

# The Procedure to Obtain Justice in Electoral Disputes in Cameroon

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### ABSTRACT

All citizens have the right to participate in government, directly or through representatives chosen in genuine democratic elections. The right is guaranteed by International and national laws hearing and in Cameroon, it is enshrined in the preamble of the constitution. However, the laws, institutions, and procedures put in place for the procedure established to obtain justice in electoral disputes in Cameroon pose a challenge to guarantee free, fair, and quality justice in the settlement of electoral disputes. This study conducts a critical analysis of the procedure to obtain justice in electoral disputes in Cameroon. Using a doctrinal qualitative methodology, we explored primary and secondary sources. Our findings indicate that, the inaction of courts enables incumbents to consistently retain power, thereby negating the principle of consolidation of democracy. Thus, the courts are failing to play a role in promoting democratic consolidation. The research concludes that the procedure to obtain justice in electoral disputes by courts in Cameroon is a serious nightmare with successes. Therefore, the challenges faced in the procedure to obtain justice in electoral disputes by courts in Cameroon brings about the study recommending the following: There should be a total judicial independence by the executive organ, persons with the capacity to petition for electoral disputes be extended, the absence of appeal for national elections be provided, the timeframe to petition and adjudicate matters be extended and finally the constitutional council judges should have a life time mandate.

**Keywords:** Procedure, Justice, Electoral Disputes

### Introduction

The credibility of electoral adjudication, acceptance of court decisions, and stability of the election environment increasingly hinge on the effective resolution of disputes and violations throughout the electoral cycle [1]. All citizens have the right to participate in government, directly or by representatives chosen through genuine democratic elections [2]. However, conflicts can arise even in the most democratic electoral process. Cameroon's commitment to follow international obligations and standards to provide court settlement, do not only guarantee electoral rights but in such cases also provide guidance when electoral disputes occur. Election disputes are inherent to elections. The rules and procedures put in place for any given election should allow voters to challenge violations through an effective system of election dispute resolution that address their concerns and takes into consideration due process guarantee. The Cameroonian lawmaker ensuring access to legal redress during the electoral process is important to increase public trust in elections, contribute to the legitimacy of the government, and protect voters' rights, assembly, and association. The existence of election complaints in Cameroon, therefore, does not indicate

any weakness, but on the contrary a fair and comprehensive process for resolving disputes, reflecting a strong commitment to democracy and human rights. International standards protect the settlement of electoral disputes, effective remedy, through the efficient, independent, and transparent administration of justice. Disputes over electoral outcomes are a common feature of electoral politics. Yet, very little is known about how people of the bench resolve these challenges and what effect, if any, this has on the contractual dissatisfaction of electoral stakeholders. This is why electoral disputes are often limited to all complaints and appeals on election results. The proper settlement of electoral disputes is an essential part of a successful electoral process. This implies ensuring an effective system of challenging electoral violations and examination of election disputes, by combining an effective mechanism of lodging complaints and an effective decision-making process on the election and electoral complaint [3]. It is on this aspect; this research work is based upon analysing the settlement of electoral disputes by courts in Cameroon.

### Filing of Petitions

The referral is a formality by which a litigant brings his dispute before a court to examine the admissibility and merits of his claims. It may be done by an application of the petitioner or

the judge itself. The filing of a petition is the only means an aggrieved party in an elections dispute makes his claims to be known to the judge. As briefly discussed in the beginning, an election petition is a dispute that arises in the context of the exercise of the right to vote, whether before or after the actual polling day. Ironically the Electoral Code of Cameroon does not define an 'election petition.

