1. Impact of three Constitutional articles amended during the 2008 Constitutional amendment

Three articles out of the six amended in the 2008⁴³ Constitutional amendment have been selected for analysis in order to demonstrate their impact on the Constitution of Cameroon. These are the three most relevant. The other three amendments deal with the convening of the National Assembly and the Senate - Article 14§3a (new)⁴⁴, the extension or abridging of term of office of the National Assembly in case of serious crisis - Article 15§4 (new)⁴⁵, and the last deals with the position of the Senate *vis-à-vis* the regions - Article 67§6 (new)⁴⁶.

2.1.1. Article 6§2 (new)

“Art. 6§2(new) The President of the Republic shall be elected for a term of office of 7 (seven) years. He shall be eligible for re-election”.

⁴³ Law No. 2008/001 of 14 April 2008 to amend and supplement some provisions of law No. 96/6 of 18 January 1996 to amend the Constitution of 2 June 1972.

⁴⁴ This article states that both houses of parliament shall meet on the same dates in ordinary session during the months of March, June and November each year, when convened by the Bureaux of the National Assembly and the Senate, after consultation with the President of the Republic.

⁴⁵ Article 15§4(new) states that in case of serious crisis or where circumstances so warrant, the President of the Republic may, after consultation with the President of the Constitutional council and Bureaux of the National Assembly and the Senate, request the National Assembly to decide, by law, to extend or abridge its term of office. In this case, the election of a new Assembly shall take place not less than 40 (forty) and not more than 120 (one hundred and twenty) days following the expiry of the extension or abridgement period.

⁴⁶ Article 67§6(new) is to the effect that where the Senate is put in place before the regions, the electoral college for the election of Senators shall comprise exclusively Municipal Councillors.

This article removes the term limits of the president, which formerly reads, “He shall be eligible for re-election once.” The current President who has been in power since 1982 introduced article 6§2 in 1996 to enable him stand for re-election. The President, whose term in office is supposed to expire in 2011, has removed the word “once” to make himself a life president without any limit on his tenure. An unlimited term of office is a sign of despotism, and prevents the citizen from having a President of their choice if an unwanted President remains in power. It is obvious that when a President tries to remain indefinite in power, there is bound to be fundamental rights abuses because any citizen who tried to talk against him will be arrested or prevented from doing so. In addition, to maintain his stay, he will appoint his trusted friends to lead state strategic institutions and hence making the country a sought of cottage industry at the detriment of the whole nation.

2.1.2. Article 51§1(new)

“Art. 51§1(new) The Constitutional Council shall comprise 11 (eleven) members designated for an eventually renewable term of office of 6 (six) years

These members shall be chosen from among personalities of established professional renown.

They must be of high moral integrity and proven competence”.

This article changes the tenure of the members of the Constitutional Council from 9 (nine) years⁴⁷ non-renewable term of office to 6 (six) years renewable. This means that these members will rather prefer to be loyal to the President who has appointed them than to serve the nation impartiality and independently since they know, their eligibility depends on their relationship with the President. In addition, the President might decide to behave funny and cunningly

⁴⁷ Article 51§1 of Law No. 96-06 of 18 January 1996 which amended the Constitution of 2 June 19972, stated that the Constitutional Council shall comprise 11 (eleven) members designated for a non-renewable term of office of 9 (nine) years.

appoint his friends in their sixth year to aid him in the forthcoming presidential election, which will be held in the seventh year of his presidential term since article 48§1 states that the Constitutional Council shall ensure the regularity of presidential elections, parliamentary elections and referendum operations. It shall proclaim the results thereof. If the President places his friends in the Constitutional Council any challenges (article 48§2), as to the regularity of the election provided in article 48§1 brought before them by any candidate, political party that participated in the election in the constituency concerned or any person acting as Government agent at the election will easily be manipulated upon.

2.1.2. Article 53§1-3 (new)

Art. 53§1(new) The Court of impeachment shall have jurisdiction, in respect of acts committed in the exercise of their functions to try:

- The president of the Republic for high treason;

§2 The President of the Republic shall be indicted only by the National Assembly and the Senate deciding through an identical vote by open ballot and by a four-fifth majority of their members.

§3 Acts committed by the President of the Republic in pursuance of article 5, 8, 9 and 10 above shall be covered by immunity and he shall not be accountable for them after the exercise of his functions;

This article makes the president liable only for high treason committed against the state and indictment is only through the National Assembly and the Senate deciding through an identical vote through open ballot and by a four-fifth majority of their members, which is not easy to arrive at. Considering the fact that the President's party or the ruling party is made up of more than three-quarter⁴⁸ of the total number of Members of Parliament, this means that the opposition

⁴⁸ The 22 July 2007 National Assembly election witnessed a huge majority of the ruling party, Cameroon People Democratic Movement, CPDM. Although it was largely criticized that the victory was stolen from the Social Democratic Front, SDF, the strongest opposition party, the Constitutional Council declared it in favour of the ruling party. CPDM has 152 MPs out of the total 180, the leading opposition party, Social Democratic Front, SDF, has 16

or the nation will never be in a position to hold the president liable for high treason. High treason and not treason is stipulated and there is no notion of what is referred to as high treason. The impeachment of a President is a serious matter, allowing it to be carried out through an open vote will make some of the MPs feel intimidated or forced to vote against their wish since each and everyone will know who voted for or against.

Sub §3 states that the President shall not be liable for acts committed in the execution of his functions even when he is out of office. This means that he can carelessly managed the state's funds knowing that he would not be held liable or accountable for his acts. The immunity can covers him when he is in office but not when he is out of office. This greatly undermined the principle of good governance and accountability.

2.2 The effect of the Constitutional Council's silence during the 2008 amendment on the Constitution and on other Constitutional rights.

The Constitutional Council failed to adjudicate on Law No. 2008/001 of 14 April 2008 that amended and supplemented some provisions of law No 96/6 of 18 January 1996 to amend the Constitution of 2 June 1972. This amendment procedure caused civil unrest throughout the whole country, but in the face of all that, the Constitutional Council was silent. The citizens expected the Constitutional Council to use its jurisdiction on constitutionality of laws to quash the amendment prior to its enactment. However, the Constitutional Council failed to uphold the unconstitutionality of amendment, to adjudicate in matters pertaining to the constitution and to

MPs, National Union for Democracy and Progress (UNDP) has 06 MPs, Cameroon Democratic Union (UDC) has 04 and Progressive Movement (MP) has 01 MP.

protect fundamental rights enshrined in the constitution. This section will expand on the impact of this amendment on the constitution and on other constitutional rights.

2.2.1. Effects on the Constitution

The 2008 constitutional amendment in Cameroon was one of the worst unconstitutional amendments in the twenty-first century. It met with opposition from virtually all angles of the society but since the Constitution made it easier for the president-initiated amendments⁴⁹ to be legislated upon in the National Assembly and also because the Constitutional Council was quiet in adjudicating on the constitutionality or otherwise of the amendment, the amendment went through successfully. The effect on the constitution can be seen as demonstrated below.

