

Chapter 3

The Electoral Framework and Election Administration

The Legal Framework for the Elections

The legal framework governing Presidential Elections in Cameroon consists of various laws – including the 1996 Constitution of the Republic of Cameroon and subsequent amendments – which relate to the vacancy and election to the Presidency.

Law N°. 2006/11 of 29 December 2006 (as amended in 2008 and 2010) governs the establishment, organisation and functioning of Elections Cameroon (ELECAM). The law provides that ELECAM be an independent body charged with the responsibility of organising, managing and supervising all electoral operations and referendums. ELECAM was established to replace all the institutions that previously managed elections in Cameroon, notably, the Ministry of Territorial Administration and Decentralisation (MINATD) and the National Elections Observatory (NEO).

Constitutional Background

The Constitution of the Republic of Cameroon provides for the election of the President by a majority of votes cast through direct, equal and secret universal suffrage. The President of the Republic is elected for a seven-year term. In April 2008, the Constitution was amended to remove term limits on re-election to the office of the presidency.

The Constitution describes the powers of the executive, the legislature and the judiciary. It provides that legislative power shall reside with the Parliament, which is composed of the National Assembly and the Senate. The National Assembly and the Senate are elected for a five-year term and members are eligible for re-election. However at the time of writing this report, the Senate was yet to be established. Parliament votes on laws and the President enacts them by decree.

The Constitution provides for a Constitutional Council which at the time of writing this report was also not yet established. In the meantime the Supreme Court has been assigned the role of the Constitutional Council in addition to its own ordinary judicial functions.

Specifically, the functions of the Constitutional Council in relation to elections as outlined in Articles 46 to 52 of the Constitution are as follows:

- To ensure the regularity of presidential and parliamentary elections, and referendums.
- To address claims or disputes regarding the regularity of the elections which are referred to it by the following: any candidate or political party participating in the election in the constituency concerned; any person acting as 'government agent at the election'; the President the Republic; the President of the National Assembly; or one-third of the members of the National Assembly

- To adopt and proclaim the results of the election.

According to Article 50 of the Constitution, rulings of the Constitutional Council are legally binding and not subject to appeal. Concern has been expressed that the powers of the Constitutional Council to announce election results detract from the powers of ELECAM as an independent electoral management body.

Election Administration

The 2006 law (as amended) establishing ELECAM provides that it shall be an 'independent' body and a 'moral entity' with 'managerial autonomy'. According to the Law, ELECAM's duty is to 'organise, manage and supervise elections and referendums.' In this respect, 'it shall be vested with the requisite powers to perform its duties'. ELECAM was established following the recommendation made by the Commonwealth Observer Group for the Cameroon Presidential Election in 2004 that Cameroon should have an independent election management body.

ELECAM functions through the Electoral Board (EB) and the General Directorate of Elections (GDE). The EB is comprised of 18 members (including a chairperson, the incumbent Dr Fonkam Azu'u) and performs mainly supervisory duties, while the GDE (headed by a Director-General) actually manages and organises elections. According to ELECAM's website, the EB is the 'policy-making organ' while the DGE is the 'executive organ'.

Section 18 of the 2006 law as amended affirms that 'the General Directorate of Elections shall be responsible for the organisation and management of the poll under the supervision of the Electoral Board'. Section 6 distinguishes this from the role of the EB which is to 'ensure compliance with the electoral law for all stakeholders for the purpose of guaranteeing regular, impartial, free, fair, transparent and credible polls'.

Appointment of Electoral Board Members and the Director General

According to the 2006 law as amended, members of the EB shall be appointed from 'independent personalities of Cameroon' 'reputed for their stature, moral uprightness, intellectual honesty, patriotism, neutrality and impartiality'. They are appointed by Presidential decree 'upon consultation with political parties represented in the National Assembly and civil society'.

The tenure of EB members is four years, renewable as appropriate, and expires in the following situations: non-renewal of mandate, resignation, and death. The mandate of members may also be terminated in the following cases: physical incapacity, serious misconduct (notably the breach of oath), and where a penalty is imposed for a felony.

The Director General of the GDE and his or her deputy are also appointed by Presidential decree for a five-year term 'renewable as appropriate upon consultations with the electoral board'. His or her appointment may be terminated in similar circumstances as that of board members.

Section 2 of the 2006 law as amended prohibits ELECAM members from seeking or receiving 'instructions or orders from a public or private authority during the performance of their duties'. Section 3 provides that ELECAM members are immune from prosecution,

investigation, arrest or detention in the performance of their duties, and save in cases of *in flagrante delicto*⁴, shall not be prosecuted during their tenure in office.