### **Locus Standi to Lodge in Petitions for National and Local Elections**

The settlement of an electoral dispute is no isolated procedure [4]. It seeks to enforce constitutional principles that find a residence in electoral law. Put differently, the procedure is backed up by constitutional principles which constitute the foundation upon which this discipline of law is established. An election petition is a procedure for inquiring into the validity of the results for both national and local elections and also pre-voting processes such as the qualification of the candidate, the problem with voter's registers before the polls or voting. Locus standi implies who can file for an electoral petition or who can petition during an electoral process? Persons acknowledging locus standi in electoral petition depends on the type of electoral dispute and the type of election. For pre- electoral petitions, this is mainly the recognition of list or candidatures, for national elections, locus standi is given to any candidate, any political party taking part in the election, or any person serving as a government representative in the said election. As provided in article 129 of the Electoral Code of Cameroon, it states as follow objections or petitions relating to the rejection or acceptance of a candidate, as well as those relating to the color, initials, or emblem adopted by the candidate may be brought before the constitutional council by any candidate or political party taking part in the election or any person serving as a Government representative in the said election, within a maximum period of 2 two days following the publication of the list of candidates (129 EC). What is peculiar about the jurisdiction of the constitutional council for national elections, it has a unique seat in Yaoundé [5]. To this effect, all the categories of persons are supposed to deposit their petitions at the constitutional council only in Yaoundé [6]. The unique seat of the constitutional council can only move out of Yaoundé in exceptional circumstances that may hamper the smooth functioning of the institution [7]. In 2018, parliamentary and presidential elections, 12 petitions were lodged during a pre-electoral dispute for parliamentary election with most of the petitions rejected for lack of locus standing, and 14 petitions were rejected by the constitutional council during the post-electoral disputes for the bases of standing for presidential election respectively." A recent parliamentary election of 2018 for example, in the matter of post-electoral disputes between N Njenje Valentin Klebler, SDF (Petitioner) and Elections Cameroon, CPDM, ANDP, UNDP (Respondents) wherein the relief sought by the petitioner was the cancellation of election results of the election of senators of 25 th March 2018 in Lebialem, Kupe Muanenguba and the entire South West Region due to insecurity, lot of irregularities and serious fraud [8]. The petition was inadmissible for lack of locus standi. Consequently, it was dismissed [9]. Also, the petition of BertinKisob, National President of the Cameroon Party for Social Justice (CPSJ), was rejected for lack of locus standing candidate (14 petitions) [10]. With regards to post-electoral disputes, standing to file for a petition on national elections, is provided for any candidate,

any political party which took part in the election, or any person serving as a representative of the Administration. The parties to the litigation procedure may either request for the total or partial cancellation of the election operations [11]. This was also, the case of Gabanmi-Danha Reggionbert, an independent candidate, who petition the constitutional council for the cancellation and rescheduling of the 7 October 2018 presidential election. However, the CC rejected the petition for lack of locus standi being that his candidature to run for the post was rejected by the Electoral Board and corroborated by the CC. It is important to know that national elections are elections which touches the President of the Republic, members of the National Assembly, Senatorial and referendum operations.

As discussed above for national elections, the electoral code provides for different kinds of persons to petition for local elections. Any person justifying the locus standing on local elections varies according to the type of election and the nature of the dispute. Standing to petition the administrative court for pre-electoral disputes for municipal elections according to section 189 of the Electoral code is given to any candidate, any representative of the list, or any elector whose name appears on the electoral register of the council concerned. For regional elections, it is given to any candidate concerned, any representative of the list concerned or any other list, and any member of the Electoral College [12].

During post-electoral disputes, legal standing to petition for municipal council election is given to any elector, candidate, or person acting in the capacity of a government election officer [13]. For regional elections, the power to petition the administrative court for cancellation of election is given to any elector, candidate, or state representative in the region. One of the central planks of the 1996 Constitution of Cameroon is the right accorded to citizens to elect representatives. Article 2 of the Constitution gives every citizen a right to take part in the conduct of public affairs, directly or through freely chosen representatives, and to be able to vote or to stand for election at periodic elections. Under this Constitution under a system of universal, equal suffrage and secret ballot. This injunction is a bridge from the immediate past that spanned the period from 1970 to 1990 when the government of Cameroon was not based on the will of the people. Thus, the Constitution foresees those elections, however, due to the new dispensation, elections may be disputed. Consequently, it provided for an election dispute resolution mechanism. One of the greatest innovations attached to electoral disputes for local elections is the right given to all electors whose names appear on the voter register. Like national elections were standing to petition is only given to a political party, candidate, and state agent, for local elections, power to contest the results is given to every elector to fight for his or her political right when violated during the election process. Even though in the past years, election petitions emanating from individual electors for local elections are very timid [14].

### **The Auto Referral by The Judge**

What makes the settlement of electoral disputes more interesting is the fact that the procedure, more than not the elements of the procedure are not spelled out either in the Constitution or the Electoral Code. In a series of decisions, the electoral judge recognized his power to take action "proprio motu", that is

without any petition. For him, “Mindful the fact that it results from the combined reading of texts that the Constitutional Council, even in the absence of any litigation, has jurisdiction, because of minutes and attachments to it transmitted by the National Commission of the Final Counting of Votes, to reform the results or to cancel the election in the event of frauds or irregularities having a significant influence on the result of the poll” [15,16]. The electoral judge has done this in so many instances by acting in an auto referral manner which includes, in Judgement No 30/CELL 2007 of August 7, 2007, NINTCHEU Jean Michel (SDF), ETROUKANG Jean Pierre (UNDP), AN, Wouri East, No. 118/CEL /2007 of August 07, 2007, Basil YAGAI (UNDP), AN Mayo Tsanaga North, Kwemo Pierre (SDF), No. 177/CEL/2007 of 7 August 2007 [17].