Abuse of the Rule of Law

The rule of law can be defined as the existence of an organised body of laws that maintain the institutions of a government together in a way that implants democracy within that state. This existence is made possible only if there is a strong and independent judiciary, which ensures that the laws of the land/state are enforced fairly and equally⁵⁰. It can be said to be one of the essential components of good governance among which there is legitimacy and democracy. It also means that everyone is subject to the law and with it comes accountability. The rule of law is a “theory of governance relying upon a sequence of legal and social constraints designed to encourage order and to avoid arbitrary and unreasonable manoeuvres of government powers and it equally suggests that the constitution, which is the Supreme Law of the land, is expected to be sovereign”⁵¹. Therefore, if the Constitution is the supreme law of the land, and article 53§3

⁴⁹ See *supra* note 42

⁵⁰ Bernard Muna, *Cameroon and The Challenges of the 21st Century*, Tama Books, 1993, pp 85-86

⁵¹ Eyambe Elias Ebai, *The Rule of Law and Constitutional Amendment in Cameroon*, (accessed 22 March 2009) at <http://www.postnewslines.com/2008/10/the-rule-of-law-and-constitutional-amendment-in-cameroon.html>, p 1

states that the president is immune from acts committed during the execution of his duties as the President and Head of State, it therefore means that he is above the law and cannot be judged for such things after his reign.

“Art. 53§3: Acts committed by the President of the Republic in pursuance of article 5, 8, 9 and 10 above shall be covered by immunity and he shall not be accountable for them after the exercise of his functions”

This article violates one of the elements of good governance and leaves the constitution without any protection since any president can do whatever he/she likes during their reign and still go free. Good governance purports for accountability and faire treatment, by making the president immune from his responsibility in the execution of his service as Head of State, means the judiciary cannot hold him liable and a weak judiciary or a Constitutional Council in the case of constitutional rights protected, is an directly way of saying there is violation of fundamental rights.

2.2.2. Effects on other Constitutional Rights

Though the 1996 Constitution clearly guarantees the protection of Constitutional rights outline in its preamble and article 65 affirms that the preamble shall be an integral part of the constitution, the upheavals during the taxi drivers strike over fuel prices inflated by President Biya’s intention to amend the constitution witnessed a lot of fundamental rights abuses.

Abuse of Right of Expression:

Freedom of expression is an essential tool in modern democracy and according to the interpretation of the Article 10§2 of European Convention for the Protection of Human Right and Fundamental Freedom, “it is applicable not only to “information” or “idea” that are favourable received or regarded as inoffensive or as a matter of indifference, but also to that which offend,

shock or disturb the state or any sector of the population”. Free speech is guarantee under the preamble of the Constitution of Cameroon as “the freedom of communication, of expression, of the press, of assembly, of association, and of trade unionism, as well as the right to strike shall be guaranteed under the conditions fixed by law.”

Following the enactment of the constitutional amendment, and when the citizens realised that the law has not been declared unconstitutional, many publicly criticised the amendment. This resulted in a series of arrests and imprisonments and many abuses. Cameroon’s singer-songwriter and an outspoken critic of the government, Lapiro de Mbanga received a 3-year prison sentence and was imposed high fine for singing against the Constitutional amendment. In a song entitled “‘Constipated Constitution,’ he sang that the head of State is caught in the trap of networks that oblige him to stay in power even though he is tired ... Free Big Katika (President Biya’s nickname)”⁵². Mbanga’s appeal against the sentence is still pending before the court but as usual, the executive had its way, and Mbanga is serving his prison term. Mbanga is not the only case of fundamental rights violation. Joe La Conscience; another singer-songwriter received a six-month imprisonment term for singing against the 2008 constitutional amendment.

The government is determined to limit freedom of expression as much as possible and this will mean stepping beyond the singer-songwriters milieu. To demonstrate its determination, the government closed down a television station in Douala (Equinoxe Television) and two radio stations (Equinoxe Radio in Douala and Magic FM in Yaounde) for airing debate and allowing

⁵² The song has been banned on most TV and radio channels. Any criticism about the constitutional amendment by any citizen is an invitation for imprisonment and torture. More can be read at <http://www.internationalpen.org.uk/index.cfm?objectid=D7E60B77-E0C4-ED84-0C8E194E54C2DA10> (accessed 21 March 2009).

live programs (making it possible for people to call and give their views) on the most controversial constitutional amendment⁵³ in modern days.

Abuse of Right to Fair Trial:

The 1996 preamble states, “the law shall ensure the right of every person to a fair hearing before the courts” and “every accused person is presumed innocent until found guilty during a hearing conducted in strict compliance with the rights of defence.” One of the impacts of the violent strike that followed the announcement of the president’s intention to amend the constitution was abuse of right to a fair trial. Francis Ndjongo, a lawyer and member of the Cameroon Bar Council, is one of those who opted to defend the defendants free of charge. In an interview with the journalists, he said “Once they appear in court, they are hurriedly tried without any defence counsel, with trials lasting sometimes just about five minutes, and sentenced to heavy prison terms ranging from 14 months to two years and payment of fines⁵⁴.” In some cases, human rights activists have complained of mass trial carried out with no time allowed for self defend despite the fact that citizens were arrested at random during this period without necessarily being demonstrators.

Abuse of Right to Life

One of the rights protected by the 1996 preamble states, “every person has a right to life, to physical and moral integrity and to human treatment in all circumstances. Under no circumstances shall any person be subjected to torture, to cruel, inhuman, or degrading treatment.” During the February 2008 strike, as Alice Nkom, lawyer and human right activists

⁵³ Attacks on the Press in 2008: Cameroon, (accessed 14 March 2009), at <http://www.cpj.org/2009/02/attacks-on-the-press-in-2008-cameroon.php>

⁵⁴ Tansa Musa, *Cameroon activists say riots kill more than 100*, (accessed 21 March 2009) at <http://www.reuters.com/article/worldNews/idUSL0521512320080305?pageNumber=2&virtualBrandChannel=0>

said, “many were beaten in custody with visible marks on them and they appeared in court naked from the waist up” and Cameroon activists said “more than 100 people died”.⁵⁵ Newspaper reported the death of more than 100 with 20 bodies recovered from Douala’s Wouri river where demonstrators were trapped by security forces on both sides of the bridge and the security forces used tear gas on them. In confusion, and to avoid being arrested, many jumped into the river in a bid to save their lives but died.

The above analyses show that despite the impact of the various constitutional upheavals and confrontations or the various abuses of rights, the Constitutional Council remained silent and failed to adjudicate on the unconstitutionality of the amendments. The obvious question to ask at this junction is why it failed to do anything and the next chapter will tackle this question by looking at the composition, jurisdiction, access to the court or its ability to work independently and impartially. These issues are necessary for a smooth running of a Constitutional Council.