The Yaoundé based headquarters of ELECAM is the central office for managing the elections. ELECAM branches are responsible for election management duties at the local level, and are directly answerable to the Director General of Elections.

These branches comprise:

10 Regional Delegations
58 Divisional Branches
360 Council Branches

Electoral Commissions

The 2006 law as amended provides for the following Commissions (chaired by representatives of ELECAM) which are charged with responsibility for various aspects of the electoral process:

- Commission for the Revision of the Register of Electors
- Commission for Supervising the Establishment and Distribution of Registration Cards
- Local Polling Commissions
- Divisional Supervisory Joint Commissions
- Council Supervisory Commissions
- National Commission for the Final Counting of Votes

Voter Registration

The registration process commenced in August 2010 and officially ended on 31 August 2011, as required by law under Section 37 of the 1992 law as amended. To register on the voters' lists, Cameroonian had to go to the office of the ELECAM Council Branch in their electoral constituencies or contact the Joint Revision Commissions conducting mobile registration within institutions, markets, neighbourhoods and villages. In this election the voters list was inherited in part from the previous parliamentary election in 2007. Voters who registered after 2007 were added to the list with the use of new software provided by the United Nations Development Programme (UNDP).

The software is currently owned by ELECAM and was used in the registration of an additional 2.7 million voters to the pre-existing 5,067,000. The total number of voters at the closure of the voter registration was said by ELECAM to be 7,525,122, a number which still needed to be consolidated. Voters needed to meet a set of criteria in order for them to be included in the voter register and for their registration cards to be issued.

The following were the conditions that potential voters had to meet for inclusion in the voter register. A potential voter:

- Must be a Cameroon citizen in the country or in the Diaspora.
- Must have Cameroonian nationality by birth or must have been naturalised as a Cameroonian, or should have been resident in an administrative unit for at least six months.
- Must be twenty years of age.

⁴ In 'blazing offence' - caught in the act of breaking the law

- would be disqualified as a result of the following:
 - the conviction of a felony even by default.
 - the sentence of a term of imprisonment without suspension, of more than three months.
 - the sentence of a term of imprisonment with a suspension of more than six months.
 - being the subject of a warrant of arrest.
 - being an undischarged bankrupt who has been so adjudged by a Cameroonian court or a foreign judgment enforceable in Cameroon.
 - being an insane person [*sic*] or person of unsound mind.

Once a potential voter met the set conditions, he or she was entered into the voter register and a permanent registration card was issued in his or her name. The distribution of registration cards was the responsibility of ELECAM. However, upon observation it was noticed that not all voters received their cards. In addition, some members of political parties claimed that multiple cards were issued to some voters. Registration cards that were not delivered were sent to polling stations and some were collected on polling day.

The introduction of Law N°. 2011/013 on 13 July 2011 provided for Diaspora voting, and under Section 2 (1), Cameroonian residing abroad would be entered on the registers of electors opened at diplomatic representations and consular posts in their countries of residence or attachment.

A National Identity Card was the required identification for voting, and was mandatory pursuant to Law N°. 90/042 of 19 December 1990 establishing the National Identity Card. To encourage Cameroonian of voting age to register ahead of the upcoming elections, the government waived the fee for obtaining these cards for the 2011 voter registration process.

According to Section 32 of the 1992 Act as amended, a registered voter should be issued with a voter's card that must indicate his or her 'full name, date and place of birth, filiation [*sic*], occupation, residence or place of abode'. In practice, and for the 2011 election, voters were provided with a receipt upon registering, and given a date to collect their voter's card.

Candidate Eligibility and Nomination

Any citizen of Cameroon not younger than 35 may be eligible for nomination to the position of President as long as he or she possesses complete citizen rights.

The law requires any person aspiring to stand in a presidential election to declare his/her candidature through a declaration bearing his/her authenticated signature. Such a candidate may either be nominated by a political party, or stand as an independent.

An independent candidate must be presented by at least 300 dignitaries from all regions with 30 signatures from each region by Members of Parliament or the Chamber of Commerce and Agriculture, Municipal Councillors or First Class Chiefs.

Nomination papers must be submitted to ELECAM - the body responsible for approving candidates and publishing the final lists of candidates contesting presidential (and other) elections.

According to Section 55 of the 1992 Act as amended governing Presidential elections, candidates were to submit their nomination papers to ELECAM within five days following the convening of the electorate (that is, the announcement of the election date). For this election, the election date was announced on 4 September 2011, following much public speculation on whether or not the election would be held in the first place.

