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The Cameroonian's Decentralization Code and the Production of Implementation's Regulations by the Government: Pressing Theoretical and Practical Questions put to Stakeholders

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Abstract

The issue in this article is the evaluation of the impact of administrative regulations on the implementation of the decentralization process in Cameroon. This issue is highlighted by a double delegation stemming from the Constitution which while adopting decentralization form of government delegates almost all the powers of putting the process in motion to Parliament. From the observations and analysis of the laws adopted by Parliaments, loopholes are deliberately left by the legislator to be filled by the Executive Power by way of regulations. The bond of contention is that such delegation is left without giving the time frame for that to happen nor setting standards for the content of such implementing regulations. These unfettered powers delegated to the Executive is part of the political game unfolding under a de facto one party system. It creates an avenue for the obvious resistant of the entrenched centralization as opposed to the very purpose of the decentralization process. The outcome is that Executive Power paradoxically imposes the pace of decentralization process to the point of frustrating an array of key provisions of the decentralization code. All of these, contrary to the intentions manifested in the Constitution on the model of decentralization, creating local governments.

Keywords: Code, Constitution, Decentralization, Executive power, Implementation, legislator, Model, Regulations

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Introduction

Article 1(2) of the Constitution[2] of Cameroon highlights the form of the state as being a Unitary Decentralization State. The decentralization aspect is that which needs administrative, managerial and financial resources to be implemented. The availability of one or many of these resources can seriously impair the whole decentralization process. Apart from the above issues, the entrenched centralized administration combined with the habit of concentration of power

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[2]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.

harbors a potential of sparking controversies as to who does what and when. Precisely, it is the domain of sharing power and resources with the unavoidable tension between those who want to hold-back powers and those who have an interest in making it a reality. All these sources of political and legal differences of views may have a negative or positive impact on the decentralization process, and on the good governance and development, the decentralization is purported to bring to the people and the country at large. The importance of decentralization is visible in the Constitution as part X is reserved to lay down its key features. Under article 55 it is visible that the legislative power receives a delegation of power to adopt key laws governing decentralization[3].

It is remarkable that article 55 alone makes five references to the law to be adopted by the legislative power. All together from Article 55 to 62 references are made to laws to be adopted by Parliament. More to that article 20 of the constitution[4] makes the Senate the parliamentary representative of decentralized entities which are regions and councils. Decentralization is therefore, essentially in the powers of the Legislative Power and by implication to be organized essentially by laws.

Nevertheless, the obvious thing is that the legislative process of decentralization in Cameroon did not come to an end in December 2019 with the adoption by Parliament of Law ***N0 2019/024 of 24 December 2019 bill to institute the general code of regional and local authorities*** *(hereafter referred to as the decentralization code)*. The code is a combination of most of the

[3]**Article 55 1**. Regional and local authorities of the Republic shall comprise of Regions and Councils.
Any other such authority shall be created **by law.**
2. Regional and local authorities shall be public law corporate bodies. They shall have administrative and financial autonomy in the management of regional and local interests. They shall be freely administered by councils elected under conditions laid down **by law.**
The duty of the councils of regional and local authorities shall be to promote the economic, social, health, educational, cultural and sports development of the said authorities.
3. The State shall exercise supervisory powers over regional and local authorities, under conditions laid down **by law**.
4. The State shall ensure the harmonious development of all the regional and local authorities on the basis of national solidarity, regional potentials and inter-regional balance.
5. The organization, functioning and financial regulations of regional and local authorities shall be defined **by law.**
6. The rules and regulations governing councils shall be defined **by law**

[4] The senate shall represent the regional and local authorities (1). Each region shall be represented in the senate by 10 (ten) senators of whom 7 (seven) shall be elected by indirect universal suffrage on a regional basis and 3 (three) appointed by the President of the Republic (2). Candidates for the post of senator and personalities appointed to the post of senator by the President of the Republic must have attained the age of 40 (forty) by the date of election or appointment (3), Senators shall serve a term of 5 (five) years.

laws governing decentralization adopted since July 2004 including the recent ***special status*** applicable to the North West and South West Regions. The code like any other law is destined to be implemented or put into effect by the administration which is the operating organ of the Executive Power. The administration both national and local does this through the issuing of regulations such as decrees, orders, decisions, circulars etc. The purpose of these regulations is to explain to the councils how it intends the code to be put into effect and what citizens must do to comply with the law.