It is a courageous position of the electoral judge in the sense that no provision expressly gave him the right. Worse it is formally forbidden for him by the law according to section 12 of the 2004 law which provides that, the Constitutional Council shall rule solely on matters referred to it” [18].

### Interest to Act

Like in all other forms of action in justice, interest to act is what a person will gain in the case. The interest can be a moral or material advantage that the petitioner or complainant seeks to achieve from his action before the judge. We say “No interest, no action”. The interest for filing an action to a court can either be patrimonial or extra patrimonial; it can be legitimate, real and actual, direct and personal. Unfortunately, neither the constitution nor legislative provision makes references on the requirement of the interest to act in a petition of the contestation of elections in Cameroon. This is a requirement that in the past decades has been implemented by the electoral judge. For example, in the case of YOUSOUFA DAOUA. In this case, at the request of the petitioner asking for the cancellation of the electoral process, it found the petition inadmissible because the petitioner’s party won the votes of the election by an absolute majority. YOUSOUFA DAOUA (RDPC), AN, Benoue-Ouest [19]. The judge thus poses as a condition for the admissibility of an application the existence of a privilege to be derived from the annulment of the electoral operations, thus making the electoral dispute a subjective dispute. Although the personal interest of the applicants should not be neglected, it cannot supersede the objective interest of compliance with the electoral law.

### The Evidence Regime

One of the key features of an electoral court which often eludes the constitutional court and the regional administrative courts in Cameroon is that it has the discrete feature of inquisitorial adjudication. The common law practice of adjudication of disputes is ordinarily adversarial, whereby the court sits passively to hear the case of each party before it, within strict rules and procedures. An election court is an exception to this practice. It is not bound by the strict procedures and rules of evidence that are common with ordinary adjudication; it goes even beyond the evidence already provided by the parties to inquire into the substance of the allegations made. The judge in election disputes adjudication has proven the exception to the adversarial system of justice. But this has been shown by the fact that the electoral process and election, in particular, have numerous petitions during the election period. To reduce

this accommodation of petitions, the judge upon his motion can dismiss cases for inadmissibility and unfounded evidence. When the evidence given cannot provide enough irregularities, the judge with an explanatory statement can quash the petition [20]. As provided in section 134 of the Electoral Code of Cameroon which states the constitutional council may, without a prior adversarial hearing, issue a reasoned decision to reject any petition it considers inadmissible or to be based solely on objections which are cannot influence the outcome of the election. These discretionary powers given to the judge by the Cameroonian legislator can hamper procedural justice, fair trial, and justice during electoral disputes especially for national elections where the decision arenot appealed. In countries like Nigeria, Zimbabwe this kind of practice does not exist since there is a special tribunal for election adjudication.

As to the burden of proof, the general principle is still maintained. “He who alleges must prove”. The production of evidence in court is still the same as in a criminal matter. The burden of proof lies on the petitioner or litigant who is protesting of rigging, flaws and irregularities encounter in the electoral process. As far as the production of evidence is concerned in electoral disputes, some seem to be more valued and regarded by the electoral judge in the sense that it gives them higher probative value. The probative value here, we are referring to the amount of substance the evidence has over the issue when it comes to contradiction on what to believe and accept. The bailiff’s reports and the minutes of electoral commissions. Observation of the court’s decisions shows that it was systematically convinced when the irregularities alleged by the petitioner were corroborated by these documents. This attitude of the judge can be justified by the fact that that evidence are “very original, also raw materials of the electoral affairs, and they constitute the photography of the conduct of the polls”. The proximity of these commissions to the conduct of the electoral operations may therefore justify their being considered as “instruments with high probative value”. For example, in the last 2018 presidential elections, in conformity with Section 129 of the Electoral Code, which provides submission of petitions before the Constitutional Council, within 2 (two) days following the publication of the list of accepted candidates, complaints, and contentions relating to the acceptance or rejection of candidatures for the presidential election, the said body effectively received 12 (twelve) petitions. Citing varied reasons, certain claimants appealed for a reinstatement of their candidature, rejected by the Electoral Board, while others petitioned for the rejection of some candidatures retained. What is very interesting to know here is the fact that all the petitions were rejected for “lack of justification”.

