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LOCAL GOVERNMENT ELECTIONS IN CAMEROON



BY

HARMONY BOBGA - MBUTON

*A Publication of Human Rights Clinic and Education Center
Bamenda - Cameroon*

December, 1996

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PART A. INTRODUCTION

The right of every citizen to participate in the government of her/his country is a universally recognized right. In Cameroon both International, Regional and National provisions for the protection of the right to participate in the government, have not only been recognized in the fundamental law of the land, i.e. the constitution, but have been made legally enforceable by Art 65 of the new constitution. In fact this right is very specifically provided for in s. 2 (2) & (3) of the January 1996 Cameroon Constitution. The operation of this right in practical terms does not however imply that all citizens of a nation can at the same time take part in making decisions for their government.

The enjoyment of this right is ensured essentially through representation whereby a number of citizens are selected by the general body and mandated to act on behalf of the electors.

The process of selection of representatives for purposes of government is called election. The organisation and execution of elections normally takes place within a given legal framework. An analysis of this framework as pertains to local government (Council) elections will form our principal focus in this presentation.

2. ELECTION AND DEMOCRATIC GOVERNMENT

It is a fitting back drop to presentation of the Legal Framework for elections to briefly look at the connexion between elections and good governance. Elections in themselves are not of great significance until they are linked to their ultimate objective - the selection of representatives for purposes of ensuring democratic government.

There are many views and perceptions of democracy, ranging from multi-party democracy, to participatory democracy etc. After living through more than 5 years of transition from a mono-party state to

a multi-party "so called" democracy, few reflecting Cameroonians would question the inadequacy of multi-partism under the Cameroon experience, as a reliable means of ensuring genuine citizens' participation in government. Participatory democracy seems to be the kind of governmental culture we should employ to build Cameroon. Regrettably multi-party democracy is not an automatic and reliable access to participatory democracy because experience has shown that the political leader who cry from roof tops for democracy are themselves not practitioners or respecters of democratic principles within their parties.

In a country with widespread poverty and low literacy rate, democratic government can really only be talked about when the down trodden citizens of our local (traditional) communities and our urban "slum-Havens" can be heard directly through their democratically chosen Representatives. It could also be added that the process of democratic government serve a healing purpose particularly for local communities which have been oppressed from generation to generation first by tribal Authorities and later by the so-called "modern state" institutions of either military or one-party dictatorial governments even when these exist behind the smoke screens of pseudo (multiparty) democracy.

The election of representatives for local self-government is therefore both an occasion to choose local leaders and managers as well as a signing of contract(s) of performance between the local community (electors) and their leaders/managers.

I have no doubt that many amongst us will be wondering the appropriateness of discussing the question of local government (municipal) elections with "elected Councillors", after the Local Government Elections of January 21, 1996. The simple answer is that almost all legislations on elections, both local and international emphasize the periodicity of elections. This is to stress that the gains from elections are only truly sustainable if from time to time, elected representatives renew their contracts of performance with the electorate. There could equally be need for replacement of

persons elected for a particular term with other persons, for the subsequent terms. Such a practice will ensure that holders of power do not become corrupt by the trappings of the powers they control for too long.

We may wish to liken an election to the human kidney, while the latter is a physical organ, the former is an opportunity which serves for cleaning the governmental system periodically so as to ensure sustainable participatory democratic government.

A well laid out electoral system in itself is not good enough. There is need for an informed group of persons within each electoral system, to ensure the freedom and fairness of the electoral process. Even as partisan persons we believe that the councillors of today are potential ensurers of a free and fair elections. Their contribution to the respect for the desired electoral standard could serve elections other than local council elections such as those for the Regional Councils, Parliament and the Presidency. It is for these reasons that it is not too late or too early to build the capacity for understanding and managing elections in local councillors.

PART B: LEGAL FRAMEWORK FOR LOCAL GOVERNMENT ELECTIONS

We cannot talk of elections without relating them to an orderly society. An orderly society for our purpose, and in our context, is one in which human conduct is regulated by law as a means of ensuring peace and justice. This part of the presentation shall therefore dwell on the legal framework for local council elections.

