

## Election management bodies in Africa: Cameroon's 'National Elections Observatory' in perspective

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### Summary

*This article examines in detail the work of the Cameroonian National Elections Observatory (NEO) during the 1990s, at a time when democratic transition through multiparty elections took place around Africa. It is contended that regardless of such initiatives, many countries now show signs of returning to de facto one-party systems. Indicative of this regression has been the way elections have been managed and manipulated by the ruling party. It is suggested that the integrity of the election management process is a crucial factor in the facilitation of functional democratic elections. Considering that election management bodies (EMBs) are considered vital for ensuring a level playing field between all political actors to guarantee free and fair elections, it is emphasised that EMBs must be independent and accountable, with sufficient resources to sustain their effective operations. The article concludes that even though some of the EMBs set up in African countries have been successful, many others lack in autonomy, power and capacity. EMBs are often not sufficiently independent, have merely served as instruments for perpetuating rituals of symbolic elections and disguise signs of authoritarian revival. The NEO is analysed and compared with other EMBs in Africa.*

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## 1 Introduction

The early 1990s saw the onset of the so-called 'third wave'<sup>1</sup> of democratisation as African governments came under unprecedented pressure from their citizens to transform dictatorial one-party systems into democratic governments accountable to the people through regular, free and fair elections. The high hopes that this would usher a new era of constitutional democracy was reinforced by the successful multiparty elections in Benin in 1990 and Zambia in 1991, which resulted in the peaceful and constitutional change of leadership. In the last few years, however, regular multiparty elections of a hardly competitive nature in which the ruling elites have hardly changed and in which the ruling parties have been returned to power with increased majorities have raised the ominous signs of a return to the *de facto* one-party system and raised serious questions about the long term sustainability of the present democratic transition.

Conventional accounts of the evolution of the electoral processes in Africa in the last decade have tended to focus on the voting processes on election day or on the outcome of elections without paying much attention on who organised the elections, how they were conducted and the structure and processes put in place for doing this. The centrality of elections to the model of liberal democratic politics to which many African countries today aspire presupposes the existence of electoral institutions that will guarantee a free and fair contest. One of the key institutions essential to accomplishing this is an independent election management body (EMB). Institutions shape the choices available to political actors, and as Scarritt and Mozaffar succinctly put it: 'To craft democracies is to craft institutions'.<sup>2</sup> The type of EMB chosen must be recognised as one of the most important institutional structures for shaping the nature and extent of political competition not only because

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<sup>1</sup> This much-hackneyed expression was coined by S Huntington *The third wave: Democratisation in the late twentieth century* (1991) 15. He defines a 'wave of democratisation' simply as 'a group of transitions from non-democratic to democratic regimes that occur within a specified period of time and that significantly outnumber transitions in the opposite direction during that period'. He identifies two previous waves of democratisation: a long, slow wave from 1828 to 1926 and a second wave from 1943 to 1964. The 'third wave' is considered to have started in the 1970's although it only reached the African shores in the late 1980's and early 1990's, in what Larry Diamond refers to as a 'second liberation', in 'Developing democracy in Africa: African and international perspectives' <<http://democracy.stanford.edu/Seminar/Diamondafrica.htm>> (accessed 28 February 2003). The 'first liberation' in this respect, being the granting of independence to African countries in the early 1960's. Also see L Diamond 'Is the third wave over?' (1996) 7 *Journal of Democracy* 20.

<sup>2</sup> JR Scarritt & S Mozaffar 'The potential for sustainable democracy in Africa', paper presented at the International Studies Association Conference, San Diego, 19 April 1996.

it is one of the most manipulable instruments of politics, but also because it may decisively influence the outcome of elections. The great potential for EMBs to influence electoral outcomes has been responsible for the tremendous growth in election monitoring and election observer missions.<sup>3</sup> This is not to underestimate the potential effects of other factors such as the electoral system adopted and the electoral laws in place. In many respects, EMBs are merely one cog in the wheel of a much broader framework of institutional arrangements needed to pave the way for liberal constitutional democracy.

Using the example of Cameroon's oddly named 'National Elections Observatory' (NEO),<sup>4</sup> this paper will attempt to assess the importance, challenges and prospects of election administration in Africa. It will start with an overview of the electoral landscape of Africa generally, and the situation in Cameroon in particular, with emphasis on the post-1990 elections. It will consider whether, from the experiences of the numerous multiparty elections that have taken place, the electoral processes are now freer and fairer. The contribution further examines EMBs generally before focusing attention on Cameroon's NEO: Does the NEO provide a satisfactory framework for peaceful constitutional change and an incentive to all who aspire to political office through the ballot box?

The overall legitimacy and acceptability of an election depends on many factors, one of the most crucial of which is the integrity of the election management process. There is no foolproof or perfect EMB and, in fact, the search for more effective and credible election management systems is not a preoccupation unique to Africa's fledgling transitional regimes. Fundamental as they are, elections on their own are neither the sole means nor the exclusive end of democracy. They do provide a useful indicator of a country's democratic health.

In Africa's faltering transitional democratic landscape, elections are often a defining moment, a critical turning point with clear ramifications as to whether there will be greater or lesser opportunities for all political actors. The incentive for all political actors to behave in a manner that enhances democracy and lawfulness, depends very much on the legitimacy and acceptability of electoral outcomes. One of the vital requirements of the outcome is the integrity of the administration of the elections. The significance of EMBs today has to be appreciated in the light of the numerous challenges posed by the fragility and stunted

<sup>3</sup> See, generally, G Geisler 'Fair? What has fairness got to do with it? Vagaries of election observations and democratic standards' (1993) 31 *Journal of Modern African Studies* 613; J Elklit & P Svensson 'The rise of election monitoring: What makes elections free and fair' (1997) 8 *Journal of Democracy* 32.

<sup>4</sup> This is a rather curious and probably an unfortunate official and literal translation of the original French text that refers to it as 'L'Observation National des Elections'. This body certainly has nothing to do with an 'observatory' as that term is used in ordinary parlance.

character of the electoral processes inherited at independence and how these have continued to be manipulated in spite of the reintroduction of multiparty democracy.