However, the way the evidence regime is being managed leads to a certain laxity which is manifested by the reluctance of the judge to use all the means of instructions provided to him by the legislator. Notwithstanding the multiple choice of investigation made available to him among which the hearings, the judge always balks at showing judicial boldness. One of the overriding weaknesses of the evidence with the probative value of the bailiff is the acquisition day. According to section 86 of the electoral code, it provides that polling shall take place on a Sunday or a day declared a public holiday and shall last a single day. The issue here is that the reliability of the bailiff’s evidence is difficult to achieve since the day of election is not a working

day for the reason aforementioned. What is very important to note here is the fact that before a bailiff goes and attests for evidence during the electoral dispute, he needs an authorization from the examining magistrate of that jurisdiction. However, the most challenging issues are the number of bailiffs found in one subdivision and the number of polling stations. There is a very great disparity between the personnel and the polling stations to be covered.

### Formal and Procedural Requirements

Forms and procedures applicable before the electoral judge is first of all common to those applicable to other matters before those courts. In addition, the law sets other formal and procedural rules peculiar to electoral disputes which all will be excursively discuss.

### Forms of Petition for National and Local Elections

According to Section 42(1), of the 2004 law which laydown the organization and functioning of the Constitutional Council and section 130 of the Electoral Code decisively settles the debate as to the nature of forms of court proceedings to challenge the results in presidential and parliamentary elections. It provides that petitions where the election of the President or Member of Parliament is in dispute shall be by way of "simple petition". The court in application shall take the form of a "simple petition Form". This form resembles an ordinary court application on notice. Section 42(1) does not deal with the form of a 'petition' or defines what a simple petition is. Once filed, the (simple petition) has to abide by the timelines enjoined by the 2004 law and the Electoral Code, namely, that the petition must be filed within 72 (seventy-two) hours with effect from the date of close of the polls. The idea of "simple petition" mentioned means there is no particular formalism required for filing an election complaint to the CC. A party filing a petition shall state the alleged facts of the matter and the grounds therefore. It shall be posted within 24 hours of its submission and sent to the parties concerned, who shall have a period of 48 hours to present their written submissions, duly acknowledged. Also, the petition shall be exempted from all stamp duty or registration fees as provided in section 42(3) (4) of the 2004 law about the organization and functioning of the constitutional council. One important element which must be contained in the form of a petition, is provided in section 49 of 2004 relating to the organization and functioning of the constitutional council. This section provides that the petition shall under pain of inadmissibility bear the full name, statute, and address of the petitioner as well as the name of the member(s) of parliament whose election is contested. In addition, it shall be reasoned and include a summary statement of the practical and legal grounds therefor. The petitioner shall append to the petition the documents produced as an exhibit. This same section of the law is explicitly explained in the electoral code. Like any other petition (criminal or civil) which states the reason for the complaint, section 130(4) gives an obligation to the petitioner to allege the facts and means, for triggering the court.

With regards to the form for local elections petition, the Electoral Code talks of "simple petition" to be used to refer disputes to the Administrative Court [21]. Even though the Code did not define what it means by "simple petition," the word "simple petition" means that there is no particular formality needed for the electoral petition. However, the judges in many instances have given particular notions on the forms of the complaint or

petition. According to the judges neither the transmission slip nor a simple note without special request can be considered a valid request. For example, in the case of Massaga Cdtkissamba v. ELATE mike Adolf ETSIA [22]. In like manner, the request must be written by its author and contain a specific request [23]. The form of petition is very important when it comes to electoral disputes litigation. Due to the over-crewing of petitions during this period with limited time, the electoral judge is very strict to looking into the form of complaint requested by the petitioner. Like in the case cited above of Bakolo Benson Eeffiong. The petition was inadmissible for being bad in form and consequentially dismissed by the judge. What is very important about the form of the petition is that the petitioner must allege the facts and means, give reasons for petitioning the judge. Apart from this, the Electoral code did not specify other elements to be included nor the 2006 law relating to the organization and functioning of the administrative court. The simplicity of the form of petition for local elections is applauded by many to provide access to justice in electoral disputes in Cameroon.