⁵⁵ *Id.*

CHAPTER THREE

CONSTITUTIONAL COUNCIL IN CAMEROON AND THE FEDERAL

CONSTITUTIONAL COURT IN GERMANY

“The central role of the court in a democratic society is ‘to protect the rule of law. This means, *inter alia*, that it must enforce the law in the institutions of the government and it must ensure that the government acts according to the law’”⁵⁶

Constitutions typically allocate rights and duties, and constitutional adjudication is generally for vindication of the rights and enforcement of duties involved⁵⁷. The courts usually resolve disputes concerning constitutional right and obligations and it must ensure that the rule of law is respected and other states’ institutions act in accordance to this. Many countries with a centralised model of constitutional review entrust these disputes to the constitutional courts or a court-like institution. In acting as guardian of the constitution, the constitutional courts can perform the centralised model, which started in Europe (“power to review vested in a court or a court-like institution”)⁵⁸ or the decentralised one, first established in the United States (“power to control given to all judicial organs of a given system”)⁵⁹.

There are three basic types of review jurisdiction: abstract review (“review of legislation takes place in the absence of litigation”) ⁶⁰, concrete review (“review of legislation constitutes a separate stage in an ongoing judicial process”) ⁶¹, and the individual constitutional complaint procedure (“a private individual alleges the violation of a constitutional right by a public act and

⁵⁶ Dorsen, Rosenfeld, Sajo & Baer, *Judicial enforcement of the Constitution and Models of Constitutional Adjudication*, Comparative Constitutionalism: Cases and Materials, American Casebook Series, (2003) p 108

⁵⁷ *Id.* at 133

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.*

seek redress from the court for such a violation”)⁶². Abstract review can be either *a priori* (Constitutional Council) or *a posteriori* (German Federal constitutional Court) model of judicial review depending on its institution.

The constitutional courts in reviewing the constitutionality of amendments made to state constitutions are influenced by its creation and access to the court. Thus, an independent and impartial constitutional court is essential for democratic ruling. This means the court must be independent of other branches of the government by means of creation, appointment and remuneration. It is when this independence is guaranteed that a constitutional court will not adjudicate based on private sector influence or relying on the executive as its employer and, hence, failing to respect the legality of constitutional norms.

Another issue of vital importance to the constitutionality of amendment is access to the Constitutional Court. Who has standing before the court, or who can submit a constitutional claim for adjudication is important because without standing, the private individuals will not be able to seek remedies when a constitutional right is violated, no matter how nicely the jurisdiction of the Constitutional Council is stipulated. Prior to the 1972 Unification in Cameroon, the 1st September 1961 Constitution provided for a very limited power of judicial review by allowing only the President to refer matters of constitutionality to the Federal Court of Justice. This limitation, as seen in Chapter 1, is still felt in today’s Constitutional Council.

This chapter aims to analyse why the Constitutional Council in Cameroon has been silent in Constitutional amendment despite the impacts raised in the previous chapter. In answering this

⁶² *Id* at 113

question, the chapter will also examines the independence of the Constitutional Council in Cameroon and Federal Constitutional Court, access to these courts and the role they play in constitutional amendments, to see how the example of the Federal Constitutional Court in Germany could be useful in Cameroon. Composition and access to the Constitutional Council is important to analyse because only an independent and impartial Constitutional Council can be bold enough to act without external influence. The Federal Constitutional Court in Germany and the Constitutional Council in Cameroon both exercise centralised judicial review⁶³.

3.1. The Constitutional Council in Cameroon

The Constitutional Council in Cameroon was created in 1996 by Law No. 96/6 of 18 January 1996 that amended the Constitution of 2 June 1972. The Constitutional Council is, however, not operational and its functions are being carried out by the Administrative Bench of the Supreme Court. This is by virtue of article 67§4, which states, “the Supreme Court shall perform the duties of the Constitutional Council until the latter is set up” and this lay the base for Cameroon being governed by two constitutions – the 1972 and 1996 Constitutions. Article 46 of the Cameroon Constitution gives the Constitutional Council the jurisdiction to adjudicate in matters pertaining to the Constitution, the Constitutional Council shall be the organ regulating the functioning of the institutions, and it shall adjudicate in disputes involving the constitution and the regions. However, with these powers at its disposal, the Constitutional Council has since been silent in the execution of its duties as regards constitutional amendments. The question is why the Constitutional Council has been unable to exercise this jurisdiction. In an attempt to answer the question why the Constitutional Council in Cameroon has been silent in constitutionality of amendments, this section will look at the independence of the Council as

⁶³ This occurs when judicial review is confirmed to one judicial or legal organs.

regards its creation and the mode of appointment of its members. This is because a dependent or an executive dominated Constitutional Council will find it difficult or impossible to effectively carry out its duties and hence depriving the Constitution of its supremacy and individuals of their protected rights.

3.1.1. Independence of the Council - Composition/membership

Constitutional courts can only effectively review the constitutionality of the government's action and protect fundamental rights if they are able to make decisions without interference from the other arms of the state: the executive or the legislature. Thus, the guarantee of independence of the judiciary and impartiality of judges are of vital importance to fundamental rights, constitutionality of amendments, protection of the constitution and the preservation of the rule of law. The independence of the judiciary or constitutional court is essential when constitutional effectiveness is concerned. The Constitutional Council in Cameroon and the Federal Constitutional Court in Germany are both institutions acting as the guardian of the constitution. However, as will be seen below, the Federal Constitutional Court is a tribunal made up of professional judges who are free from external influence in the adjudication of constitutional matters, whereas the Cameroon Constitutional Council, which is not a court of law, "operates outside the judicial system"⁶⁴ and suffers from executive domination.

The composition of the Cameroon Constitution Council is stated in article 51§1(new)⁶⁵ as:

Art. 51§1(new): The Constitutional Council shall comprise 11 (eleven) members designated for an eventually renewable term of office of 6 (six) years.

⁶⁴ Charles Manga Fombad, *The New Cameroonian Constitutional council in a Comparative Perspective: Progress or Retrogression?* Journal of African Law, Vol. 42, No. 2 (1998), pp. 172-186, p 176

⁶⁵ Cameroon Cont. amend 2008

These members shall be chosen from among personalities of established professional renown.

They must be of high moral integrity and proven competence.

51§2⁶⁶: Members of the Constitutional Council shall be appointed by the President of the Republic. They shall be designated as follows:

- Three, including the President of the Council, by the President of the Republic;
- Three by the President of the National Assembly after consultation with the Bureau;
- Three by the President of the Senate after consultation with the Bureau;
- Two by the Higher Judicial Council.

Besides the eleven members provided for above, former presidents of the Republic shall be *ex-officio* members of the Constitutional Council for life.

The Constitutional Council comprises eleven members elected for a renewable term of six years among personalities of established professional renown who must be of high moral integrity and proven competence. Nothing is stated as to what constitutes “established professional renown” or what constitutes an “eventually renewable term of six years” or how many terms are the tenure of the member of the Constitutional Council renewable. The fact that members are eligible for re-election imposes upon them the desire either to be more effective in their duties or to be partially inclined towards their elector. Since the President of the Republic elects members of the council, this makes it an executive dominated institution, which however, directly or indirectly has to pay loyalty to him and thus ends up being a partial institution in the constitutionality of amendment. It clearly shows that members of this council will not endeavour, or attempt to quash any unconstitutionality in an amendment initiated by the president, or where his interest will be at stake. They will therefore prefer to favour the President than to protect the Constitution or fundamental rights protected within. This account for one of the reasons why the Constitutional Council has been silent in quashing cases of

⁶⁶ Cameroon Cont. amend 1996

unconstitutionality in amendment. Former Presidents are automatically *ex-officio* members. This only goes on to increase the influence of the executive branch on the Constitutional Council and also undermine the supremacy of the constitution. This forfeits the meaning of constitutionalism, which deals with the “restriction of state power in the preservation of public peace”⁶⁷. As regards the status of the members, the Constitution states:

“Art. 51§5⁶⁸: The duties of members of the Constitutional Council shall be incompatible with those of member of Government, of member of Parliament or of the Supreme court. Other incompatibilities and matters relating to the status of members, namely obligations, immunities, and privileges shall be laid down by law.”