## 2 The general African electoral landscape

Although elections have been an integral part of African politics before and after independence, until the late 1980s this hardly formed the basis of change of government. A few African heads of state, such as Morocco's late Hassan II and to a lesser extent the late Emperor Haile Sellassie of Ethiopia, were literally born to power. Far more heads of state seized power by force through *coups d'état*. Others conquered it after long guerrilla campaigns.<sup>5</sup> A notable exception during the 1980s was Mauritius, where a multiparty election resulted in a transfer of power. However, some of the deficiencies of the election administration in post-independence Africa can be traced to the colonial era. Most African governments achieved independence with very little experience of the art and craft of electoral politics. It was only because of strong opposition by nationalists fighting for self-determination and independence that the colonial powers introduced elections and a general right to vote in the 1950s and 1960s. Much of the electoral machinery inherited at independence was rudimentary and *ad hoc*, and was based on a narrow and restrictive franchise. In most cases the colonial electoral machinery was designed and contrived to ensure electoral success to parties favourable to the colonial regimes. To achieve this end, the colonial administrators exerted wide-ranging and manipulative influence. As Fred Hayward points out, the French colonial electoral experience, in particular, created a legacy of abuse that has lived on long after independence.<sup>6</sup>

After independence, the inherited EMBs were easily used by many of the new rulers to retain control and monopolise political power. These EMBs were either politicised and thus rendered ineffective as instruments for promoting free and fair elections, or were dissolved or suspended.<sup>7</sup> The basis for competitive electoral politics was thus undermined. Elections were used merely as a means to reinforce the dominance of the new elites and to keep out rivals or as meaningless political rites to grant periodic legitimisation to one-party regimes. In fact, with the notable exception of Botswana, The Gambia and

<sup>5</sup> See S Ellis 'Elections in Africa in historical context' in J Abbink & G Hesselning (eds) *Election observation and democratisation in Africa* (2000) 37.

<sup>6</sup> F Hayward *Elections in independent Africa* (1987) 8.

<sup>7</sup> See A Jinadu 'Matters arising: African elections and the problem of electoral administration' (1997) 2 *African Journal of Political Science* 2.

Mauritius, African states introduced the one-party systems under which elections assuring the victory of the ruling party as a forgone conclusion became the pattern. The one-party system and its emasculation of electoral administration in rendering competitive elections impossible also made constitutional change of government through the ballot box a rarity in Africa.

The question whether the advent of multipartyism, especially with regard to the so-called founding elections,<sup>8</sup> has improved the quality of electoral administration in Africa is not easily answered. Although a number of comparative studies have been carried out on the electoral experiences under the post-1990 wave of liberalisation and democratisation, none has critically investigated the EMBs specifically.<sup>9</sup> These studies have mainly addressed the extent to which the numerous post-1990 multiparty elections have served as a means of change of regime or government, which to a large extent has been influenced by the extent to which these elections have been free and fair compared to pre-1990 elections.<sup>10</sup>

A careful analysis of these elections shows that a distinction may be drawn between what has been referred to as the 'early' (1990–1994) and the 'late' (1995–1997) founding elections.<sup>11</sup> As noted earlier, prior to 1990 (in 1982), on only one occasion had an African leader been replaced at the polls (in Mauritius). Between 1990 and 1994, incumbent

<sup>8</sup> D Nohlen, M Krennerich & B Thibaut (eds) *Elections in Africa. A data handbook* (1999) 11 n 6 suggests that the concept of 'founding elections' has been borrowed from Latin American studies and describes a situation where 'for the first time after an authoritarian regime, elected positions of national significance are disputed under reasonably competitive conditions'. They, however, point out that with respect to African elections, there is no agreement as to whether the concept should be applied to all national elections, or only those that directly or indirectly select the chief political executive. Be that as it may, the essence of founding elections in Africa is that they broke with the well-established pattern of one-party ritualistic elections. See also Bratton 'Founding elections: Africa' in R Rose (ed) *International encyclopaedia of elections* (2000) 105–107.

<sup>9</sup> See, generally, Bratton & Van de Walle *Democratic experiments in Africa. Regime transitions in comparative perspective* (1997); M Cowen & L Laakso (eds) *Multi-party elections in Africa* (2002); Nohlen, Krennerich & Thibaut (n 8 above); R Sandbrook 'Transitions without consolidation: Democratisation in six African countries' (1996) 17 *Third World Quarterly* 69; JA Wiseman 'Early democratisation elections in Africa' (1992) 11 *Electoral Studies* 279; and T Young 'Elections and electoral politics in Africa' (1993) 63 *Africa* 299.

<sup>10</sup> The now familiar vague catchphrase 'free and fair' is made up of two distinct elements, the freedom dimension that consists of all the basic political rights and liberties enshrined in the various human rights conventions, and the fairness dimension, which consists of regularity and reasonableness, and both require a level playing field recognised and accepted by the various players as level. For a thorough analysis of the intricacies of this phrase, see, further, J Elklit & P Svensson 'The rise of election monitoring: What makes elections free and fair?' (1997) 8 *Journal of Democracy* 32, and J Elklit 'Free and fair elections' in Rose (n 8 above) 130.

<sup>11</sup> See Bratton (n 8 above) 105–107.

leaders were replaced in 14 out of 29 presidential elections. The most significant of this was the departure of Kenneth Kaunda in Zambia in October 1991. By contrast, the later founding elections of 1995–1997 have hardly led to any leadership or regime changes. Many international election observers and monitors had endorsed the early founding elections as free and fair, but have been less willing to endorse post-1994 elections. In fact, it has even been suggested that an electoral observation and monitoring industry has grown up around Africa's multiparty elections.<sup>12</sup> However, it appears as if many African incumbents caught off guard by the wind of change in the early 1990s had been unable to resist both domestic and international pressure to hold reasonably free and fair elections. With time, however, they have been able to recover sufficiently to return to the old habit of managing and manipulating elections. It is particularly significant that the tentative moves towards competitive or semi-competitive elections had not resulted in any serious attempts to reform the system of electoral administration, especially through the introduction of independent EMBs.

In fact, most recent elections have exposed many of the same elaborate schemes of electoral manipulation that came to be associated with one-party ritualistic elections. In broad terms, at least eight main forms of electoral malpractices have been associated with recent elections:<sup>13</sup>

- the imposition of restrictions on the activities of or even the existence of opposition parties;
- abuse of voter registration procedures;
- manipulation of the size of electoral constituencies;
- restrictions upon the selection or registration of candidates;
- the unfair use of state resources;
- the amendment of the constitution and the introduction of electoral laws and electoral systems that favour the ruling party;
- the abuse of voting and counting procedures; and
- the overturning of unfavourable results.

No discussion of the ills that have plagued African elections is complete without mentioning the effects of bribery and corruption.

<sup>12</sup> See Cowen & Laakso (n 9 above) 16 and in general Geisler (n 3 above).

<sup>13</sup> The most comprehensive account of the numerous electoral malpractices that have been noticed in post-1990 elections feature prominently in many of the election observers' and election monitors' reports that are regularly published after elections and that have led Cowen & Laakso (eds) (n 9 above) 1–26 to the opinion that there are probably more details about the conduct of elections in Africa than for any other continent. See further J Daniel & R Southall 'Electoral corruption and manipulation in Africa: The case for international monitoring' in J Daniel, R Southall & M Szeftel (eds) *Voting for democracy. Watershed elections in contemporary anglophone Africa* (1999).