In most countries, the production of laws is principally in the hands of the Legislative Power. The Cameroon constitution limits the domain of intervention of the Legislative Power[5]to two chambers[6]. Apart from this identified domain of legislation, any other production is done by the Executive Power in the form of regulations[7]. But the tradition in most countries (including parliamentary or presidential regime) do allow the Parliament to delegate some aspects to the Executive to adopt regulations to complete and implement laws or statutes. Such legislation is said to be by delegation and in principle, secondary and subordinate to the main laws voted by Parliament.

The decentralization process in Cameroon is going through the same process of delegation, empowering the government to adopt regulations to complement and enable the smooth implementation of the decentralization code. Logically such power cannot be a totally free hand given to the government to paralyze or even undo the powers given to the local government by the code. The decentralization process is weakened by the exaggerated level of centralization by the central administration. It is of interest to examine both the conduct of the central government and the nature of the expected regulations in line with the constitution's promise of decentralization with power to enjoy the legal personality, free administration and financial autonomy[8].

[5] Article 26 of the Constitution of Cameroon
[6]That is, the House of Senate and the National Assembly which depicts some high degree of Bicameralism.
[7] Article 27 of the Constitution of Cameroon
[8]The word autonomy at times has been a subject of debate among legal scholars who finds it difficult to be at even with the degree of such an autonomy. A comparative evaluation of the degree of autonomy given to local governments will indicate that, in advanced decentralisations, the local government has a wider spectrum of powers of initiative and a lesser degree of control of its activities than the case of Cameroon.

In order to guide our demonstration of the truncated approach to the implementation of the decentralization code we may ask the following questions: **what is the importance of such implementing regulations? What if the administration does not produce the much-expected implementation regulations? Or is the government through the administration under the obligation to produce such implementing regulations? Is the process of regulating production of implementation a political or purely administrative and technical issue?**

To attempt to answer the above questions, the exploration of literature and jurisprudence on this important aspect of good governance promised by the long-awaited decentralization process seems to be performing below average in Cameroon. If we look closely at the chain of production of laws and regulations which runs from the constitution-making power to the deliberative organs of the council passing through the Legislative and Executive powers, we find out that at each level, there is a delegation of authority or power to insert rules into the decentralization process. The downward delegation equally follows the hierarchy of norms running from the constitutional norms to legislative and lastly regulations. In theory and in principle with respect to the hierarchy of norms, the lower should not violate, thwart or paralyze the higher level. In other words, subject to the sanctions of the constitutional Council statute or laws adopted by Parliament should not be inconsistent with the provisions of the constitution and in the like manner, regulations should not be inconsistent with the provisions of the laws and sanctioned by administrative courts through the control of legality. It raises ultimately the theoretical question at the heart of this paper, that of the already difficulties faced by many councils in giving effect to the promulgated decentralization code due to the indefinite absence of implementing regulations.

Delegated legislation evolved out of the need for effective governance. As the responsibility of government increased, coupled with the increasing population, it became inevitable to evolve an expeditious and effective means of law-making in such a way that the legislature is not required to produce every legal instrument needed by the government. Another reason for the evolution of delegated legislation is the technicality of the subject matter. Where a subject matter requiring legislation is too technical as to exhaust the competence of the legislature, such matters are referred to a department or agency of government having the competence and technical resources regarding the subject matter.

The delegation of legislation from parliament to an administration is indispensable for the modern administrative state. The delegation of a piece of legislation means that the legislature per se does not make a decision, but authorizes a governmental agency to do so[9]. Delegated legislation refers to rules, instructions, and directives which are made pursuant to a delegated authority to legislate. From the above, it can be deduced that delegated legislations are inferior to laws pursuant to which they were enacted. Thus in the case of **NNPC v Famfa Oil Ltd (2012) 17 NWLR (pt. 1328) 148,** the Supreme Court held that the Federal Minister of Petroleum, having failed to follow the procedure laid out by the Petroleum Act, did not legitimately acquire An Oil Mining Lease (OML) which he purportedly acquired under a subsidiary regulation. In that case, the Minister of Petroleum had granted an Oil Prospecting Lease to the respondent titled OPL 126. Having found oil, the appellant purportedly acquired 40% of the OPL 126. The respondent filed a suit to attack the purported acquisition and was successful. The trial court, however, pointed out that the respondent had the right to participate in an Oil Mining Lease (OML), a lease usually granted after the expiration of an OPL. When it got to the stage of obtaining the OML, the respondent, pursuant to a regulation made under the Petroleum Act, purportedly acquired 50% of the OML, via a procedure outside the contemplation of the Petroleum Act but in compliance with subsidiary legislation titled the Black-in-Right Regulation of 2003. The Supreme Court held that the subsidiary law sources its existence from the principal legislation and as such, in the event of any inconsistency, the provision of the subsidiary legislation shall be void to the extent of the inconsistency.