### The Time to Petition for Elections dispute

For the remedy of a violation to be effective, it must be provided in a timely and appropriate manner. This is particularly important in the electoral context due to the time-sensitive nature of the fast-paced process. Election disputes must be petitioned within a timeframe that allows for the exercise of the affected individual's electoral rights and should run from the moment when the illegality came to the attention of the applicant and should not undermine the prospect of achieving a just solution to a legitimate complaint. The election law must guarantee the resolution of disputes within a period suited to the electoral process. It is crucial here to ensure that the outcome of elections is not delayed. In Cameroon, both the electoral law and the constitution have provided the specific time for petitioners to petition the constitutional council on national elections dispute. The time to petition the constitutional judge also depends on the nature of the election and the type of petition. As concerns the nature of elections and litigation, for presidential and parliamentary elections during pre-electoral disputes, petitions shall be filed within a maximum period of 2 (two) days after the publication of the list of candidates by the Electoral Board [24,25]. For post-electoral disputes, all petitions filed must reach the constitutional council within no more than 72 (seventy-two) hours of the close of the polls [26]. The issue that is not clear here is when the 72 hours do start to run? Is it immediately after the close of the poll? The aspect is that most of the elections are held on Sundays which is a public holiday and all offices are close on the day of the elections. For example, the election to elect the President of the Republic in 2018, senatorial and legislative elections in that same year were all held on Sundays. This time is too short for petitioners to gather evidence to prove the irregularities in the cause of the elections process. The settlement of electoral disputes in national elections in Cameroon is problematic. This is based on the fact that after 72 hours of the close of polls, any of the person mentioned who can petition the CC, can no longer do so whereas, the National Commission for the Final Counting of votes has the laxity to correct errors received from the Divisional Supervisory Commissions while doing the counting before, submitting to the constitutional council for the proclamation of results [27]. This implies that all the changes which could be made by the National Commission



for the Final Counting of votes can no longer be petitioned as a dispute since the time to petition the CC has passed. In most countries for example, in Nigeria, Ghana, Kenya, the United States, France petition to challenge national elections is declared first by Election Commissions before petitions by various authorized persons can now be lodged to the Constitutional Council and more importantly, the right of an appeal is provided. For instance, in Uganda, Museveni was declared the winner of the 2006 presidential elections of Uganda by 59 percent against Besigye who got 37 percent. In *Rtd. Cl. Kizza Besigye v. The EC Yoveri Kaguta Museveni* (as reported in Gloppen 2007), Besigye filed a petition on 7 March which was heard from 22-30 March and a decision given on 6 April 2006 within 30 days from the filing of the petition, as required by Article 104 of the Constitution and Section 59 of the Presidential Elections Act. Besigye maintained that Museveni was not validly elected and asked the court to order a re-run or a recount of the vote [28].

The legal maxim “justice delayed is justice denied” ‘implies that for one to say there has been a fair hearing the proceedings in connection with the hearing must be conducted expeditiously. In the contexts of electoral adjudication, it is very critical because of the electoral cycle which is time-bound and Election petitions are neither criminal nor civil cases. On the ground of public policy, they are regarded as unique and therefore, accorded special treatment. In legal parlance, it is common knowledge that election petitions are “sui generis” which means special, or, put in another expression, proceedings of its kind or class, unique or peculiar. The Chief Justice of Ghana brings home the point when she observed: “I appreciate the sobering fact that an important safeguard of election integrity lies in an effective resolution of complaints and appeals with minimum delay”. In Kenya and Zimbabwe, the laws require electoral petitions to be heard and determined expeditiously and be given priority [29,30]. As seen above on national elections in Cameroon, the legislator has provided the time limit for the constitutional judge to rule on petitions brought before him. This is a great achievement brought by the lawmakers in Cameroon to accelerate the legal process in elections dispute. On the other hand, the time to rule on petitions depends on the type of electoral dispute and the nature of the election. For pre-electoral litigation on national elections, which comprises both presidential and parliamentary elections, the time to rule by the constitutional judge is 10 days [31]. This situation is not the same when it comes to postelectoral disputes. When it comes to post-electoral disputes, the time to rule varies with regards to the type of election and the nature of the dispute. For presidential and senatorial electoral disputes, the time limit to rule by the Constitutional council is 15 days while for legislative elections is 20 days [32]. The aspect of setting a time limit within which a judge has to rule is a good thing. The problem is the ability of the judge to rule within this range of time can cause the electoral judge to act arbitrarily due to lack of a due process of the law. In the last presidential elections, the constitutional council of Cameroon received 18 petitions for post-electoral dispute for it to be tried within 15 days, and with the proclamation of results [33,34]. Even though the petitions were not many received by the electoral judge in the election, the fact that there is no right for the petitions to be redressed by another court is a problem [35]. The issue of due process of the law is not guaranteed [36]. In Nigeria, before the 2010 constitution, the Electoral Act of Nigeria 1982 has imposed a time limit of 30 days within which an election petition had to be resolved. As a result