Political liberalisation appears to have multiplied and intensified the complex patrimonial power structures and provided new avenues for one-party practices that continue to thrive with probably more sophistication under the new multiparty framework. Evidence from various studies suggests that the incidence of bribery, corruption and clientelism has increased during this multiparty era and involves both agents of the ruling and opposition parties.<sup>14</sup>

Although multiparty elections have become more frequent and regular, it is clear that the quality of these elections and their ability to provide an opportunity for citizens to determine who governs them has been steadily reduced since 1994. One of the major contributing factors has been the frequent irregularities in the administration of elections designed to favour incumbents. The situation in Cameroon in the last 20 years will be used as an example to illustrate the negative effects of poor election administration on the prospects for constitutional governance on the continent.

### 3 Background to elections in Cameroon

Modern Cameroonian constitutional history starts on 8 November 1982, with the accession to power of Paul Biya after the sudden and unexpected resignation of Cameroon's first president, Ahmadou Ahidjo. In his inaugural speeches, the new president promised a 'new deal' package based on 'liberalisation and democratisation' as well as 'rigour and moralisation'. During his early months in office, some attempts were made to remove some of the harsher restrictions to political freedom that his predecessor had put in place. But after an attempted *coup* in 1984, some of these restrictions were reintroduced. Some scholars have suggested that the abortive *coup* was the turning point that caused Biya to revise his liberal ideas.<sup>15</sup> However, many of Ahidjo's repressive laws were still in place, and not much had been done to implement the promises of greater liberalisation and democratisation. In particular, the ruling Cameroon People's Democratic Movement (CPDM) continued to be the sole political party. Biya argued that the one-party system had to serve as a school for democracy until the country was ripe for multi-partyism, although no time frame was given for this transition.

Until 1990, Biya's implementation of his promises of 'liberalisation and democracy' had been limited to holding semi-competitive elections

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<sup>14</sup> See Cowen & Laakso (n 9 above) 18 and Daniel, Southall & Szeftel (n 13 above) 37.

<sup>15</sup> See J Takougang & M Kriegler *African state and society in the 1990s: Cameroon's political crossroads* (1998) 75.

for officials within the various organs of the CPDM party.<sup>16</sup> In the 1980s, such semi-competitive elections had become a matter of much debate amongst political scientists. Some saw it as a means of guaranteeing a minimum of competition and accountability in systems where opposition parties were not allowed.<sup>17</sup> To some, this represented a genuine African variant of democratic elections, or as Chazan puts it, an 'African-derived formula for constructive popular representation'.<sup>18</sup> Others regarded these types of elections as a start of an incremental process that would eventually lead to true competitive elections.<sup>19</sup> However, Biya's semi-competitive elections, in which he excluded any contestation of his position, did not prove to be the start of 'incremental democracy' that could ultimately lead to full democracy, but turned out in many respects to be an attempt to hinder the democratic process itself.

The story of how multipartyism finally came to Cameroon in spite of resistance by the regime has been elaborately told in many recent accounts.<sup>20</sup> The Cameroonian legislature formally sanctioned multipartyism in December 1991 and set the stage for what many thought was going to be a new era in which the will of the people would determine who governs the country. The first test of this new-found liberty came in the multiparty parliamentary elections that took place on 1 March 1992, after several postponements. The main opposition parties, with the exception of the 'Union National pour la Démocratie et le Progrès' (UNDP), boycotted the elections because the government had reneged on an agreement reached with the opposition parties on 13 November 1991, that required the enactment of a new electoral code and the establishment of an independent electoral commission. To counter the risks of a total opposition boycott, the government made available the sum of 500 million CFA francs to each participating party. Only 35 of the 69 registered parties participated in the elections and on a

<sup>16</sup> In 1986, elections based on secret ballots were held at several levels of the party and resulted in over 50% of the old cell, branch and section leadership losing their positions. Dramatic results were also recorded when multiple CPDM candidates were allowed to stand for municipal elections in November 1987 and parliamentary elections in April 1988. In fact, in the parliamentary elections, 85% of those elected to the National Assembly were new. Significantly, however, in the presidential elections that were held at the same time, Biya was the only presidential candidate. Although in 1983, he had initiated an amendment to the Constitution permitting multiple candidates under certain conditions. The conditions were so onerous and unrealistic that they effectively ensured that nobody other than himself could qualify and contest for the presidency.

<sup>17</sup> See Nohlen, Krennerich & Thibaut (n 8 above) 7.

<sup>18</sup> N Chazan 'African voters at the polls: A re-examination of the role of elections in African politics', (1979) 17 *Journal of Commonwealth and Comparative Politics* 136.

<sup>19</sup> See R Sklar 'Democracy in Africa' (1983) 26 *African Studies Review* 11.

<sup>20</sup> Besides Takougang & Krieger (n 15 above), see also J Mbaku & J Takougang (eds) *The leadership challenge in Africa: Cameroon under Paul Biya*.



low voter turnout of about 30%, the CPDM won 88 seats, two short of a majority, and the rest were shared between the opposition — 68 for the UNDP, 18 for the 'Union National des Populations du Cameroun' (UPC), and six for the little-known 'Mouvement Démocratique de la République' (MDR). The CPDM was able to form a coalition with a slim majority with the MDR. Because of the close outcome of the elections, some commentators have concluded that the elections were generally free and fair.<sup>21</sup> Whilst it is not easy to speculate on how the parties that boycotted the elections would have fared, subsequent elections raise some doubts as to whether the regime would have conceded defeat.

What must now be considered as one of the major events in Cameroon's modern history and a turning point in the democratic transition was the anticipated presidential elections of 11 October 1992. A deeply divided opposition could not agree on a single candidate. Biya, with the support of some opposition parties grouped under the banner of 'presidential majority', was ultimately declared winner by an openly sceptical Supreme Court.<sup>22</sup> In the results themselves, Biya was declared to have won with about 40%, whilst John Fru Ndi was given 36%, Bello Bouba 19% and Adamu Ndam Njoya 4%. The Washington-based National Democratic Institute for International Affairs that had monitored the elections pointed out in their report that they found 'serious fault with the electoral process', which they felt did not 'make it possible to determine which candidate would have been the winner in a fair election'.<sup>23</sup> They stated that the 'election was designed to fail' and 'while several parties were responsible for election irregularities, the overwhelming weight of responsibility for this failed process' was said to lie with 'the government and President Biya'. The report also noted that 'the Cameroonian government took unusually extreme and illegitimate actions to ensure the president's victory'.<sup>24</sup>

The opposition parties have since then regularly accused the government of fraud and other malpractices in all the subsequent elections that have been held. Without necessarily going into details, a few pertinent aspects of some of these elections need to be noted. After rejecting the results of the second multiparty parliamentary elections

<sup>21</sup> See J Derrick 'Cameroon: One party, many parties, and the state' (1992) 22 *Africa Insight* 165-176.