Provisions of the code with express delegations to the executive to produce implementation regulations.

A fast overview of the decentralization code indicates several sections or articles where the legislator expressly requests the Executive Power to adopt implementing regulations, especially in the form of decrees. Some of such Articles or Sections are 3, 4, 24, 35, 45, 46, 89, 90, 91, 92, 93, 96. 116, 117, 256, 376, 394, 395 & 397.

[9] Katsuhiro Musashi (Doshisha University) (Parliamentary Control over Delegated Legislation in Japan), P.1

The code has been put into force, but the regulations of implementation are pending

Here we have two problems: on the one hand, is it possible to implement those provisions for which the implementing regulations are made compulsory by the code now that there are not yet available? Citing the case of the mayor of Penja where the Minister of Decentralization and Local Development signed a fax message requesting the Senior Divisional Officer to request the mayor to stop the exercise of competence relating to the exploitation of mineral resources. On the other hand, is the administration under any specified obligation to adopt them?

The practical and legal impossibility to implement the code without the expected regulations

It will be practically impossible to implement those provisions for which the code made mandatory the prior production of regulations expected from the administration. This is because those provisions are seen and were deliberately framed to serve only as a base for the adoption of the pending regulations.

The absence of explicit obligation of the central government to produce regulations within a given time limit.

Whereas the code on RLAs mentions that, regulations would be produced by law, it does not specify the time limit before which the regulations must be adopted.

Does the absence of express delegations mean directly applicable provisions of the code?

It is generally difficult to think that what is not expressly prohibited is authorized. This is similar to the implementation process of the Decentralization Code. The major difficulty is the inability of the decentralized authorities to distinguish between the direct application of the text and its application through delegated instruments based on the silence of a delegated legislative power.

Possibilities of direct application of some provisions of the code

The logical presumption is that where the Code has not provided for an implementation regulation, the provisions of the Code become directly applicable. Theoretically, this is legally sound but practically untrue. Where the legislator intended that the executive intervenes in complementing the provisions of the Code, he does so expressly. Therefore, a municipal or

regional authority that draws the inspiration for his conduct or activity directly from the code will not be acting in a prejudicial manner by this interpretation.

The existence of the implicit need for implementation regulations.

The state controls the activities of the local collectivities in totality[10]. The financial execution has been the main object of control.

The state of Cameroon is a decentralized state[11] and decentralization and deconcentration are the keywords in matters of administrative organization. While the deconcentrated authority depends on a superior hierarchy for instructions that he has to obey, the decentralized authority has the power of autonomous decision exercised under the supervision of a state representative (supervisory authority). The control applied to Regional and Local authorities can only be done within the perspective of the code[12]. This supervisory authority often sneaks in an unorthodox implicit implementation regulation which generally takes the form of a letter or circular from the competent supervisory authorities.

The mechanisms of control of the effective implementation of the code

There is a debate over the powers given to the government to get involved in the domain of competence of Parliament. It is to be noted that this is through express invitation by Parliament itself. How far does Parliament have control over the content of the delegated legislation? In countries like the United Kingdom, Australia, Canada etc. Parliament continues to control the work of government on this aspect and to control the conformity of the content of such regulations also called delegated legislation. However, the regulation mechanism is highly discretionary and circumstantial so it is difficult to determine the timing.

[10]Sections 39 of the general code of regional and local authorities have lays down the foundation as it states that: (1) Local authorities shall carry out their missions in accordance with the Constitution as well as laws and regulations in force. (2) No local authority may deliberate outside its statutory meetings, or on matters outside its jurisdiction or which undermine State security, law and order, national unity or territorial integrity. (3) Where a local authority acts in violation of the provisions of sub-section (1) above, the resolution or decision impugned shall be declared null and void by order of the representative of the State, without prejudice to the penalties provided for by the laws and regulations in force.