The fundamental law of Cameroon is the constitution. The said constitution is thus the foundation upon which the law regulating local council elections is rested. Under the principle of hierarchy of laws within a legal system, the electoral laws mandatorily have to conform with the constitution.

The specific legislation on local council elections is law N° 92-002 of 14 August 1992. Section I of the said law however requires that for its completeness, it should be read mutatis mutandi with Law N° 91/20 of 16 December 1991 governing parliamentary elections.

B1. THE RIGHT TO VOTE

The right to vote as earlier stated is a universally recognized fundamental human right which has been incorporated in to the Cameroon national constitution. To quote from the international instruments (UN, UNIVERSAL DECLARATION OF HUMAN RIGHTS) Article 21:

- 1) Everyone has the right to take part in the government of his country, directly or through freely chosen representatives.
- 2) Everyone has the right of equal access to public service in his country
- 3) The will of the people shall be the basis of the authority of government: *this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.*

Although the above provisions have simply been incorporated by reference to the preamble of the constitution of Cameroon, it is a concrete enforceable right as guaranteed in article 65 of the same constitution which makes the preamble of the constitution an integral part of the constitution. Without the said article 65 the right to vote would have been a mere declaration of intention or philosophy which cannot be asserted as an enforceable right under the constitution.

In the hierarchy of laws of the land, the constitution is the highest and the most fundamental law from which other laws derive their legitimacy. In constitutional law, therefore any law that is at variance with the national constitution shall be null and void to the extent of its variance from, or inconsistency with the said constitution. The legality of all subsidiary legislations is tested by this rule.

The electoral law bearing the regulatory details of municipal elections is a subordinate legislation to the constitution, any provision in the electoral law which is inconsistent or at variance with the constitution, is bad, null and void.

To test the right to vote therefore we shall examine sections (6-7) of law N^o. 92-002 of 14/08/92, Law N^o91-020 of 16/12/91 and any other subsidiary legislation on the standard laid in the January 1996 Cameroon constitution.

S.6 (1)-(3) Law N^o. 92-002 of 14/08/92 when read together do not clearly identify the elements that must be present, to warrant assertion of the right to vote.

Subsection (1) simply talks of the need for a voter to have a place of abode and that of residency over a continuous period of 6 months within an electoral constituency.

Subsection (2) which reiterates the requirements of place of abode and residency therein, is rather presumptuous when it also refers to an age requirement which age is not stated and was never mentioned in subsection (1). The latter subsection however makes the registration of such a qualified person to be eligible to have her/his name entered into the voters register during the period of revision of a voters register, which seems to be the final act of securing the right to vote.

In accordance with Section 1 of Law N^o. 92-002 of 14/08/92, we must fall back to law N^o. 91-020 of 16/12/91 to supplement Section

6 discussed above. The relevant provisions of the former law are found in its Sections 11 to 14.

Section 11 fixes the age limit below which the right to vote is not accessible, at 20 years before or on the day of closure of the revision of the electoral register. This provision takes care of the silence on age in section 6 of law N^o. 92-002 of 14/08/92. This minimum age of 20 years for voters is also provided for in S.2(3).

There are however two exceptions to the requirement of place of abode and continuous residency. The qualification is in two arms. In the first arm, anyone otherwise qualified but not resident as required in a specific place of abode may nevertheless qualify to register within an electoral constituency provided, he/she can show proof of having his name on the income tax assessment list of a given Administration unit for five consecutive years.

The second arm of exception concerns members of the Armed Forces. Such persons may register to vote either where the force's unit is, or at their "home port" and either of these will dispense with the requirement of residency within the particular electoral constituency.

B.2 - QUALIFICATION TO BE VOTED - CANDIDACY

In the preceding part we dealt with the question of eligibility to vote to chose representatives for purposes of government. In this section we shall address the question of *who can be voted or can qualify to be voted or stand election*.

Generally speaking any citizen of full age is eligible to be voted by other citizens of the same community, to represent the latter. This, in principle is the essence of the fundamental rights provision which states that *"everyone has the right to take part in the government of his country directly or through freely chosen representatives"* (Art. 21(1); U.N.U.D.H.R); This standard of eligibility is narrowed

down to specific requirements from Nation to Nation. In Cameroon the criteria for judging a citizen eligible to stand for an election are spelled out in the various electoral laws.