<sup>22</sup> Under the 1972 Constitution, one of the functions of the Supreme Court, which in many respects was purely ceremonial but legally significant, was that of proclaiming the results of presidential elections and referenda. The Court in proclaiming the results of the 1992 presidential elections went beyond its normal practice in listing some of the alleged irregularities but pointed out that it had no powers to adjudicate these allegations.

<sup>23</sup> National Democratic Institute for International Affairs (NDI) *An assessment of the October 11, 1992 election in Cameroon* (1993) iii-iv.

<sup>24</sup> See, generally, National Democratic Institute for International Affairs (NDI) *An assessment of the October 11, 1992 election in Cameroon* (1993).

held in May 1997, which had been described by the Commonwealth Observer Group as 'flawed',<sup>25</sup> the leaders of the three main opposition parties decided to boycott the October 1997 presidential elections saying that the results were a foregone conclusion and that their participation would only lend credibility to an illegitimate and corrupt regime. Many international election observer groups such as those from the Commonwealth and the 'Francophonie' and the International Foundation for Election Systems (IFES) appeared to have agreed with them and declined invitations to observe the poll on an election that they felt did not have full public support. In what smacked of a pre-1990 single candidate presidential election, Biya was declared winner with 92.6% against seven little known candidates. Even then, the few international and local observer groups that had monitored the election still reported that it had neither been free nor fair.<sup>26</sup>

The most contentious issue surrounding all these elections has been the role that the different electoral laws<sup>27</sup> conferred on the Ministry of Territorial Administration (MINAT). This strategic Ministry is usually headed by one of the closest collaborators of the president and member of the ruling party, and has acted, until the 2002 elections, as an EMB with wide-ranging powers in organizing and supervising elections. It controls and directs operations at national, provincial, divisional and sub-divisional levels. As a result, the conduct and supervision of elections is inseparable from the highly politicised system of territorial administration, whose administrators are appointed by the president of the Republic and hold office at his pleasure. Each election has usually been preceded by transfers, promotions and reallocation of officials at MINAT all over the country raising suspicion of a deliberate design to place in strategic positions and key constituencies officials capable of carrying out the political instructions issued to them.<sup>28</sup>

<sup>25</sup> See Commonwealth Secretariat *The parliamentary elections in Cameroon, May 17 1997: The report of the Commonwealth Observers' Group* (1997); and T Bakary & S Palmer *May 17, 1997 legislative election in Cameroon: The report of the IFES International Observer Mission* (1997).

<sup>26</sup> See US Department of State *Country report on human rights practices, Cameroon, 2000* <<http://www.state.gov/g/drl/rls/hrrpt/2000/af/713.htm>> (accessed 28 February 2003).

<sup>27</sup> See particularly Law No 91-020 of December 1991 as modified by Law No 97-13 of March 1997.

<sup>28</sup> There are rare exceptions to their servility. For example, a week after the controversial 11 October 1992 polls, the governor of the Eastern Province, George Achu, resigned citing as reasons the management of the democratic process especially in the last two elections, and gave as example a meeting on 28 September 1992 during which the Minister of Territorial Administration had ordered the country's ten provincial governors to 'do everything fair and foul to ensure at least a 60% victory of the CPDM candidate in our provinces', and added that they had been issued copies of a six-page document detailing techniques of electoral fraud. See National Democratic Institute for International Affairs (n 24 above) 34.

The Electoral Law creates a series of Commissions charged with responsibility for various aspects of the electoral process. These can be summarised as follows:

- i) A Commission for the revision of the register of electors. This Commission exists at the council, sub-divisional or district levels and their membership comprises of a Chairperson appointed by the Senior Divisional Officer (SDO), the mayor or a municipal representative and a representative of each political party contesting election in the constituency.
- ii) A Commission charged with supervising the establishment and distribution of registration cards, with a composition identical to that of the Commission for the revision of the register of voters.
- iii) A Local Polling Commission at the level of polling stations whose Chairperson is appointed by the SDO and is composed of representatives from the different political parties.
- iv) A Divisional Supervisory Commission at the level of each division composed of the President of the divisional High Court, three representatives of the administration appointed by the SDO, one independent person appointed by the SDO and a representative of each of the political parties.
- v) The National Commission for the Final Counting of Votes whose membership comprises of the following: a Supreme Court judge appointed by the President of the Supreme Court as Chairperson, two other judicial officers also appointed by the President of the Supreme Court, ten representatives of the administration appointed by the Minister of Territorial Administration and ten representatives appointed by the political parties taking part in the elections.
- vi) The Constitution provides for the proclamation of the results by the Constitutional Council, after a verification of the polling operations on the basis of the reports and documents forwarded by the National Commission for the Final Counting of Votes.<sup>29</sup> As the Constitutional Council has not been created, its powers are presently being exercised by the Supreme Court, all the members of which are appointed by the Head of State, on the advice of the Higher Judicial Council.

Because of the key role played by MINAT and the government in general, in determining the composition and *modus operandi* of these different commissions, there is wide scope for abuse. For example, 11 of the 13 members of the National Commission for the Final Counting of Votes (NCFV), appointed by the government and charged with

<sup>29</sup> See art 48 of Law No 96-6 of 18 January 1996 to amend the Constitution of 2 June 1972.

overseeing, counting and tabulating the votes during the hotly contested 1992 presidential elections were drawn from the president's ethnic group in the Centre and South provinces. It therefore had no ethnic, regional or political balance that could inspire confidence in its transparency.

Gerrymandering of constituencies has also been a regular feature of Cameroonian election politics. Prior to the October 1992 presidential poll, the country's 10 provinces comprised of 49 divisions and 182 subdivisions. After the announcement of the elections, the Minister of Territorial Administration created seven additional divisions, five of which were hurriedly established just a month before polling day and for which the president appointed SDOs, and the two others were established just a few days before the elections. On 2 April 1997, the same day that parliamentary elections were announced, the president signed a decree increasing the total number of divisions and effectively redrawing a number of key constituencies. Besides this, some officials, such as judicial personnel, who play a crucial role at various stages in the electoral process, have been singled out for special treatment.<sup>30</sup>

One problem that has dominated Cameroonian politics during this transitional period has been the spread of corruption. Political corruption has always been a feature of Cameroonian politics and has been used partly as a means to wealth and status but mainly as a method of acquiring and retaining political power and influence. The advent of multipartyism has exacerbated both its level and scope. It is therefore no surprise that for two successive years, 1998 and 1999, Cameroon came top in Transparency International's corruption perceptions index.<sup>31</sup> However, this is not the place to analyse the full scope of Cameroonian

<sup>30</sup> As part of the preparations for the 1997 elections, magistrates, judges and other judicial personnel who intervene at certain critical stages in the various divisional and provincial vote counting commissions were suddenly given what could only be termed 'hush money' in the form of a hefty salary increase and exorbitant allowances. The size of the increases and the allowances and other fringe benefits for the judges of the Supreme Court who have the final say in elections for the first time placed their salaries above that of government ministers. This effectively transformed judges into 'super civil servants', very much like the military and security forces personnel, whose salaries had since 1992 been much higher than those of other civil servants, because of their extensive use in suppressing the political strikes that have marked the 1990 decade, and thus giving them a stake in the survival of the regime. See, generally, the discussion of political corruption in Cameroon in CM Fombad 'Endemic corruption in Cameroon: Insights on consequences and control' in KR Hope & B Chikulo (eds) *Corruption and development in Africa: Lessons from country case studies* (2000) 234 and the same authors' chapter 'The dynamics of record-breaking endemic corruption and political opportunism in Cameroon' in Mbaku & Takougang (n 20 above).