[11] See section 1(2) of the Constitution.

[12] Ibid.

Mechanisms for Scrutiny of Subordinate Legislation

Under the Constitution, the Parliament has the power to make laws, the Executive is responsible for implementing the laws and the Judiciary is the body interpreting the laws. In most cases, the legislature enacts a law covering the general principles and policies and leaves detailed rule-making to the government to allow for expediency and flexibility[13]. The government is required to frame the rules in accordance with the policy laid down by the legislature. Such rules are called subordinate legislation.

The role of the Executive is not limited to implementing legislation, it has also been given the power to make policies and issue executive orders establishing the necessary framework to implement them. Subordinate legislation can only be framed under a central or state Act if the Act gives rule-making power to the government. However, certain functions and powers cannot be delegated to the government. These include framing the legislative policy, exceeding the scope of the delegating Act, retrospective effect of rules, etc. There are broadly three mechanisms to ensure that the rule-making process complies with the above, i.e., parliamentary scrutiny, public consultation, and judicial scrutiny.

The possibility of getting the administrative courts to control the action and inaction of the government

The very existence of the administrative justice system is to curb arbitrariness on the part of the government as maintained by **Jean RIVERO** that the fear of the judge is the beginning of wisdom. **Benjamin BOUMANKANI** went further to maintain that the control of discretionary power is just a means to an end. In other words, the existence of the rule of law is not self-sufficient. This is due to the fact that the rule of law is just a means to an ultimate which is the protection of the rights of the citizens and fundamental rights and freedoms. The control exercised by the courts is very important in the consolidation of the rule of law and the protection of the rights and freedoms of the citizens. Considering that the powers of the executive are often not schemed, there is a higher tendency to abuse or use the power for the wrong purpose or wrongfully assess a situation. When powers are being used in a prejudicial or illegitimate manner, we are only left with just one remedy-the control exercised by the administrative judge.

[13]For example in India, under the Essential Commodities Act, 1955 the government has been given the power to amend the list of essential commodities.

The issue of judicial review is invaded at the same time, by a certain impulse of skepticism and enthusiasm. The contribution of judges to the identification and control of discretionary power is of undeniable interest. For a country like Cameroon, this control is fundamental; despite the requirements surrounding the issue. The admission of such control calls for a priori the establishment of an unenviable relationship between the authorities and judges. Whether they are opponents or partners in the management of state affairs, is difficult at times to determine. In addition, *"faced with an administration whose experience and tricks get stronger and stronger, the judge is forced, if he intends to fulfill his office to speak a new language"*[14]. But what is the language of the Cameroonian administrative judge? The question about the degree of control of acts of the administration is a pertinent one. At what level is judicial control in Cameroon? The following analysis will demonstrate the duality that exists in the jurisdictional control of administrative discretion which may either be direct or to an extent indirect while pointing out the limits of the control exercised.

The indirect control of administrative discretion usually consists of the identification of both elements of external and internal illegalities. This is also known as the control of ultra vires acts which is a veritable weapon to guarantee liberties and the rule of law[15]. This control is geared towards the control of the act[16]. *"The Control of external legality in general, whether competence is binding or discretionary the judge in all cases checks the external legality and sanctions non-compliance with it: incompetence, defect in form and procedure… "*[17]. This should hardly come as a surprise if we know deep down that there is no pure discretionary power in the regulation process without a few elements that bind the authority. The reality is that all powers exercised by administrative authorities are binding whether implicitly or explicitly. The regulatory power should not be exercised in violation[18] of the rules governing the jurisdiction of

[14]**J. KAHN**, « Le pouvoir discrétionnaire et le juge administratif », *R.F.S.A*, éd, Cuyas, Paris, pp.9 (1977).

[15]**J. CHEVALLIER**, *L'État de droit*, 5éd, Paris, Montchrestien, 2010, pp. 158 ; **M. DIAGNE,** « Le Conseil d'État sénégalais et la construction de l'État de droit », *Revue administrative*, n°6, ns, 1999, pp. 81 ; **C. KPENONHOUN**, *Contribution à l'étude du contentieux administratif au Bénin : 1990-2012*, *op.cit*., p. 169 et s ; **J. CHEVALLIER,** « L'État de droit », *Revue du droit public*, 1988, n°2, pp.313 s ; **HEUSCHLING**, *Etat de droit, Rechtsstaat, Rule of law*, Dalloz, 2002, pp.739 ; **H. KELSEN,***Théorie pure du droit*, 1934, trad. de la 2éd : Dalloz, 1962, pp. 496.