Some political parties complained that their candidates barely had time to prepare their submissions. Under Section 54 (2), candidature documents must include certified copies of birth certificates not more than three months old, national identity cards, non-conviction certificates, tax clearance certificates, a residence certificate showing that prospective candidates had resided in the country for upwards of five years, and a certificate attesting to the payment of the required deposit (CFA 5,000,000). As noted earlier, of the 52 presidential aspirants, only 23 were approved by ELECAM.

Issues and Recommendations

Prior to the establishment of ELECAM, elections were organised, managed and supervised by the MINATD and NEO. The establishment of ELECAM was therefore a significant first step in the democratisation process in Cameroon.

However, our assessment from the information gathered from some stakeholders was that not everyone had the same level of confidence in ELECAM despite its statutory mandate to discharge its functions impartially and independently. We found out that the suspicion and low confidence levels emanated from the fact that the initial appointments comprised former members of the ruling party.

ELECAM was also constrained in its performance by the prevailing legal framework, which it inherited from previous elections: for instance, in our discussions with some members of the Electoral Board, we were informed that certain procedural aspects of the elections such as the use of multiple ballot papers which we found to be cumbersome, costly and potentially inimical to the transparent conduct of the elections, could not be addressed by ELECAM as it was established by law.

ELECAM needs to do more to demonstrate its neutrality and inspire the confidence of the electorate in future elections. In this connection, it would be helpful if the following steps were taken in earnest to enhance the institutional autonomy of ELECAM:

Review and reform of electoral laws

- There are a significant number of laws governing elections in Cameroon. For this election, MINATD published a compilation of excerpts of the five that are directly relevant to presidential elections⁵. This provided some clarity and ease of access to the legal framework. We hope that ahead of future elections, a complete and comprehensive review of the various electoral laws will be undertaken with a view to commencing a consultative process of electoral reform which captures some of the recommendations in this report, addresses conflicting and unclear provisions, and produces an improved compilation of Cameroon's electoral laws.

⁵ The five laws are: Law N°. 96/6 of 18 January 1996; Law N°. 92-10 of 17 September 1992; Law N°. 2006/011 of 29 December 2006; Law N°. 2004/004 of 21 April 2004; and Law No. 2011/013 of 13 July 2011 (and relevant amendments and supplementary laws)

We note that the establishment of ELECAM itself, through Law N° 2006/011 of 29 December 2006, presents a strong foundation for electoral reform that can be built upon.

Autonomy, independence and impartiality of ELECAM

- ELECAM should have the sole responsibility of handling the electoral process. This should include the hearing of disputes with right of appeal to the Constitutional Council; announcement of the results; and accreditation of observers. This would address the institutional overlaps in responsibilities which the team found to impinge on the autonomy of ELECAM. It is the Team's recommendation that the remaining vestiges of electoral functions should be progressively transferred from MINATD and other institutions to ELECAM.

Filling the gaps in the electoral framework

- We echo the recommendations of the 2004 Commonwealth Observer Group in urging the establishment of the Senate and the Constitutional Council, which have constitutional roles to play where there is a vacancy in the office of the presidency, and during the hearing of electoral disputes respectively⁶; additionally, we urge the review of whether the Constitutional Council should have original jurisdiction to hear election petitions or whether its jurisdiction should be appellate by way of review.

The issue of an inaccurate voter list

- There should be a new voter registration list completed in time for the next elections in the country. The list of registered voters ought to be available online and in hard copy, readily and easily available in readable print. The master list of all voters province-wide and nationwide should be readily available to voters at will. It should be made clear that once a registered voter's name is on the list, the voter does not require any further document other than the official identification to vote in the election.

Constrained election timetable

- A timetable should be designed that allows sufficient time for pre-election activities such as voter registration, candidate nomination, inspection of the voter register and campaigning. For example, candidates must be given sufficient time to prepare and present their documents.

Nomination of independent candidates for president

- The 1992 law (as amended) which governs the conditions for presidential elections⁷ stipulates that any candidate vying for Independent status must produce 300 legalised signatures from the electoral college (voters) who should be members of

⁶ Report of the Commonwealth Observer Group: Cameroon Presidential Election, 11 October 2004, page 44

⁷ Law N°. 92-10 of 17 September 1992 to lay down conditions governing the vacancy of and election to the Presidency of the Republic as amended and supplemented by law N°. 97/020 of 9 September 1997 and Law N°. 2011/2 of 6 May 2011

the National Assembly, Consular Chambers, Councilors, and First Class Chiefs (special high profile voters) from all the Provinces, making 30 per Province. This law currently makes the conditions for running as an independent candidate onerous and should be amended to allow the signatures of ordinary voters nationwide to support prospective independent candidates to run for office, thereby ensuring a more inclusive process.