<sup>31</sup> See Transparency International (TI) 1998 Corruption Perception Index <<http://www.transparency.org/cpi/1998/cpi1998>> (accessed 28 February 2003) and 1999 Corruption Perception Index <<http://www.transparency.org/cpi/1999/cpi1999>> (accessed 28 February 2003).

political corruption,<sup>32</sup> but a few aspects of its deleterious impact on the management of elections need to be noted.

The degradation of the Cameroonian public service and the resulting inefficiency and waste has encouraged a culture of bribes and other improper practices that can be linked directly to the increasing politicisation of the public services and the spread of influence peddling. Although as a practical fact, hardly any government bureaucracy can pretend to be totally non-political, as the very formulation of policy, which is essentially a political matter, necessarily involves the bureaucracy, not all bureaucracies are to the same extent permeated by party politics. Extensive political infiltration of the Cameroonian bureaucracy makes it more or less a politico-administrative set up. Appointments, promotions and, sometimes, advancements and transfers are determined solely by political considerations. In fact, since the onset of the democratisation process, all senior or middle level civil servants known or suspected of being sympathetic to the opposition parties have been purged, especially from strategic politically sensitive positions and replaced by supporters or sympathisers of the ruling party. Ministers continue, as in the past, to retain such exclusive control over their ministries that new appointments and demotions within the ministries usually follow each ministerial reshuffle. Because the appointees know that they owe their positions to these ministers, the appointees openly show their loyalty and allegiance to their ministerial boss and engage in activities that will promote and protect his interests and the interests of his party rather than the interests of the state. This misplaced loyalty to the political leadership is carried down the chain of command.

This then is the problem that pervades MINAT, which is responsible for the organisation and supervision of elections. In the way it has operated, no clear distinction could be made between CPDM activities and the activities of the civil servants employed in this ministry. This confusion has been at the root of most of the election controversies that have called into question the results of the various multiparty elections and led to calls for the creation of an independent EMB in the country.

On 19 December 2000, President Biya promulgated as law, Law No 2000/016, a Bill introduced on 30 November 2000, creating the NEO and thus finally yielding to considerable international and national pressure to create an independent EMB.<sup>33</sup> It is this body that supervised

<sup>32</sup> For recent studies on Cameroonian corruption, see Fombad (n 30 above) 234–260; Fombad 'The dynamics of record breaking corruption and political opportunism in Cameroon' (n 30 above) and FE Stiftung & G Cameroon *Corruption in Cameroon* (1999).

<sup>33</sup> Almost all the international election observer mission or monitoring mission reports on Cameroonian elections since 1992 have often recommended the establishment of an independent EMB as the only means of promoting public confidence in Cameroonian elections. See, eg, Commonwealth Secretariat *The parliamentary*

the 2002 municipal and legislative elections. Before considering whether the NEO is the panacea for Cameroon's multiparty election problems, it is necessary to briefly look at EMBs in general, highlighting the various options that the Cameroonian legislator had to choose from.

#### 4 An overview of election management bodies

The successful management of a modern election with electors numbering several millions is an administrative undertaking of considerable size, involving a series of operations, the organisation and time of which must be carefully planned and supervised by trained personnel.<sup>34</sup> Whilst the overall legitimacy and acceptability of each election as binding by all the participants will depend upon many factors, the integrity of the management of the election is probably one of the most vital. The public will measure the legitimacy of an election on the basis of the actual integrity of the EMB and the transparency of the management process.

As we have seen, recent state experiences and practices in Africa underline the necessity for independent EMBs. Ideally, such monitoring bodies should enjoy the confidence of all political actors and the electorate as a whole, to enable them to act as impartial control mechanisms. The fragility of the present transitions and the mounting doubts about the impartiality of the administrative bodies that presently perform these functions in many countries make attaining this ideal all the more important. One of the most useful documents on EMBs is the Code of Conduct for the Ethical and Professional Administration of Elections, which was issued by the International Institute for Democracy and Electoral Assistance (IDEA), Stockholm, in 1997.<sup>35</sup> This Code, which has been endorsed by many electoral bodies around the world,<sup>36</sup> is based on the collation, analysis and synthesis of different codes and materials on the topic and provides minimum standards that EMBs should conform to. It identifies the main functions usually assigned to EMBs as comprising:<sup>37</sup>

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*elections in Cameroon, May 17 1997: The report of the Commonwealth Observers' Group* (1997) 29; and National Democratic Institute for International Affairs (NDI) *An assessment of the October 11, 1992 election in Cameroon* (1993) 54. For an African example, see the Electoral Commissions Forum of SADC Countries, *Zimbabwe Elections Observer Mission Report 24–25 June 2000* (2000) 55.

<sup>34</sup> See TE Smith *Elections in developing countries* (1960) 3.

<sup>35</sup> See <<http://www.idea.int/publications/conduct/admin/intro.htm>> (accessed 28 February 2003).

<sup>36</sup> See M Maley 'Administration of elections' in Rose (n 8 above) 7.

<sup>37</sup> See IDEA *The Functions of an election administration* <<http://www.idea.int/publications/conduct/admin/part1.htm>> (accessed 28 February 2003).

- conducting elections and referendums;
- compiling and maintaining a register of voters;
- promoting public awareness of electoral matters by conducting civic education and information programmes for members of the public, particularly for women, youth, the illiterate and disadvantaged minorities;
- training of electoral officials;
- informing candidates, political parties and other affected persons about the electoral process;
- ensuring that women and minorities are able to participate fully in the process;
- making regulations governing the electoral process;
- enforcing the electoral law;
- researching electoral policy and related matters;
- providing the government, the legislature, and organs of the executive with information and advice about electoral matters; and
- engaging in international co-operation and assistance.

It is generally agreed that a credible, efficient and effective EMB should be founded on principles of independence, non-partisanship and professionalism. It should also have clear procedures that make it sufficiently accountable and non-political so that it can operate in a political environment.<sup>38</sup> The IDEA Code also provides an expanded statement of five ethical principles, which form the basis of election administration. These require that an EMB must demonstrate respect for the law; be non-partisan and neutral; be transparent; be accurate; and be designed to serve voters.