of the defect inherent in the Electoral Act 1982, the Supreme Court rose to the challenges to declare that any provision limiting the time within which election petitions must be determined is unconstitutional. With this development, the 1999 constitution did not provide for any time limit within which to conclude election petitions. In the same vein, the electoral legislation that followed the 1999 constitution jettisoned the provisions imposing a time limit for the disposal of election petitions.

With regards to the time to file for local election, the efficient administration of justice in electoral disputes includes the requirement for an expeditious process for filing and disposition of different types of petitions and complaints [37]. According to Professor Maurice Rosenberg, “slow justice is bad, but speedy injustice is not an admissible substitute. In Cameroon like in other countries, the Electoral Code provides the time to petition for local elections depending on the nature of the election and the type of electoral disputes. For pre- and post-electoral disputes for both municipal and regional elections, the time to complain or petition the Administrative Court is within 5 (five) days following the publication of the list of candidates by elections Cameroon [38]. This number of days given by the lawmaker for local elections is a bit longer than that of the national elections which is just two days for pre-electoral disputes and 72 hours for post-election complaints [39,40]. Most international standards recommend a shorter deadline for the filing of a complaint with a time limit of three to five days [41]. The Cameroonian legislature was not dormant in this type of election time limit. The five-day limits are a long duration period regarding the fact administrative court handling such disputes at the first instance is within that region where the election took place. Also, this will give much time for the litigant to even prepare his or her defense and even carryout some legit investigation to allege the irregularities. This time duration is very significant though the election does not have too much concern like the presidential election, which raises issues of the highest political, social, and economic importance and sensitivity [42]. Though the time duration provided by the legislator is very encouraging to allow electors, candidates to protect their political human rights, by seeking justice in case of irregularities encounter on polls whatsoever, at the administrative court of Buea, many petitions have been dismissed for time-barred. Like in the case of *Elundu Joseph Mambe V Elections Cameroon (Elecacm)*, *Undp and Ngando John Ngando* as the third responded. In the *Elundu Joseph's* case, the Electoral Board of Elections Cameroon published the list of candidates on 9 December 2019, and the petitioner only complaint on 16 December 2019 [43]. Also, in the case of *NJONGA DAVID NANJIA Social Democratic Front (SDF) Municipal Candidate for Limbe III Council* petition was dismissed having been filed out of time. The post-electoral dispute petition was filed on the 17 of February 2020 while the result for the constituency concern was proclaimed on the 10 of February 2020 since the election took place on 7/ 02/2020 [44]. Out of the 25 petitions received during pre- and post-electoral disputes for the 7 February, 2020 municipal elections 15 were dismissed for having filed out of time [45]. Some countries in Africa like Angola, Botswana, Lesotho, Madagascar, Namibia, Swaziland, Zambia have a long period during which an electoral dispute is filed. For these countries, an electoral dispute petition has a period of 30 days within which a petition needs to reach the High Court [46].

In assessing the issue of timeliness in decision-making after a petition has been filed, it is useful to note when the electoral cycle and the dispute are supposed to be ruled out in court. The time to rule by the judge in local elections is provided in the electoral code. The time to rule by the judge depends on the type of election and dispute. In Cameroon, the deadline for the administrative court to rule for municipal elections petition during a pre-electoral dispute is 5 (five) days [47]. For regional elections, during the pre-electoral dispute, after filing of the petition, the court has within 7 (seven) days to rule on the petition [48]. While for both elections during the post-electoral dispute, the time to rule by the court is within 40 (forty) days [49]. A unique challenge related to this timeline for the resolution of election cases is petitioners' lack of access to evidence to prepare a defense or substantiate a claim. This is a challenge for all elections, and it presents a particular procedural barrier to petitioners – most often a candidate, political party, or elector – as the burden of proof generally rests to the individual or political party making the claim. Because an electoral process is a very specific exercise generally managed by an EMB, the relevant evidence, such as results sheets, rejected ballots, official forms, and voter registry documents, may not be easily obtainable by an individual outside the EMB, or at least not within the tight deadlines that usually exist for an election petition. For local elections, the 5 and 7 (time to rule for pre-electoral disputes for both municipal and regional elections respectively) and 40 days provided is a very tight time limit for a petitioner to prepare his claim and even hire a lawyer to defend his or her case. Also, since service of notice is supposed to be served to the respondent to come and refute the claims brought by the petitioners, this time limit as provided by the legislator can cause a miscarriage of justice in local elections dispute settlement. The fair hearing will not be provided for each party to explain their cases and consequently a jeopardy in justice. Regarding the fact that the Administrative Court is not only specialised or has specific jurisdiction to try election disputes, the time to rule for both elections is really short. In Kenya, all local elections disputes are being handled by the High Court [50]. In Kenya and Nigeria, the time to file for an appeal and adjudicate the dispute by the Court of Appeal for local elections is 6 (six) months [51]. In Cameroon, even though the law provides for an appeal to the Administrative Bench of the Supreme Court, there is no time limit for the court to rule on petitions emanating from electoral disputes.