It is essential to have clearly stated what incompatibilities and matters relating to the status of members (obligations, immunities and privileges) are instead of reserving them to be laid down by law. These “safeguards are so crucial to the proper functioning of the Council”⁶⁹ and have an impact on the impartiality or independence of the Constitutional Council. However, this law came out on 21 April 2004⁷⁰ and brought it functioning under the supervision of the president. Here again we see the functioning of the Constitutional Council being placed under the executive or the President, having the President as its supervisor, it will be very difficult for the Council to venture on adjudication, which might harm the President’s interest, or to take action without his approval. The modalities and functioning of the Constitutional Council’s general secretariat is determined by a Presidential decree and the General Secretary is nominated by a Presidential decree⁷¹. This only goes further to show how difficult it will be for the Constitutional Council to

⁶⁷ András Sajó, *The Constitution as Fear and Acceptance*. Limiting Government, Central European University Press. (1999), p 9.

⁶⁸ Cameroon Cont. amend 1996

⁶⁹ Charles Manga Fombad, *The New Cameroonian Constitutional council in a Comparative Perspective: Progress or Retrogression?* Journal of African Law, Vol. 42, No. 2 (1998), pp. 172-186, p 178

⁷⁰ Law No. 2004/004 of 21 April 2004 to lay down the Organisation and Functioning of the Constitutional Council.

⁷¹ Article 10§1-2 of Law No. 2004/004 of 21 April 2004 to lay down the Organisation and Functioning of the Constitutional Council.

act impartially with such an executive influence in the constitutionality of amendment as the President can decide to appoint only those who are loyal to him and do not care about the protection of the Constitution or the rights of individuals.

3.1.2. Jurisdiction and Access to the Council

The rule on standing varies from one country to the other, while it is open to all in some countries; it is restricted to some particular individuals in others. However, making the Constitutional Court more accessible or allowing for individual constitutional complaint procedures would be making it more effective in the interests of the people as many will be able to challenge when their constitutional rights are violated. This will promote democracy and protection of fundamental rights. But how can jurisdiction and standing before the Constitutional Council in Cameroon contribute to its being silent?

Access to justice is an essential element in modern democracy and if access to the Constitutional Council is restricted, no matter the number of constitutional abuses, the Council might not be able to react because somebody needs to bring up a claim for the council to adjudicate on. Although some constitutions empower its Constitutional Court to “adjudicate... as *ex officio*, on initiatives to revise the Constitution⁷²,” not all Constitutional Courts have that power. This therefore, shows how important standing is, since when a Constitutional Court cannot adjudicate ... as *ex officio*, a constitutional complaint needs to be raised by someone whose constitutional rights has been violated.

Art. 46§2⁷³ Matters may be referred to the Constitutional Council
by the President of the Republic, the President of the National

⁷² Romania Const. art. 144§a, in its original form in the Constitution of 1991, (now Article 146§a of the 2003 version of the Constitution

⁷³ Cameroon Const. amend 1996

Assembly, the President of the Senate, one-third of the members of the National Assembly or one-third of the Senators. Presidents of regional executives may refer matters to the Constitutional Council whenever the interests of their Regions are at stake.

§3 Laws as well as treaties and international agreements may, prior to their enactment be referred to the Constitutional Council by the President of the Republic, the President of the National Assembly, the President of the Senate, one-third of the members of the National Assembly, one-third of the Senators, or the Presidents of regional executives pursuant to the provisions of paragraph (2) above.

Art. 48§2 Any challenges in respect of the regularity of one of the elections provided for in the preceding paragraph maybe brought before the Constitutional Council by any candidate, political party that participated in the election in the constituency concerned or any person acting as Government agent at the election.

From the above-mentioned articles, access to the Constitutional Council in Cameroon is very limited. Matters maybe referred by the President of the Republic, or the President of the National Assembly or the President of the Senate. The President is himself the initiator of amendments and the idea of him ever referring a matter to the Constitutional Council is very slim. The President has a very dominant executive in which the President of the National Assembly is seem like a subordinate and not belonging to the legislative branch and so he will never think of challenging the President by referring a matter to the Constitutional Council and as for the Senate, it is not yet functioning.

Individuals are granted access only if they had participated in the election or acted as a government agent. Citizens whose constitutional rights have been violated cannot ventilate their grievance before the court because they have no standing. “Citizens are therefore in no position to compel the government to respect their constitutional rights, especially on important matters

like human rights, freedom of speech, and freedom from arbitrary arrest which the constitution elaborately extols in such hortative but oblique terms in its preamble”⁷⁴ or to refuse any constitutional amendment that violates constitutional rights.

Standing is also given to one-third of the members of the National Assembly or one-third of the Senators to seize the Council but since the ruling party, the Cameroon People Democratic Movement, CPDM, made up 153 Members of Parliament out of 180⁷⁵ in the National Assembly, it is very difficult for any enactment against the CPDM to succeed. The President of the Republic and the Presidents of the Houses of parliament need to be notified of any matter addressed to the Constitutional Council⁷⁶. This does not seem to be necessary because they are not members of the Constitutional Council but it only shows how dependent and partial the Constitutional Council can be in deliberating its functions since informing these people indirectly means receiving external influence from them.

As regards the jurisdiction of the Constitutional Council, articles 46 – 48⁷⁷ state that:

Art. 46. The Constitutional Council shall have jurisdiction in matters pertaining to the Constitution. It shall rule on the constitutionality of laws. It shall be the organ regulating the functioning of the institutions.

Art. 47§1 The Constitutional Council shall give a final ruling on:
- The constitutionality of laws, treaties and international agreements;

⁷⁴ Quoted in Charles Manga Fombad, *The New Cameroonian Constitutional council in a Comparative Perspective: Progress or Retrogression?* Journal of African Law, Vol. 42, No. 2 (1998) p. 179

⁷⁵ *Supra* note 48.

⁷⁶ Article 19§3 of Law No. 2004/004 of 21 April 2004 to lay down the Organisation and Functioning of the Constitutional Council.

⁷⁷ Cameroon Cont. amend 1996

- The constitutionality of the standing orders of the National Assembly and the Senate prior to their implementation;
- Conflict of powers between States institutions, between the State and the Regions, and between the Regions.

Art. 48§1. The Constitutional Council shall ensure the regularity of presidential elections, parliamentary elections and referendum operations. It shall proclaim the results thereof.