Qualification for candidacy for election of councillors is provided for in Sections 8-9 of law N° 92-002 of 14/08/92. The S. 8(1) prescribes the requirement of residency but qualifies it in subsection (2) by saying the requirement of residency can be dispensed with if the interested aspirant can show proof of possession or ownership of a place of abode within the constituency.

S.9 of the law on municipal elections makes provisions for invalidation of occupancy of the seat of a municipal councillor in the event of discovery of error in such councillor having been adjudged qualified. The provision goes further to make vitiating conditions arising after the councillor has been elected, to operate retrospectively in invalidating the councillor and thus rendering the seat vacant.

The invalidation of a councillor's seat after election may well be justified on grounds of the need for the continuity of qualifying conditions. But it appears to be a double-edged sword with such retrospectiveness which seriously affects the security of tenure of representation.

B3. VOTER REGISTRATION

After discussing who is qualified, to vote and who could qualify to be voted, the next important matter to address is the question of voter registration.

Voter registration simply means the establishment of a record or register of citizens who have met the criteria to be electors. Each Registered Voter is identified by a voter's card issued on the basis of such elector's names featuring on the electoral register. Whenever an electoral exercise takes place, a voters card is checked

against the entries in the electoral registers. The importance of voter register can hardly be overemphasized because it is the crystallization of the right to vote and therefore access to government franchise.

Law number: 92-002 of 14 August 1992, which lays down conditions for election of Municipal Councillors in Cameroon does not make provisions for establishment of voters registers. The said law as we saw earlier, directs users to supplement it with provisions of Law Number: 91-020 of 16 December 1991 which lays down conditions governing elections of members of parliament. Section 48 of the latter law provides that:

In each council and subdivision a register of electors shall be drawn up. In addition, a special register shall be drawn up for each polling station. Such register may be classified according to local conditions, by alphabetical order, quarter or family group.

The same law goes further in its section 52 to state that:

Registers of electors shall be permanent. They shall be revised every year throughout the Republic. Senior Divisional Officers may order a thorough recompilation of the registers at the time of the annual revision.

The experience of the Cameroonian electorate in the last three elections since the declaration of multi-partism in 1990, have shown clearly that the voters registers/Registers of electors are the critical foundation for fair elections. It should be remembered that a citizen's right to vote can only be secured by the entries into the Register of Electors. A manipulation of electoral registers could be the most effective means of not only undermining citizens' rights to vote but, of the entire electoral processes. The provision in Section 52 of Law No. 91 02 of 16 December 1991 is most disturbing as far as electoral registers are concerned. While the security of registers of electors lies in completeness and permanency, the latter character

is even more important. This argument is evident in the general short fall in voter registration rumoured to have been recorded in the most recent exercise of a *thorough revision* of the voters registers. It is difficult to understand how dealing with the same electorate it would be necessary to establish fresh registers of electors every year or after every election.

In the absence of an *independent electoral commission* it is doubtful whether administrators who owe allegiance to their master can not be vulnerable to requiring thorough revision of registers of electors to suit their master's political/electoral interests. It must be understood that this defect in the electoral law is like a sword which the present opposition will not hesitate to use against the electorate if they secure the reigns of power. Indeed it is an evil that can hardly lack a master or user.

It is my humble view that in the same manner that cross-checking of votes cast is done by representatives of opposing political parties, the completed electors registers ought to be accessible to all interested parties for *verification* and *certification*.

Regarding the last Electoral registration exercise I do think that a joint commission representing the major political competitors should verify and certify the new registers and do so with a comparison of the new registers and the preceding ones. There should be an enquiry into the difference in the number of voters registered between the two sets of registration.

The issuance of voters cards to all duly registered voters will also avoid a subsequent manipulation/falsification of electoral registers, for every registered voter will not only be expected to have an electors card but such a card holder will be presumed to be entered in the electors register.

B4. NOMINATION AND SELECTION OF CANDIDATES:

Once a citizen meets the qualification to be voted as a representative, the next hurdle is to be accepted into the electoral race. An aspiring candidate puts up her or his candidacy by so indicating and completing the required administrative formalities for standing as a candidate. Where a single member candidacy is admissible, a prospective candidate needs only to complete the administrative formality after deciding to run for the electoral seat.