### Recommendations

“If we never do anything which has not been done before, we shall never get anywhere” From the foregoing discussion, this section pools together some recommendations deemed necessary to realize a solid and efficient settlement of election disputes in Cameroon [52]. The following recommendations are proposed.

### Appointment and Removal of Judges

Under the current arrangement, the president and members of parliament have ultimate power over the appointment and removal of judges [53]. This potentially creates a conflict of interest as the president is a political figure who is the head of state whose elections could potentially be challenged before the Constitutional Court. It is proposed that the appointment and removal of judges be in the hands of an independent organ that should have a transparent and fair appointment and removal process. The United States model of the Judicial Council is

adopted, with the necessary modifications. This will allow for judges to be appointed in the most transparent and meritorious way. It will also allow for a fair and transparent removal system that will increase the sense of independence and insulation of judges. For the constitutional council members, the councilors should be appointed 6 years non-renewable or appointed for life.

Also, with regards to the qualification of the members of the Constitutional Council, the Cameroonian approach is likely the picture of France, which has an open representation with no specific requirements for legal qualification of members. The law only requires nominees to be persons of integrity, with an established professional reputation and renowned competence. In most other countries, there is a legal text which obligates members of the constitutional court to be a judge with more experience in the legal profession. Countries like Germany, Spain, Italy give privileges to members of the constitutional council to be magistrates, law professors, and lawyers. This is because of the important role played by this organ. According to Hans Kelsen, the body responsible for the control and regularity of the constitution cannot be compared to any other legal institution. The researcher, in this case, recommends being magistrates, lawyers, and law professors.

### The Right of Appeal Should Be Provided for National Elections

“One of the cardinal principles to safeguard to fair trial and justice is the right to appeal.” As enshrined in international, regional instruments, as well as in the preamble of the Cameroon constitution [54]. According to article 50(1), of the Cameroon constitution and article 136 of the Cameroon Electoral Code provides the ruling of the constitutional council shall not be subject to appeal [55]. The restriction of the right to appeal the decision of the constitutional council is a violation of the fundamental political human rights of Cameroonians to free, fair and impartial justice in elections. Elections are the cornerstone of democratic governance and political stability. Any restriction to appeal the constitutional council decision in the first instance must be based on reasonable and objective criteria. Also, couple with the fact that the constitutional council is a body with a quasi-judicial status and also it is placed outside the judicial apparatus [56]. Furthermore, the law says members of the constitutional council shall be chosen from among personalities of professional renown which gives latitudes to appoint even persons without judicial background [57].

The researcher strongly recommends that an independent electoral court in charge of electoral disputes for national elections should be created in Cameroon. Such as the one in Nigeria and South Africa. Where by the constitutional council shall become appellant jurisdiction where parties can seek redress?

### The Time Frame to Petition and Adjudicate Election Disputes Should Be Extended

The Cameroon electoral code provides for a very shorter time to file and the time for the courts to pass their judgments for both national and local elections both for pre and postelectoral litigation. For national elections, which comprises of presidential and parliamentary elections, for pre-electoral litigation, the time frame to petition the CC is two days and for post-electoral

litigation, the time limit is 72 hours [58]. Going to the wordings of section 130(4) of the Cameroon electoral Code which requires petitioners to specify the alleged facts and means. Couple with the fact that most elections are held on Sunday, and in the case of the South West and North West during the last presidential and parliamentary election most of the offices were closed on Monday due to the crisis. Again, in order to gather the alleged fact and means, the time frame which is 2 days for pre-electoral disputes and 72 hours for post-election, is too short taking into consideration the dismal condition of most road networks and sometimes the internet outage in some regions in Cameroon. For local elections, for regional elections the law provides for 5 days to lodge a petition to the competent administrative court, and for municipal elections, for both pre- and post-electoral litigation, the law provides within 5 days to petition the competent administrative court [59]. Due to this shorter period, to petition the courts, most often the cases in the court are dismissed for a reason to have been filed out of time. A celebrated case is a petition filed by SFN against ELECAM, MINAT, and ANDP as respondents whereby the constitutional council declared the petition inadmissible because it was filed out of time *ab initio* [60].