The Constitution gives the Constitutional Council *a priori* jurisdiction over the “constitutionality of the standing orders of the National Assembly and the Senate prior to their implementation⁷⁸” and “laws as well as treaties and international agreements may, prior to their enactment, be referred to the Constitutional Council...⁷⁹”. However, despite these clauses, matters must be referred to the Constitutional Council before it can adjudicate on them. The ruling of the council according to section iv of the 2004/0004 law of 21 April 2004 on the organisation and functioning of the Constitutional Council, is that all decisions of the Council are binding. Article 50§1 states that the rulings of the Constitutional Council shall not be subject to appeal and they shall be binding on all public, administrative, military and judicial authorities, as well as on all natural person and corporate bodies and sub §2 emphasis that any provision declared unconstitutional may not be enacted or implemented. Since its decisions are final there is a great need for the organ to be efficient, independent, and competent in order not to violate rights by adjudicating badly.

If the Council has power to adjudicate in matters pertaining to the Constitution, it means it shall act, as the guardian of the constitution and in so doing, shall make sure the supremacy of the constitution is maintained in all activities concerning the constitution, be it constitutional

⁷⁸ Cameroon Const. art. 47§1

⁷⁹ Cameroon Const. art. 47§3

amendments or ratification of treaties. The Constitutional Council shall resolve conflicts of powers between State institutions, between the State and Regions and between Regions. Apart from solving problems between the state institutions, the Constitutional Council shall ensure the regularity of presidential and parliamentary elections and referendum operations. In matters of Constitutionality of amendment, Kemal Gözler argues that under the European model of juridical review, when the Constitution does not expressly empower the Constitutional Council to adjudicate on Constitutional amendments, it means it does not want it to adjudicate in such matters. The French Constitutional Council in a decision on 6 November 1962, No. 62-20 DC, ruled out that it does not have jurisdiction to review the constitutional amendment adopted by way of referendum⁸⁰. The German Federal Constitutional Court however, sees amendments as laws and can adjudicate on the constitutionality of amendment⁸¹, thereby showing that the Constitutional Court with jurisdiction over laws can adjudicate on Constitutional amendments. In Cameroon however, the Council has a very limited access to it and those who can bring a case are the main authors initiating the amendment and are hardly likely to bring up a claim that will be adjudicated against them.

3.1.3. Participation in Constitutional amendment

The Cameroon Constitutional Council since its creation in 1996 witnessed one constitutional amendment in April 2008⁸², which resulted in violent criticism by all sections of the country and a strike throughout the nation in February following the President's intention to amend the constitution but the Council failed to take action. From the previous section, it can be seen that

⁸⁰ Quoted in Kemal Gözler, *Judicial Review of Constitutional Amendments: A Comparative Study*, (accessed 18 March 2009), at <http://www.anayasa.gen.tr/jrca.htm>, Ekin Press 2008, p 25

⁸¹ *Id* at p 33

⁸² Law No 2008/001 of 14 April 2008 to amend and supplement some provisions of law No 96/6 of 18 January 1996 to amend the Constitution of 2 June 1972.

the silence was due to limited access to the council, which prevented the strikers from filing a complaint against such an amendment. Another reason for such a silence is due to the composition of the parliament where the ruling party form more than three-quarter of the total number of Members of Parliament. This means the president will always receive the support of his party and they will ensure that all amendments follow the right procedure no matter what means they use, even if it means offering money to parliamentarians, as was the concern raised by other parliamentarians during this 2008 constitutional amendment.

After analysing the independence of the court as regards the composition and membership, its jurisdiction and access and participation in Constitutional amendments in Cameroon, the case of the Federal Constitutional Court in Germany will be examined.

3.2. The Federal Constitutional Court in Germany

The Federal Constitutional Court in Germany is a specialised tribunal empowered with jurisdiction to adjudicate on constitutional questions arising under the Basic Law⁸³. Created in 1951, the Basic Law for the German Federal Republic provided in article 92 that the highest judicial power is vested in the judges and exercised by federal courts, courts of Länder and by the Federal Constitutional Court. Wider jurisdiction is granted to the Federal Constitutional Court than that accorded to either the Supreme Court or the Constitutional Tribunal under the Weimar Constitution⁸⁴. Its task is to ensure that all institutions of the state obey the constitution of the Federal Republic of Germany (Basic Law) and the Court also helps to secure respect and

⁸³ Donald P. Kommers, *The Federal Constitutional Court*, The Constitutional Jurisprudence of the Federal Republic of Germany, Second Edition, Duke University Press, (1997), p 3.

⁸⁴ Gerhard Leibholz, *The Federal Constitutional Court in Germany and the "Southwest Case"* The American Political Science Review, Vol. 46, No. 3 (Sep., 1952), p 1

effectiveness for the free democratic basic order especially in the application of the fundamental rights⁸⁵ and its judges have monopoly no matter in which court they exercise their duties. The independence of the court, access, and rule play in constitutional amendment will be analysed below.

3.2.1. Independence of the Court - Composition/membership

The Federal Constitutional Court is not only the highest body of “administration of justice and jurisdiction but also a constitutional organ”⁸⁶. Its results are binding and it is independent and autonomous. Unlike the Constitutional Council in Cameroon, the Federal Constitutional Court comprises two panels of eight professional judges, each of which is made up of three judges who must have served the Supreme Court for at least three years⁸⁷. The Bundestag and the Bundesrat elect these judges for a non-renewable term of 12 years. They each select four members of each panel while the authority to select the Court's President alternates between them. The selection of a judge requires a two-third majority.

Article 1§1 The Federal Constitutional Court shall be a Federal court of justice independent of all other constitutional organs.

Article 2§1 The Federal Constitutional Court shall consist of two panels.

§2 Eight judges shall be elected to each panel.

§3 Three judges of each panel shall be elected from among the judges of the supreme Federal courts of justice. Only judges who have served at least three years with a supreme Federal court of justice should be elected⁸⁸.

⁸⁵ Das Bundesverfassungsgericht, (accessed 19 March 2009) at <http://www.bundesverfassungsgericht.de/en/organization/procedures.html>,

⁸⁶ Anke Frechmann and Thomas Wegerich, *The German Legal System*, London Sweet & Maxwell, (1999) p 97.

⁸⁷ Law on the Federal Constitutional Court Act (Bundesverfassungsgerichts-Gesetz, BVerfGG), amended by the Act of 16 July 1998, (accessed 23 March 2009) at <http://www.iuscomp.org/gla/statutes/BVerfGG.htm#16>

⁸⁸ *Id.*

The fact that the Federal Constitutional Court is made up of professional judges means that they are well versed with Constitutional matters or with matters falling within their jurisdiction since they have a profound training in this domain. This also helps the Court to intervene when unconstitutional laws are legislated by the parliament or when there is unconstitutionality in an amendment since they are not lay members without any idea on the subject matter. The alternating position of the Court's President enhances a balance between the two Senates. Article 3§3⁸⁹ concerns the incompatibility of members of the Federal Constitutional Court with other state organs. This helps to strengthen the neutrality of the Court's members and also to make them impartial and independent in the execution of their function.

Art. 3§3 They may not be members of the Bundestag, the Bundesrat, the Federal Government, nor of any of the corresponding organs of a Land. On their appointment, they shall cease to be members of such organs.