What is common in Cameroon for parliamentary as well as municipal elections is that electoral contests are based on part lists of candidates. This implies that after volunteering to stand election a prospective candidate must be selected by his political party and with other such candidates, the party constitutes a list whereupon the short-listed candidates proceed to fulfill the administrative formalities and thereafter the party list is presented to the electoral body as a block of candidates contesting on that party's platform. This of course is the way candidates stood for the last municipal elections.

The essence of election being representation, it would be presumptuous not to question into the representative status of individual candidates even though together they form a list for the whole Council area. In most modern democracies it is required both in Law and Practice that each would-be Councillor represents a specific constituency within the municipality, which is generally called a ward. A ward in this context is a combination of demographic and geographic elements to produce the smallest political constituency. This criteria is not apparent in the Cameroon Municipal electoral Law, particularly when read, as required, with the law on parliamentary elections. The Letter and spirit of the representation provisions in the electoral laws are to the effect that collective representation dispenses with specific geo-demographic units within the municipal jurisdiction. The foregoing arrangements do not seem to take the argument for representation towards

participatory local self-government, to its logical end, or anywhere closed to such end.

B.5 LOCAL GOVERNMENT ELECTORAL CAMPAIGNS:

The Campaign phase in the electoral process is the stage during which a party markets its lists of candidates to the electorate by presenting the candidates and/or their list with a view to persuading the electorate to vote for such list or candidates on a particular political agenda or policy.

The methods employed in campaigning are varied but most often they includes using the media, pictures and other forms of communication such as debates, between opposing parties etc. In this exercise the Law protects the reputation of each candidate or list of candidates from being injured by contesting parties. Besides the general protection against affronts to reputation under the penal code, the electoral Law makes further protective provision under its Ch.VI Sections 28 (1) - (4).

The question, however, that tickles the mind is: can candidates and, or their lists, had or could have equal opportunities for campaigning? Regrettably, if there is anything more obvious about electoral practices in Cameroon, it is the unequal opportunities to effective media coverage such as the Television and the Radio. These media being under the control of Government and consequently the ruling party, tend to serve that party's interest more. This smacks of a reluctance to retreat from power and very often undermines the freeness and fairness of elections.

Another crucial factor is that the ruling party through the government or the administration which so far controls the election organ, dictates the electoral timetable. Experience has shown that this power is not only prone to abuse but is shamelessly abused when the incumbent government and, or ruling party runs campaign activities both covert and overt for long enough time before opening up electoral campaigns officially to other competing parties.

So far therefore unequal solicitations for votes from the electorate constitutes a serious limitation on equality of opportunity in the competition and consequently renders elections unfair and not free.

PART C: VOTING PROCESS

C.1: POLLING STATIONS

The polling stations are the real host premises for the ultimate exercise of franchise by the electorate. They should therefore not be treated with any less importance.

In the law establishing conditions for election of councillors, in its section 29 precisely provision is made only for the place of custody of electors registers being the subdivisional or District Office, and for the fact that in the event of a dispute following an election, marked copies of the electoral registers shall be sent to the President of the competent Administrative court if the latter requests for them. This provision, although preceded by the sub-heading "polling stations and voting" fails to carry any information on the organisation and distribution of polling stations.

With such a lacunae, one must turn to the Law regulating Parliamentary elections i.e.

Sections 95 of Laws 91- 20 of 16 December 1991. It states that:

1. Upon the proposal of Senior Divisional Officers, the Minister in charge of Territorial Administration shall, by Order, fix the Lists of polling stations in respect of every administrative area.
2. Such Lists shall indicate the area covered by each polling station.
3. There shall be set up one polling station for a maximum of eight hundred electors.

From the letter and spirit of the foregoing provisions, it is clear that it deals simply with the distribution of the polling stations.

The organisation of polling stations such as the staffing, arrangement into polling booths is also reserved for an order of the Minister of

Territorial Administration as well as the provision of electoral materials - ballot papers, envelopes etc. (section: 97).

The foregoing provisions on polling stations do not lay down any criteria to be followed thus everything in this regard depends on the subjective judgement of the Minister of Territorial Administration and the not strictly on objective independent appointees of the same Minister or other neutral body.