[16]**A. de LAUBADÈRE**, « Le contrôle juridictionnel du pouvoir discrétionnaire dans la jurisprudence récente du conseil d'Etat », in Pages de Doctrine, *LGDJ*, 1980, pp.360-375.

[17]**J. MORAND-DEVILLER**, *Cours de droit administratif,* 8éd, Montchrestien, Paris, pp.274, 2003,.

[18]**LIDOU OUSSENI,***Les modalités de la violation de la loi en Droit administratif camerounais*, Mémoire pour le DEA de Droit public, Université de Yaoundé II- Soa, 2008/2009, pp. 138.

an authority. In its various modalities, it must be respected by the authority who intends to use this discretion. Thus, when the judge specifies in a well-known case that: *"The minister is therefore not qualified to make an assignment of this nature. This power is not within its competence"*[19]; he intends to set the pace for the rationalization of the exercise of regulatory power. In this case, the judge goes even a little further to sanction the alleged: *"discretionary right ..."*[20].

The use of regulatory power is not done in disregard of the rules of competence. It's in this sense that the remedy for abuse of power is presented as an effective means not only to cancel the act, but also if necessary, to repair any related damage. The principle is that the administrative authority, even if he decides discretionary, must respect the conditions of form and procedure linked to this act**.** The administrative judge always controls the legality of the acts where discretion was exercised. He does this through the control of external and internal illegalities.

After making retrospect of the indirect method of control in Cameroon, it will be judicious to look at the direct means of control available to the administrative court. This control is carried directly on the appreciation of the opportunity by the administration. It has as its principal objective either to reduce its field of application by the administration or to appreciate the manner in which the administration makes use of it. To be more concise, it looks more profoundly at the motives, the respect of the principle of good administration, and the control of proportionality of the measure during the exercise of regulatory powers. This control is still in the process of being consolidated by the administrative jurisdictions in Cameroon. The emancipation of this method of control of discretionary powers by the courts is the responsibility of the courts. The administrative judge who is the protector par excellence of the citizens against the scepter of the administration is responsible to develop new methods of checking the appropriateness of the regulations by the administration[21].

[19]Jugement N°01/97-98 du 30 Octobre 1997 Melone Stanislas/Etat du Cameroun.

[20] Ibid.

[21] Regulation is all about discretion and incorporates flexibility and a sense of fairness; most consider it to be a very positive feature of the administrative process. At least for the average citizen, the absence of individualizing discretion in an administrative scheme engenders feelings of injustice, and those directly affected by such a program are dissatisfied with inflexibility. Less evident is the proposition that administrative decision-making becomes worse if it sticks too closely to the rules. Despite these positive aspects of individualizing discretion, however, in our theory of social conduct we feel more secure if our bureaucrats are constrained by rules. Our attitude towards individualizing discretion reflects this conflict. The benefits of individual discretion create a

It is a reality that has become commonplace today based on the consistency of case law which could be attributed to the overdue dilution of administrative jurisdiction within the Supreme Court[22] and its inability to fabricate a case law[23] based on administrative justice. Thanks to the regionalization of administrative justice[24], that there was concretized a page turnover[25] that started as far back as 1996 in the history of administrative justice. The general stand for a long time now has been that of denial of the jurisdiction of the courts in matters concerning the proportionality of an administrative act. When it comes to disciplinary measures against civil servants, only the disciplinary authority decides discretionarily whether to sanction or not or even the time to sanction. The choice of whether to apply one principle or the other most often remains discretionary. This applies same for the determination of when to issue a receipt for an association that has been declared. As such when the judge specifies that: *"considering that…the petitioner by virtue of his status had no right to be promoted by choice on a fixed date …"*[26].

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dilemma for administrative theory. The official is given freedom, not license. To what extent then should administrative officials be free, without judicial interference, to exercise individualizing discretion? The answer to this question affects our judgment as to the role courts play with respect to this type of discretion.

[22]**C. KEUTCHA TCHAPNGA**, « La réforme attendue du contentieux administratif au Cameroun », *Juridis Périodique*, n°70, avril-mai 2007. pp.24 ; See also **J-C ABA'A OYONO**, « La nouvelle révision du Droit de la Justice Administrative », *Revue Africaine des Sciences Juridiques et Politiques*, n°1, Vol 8. pp. 231.