§4 The functions of a judge shall preclude any other professional occupation save that of a lecturer of law at a German institution of higher education. The functions of a Judge of the Federal Constitutional Court shall take precedence over the functions of such lecturer.

Article 4§1 The term of office of the judges shall be twelve years, not extending beyond retirement age.

§2 Immediate or subsequent re-election of judges shall not be permissible.

The fact that judges are not eligible for re-election as per article 4§1 also enforces the neutrality of the organ as the judges do not have any reason to remain loyal to a particular person than to serve their panel and the nation as a whole.

⁸⁹ *Id.*

3.2.2 Jurisdiction and Access to the Court

The German Federal Constitutional Court holds a monopoly on interpretation of the constitution with regard to all jurisdictions. Article 13 of the law of the Federal Constitutional Court of Germany states the wide domain of the jurisdiction of the Court.

Art. 13 The Federal Constitutional Court shall decide in the cases determined by the Basic Law, to wit

§5. on the interpretation of the Basic Law in the event of disputes concerning the extent of the rights and duties of a supreme Federal organ or of other parties concerned who have been vested with rights of their own by the Basic Law or by rules of procedure of a supreme Federal organ (Article 93§1-2 of the Basic Law),

§6. in case of disagreements or doubt on the formal and material compatibility of Federal law or Land law with the Basic Law, or on the compatibility of Land law with other Federal law, at the request of the Federal Government, of a Land government, or of one third of the Bundestag members (Article 93§1-2 of the Basic Law),

The Court has among other powers to interpret the Basic Law in the event of disputes concerning the extent of the rights and duties of a Supreme Court or its compatibility with other state organs. It also gives a final decision on implementation of the Federal law by Länder and on conflicts between Länders.

§7. in case of disagreements on the rights and duties of the Federation and the Länder, particularly in the implementation of Federal law by the Länder and in the exercise of Federal supervision (Article 93§1 & §3 and Article 84§4, second sentence, of the Basic Law),

§8. on other disputes involving public law, between the Federation and the Länder, between different Länder or within a Land, unless recourse to another court exists (Article 93§1 & §4 of the Basic Law),

§8a. on constitutional complaints (Article 93§1 & §4a and §4b of the Basic Law),

Apart from giving a final verdict in interpretation, the Federal Constitutional Court also has jurisdiction over other constitutional rights disputes such as jurisdiction in case of land disputes within a Land or on compatibility between a Federal or Land law with Basic Law.

§10. On constitutional disputes within a Land if such decision is assigned to the Federal Constitutional Court by Land legislation (Article 99 of the Basic Law),

§11. On the compatibility of a Federal or Land law with the Basic Law or the compatibility of a Land statute or other Land law with a Federal law, when such decision is requested by a court (Article 100§1 of the Basic Law),

The Court has a wide range of jurisdiction as demonstrated by article 13 of the Law on the Federal Constitutional Court Act and just like the Constitutional Council in Cameroon, it also has jurisdiction on the constitutionality of laws, article 21§2 of the Basic Law. The functions of the Court are shared between the two panels and their area of jurisdiction is clearly stated as can be seen below.

Article 14§1 The First Panel of the Federal Constitutional Court shall be competent for legal review proceedings (Article 13§6 and §11 above) in which a legal provision is claimed to be largely incompatible with basic rights or with rights under Articles 33, 101, 103 and 104 of the Basic Law, as well as for constitutional complaints with the exception of such complaints pursuant to Article 91 below and those in the domain of electoral law.

§2 The Second Panel of the Federal Constitutional Court shall be competent for the cases stated in Article 13§1 to §5, §6a to §9, §12 and §14 above, as well as for legal review proceedings and constitutional complaints not assigned to the First Panel.

The Second Panel shall also have jurisdiction over juridical review not assigned to the First Panel. Deliberations of the Federal Constitutional Court shall decide in secret or public depending on the type of pleading held.

Article 30§1 The Federal Constitutional Court shall decide in secret deliberations on the basis of its independent conviction resulting from the pleadings and the taking of evidence. The decision shall be drawn up in writing together with the reasons and

signed by the participating judges. If oral pleadings have been held, it shall be proclaimed publicly, stating the main reasons for the decision. The date of proclamation may be given during the oral pleadings or at the end of the deliberations; in this case it shall be immediately made known to the parties involved. No more than three months should lie between the end of oral pleadings and the proclamation of the decision. The date may be deferred by an order of the Federal Constitutional Court.

Apart from the jurisdiction and means of deliberation of the Federal Constitutional Court, another vital point worth analysing is who has access to the court because without access the functions outlined will not be properly carried out. The Federal Constitutional Court, just like the Constitutional Council in Cameroon, has limited access but unlike in Cameroon (which is open only to the President and few individuals as seen in section 3.1.2.), the Federal Constitutional Court's access is limited, except in the case of constitutional complaints, to the state and federal government, state and federal courts, and parliamentary groups such as party factions and minorities in national and state legislatures⁹⁰.

The Federal Constitutional Court accepts constitutional complaints as a method of “judicial review from any person whose constitutional rights or basic rights has been violated by a public authority and he/she wishes a redress or compensation.”⁹¹ When there is a problem of compatibility between the Federal or State law with the Basic Law or with the State law and other Federal laws. Access to the Court is granted to the federal government, a state government or one-third of the Bundestag. Concerning concrete judicial review, any court in employing legal norms during a case may first check its compatibility with the Basic Law. In case of any

⁹⁰ Dorsen, Rosenfeld, Sajo & Baer, *Who? What? And Whom?: Standing, justifiability and the binding effect of Constitutional Adjudication*, Comparative Constitutionalism: Cases and Materials, American Casebook Series, (2003) p 125

⁹¹ *Id.*

doubt, the court can stop the proceedings and contact the Federal Constitutional Court for concrete information as to its compatibility.

Art. 86§2 If in court proceedings it is a matter of dispute and relevance to determine whether a law continues to apply as Federal law, the court must obtain a decision by the Federal Constitutional Court in analogical application of Article 80 above.

Art. 90§1 Any person who claims that one of his basic rights or one of his rights under Articles 20§4, 33, 38, 101, 103 and 104 of the Basic Law has been violated by public authority may lodge a constitutional complaint with the Federal Constitutional Court.

As seen above, the Federal Constitutional Court in Germany and the Constitutional Council in Cameroon both have jurisdiction over the constitutionality of laws and neither has any expressed statement authorizing it to intervene in Constitutional amendment, however, below we shall see what role the Federal Constitutional Court plays when it comes to Constitutional amendment.

3.2.3. Participation in Constitutional amendment

The German Federal Constitutional Court does not have any expressed clause in the German Basic law authorizing it to adjudicate in Constitutional amendment. Article 79 states that:

Art. 79§1 This Basic Law may be amended only by a law expressly amending or supplementing its text. In the case of an international treaty respecting a peace settlement, the preparation of a peace settlement, or the phasing out of an occupation regime, or designed to promote the defence of the Federal Republic, it shall be sufficient, for the purpose of making clear that the provisions of this Basic Law do not preclude the conclusion and entry into force of the treaty, to add language to the Basic Law that merely makes this clarification.