However, the most contentious issue, especially in transitional regimes, has usually been that of determining the type of EMB a country should have. Around the world, there is a considerable variation in structures for administering elections, each of which reflects the administrative history of, and the environment prevailing in each country. Charles Lasham in a recent study has identified the following broad types of national EMBs:<sup>39</sup>

- temporary EMBs;
- permanent EMBs;
- independent EMBs, whether temporary or permanent;
- partisan temporary or permanent EMBs;
- mixed partisan/non-partisan EMBs;
- specialised judicial bodies;

<sup>38</sup> See A Scallan *Guiding principles* <<http://www.aceproject.org/main/english/em/em20.htm>> (accessed 28 February 2003).

<sup>39</sup> See a full discussion of these bodies at <<http://www.aceproject.org/main/english/em/emb01/default.htm>> (accessed 28 February 2003).

- government ministries;
- decentralised bodies; and
- others.

Whichever type of EMB is chosen, the crucial test is whether it is sufficiently founded on the principles of independence, non-partisanship and professionalism to be able to function efficiently. In addition to deciding the form the EMB will take, it must also be decided whether it should be established under the constitution or by statute. The ideal situation is to entrench an enabling provision for the EMB in the constitution and to supplement this with electoral legislation. The basic components of this framework, which should be clearly spelt out in the constitution, should include its essential characteristics such as its status, the manner of appointment of members, the size, and the tenure of office of appointees, as well as its budgetary autonomy and its powers. Where a simple statutory instrument creates it, this can easily be changed by the government of the day when it suits its convenience. For countries like Cameroon, where there is no effective means for controlling or restraining violations of the constitution by the executive or legislature,<sup>40</sup> it must be clearly provided that the provisions relating to the EMB cannot be amended without a qualified majority and a referendum.

The guiding principles governing the establishment and operation of the EMB, whatever form it may take, can therefore be stated to be as follows: Firstly, it should preferably be entrenched in a constitutional document that subjects its amendment to a special procedure. Secondly, it should be founded on principles of independence, non-partisanship and professionalism when discharging its functions. It is in the light of these principles as well as the history of electoral controversies surrounding the organisation and supervision of elections in Cameroon by the MINAT that the NEO is now being analysed.

## 5 The NEO as an EMB

### 5.1 A general overview of the NEO

The Cameroonian NEO appears to have been inspired by a similar body that was created in Senegal and that had successfully organised and supervised the elections that enabled the incumbent president, Abdou Diouf, to be beaten by his long time rival Abdoulaye Wade. However, the Cameroonian version of the Senegalese law is different from the latter in many material respects.<sup>41</sup>

<sup>40</sup> For the problems of control of constitutionality of laws in Cameroon, see CM Fombad 'The new Cameroonian Constitutional Council in a comparative perspective: Progress or retrogression?' (1998) 42 *Journal of African Law* 172.

<sup>41</sup> For example, while the Senegalese law was a compromise worked out between the government and the opposition, the government essentially imposed the



The NEO Law describes the NEO as 'an independent body charged with supervising and controlling elections and referendums'.<sup>42</sup> Its mission, according to section 2 of the Law, is to 'contribute to the observance of the electoral law in order to ensure regular, impartial, objective, transparent and fair elections, and to guarantee voters and candidates the free exercise of their rights'. The NEO is composed of 11 members appointed by presidential decree for a mandate that ends as soon as the electoral process is over. They are to be chosen from among 'independent personalities of Cameroonian nationality with a reputation for moral rectitude, intellectual honesty, neutrality and impartiality' and who in the discharge of their duties, should not 'request or receive instructions or orders from any public or private authority'.<sup>43</sup> A Chairperson and Vice-Chairperson from amongst the members of the NEO are also to be appointed by presidential decree. Section 5 of the Law contains a long list of persons who cannot be appointed as members of the NEO. They include:

- members of government and persons of similar status;
- judicial and legal officers in active service;
- secretaries-general of ministries and persons of similar status;
- directors in the central administration and persons of similar status;
- governors, senior divisional officers and their assistants, sub divisional officers and their assistants, district heads in active service or on retirement for less than three years;
- traditional rulers.

The only permanent feature of the NEO is its permanent Secretariat that is to be headed by a Secretary-General appointed by presidential decree, on the advice of the NEO Chairperson. The NEO may set up corresponding structures in the different regions, divisions and councils, the composition and functioning of which is to be determined by decree. During elections and referendums, the NEO may set up in provinces, divisions and councils corresponding structures which shall serve as its branches.<sup>44</sup> These structures must be 'dissolved' as soon as the election concerned is over. The duties of the NEO that are enumerated in section 6 of the Law are extremely wide ranging and include some of the duties usually associated with EMBs. The duties of

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Cameroonian law. Another significant difference is that under the Senegalese law, members of the EMB are appointed by the government after consultation with all political parties and civil society. No such consultation is provided for under the Cameroonian law and the members are simply appointed exclusively by the government, or more precisely, the President of the Republic.

<sup>42</sup> See sec 1 of Law No 2000/016 of 19 December 2000, hereinafter simply cited as the NEO Law.

<sup>43</sup> n 42 above, sec 3(3).

<sup>44</sup> Decree No 2001-306 of 8 October 2001.

the NEO are limited just to 'supervising and controlling' the specified activities. It can perform these duties either on its own initiative or where the competing political parties, candidates or voters submit a case to it. It also has the powers to draw up its internal rules and regulations.

As regards the cost of running the NEO, section 20 of the Law simply states that the 'state shall place at the disposal of NEO all the human and material resources necessary for the accomplishment of its mission', and that its running expenses and those of its branches shall be borne by the state and be included in the state budget. Section 7 provides that members of the NEO will be granted 'allowances and travelling expenses under conditions determined by decree'. All other matters not dealt with by the Law are subject to section 21, which provides that a decree shall lay down the modalities for the implementation of the law. The 2001 implementation decree allows the Chairperson of the NEO to request from any Minister that employees of that ministry be placed at the disposal of the NEO for the duration of an election.<sup>45</sup>

## 5.2 An appraisal of the NEO

The management of the 30 June 2002 municipal and legislative elections provided the NEO with its first major test. The elections had been due for January 2002, but were postponed to 23 June 2002 due to concerns that the NEO would not have had the time and the resources to prepare itself. Some of these concerns were lessened when the British government provided £73 000 that was used by the British Council and the Electoral Reform International Services (ERIS) in a capacity building programme project that combined the training of election observers and the running of a voter education programme. However, on polling day, 23 June 2002, after polling had started, a presidential decree was issued, postponing the elections for another week on grounds of lack of preparation on the part of MINAT. After the results of the elections had been announced, there were renewed calls from the opposition and some international organisations for the establishment of an EMB that was independent of the government.<sup>46</sup>

The NEO started its life from a severe disadvantage because, apart from the ruling party, most of the other parties were openly hostile to it, considering it as a body set up by the government to cover up electoral

<sup>45</sup> Decree No 2001-309 of 10 October 2001 appointed the 11 members of the NEO and Decree No 2001-310 of the same date appointed two of these members as Chairperson and Vice-Chairperson.