C.2: ACTUAL VOTING/CONDUCT OF POLL

The actual casting of votes is the most critical stage at which the secrecy that is essential for the freeness and the fairness of election is tested.

Once the polling station has been set, a voter enters and collects or is given an envelope and all the ballot papers of the contesting candidates after the electoral officers must have verified from the electoral register and identified, using the electoral card and or some other means of identification, to ascertain that the voter is properly registered. The voter then proceeds into the enclosure or booth within the polling station, where he/she alone makes the decision as to who of the candidate he/she wishes to vote for. After exercising this choice, the ballot of the chosen candidate is enveloped still within the booth. The ballots that are left over are supposed to be destroyed and thrown into an opaque trash bag placed within the booth. The elector thereafter proceeds to the hall where the ballot box is placed in the view of every one within the room and puts the envelope into the ballot box. The staining with indelible ink of the thumb of the voter, besides the marking of the voter's card, is effected to indicate that he/she has voted and to prevent repeated voting.

C.3: VOTE COUNTING AND DECLARATION OF RESULTS

The only provisions for vote counting in the Municipal Council election Law deal simply with *reporting of results of the poll (s. 30)* verification of the report by the Council (electoral) supervisory commission and deposits of copies of the said report with the

Minister of Territorial Administration and the Council Archives.
We must therefore have recourse to the Law on Parliamentary elections which contains more exhaustive provisions.

Once the time within which voting is supposed to take place has lapsed, the vote casting must be stopped and the vote counting process must commence.

The counting of votes is carried out at the polling station save where there is insufficiency of electors or members of the Local polling commission who are literate in either English or French, to assist in the exercise. In such an event, the ballot boxes must be sealed and transported to the subdivisinal office, where the counting of votes is then carried out in the presence of the subdivisinal officer. Such polling stations that could be deficient in personnel should be identified before hand because Section 107 of Law No. 9-20 of 16 December 1991, provides for an order of the Minister of Territorial Administration, fixing such areas or sections.

The procedure for counting the votes, including the disqualification of ballots is clearly described in section 109 of the Law on Parliamentary elections. This procedure essentially includes the unsealing and opening of the ballot boxes, identification and recording of votes cast, by opening envelopes and reading the ballots properly cast and recording such votes on specially designed vote counting sheets. The provisions on disqualification of ballots deal with multiple ballot papers, empty envelopes and unenveloped ballots.

After the vote counting has been completed the results obtained are announced at each polling station and such results are recorded in the report on the polling exercise.

Any objection raised during the vote counting by electors is required by Law to be recorded in the polling report.

At the close of the exercise, the report on the polling is signed by the members of the voting commission for each polling station and the same is taken to the subdivisional officer who in turn forwards same to the Senior Divisional Officer of his Division while a copy of the report as required is filed in the Archives of the Sub Divisional Office.

PART D: ELECTION DISPUTES

The nature of an election dispute will depend on what type of violation is complained of. It might be a breach of conditions in the electoral Code(s) that are not specifically made offences.

As regards election offences, these are not specifically laid out in the Law on Municipal Council elections. This gap is filled by sections 115 - 118 of the Law on Parliamentary election. These offences deal with conduct of electors and those of electoral officials.

Neither the Law on Council elections nor that on Parliamentary elections, states which courts are competent to try breaches amounting to electoral offences. Jurisdiction over such offences will depend on the quantum of punishment which will indicate whether it is a simple offence or misdemeanor etc. The two laws however oust the jurisdiction of ordinary courts in all contests of election results.

The Law on Council elections however grants jurisdiction to hear and determine contest of election results in the Administrative

Court (Section 33). Curiously, the Law on parliamentary elections oust the jurisdiction of all courts of Law (Administrative Courts inclusive) and vests jurisdiction in the National Assembly! The latter of course seriously contravenes the principle of separation. It is therefore doubtful whether the Administrative court hearing on election petition will be free from executive interference.

Sections 34 and 35 of the Law on Municipal elections together deal with certain procedural matters in contest of results of the polls. The form of commencing an action for contest of polls is, by a simple application which must be lodged before the Administrative Judge within ten days following the proclamation of the results of the polls. Once such a petition is filed in time, an Administrative judge is required to rule on it within 60 days upon receipt of the petition. It is hard to reconcile the immediacy to file the petition and the inordinately long period within which the Administrative judge is given to rule on such a simple application.