§2 Any such law shall be carried by two thirds of the Member of the Bundestag and two thirds of the votes of the Bundesrat.

§3 Amendments to this Basic Law affecting the division of the Federation into Länder, their participation on principle in the legislative process, or the principles laid down in Articles 1 and 20 shall be inadmissible.

Pr. Kemal Gözler⁹² argues that with the European model of judicial review, where there is no expressed statement or clause as to the amendment of a constitution, the Constitutional Court might not be in a position to adjudicate on the constitutionality of amendment. However, the German Federal Court has taken a different standing and has considered constitutional amendments to be laws and since the constitutional court has jurisdiction over the constitutionality of law, it can then adjudicate on the constitutionality of an amendment. The Federal Constitutional Court will adjudicate on an amendment violating the substantive limits as stated in article 79§3 of the 1949 German Basic Law, constitutional amendments affecting the division of the Federation into *Länders*, their participation in the legislative process, or the principles enumerated in Articles 1 and 20 are prohibited.

Haven taken this stand by the Federal Constitutional Court, it is able to intervene in the constitutionality of an amendment and the wider access to the Federal Constitutional Court granted by the German Basic Law makes it impossible for amendments, which undermined the constitutionality of the Constitutional amendment to be legislated upon, as the Federal Constitutional Court will always adjudicate in such a situation.

3.3. Other contributing factors

From the above analyses, it can be seen that it is easier to bring a constitutional amendment complaint before the Federal Constitutional Court in Germany than doing so before the Constitutional Council in Cameroon. Although access to the Constitutional Council is a major problem in Cameroon, another blockage is the nature of the setup of the members of parliament.

⁹² Kemal Gözler, *Judicial Review of Constitutional Amendments: A Comparative Study*, (accessed 18 March 2009), at <http://www.anayasa.gen.tr/jrca.htm>, Ekin Press 2008, p 25

This is felt if the President decides to table the bill for legislation before the Members of Parliament rather than to use the referendum option. The constitution in article 63§3 is to the effect that parliament shall meet in congress when called upon to examine a draft or proposed amendment. An absolute majority of the members of Parliament shall adopt the amendment and the President of the Republic may request a second reading, in which case a two-third majority of the members of Parliament shall adopt the amendment⁹³.

The President's party or the ruling party, the Cameroon People Democratic Movement, CPDM, make up 153 of the 180 seats in Parliament is already enough guarantee for the president that in any amendment, he would have at least a 95 percent support if not 100. In the 2008 constitutional amendment only one CPDM MP, Paul Abine Ayah, former magistrate, refused to vote for it and is presently facing threat and had to tabled for his resignation⁹⁴.

The second option for submitting an amendment bill to referendum is very slim. In fact, after the referendum in 1972, President Biya refused a nationwide outcry that the 1996 Constitutional amendment be carried out through a referendum; he refused a referendum on the basis of cost, that it is very expensive. This therefore means that, if an amendment bill tabled before the Members of Parliament is legislated upon following the provision of article 63§3, the opposition party, has no judicial grounds to challenge such an amendment as it is legally valid no matter the visible manipulation.

⁹³ Cameroon Cont. art. 63

⁹⁴ Leger Ntiga *Assemblée nationale : Pourquoi Ayah Paul Abine a jeté l'éponge (National Assembly: Why Ayah Paul Abine threw the sponge)*, (accessed 28 March 2009) at <http://www.mediaf.org/fr/themes/fiche.php?itm=3328&md=&thm=2>

Having seen that the Constitutional Council, though given the power to adjudicate in the constitutionality of amendment or in matters pertaining to the Constitution, is placed in a very difficult situation, which makes it practically impossible to effectively execute its functions, the next question this research seeks to resolve, is the empowerment of this organ. An attempt to look at possible solutions will be developed in the Recommendation and Conclusion section of this work.

RECOMMENDATIONS

Having considered the various reasons hindering the Constitutional Council from taking active decisions during Constitutional amendments, as seen from the findings, some recommendations shall be drawn from the Federal Constitutional Court in Germany and from the experience that Cameroon has gone through.

Firstly, access to justice is very important and to make sure that any private individual whose constitutional rights are violated has a means of having justice done, access to the Constitutional Council should be granted to them as is the case in Germany.

Secondly, the President should not designate three members of the Constitutional Council including the President. He might appoint them through a presidential decree but should not take part in the selection of those members. This will produce a separate and independent Constitutional Council which will help to strengthen democracy and will also prevent the executive from influencing the Constitutional Council.

Furthermore, all draft proposals dealing with constitutional amendments should first of all pass through the Constitutional Council which shall adjudicate on its constitutionality with the constitution but even after this, anybody whose constitutional rights are violated can still bring a

complaint before the council. Such draft bills should be sufficiently debated upon on television and radios for citizens to know what is going on.

To deal with the problem of dominant parties like in the present day Cameroon National Assembly where the ruling party make up 153 of the 180 Members of Parliament, a constitutional amendment should also go through a referendum, this gives the citizens the opportunity to make inputs on the constitutional amendment.

Another method of empowering the Constitutional Council in Cameroon will be for the Court to adopt the view of the German Federal Constitutional Court that all amendments are laws and since the Constitutional Council has jurisdiction over laws, therefore, it has jurisdiction over amendment. By so doing, it will adjudicate on all draft proposals and those that violates constitutional rights or constitutionality of laws and amendment will not be legislated upon in the National Assembly.

A time bar should also be set for constitutional amendment where any constitutional amendment cannot be carried out unless that minimum length of time has been used to sensitised the population on the intended amendment. This will help to enable enough debate upon the draft proposed bill and hence the citizens will have the chance to express their views.

CONCLUSION

In this work I have shown that the research carried out on the discussed topic revealed serious obstacles limiting the Constitutional Council in Cameroon, especially with regard to Constitutional amendment mechanisms caused by lack of access to the Council. It shows a need for the Council to be independent in its composition, in appointing members and free from external influence, especially the executive. It also revealed that a strong dominated party in the Parliament is likely to influence constitutional amendments.

The findings show that some institutions within the Cameroon Constitution have to be modified before many can function properly. For instance, the dominance of the executive needs to be reduced to allow the judiciary and legislative to function in their capacity as independent government groups. The dominant nature of the executive has made it easy for the president to easily amend the constitution to suit his personal political desire. The constitution also portrays a contradiction between some of the ideas expressed and how they are implemented or achieved, especially the rights protected in the preamble and some of the amendments carried out.

The research shows that access to the Constitutional Council is limited except to those who are themselves the initiators of the amendments and this makes it difficult for an individual whose constitutional rights is violated to file for remedy before the council. This blockage or limited access contributes to the silent nature of the Constitutional Council, which can only react upon complaints brought before it.

This research carried out on a topic virtually new in the context of Cameroon aimed to demonstrate how constitutional organs especially the Constitutional Council in Cameroon has failed to evolve with time due to external influences and needs to be allowed to freely exercise its jurisdiction in order to be active in matters pertaining to the Constitution, especially the constitutionality of amendments.