The researcher recommends that this time frame should be extended to at least a month (14 days), given that not every petitioner will be able to gather the alleged facts and means, if not the petition will be rejected as it was in the petition of the case of the UNIVERS party headed by Cabral Libii in the 2018 presidential election. To this, the timeframe to adjudicate disputes by the constitutional council should be increased to 30 days for both disputes [61]. The law provides for 10 days during pre-electoral disputes and 15 days for post-election disputes [62]. Due to the importance of the election to foster democracy and better the lives of the citizen, an extension of this time will prove of effective administration of justice in electoral disputes and protecting their political human rights.

#### **Persons with The Capacity to Petition the Courts in Election Disputes Settlement Should Be Extended**

Cameroon has enacted several laws as well as up institutions to safeguards citizens' rights and guarantees the rights of everyone to justice for whatsoever. Cameroon has also ratified various international and regional instruments that make provision for the right to a fair hearing. The international and regional instruments including the Universal Declaration of Human Rights [63]. The International Covenant on Civil and Political Rights [64]. The United Nations Convention on the Elimination of All Forms of Racial Discrimination [65]. The African Charter on Human and Peoples Rights [66]. The State is obliged to [put a legal and institutional frameworks to ensure that the right to justice is protected.

All Cameroonians of age 20 and above according to section 2(3) of the Cameroon constitution, article 48(2) of the same constitution, and section 129 of the Electoral Code gives the capacity of persons to petition electoral judge the constitutional council; such as any candidate who took part in the election, a political party that participated in the election and any persons have the status of a government agent. To this, it excludes citizens who do not fall under the above-mentioned categories but which electoral capacity. Thus, limiting citizens' rights to fair, free, and impartial justice during electoral disputes for this

type of election. This was seen in the case of Assigana Tsimi vs elections Cameroon [67].

Although elections are the cornerstone of democracies, governance, and political stability. Any restriction to seize the Constitutional Council is a violation of human political rights for fair trial and justice. Article 2(3) of the Cameroon constitution stipulates votes shall be equal and secret but when it comes to referring to the Constitutional Council, there is restriction.

The researcher strongly recommends that petition of electoral disputes should be given to citizens with electoral capacity as opposed to article 48 (2) of the Cameroon constitution 1996 and section 133(1) of the electoral code concerning electoral litigation on national elections.

Research to ensure adequate knowledge/capacities of electoral judges: It is essential for electoral judges that are engaged in the area of electoral disputes reform to be thoroughly informed regarding the subject matter. What is the current legal framework implying, what are the challenges, what are the possible alternatives and how would these alternatives play out in practice, taking into consideration the country's sociopolitical context of the courts, are likely to meet with stakeholders-political parties, CSOs, and others-with potentially strong research departments and elaborated arguments and proposals. Through research and analysis, electoral judges will be capable of engaging effectively and constructively.

One way of enhancing financial independence is by giving the judiciary's budget to fund the courts which are not controlled entirely by one institution. A judiciary that relies on another institution for its funding, lacks independence and is likely to be susceptible to undue influence from that institution [68]. This is likely the situation in Cameroon where the judiciary's budget is not a separate and fixed percentage of the national budget. Instead, since under the department of the ministry of justice and attached to the ministry of justice [69]. This invariably impacts the mechanism of providing the remuneration and allowances of judges which are determined by another power through decrees which are understandable changes [70]. What is very important to know and understand here is that there is a big challenge of electoral disputes determination in Cameroon since the judiciary indispensably plays a great function in elections disputes. The Procureur General of the administrative court and of the Supreme Court who has jurisdiction over local elections are directly linked to the ministry of justice which is an executive arm of government. To this, it is underpinned by the principle of subordination thereby limiting judiciary independence and limiting the rule of law to individual judges [71]. The research strongly recommends that the judiciary should be given a special kind of autonomy in its funding.

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