[23] This is due to their fundamentally private law based training. **J-C. KAMDEM**, Cours polycopié de contentieux administratif, *tome 1, F.S.J.P.* de l'Université de Yaoundé. pp. 57-58. « *Une chose est sûre, c'est que le juge judiciaire ne peut valablement connaître du contentieux administratif, il n'a ni les connaissances, ni la tournure d'esprit nécessaires pour trancher les litiges administratifs* »; see**R-G. NLEP,** in note sous CS/CA, du 29 juin 1989, Société RAZEL CAMEROUN, Panant, n°807, 1991. p. 397 ; seealso**A. NCHOUWAT,** Le juge et l'évolution du droit administratif au Cameroun, thèse pour le Doctorat de 3e cycle, Université de Yaoundé, FSJP, 1993-1994. 454p. See**J-M. BIPOUM-WOUM,** « Recherches sur les aspects actuels de la réception du Droit administratif dans les Etats d'Afrique noire d'expression française : le cas du Cameroun, *R.J.I.C*, 1972, n°3, juillet-septembre, pp. 378-380 ; **A. BOCKEL,** *L'administration publique Camerounaise*, Encyclopédie administrative, *I.I.A.P*., Paris, Berger-Levrault, 1971, pp. 14.

[24]**C. KEUTCHA TCHAPNGA**, *Les grandes décisions annotées de la juridiction administrative au Cameroun*, l'*Harmattan Cameroun*, 1ere édiction 2017, p. 31; see also Section 5 of law no 2006/022 of 29 December 2006, op.cit.

[25]**C. KEUTCHA TCHAPNGA**, *Les grandes décisions annotées de la juridiction administrative au Cameroun*, l'*Harmattan Cameroun, op. cit*, pp. 30 ; **J. C. ABA'A OYONO,** « La nouvelle révision du droit de la justice administrative », *op. cit*, pp. 225 et s ; **J-J ANDELA** , « Les implications juridiques du mouvement constitutionnel du 18 janvier 1996 en matière d'environnement au Cameroun », in *Revue juridique de l'Environnement,* n°, 2009, pp. 421; **M. KAMTO**, « La fonction administrative contentieuse de la Cour suprême du Cameroun », in *Les cours suprême en Afrique, vol. III,* la jurisprudence administrative, sous la direction de G. CONAC and **J. de GAUDUSSON,** Paris, Economica, 1988, pp. 31.

[26]Arrêt de la CFJ/AP du 18 Octobre 1967, Oyono Ngomo Jean C/Etat du Cameroun; voir aussi l'ordonnance N° 19/OPCA/CS du 26 septembre 1998 du 26 septembre 1991, Affaire Kom Amboise c/ Etat du Cameroun « Que s'il est compétent pour connaître si l'association dissoute tombe par ses agissements sons la composition de la loi, il n'apprécie cependant pas l'opportunité de la dissolution ». See also O.C.D.H c/Etat du Cameroun.

Recommendations and conclusion

Our recommendations focus not only on the need to revise the court and include its complementary regulations but especially on the reinforcement of the constitutional role of the Senate in its representative capacity of the local government.

Reforming the code to introduce the regulatory part

There should be more appropriate legislation on local administration. The government of Cameroon should take appropriate measures to make sure that regulations concerning this code are made available and annexed to this code to facilitate the full implementation of the code.
Besides, the code may reduce the domain of delegated regulations and the legislator assumes his full functions by providing in the code the relevant directives for its direct application by the local government authorities. We can see this need from the very foundational element of decentralization in Cameroon which is the constitution. The code has given a lot of powers to the central administration to suffocate the existence of local governments through punitive regulation since there is no guarantee that implementing regulations will not bring in new elements that may even contradict the provisions of the code.

The Senate should assume its constitutional role as the representation in Parliament of local government

The framers of the Constitution determined that the Senate would best operate if it were elected by the people of the concerned regions. The practice in Cameroon is that 70 are elected and 30 appointed. Even though the Senate has been in the books for close to two decades, many Cameroonians are still stunned. Unlike presidential or municipal elections, these elections are done through an arcane and archaic "indirect universal suffrage" system where only a select few are eligible to vote[27]. According to Law No 2006/005 of 14 July 2006 to lay down conditions governing the election of Senators Chapter IV, Section 11 clarifies that:(1) Senators shall be elected in each region by an **electoral college comprising regional and municipal councilors**.