<sup>46</sup> Because of concerns over the scale of electoral irregularities, calls by the opposition parties for the establishment of a more independent body to replace the NEO were echoed in a declaration of the European Union issued in Brussels on 7 August 2002, and a Communiqué signed by the Secretary-General of the Cameroonian National Episcopal Conference as well as statements issued by the British government.

fraud. These misgivings were largely due to the controversy surrounding the way the Bill creating the NEO was handled. The Bill was introduced at the eleventh hour on 30 November 2000 and the government rejected amendments to it proposed by the opposition parties. In protest, these parties boycotted the final session of 6 December 2000 during which the Bill was finally approved. The opposition parties argued that the NEO Law was unconstitutional,<sup>47</sup> but due to the abstract, preventive and restricted character of the system for control of constitutionality of laws that was introduced by the amended 1972 Constitution, they could not bring this issue before the Supreme Court.<sup>48</sup> However, after its creation the NEO went to considerable lengths to organise meetings with representatives of the opposition parties in an attempt to build trust and confidence and also allay their fears.

At the heart of the NEO's problems are the doubts about its independence from the government and the ruling party. The NEO Law describes it in section 1 as an 'independent body'. In the context of EMBs, this is usually taken to mean that it is not subject to the control of the government of the day or any political party or other body and that it can act independently, impartially, fairly and professionally towards all parties. However, the reality is that several provisions in the NEO Law render the possibility of it acting independently difficult. For example, section 3 gives the President of the Republic the sole right to appoint both the members of the NEO as well as its chief officials, the Chairperson and Vice-Chairperson. Although President Biya in appointing the 11 members of NEO on 10 October 2001 ensured that all the ten provinces in the country were represented, most of those appointed were known supporters or members of the ruling party. In fact, the Chairperson himself was a prominent member of the CPDM who had held many ministerial positions for many years. It may be true that the NEO or similar bodies can never be entirely independent because the members must always be appointed by somebody. However, it can be argued that in this instance there was a need to allay all suspicion by providing for such appointments only after consultations with the opposition parties, or at least those of them represented in parliament.

Under the NEO Law the functions of the NEO are essentially limited to 'supervising and controlling' elections, whilst the actual organisation of

<sup>47</sup> Sec 48 of the amended 1972 Constitution provides that the Constitutional Council shall ensure the regularity of elections and also deal with any challenges with respect to its regularity. It is difficult to reconcile this with secs 6-8 & 19 of the NEO Law, which substantially transfers these powers to the NEO without the Constitution being amended to this effect.

<sup>48</sup> See, generally, Fombad (n 40 above) 172-186.

the elections themselves remains with the much criticised MINAT. Given the time constraints under which it was operating and with only 2 116 personnel throughout the country, it is difficult to see how the NEO could have operated on its own. As we noted above, while Decree No 2001-306 of 8 October 2001 allowed the NEO not only to set up structures in provinces, divisions and councils but also to borrow civil servants, it strangely requires it to 'dissolve' all these structures immediately after the elections. As a practical matter, working with MINAT was both inevitable and unavoidable, and offered many organisational advantages. The NEO was able to use the services of the experienced staff of MINAT and its decentralised electoral management structures, as well as the voter information and other important data that it had accumulated over the years.

However, there are a number of disadvantages that are sufficiently serious to warrant a very serious consideration as to the desirability of maintaining these links. Firstly, many of the numerous irregularities that have marked post-1990 multiparty elections in the country have often been attributed to MINAT and its top officials.<sup>49</sup> Leaving MINAT with responsibility for organising elections, which is basically the most crucial aspect of the electoral process, removes any resemblance of a process that can be impartial and fair. All that said, it cannot be said that the NEO is structured in such a way that it is sufficiently insulated from individuals, parties or institutions that have an interest in the outcome of the elections that it is required to supervise and control. Secondly, the fact that the NEO is a temporary body that is required to 'dissolve' the decentralised structures that it is required to set up after every election means that there is the risk of an inconsistent approach to electoral management, loss of election 'memory', and little opportunity for the adoption of a professional approach to its tasks. This will only reinforce its dependence on MINAT.

Although it is widely accepted that elections are necessary not only for making peaceful changes of government possible but also for promoting successful democratisation, there is the danger that in some situations, bodies like the NEO may serve merely as instruments for perpetuating rituals of symbolic elections and serve to disguise signs of authoritarian revival. To underline this point, it is necessary to look at two sharply contrasting sets of facts that give a picture of the state of political freedoms in Cameroon and the yawning gap between electoralism and practical reality.

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<sup>49</sup> The closest official acknowledgment of MINAT's role in electoral fraud and other malpractices was the long catalogue of irregularities attributed to it by the Supreme Court when it declared President Biya the winner of the closely contested presidential elections of 1992. See, generally, National Democratic Institute for International Affairs (NDI) *An assessment of the October 11, 1992 election in Cameroon* (1993) 50.

Our first set of facts is based on Freedom House's 2000–2001 report, in which Cameroon is classified as one of the 18 countries from a sample of 49 African countries surveyed that is considered as 'not free', in terms of its political rights and civil liberties ratings.<sup>50</sup> With a rating of seven for political rights, which is the lowest possible rating in that category, Cameroon is amongst the 23 countries in the survey of 192 countries in the world where political freedoms are considered unacceptably low. It is one of the eight African countries that fall in this category, the others being Sudan, Rwanda, Libya, Democratic Republic of Congo, Equatorial Guinea, Eritrea and The Gambia. This means that there is, according to the Freedom House study, more political freedom in war-torn countries like Sierra Leone, Liberia and Somalia, which were also surveyed, than in Cameroon. The report concludes that the measures taken so far by the Cameroonian government are not 'anything more than lip service from one of Africa's most enduring and repressive regimes'.<sup>51</sup>

With an average rating of six during the period 1980–1990 and above 6.5 on average for the period 1990–1991 to 2000–2001, the advent of multipartyism has not, as would have been expected, brought about more political freedom to Cameroonians. In other words, since 1990 the level of political freedoms enjoyed by Cameroonians has progressively decreased rather than increased. This contrasts with the trend in most African countries where there have since 1990 been clear signs of improvements in the levels of political freedoms enjoyed. In Burkina Faso, for example, the rating of 6,5 in 1980–81, and of 7,6 in 1988–89, improved to 5,4 in 1994–95 and to 4,4 in 1999–2000.<sup>52</sup> Similarly, in Malawi, the rating improved from 7,6 in 1989–90 to 3,3 in 1999–2000.<sup>53</sup> Some other countries that reflect similar trends are Benin, Cape Verde, Central African Republic, Djibouti, Ethiopia, Gabon, Ghana, Guinea Bissau, Lesotho, Madagascar, Mali, Niger, Nigeria, Seychelles, South Africa and Tanzania.