The research was carried out in an analytical manner by looking at the composition, jurisdiction and access to the Constitutional Council because it is essential for an independent court and the type of decisions it can produce. It did not consider using a case-by-case approach to analyse the silent nature of the Constitutional Council in Cameroon as regard to the amendment mechanisms because no case has ever succeeded it reaching the Constitutional Council.

This work suggests that the amendment mechanism should not be easier for an amendment initiated by the President than those initiated by the Members of Parliament and it should reflect the will of the people. It also points out that the Constitutional Council and the Courts need to be given a higher place in dealing with the Constitutionality of an amendment by making access to the Council available to the citizens who are those whose constitutional rights are easily affected.

BIBLIOGRAPHY

Books

- 1 András Sajó, *The Constitution as Fear and Acceptance. Limiting Government*. Central European University Press (1999)
- 2 Anke Frechkmann and Thomas Wegerich, *The German Legal System*, London Sweet & Maxwell, (1999).
- 3 Bernard Muna, *Cameroon and The Challenges of the 21st Century*, Tama Books, (1993)
- 4 C. Anyangwe *The Cameroon Judicial System*, Yaounde, CEPER (1987)
- 5 David R. Dow *The Plain Meaning of Article V, Responding to Imperfection: The Theory and Practice of Constitutional Amendment*. Sanford Levinson, Ed. (1995)
- 6 Donald P. Kommers, *The Federal Constitutional Court, The Constitutional Jurisprudence of the Federal Republic of Germany*, Second Edition, Duke University Press, (1997)
- 7 Dorsen, Rosenfeld, Sajo & Baer, *Judicial enforcement of the Constitution and Models of Constitutional Adjudication*, Comparative Constitutionalism: Cases ad Materials, American Casebook Series, (2003)
- 8 John Mukum Mbaku and Joseph Takougang, *The leadership Challenge in Africa: Cameroon Under Paul Biya*, African World Press, (2004)
- 9 Kemal Gözler, *Judicial Review of Constitutional Amendment: A Comparative Study*. EKIN Press, Bursa – 2008
- 10 R. Clayton, H. Tomlinson, *The Law of Human Rights*, Oxford University Press, (2000)
- 11 Tamfuh Wilson, *Constitutional Law and Political Systems*, Y.N. (2006)

Law Journals and Encyclopedia

- 1 Adrian Vermeule, *Constitutional Amendments and the Constitutional Common Law*, The Law School – The University of Chicago, (2004)
- 2 Charles Manga Fombad, *Cameroon: Text of Constitution*, International Encyclopedia of Laws, Vol. 2 Constitutional Law, (2000)
- 3 _____ *The New Cameroonian Constitutional Council In a*

Comparative Perspective: Progress or Retrogression? Journal of African Law, Vol. 42, No. 2 (1998)

- 4 Enonchong, H.N.A. *Cameroon Constitutional Law: Federalism in a Mixed Common-Law and Civil-Law System*. Yaounde: Centre d'Edition et de Production de Manuels et Auxiliaires de L'Enseignement [*Revision and Production Centre of Education Manuals and Teaching Auxiliaries*] (1967)
- 5 Gerhard Leibholz, *The Federal Constitutional Court in Germany and the "Southwest Case"* The American Political Science Review, Vol. 46, No. 3 (Sep., 1952)

Internet Sources

- 1 Anne Twomey, *The Involvement of Sub-national Entities in Direct and Indirect Constitutional Amendment Within Federations*, (accessed 9 March 2009) at <http://camlaw.rutgers.edu/statecon/workshop11greece07/workshop11/Twomey.pdf>
- 2 Attacks on the Press in 2008: Cameroon, (accessed 14 March 2009), at <http://www.cpj.org/2009/02/attacks-on-the-press-in-2008-cameroon.php>
- 3 Charles Manga Fombad, *Limit On The Power To Amend Constitutions: Recent Trend in Africa and Their Potential Impact on Constitutionalism*, (accessed 10 March 2009), at <http://www.enelsyn.gr/papers/w9/Paper%20by%20Prof.%20Charles%20Manga%20Fombad.pdf>

_____, *Researching Cameroonian Law*, (accessed 11 March 2009) at <http://www.nyulawglobal.org/Globalex/Cameroon.htm>
- 4 Eyambe Elias Ebai, *The Rule of Law and Constitutional Amendment in Cameroon*, (accessed 22 March 2009) at <http://www.postnewsline.com/2008/10/the-rule-of-law-and-constitutional-amendment-in-cameroon.html>
- 5 Gilmar Mendes, *New Challenges of Constitutional Adjudication in the 21st Century: a Brazilian Perspective*, (accessed 10 March 2009) at http://www.stf.jus.br/arquivo/cms/noticiaArtigoDiscurso/anexo/Jurisdicao_Constitucional_no_Seculo_XXI_v__Ing.pdf
- 6 Human Rights Correspondence School, *Lesson 1: Discussion of Constitutionalism and Its Relationship To Human Rights* (10 March 2009) at <http://www.hrschool.org/doc/mainfile.php/lesson49/187/>
- 7 Igor I. Kavass, *The Emergence of Constitutional Courts in Europe*, Supranational and

Constitutional Courts in Europe: Functions and Sources, (1992),
<http://www.worldcat.org/isbn/0899417892>

- 8 Leger Ntiga *Assemblée Nationale : Pourquoi Ayah Paul Abine a jeté l'éponge (National Assembly: Why Ayah Paul Abine threw the sponge)*, (accessed 28 March 2009) at <http://www.mediaf.org/fr/themes/fiche.php?itm=3328&md=&thm=2>
- 9 John Ferejohn and Pasquale Pasquino *Constitutional Adjudication: Lessons from Europe*, (accessed 11 March 2009), at <http://www.tafjapan.org/english/forums/pdf/john-pasquale.pdf>
- 10 Tansa Musa, *Cameroon activists say riots kill more than 100*, (accessed 21 March 2009), at <http://www.reuters.com/article/worldNews/idUSL0521512320080305?pageNumber=2&virtualBrandChannel=0>
- 11 Will Ross, BBC West Africa correspondent, *Cameroon makes way for a King*, (accessed 18 March 2009), at <http://news.bbc.co.uk/1/hi/world/africa/7341358.stm>

Constitutions and Statutes

- 1 Basic Law for the Federal Republic of Germany (Grundgesetz, GG) 1993
- 2 Cameroon Constitutional, 1996
- 3 European Convention for the Protection of Human Rights and Fundamental Freedoms
- 4 Law No 2008/001 of 14 April 2008 to amend and supplement some provisions of law No 96/6 of 18 January 1996 to amend the Constitution of 2 June 1972.
- 5 Law No. 2004/004 of 21 April 2004 to lay down the Organisation and Functioning of the Constitutional Council.
- 6 Law on the Federal Constitutional Court Act (Bundesverfassungsgerichts-Gesetz, BVerfGG), amended by the Act of 16 July 1998, (accessed 23 March 2009) at <http://www.iuscomp.org/gla/statutes/BVerfGG.htm#16>
- 7 Romania Constitution, 2003
- 8 The Federalist No. 47