[27] According to Chapter 1, Section 3 of Law No 2006/005 of 14 July 2006 to lay down conditions governing the election of Senators: (1) Each region shall be represented in the Senate by 10 (ten) senators 7 (seven) of whom shall be elected by **indirect universal suffrage** on a regional basis and 3 (three) appointed by decree of the President of the Republic.

In 2008, Parliament amended this clause, stipulating that "the electoral college for Senators will be **exclusively municipal councilors** in case senatorial elections are organized before regional council elections". Since regional council elections have not yet taken place, the electoral college will, therefore, consist uniquely of the 10,636 municipal councilors, the majority of whom are from the ruling CPDM and the remainder from the other political parties that are a minority to the former. So, much then for the much-vaunted "popular participation". It appears formally and materially as a deceitful institution that is intended to blindfold the population she is expected to protect. This questions the importance of bicameralism. This assertion is demonstrated in the interrogation of DUVERGER when he said "should the parliament be composed of one or two houses?"[28]

The political implications of indirect universal suffrage are immediately obvious to anyone familiar with the Cameroonian political system and the context in which the Senate was established back in 1996. At that time, Cameroon had held its first multiparty parliamentary elections a few years earlier during which the opposition had swept the majority of seats, and the ruling CPDM was forced to enter into a coalition with the MDR and UPC in order to govern. These elections had been followed by 1996 municipal elections during which the opposition had, against all odds, swept what was then described as "le Cameroun utile", or the Cameroon that matters. The ruling CPDM, therefore, needed a second legislative body in which it would be assured permanent control, and which would have the power to amend or reject laws adopted by an opposition-controlled national assembly.

It was in this context that CPDM constitutionalists came up with a 100-member senate in which the president (in violation of the sacrosanct principle of the separation of powers) would unilaterally appoint 30 Senators of his choice, the assumption being that since the president/CPDM already had a stranglehold on the "Grand South" (Center, South and Eastern provinces/regions) and its 21 seats, the regime would have an automatic 51 senate majority even before the first vote was cast.

[28]Maurice DUVERGER, Institutions politiques et Droit constitutionnel, PUF, Paris, pp.163, (1980).

This was the thinking in 1996 at a time when Cameroon still had what could pass for a reasonably credible or powerful opposition. Today, the political environment is completely dominated by the ruling CPDM which currently controls 336 of the 360 municipal councils in the province and has 9,032 of the country's 10,636 municipal councilors.

This political reality explains why the President insisted that senate elections take place before new municipal elections, even though the mandate of the current councilors expired in June 2012. This is likened to a parliament that is suffocated by a single presidential executive power[29]. On June 1, 2012, President Biya signed a decree extending the mandate of mayors and municipal councilors in Cameroon by one year with effect from the 31st of July 2012. Logic would have required that the Electoral College for the 2013 Senate elections consist of new councilors elected in 2013 and not by councilors elected in 2007. Unfortunately, political expediency once again won the day. It's for this reason that Jean GICQUEL purported that the parliament and its members are the agents of the President of the Republic[30]

Conclusion

There is no society that functions without laws, ubi jus, ubisocietas. However, laws in themselves no matter how refined they are made, cannot regulate the society if they are not enforced diligently. The force of law can only be felt in their applicability. It is therefore mandatory for text of application to accompany the mother legislations as soon as the laws have been promulgated. The decentralization Code in Cameroon would create the expected impact only when the essential texts of application have been created to accompany it. Decentralization is an essential tool to manage a multiethnic or multination unitary state like Cameroon. The impact of a well-structured decentralization has produced legendary results in France, Germany and even India. Cameroon is already on a good trajectory but which still demands some refurbishing to produce legendary results. There is hope that with the intended organization of

[29]KAMTO (M), Pouvoir et droit en Afrique noire. Essai sur les fondements du constitutionnalisme africain, L.G.D.J, Bibliothèque africaine et malgache, Paris, pp.243, (1987).
[30]Jean GICQUEL « *Le présidentialisme négro-africain. L'exemple camerounais* », in Le pouvoir, Mélanges offerts à Georges Burdeau, L.G.D.J, Paris, pp.711, (1977).

the local public service texts of application will soon be on a fast lane both for the code and any other legislation that is intended to accompany our local governments.

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