Notwithstanding the contest of the election of a candidate, the contested candidate is allowed to stay in office until the judge having the dispute before him, hands down his ruling. If the result of the petition is complete or partial cancellation of the election results, by-elections shall be organized within 15 days of the cancellation, provided that there shall be no such by-elections if the cancellation occurs 6(six) months preceeding general council elections.

PART E. CONCLUSIONS AND RECOMMENDATIONS

An attempt has been made in the foregoing pages to explain the importance of elections in a democratic culture, to analyse the Legal Framework for local council elections as well as the conduct of voting, to the handling electoral disputes.

The question that we must answer at the close of such a discourse is:-

Whether or not the law and practice of council elections in Cameroon today offers an environment for the development of a viable and sustainable democratic culture through participatory democracy within the frame work or local government?

Without appearing to give judgement, I would answer these questions in the negative. My principal reactions for this view is that the power to manage and control elections in general and more specifically the council election is in the hands of overtly partisan civil servants. The vulnerability of such persons is not strange and more so for a ruling party caught in a creeping yet unretreating multiparty democratisation.

Before the practice complained of, there are also the laws which, to my mind, are legal structures designed essentially to impede the emergence of participatory democracy. Before the practice complained of, there are also the laws which, to my mind, are legal structures designed essentially to impede the emergence of participatory democracy. But whose fault is it? I will not place the responsibility on the ruling party for proposing a bill and passing it into law with an eye more on the short term benefit of protecting their political interests in the short run. It is said often that politics is a game of interest and so it does appear logical for a political competitor in a position of strength such as incumbency, to exploit every advantage to protect their immediate interests. Consequently, my criticism will go to the opposition political parties which boycotted the March 1992 Parliamentary Election and thereby denied themselves access into parliament that subsequently effected amendments to the municipal laws in way overly protective of the interest of the ruling party and her allies.

RECOMMENDATIONS:

Having said the electoral law is undemocratic, what should we do in the circumstances? The unavoidable fact is that we have to make do, with what we have where we find ourselves. The way to do this is to understand what elections are and against the background of such knowledge we can make the best out of a bad situation.

There should also be a campaign for greater objectivity in law making so that participating political formations in the power market places may design laws for the nation that place the interest and future of the nation as a community, above those of component groups or persons of the community. It is only when this objective attitude is adopted that nation can be saved from the whims and caprices of sectional or personal interests.

Our councillors should be knowledgeable in elections so as to be able to act as observers for their different political formations and by so doing, ensure the optimal freedom and fairness of elections through vigilance and co-operation.

The councillors equally need to be reminded of the mandate of representation they get from election and the duty to be responsible and responsive to the electorate.

We must consider the present difficulties as a process of growth in our democracy. It must be recognized that with the vulnerability of human beings it should not be mistaken that the root of the problem could only be in a particular political party, for an opposition party today may be a ruling party tomorrow and it is


unlikely that as politicians, they will not seek to protect their interest by all means.

We should remember that the Human Rights Clinic and Education (HURCLED) Center is a non-partisan organisation whose primary objectives include the promotion and protection of human rights and the building of a peaceful and democratic society. Our views in this paper are therefore strictly non-partisan and where they appear to be otherwise, the responsibility is that of the presenter as a person and not that of the organisation.

Against the background of the foregoing it is the recommendation of this presenter, for the HURCLED CENTER and himself, that there needs to be a complete review of the legal environment for elections particularly the establishment of a more independent electoral body. To avoid unnecessary cross referencing and incessant "complete reviews" of voters registers too, a common code for all elections should be drawn up with contribution from the various political formations in the country as well as the civil society.

This paper is not and cannot pretend to be an exhaustive exposé, but it serves a useful introduction and appetizer for constructive debate towards a democratic electoral culture. We therefore urge participants at this seminar to go out and educate the electorate within their constituencies on the lessons learnt here. In fact we invite you to be crusaders of fair and free elections not only ⁱⁿ councils, but ⁱⁿ parliament, presidency etc.

Thank you.

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