This analysis should be contrasted with the performances in the elections held since the advent of multipartyism in 1992 by the different parties. Table 1, which is confined to legislative elections only, shows how the electoral fortunes of the ruling party has been increasing in

<sup>50</sup> See <<http://www.freedomhouse.org/ratings/index.htm>> (accessed 28 February 2003). This information is based on Freedom House's 'Freedom in the World Country Ratings 1972–73 to 2000–01'. Countries whose combined averages for political rights and for civil liberties fall between 1.0 and 2.5 are designated 'free'; between 3.0 and 5.5 as 'partly free' and between 5.5 and 7.0 as 'not free'.

<sup>51</sup> See Freedom House *Freedom in the World 2000–2001* <<http://www.freedomhouse.org/research/freeworld/2001/countryratings/cameroon.htm>> (accessed 28 February 2003).

<sup>52</sup> <<http://www.freedomhouse.org/ratings/bolivia.htm>> (accessed 28 February 2003).

<sup>53</sup> <<http://www.freedomhouse.org/ratings/lebanon.htm>> (accessed 28 February 2003).

inverse proportion to the decrease in the quantum of political freedoms enjoyed by Cameroonians.

PARTY	SEATS WON IN 1992 ELECTIONS	SEATS WON IN 1997 ELECTIONS	SEATS WON IN 2002 ELECTIONS
CPDM	88	116	149
SDF <sup>54</sup>	BO <sup>55</sup>	43	22
UNDP	68	13	1
UDC	BO	5	5
UPC	18	1	2
MLJC <sup>56</sup>	—	1	0
MDR	6	1	0
TOTAL	180	180	180

In the 30 June 2002 elections, the ruling CPDM won over 85% of the municipal councils seats and over 80% of the parliamentary seats. The trend shown in Table 1 in the legislative elections is also reflected in the municipal elections. In the 2002 elections, the CPDM won 286 out of 337 municipal councils, thus gaining 67 more councils than in 1996, with the two main opposition parties suffering the heaviest losses. The SDF won 36 councils (down from 62), the UNDP won three (down from 29), the CDU won eight (down from nine), the UPC won three (down from five) and the MDR won one (down from five). None of the more than 160 other smaller opposition parties that are officially registered won any council at all.

### 5.3 Comparing the NEO with other EMBs in Africa

On the whole, many African post-1990 multiparty elections have been marred by irregularities in one form or another linked with the election management authorities. This is so in spite of the evidence in many of the new post 1990 constitutions of attempts to reform the elections management systems. It can be said that the effectiveness and impartiality of the EMBs contributed to some of the few early 'successes',

<sup>54</sup> Social Democratic Front.

<sup>55</sup> BO indicates that the party concerned boycotted the election.

<sup>56</sup> Mouvement pour la Liberté des Jeunesses Camerounais.

in terms of free and fair elections, such as the Zambian 1991 elections. We shall briefly compare some of these EMBs with the Cameroonian NEO particularly from the point of view of some of the most contentious areas such as their independence, appointment procedure and their composition.

The types of EMBs that operate in Africa today are extremely varied. They range from permanent or semi-permanent and reasonably independent bodies, such as the Independent Electoral Commissions (IECs) in Botswana, South Africa and Namibia, which are so structured that they are reasonably insulated from political interference and manipulation by the governments in power, to others that are under the control of the government or monarch, such as that in Swaziland. As in section 3(3) of the NEO Law, the constitution or other statutory instrument creating the EMB in most African countries reiterate the fundamental principle that these bodies in performing their functions shall not be subject to the direction or control of any person or authority.<sup>57</sup> However, the manner of appointing the members of an EMB plays a crucial role in determining the extent of its independence and impartiality. In Botswana and South Africa, the members are appointed from nominations made by an all-party committee, in Malawi, on the basis of nominations by leaders of the political parties represented in the National Assembly, and in Mauritius, by the President following consultations with the Judicial Service Commission. The ideal situation that will ensure some degree of integrity in the process is one in which all the parties involved in the political process are adequately involved in the appointment process. A rather rare but interesting type is the Mozambican partisan EMB, called the National Electoral Commission, which is composed of representatives of all the political parties.<sup>58</sup>

Where, however, there are too many political parties, as for example in Cameroon, where there are about 168 registered political parties, it may become difficult to have all of them represented or, the body becomes unwieldy. Although the fact that voters may view a partisan EMB as representative of all the political forces in the country and this may enhance the body's prestige, there is a danger that the impartiality and efficiency of the body may be jeopardised because members may decide to pursue their own party's interests. This is exactly what happened with the Mozambican National Election Commission where

<sup>57</sup> See eg sec 56A of the Constitution of Botswana of 1966, art 46 of the Ghanaian Constitution of 1992, and art 74(11) of the Tanzanian Constitution of 1977.

<sup>58</sup> Art 15(1) of Electoral Law No 4/93 states that, to guarantee balance, objectivity and independence between the different political parties, the National Electoral Commission shall be constituted as follows: (i) ten members proposed by the Government; (ii) seven proposed by RENAMO; (iii) three members proposed by the political parties other than FRELIMO and RENAMO; (iv) one personality, who shall be the president of the commission.

decision-making within it became very slow due to its politicisation and the elaborate consultations processes within it.<sup>59</sup>

However, in most African countries, the members of the EMBs, just like Cameroon's NEO, are appointed by the president without inputs from opposition political parties. With such a system of appointment, there is always the risk that those appointed are likely to be biased and compliant supporters of the president and would do his bidding. But, it does not necessarily follow that such body cannot be neutral or act independently from the president or his government. For example, the Chairperson and members of the Zambian Independent Electoral Commission were appointed under the 1991 Constitution, by the then President Kenneth Kaunda. Nevertheless, this body supervised the 1991 elections that were won by Chiluba's opposition Movement for Multiparty Democracy (MMD). Be that as it may, in the uncertain and polarised political climate prevailing today in many African countries, the procedure for appointing members of the EMBs should be such as to leave no doubts about the impartiality of the body.

Another remarkable feature of many African EMBs is the role reserved for judges or members of the legal profession. In Tanzania and South Africa, it is expressly provided that at least one or more of the members must be judges or a member of the legal profession, whilst in Botswana, Lesotho, Malawi, Mauritius and Namibia, it is provided that the Chairperson must be a judge.<sup>60</sup> By contrast, in Cameroon, it is stated that judicial and legal officers in active service may not be appointed as members of the NEO. It is doubtful whether there are any valid reasons for excluding active judges. If the judiciary is independent, as it is provided for in almost all modern African constitutions, then it is better to appoint an active judge, whose impartiality can be assumed more than a retired judge, who because they often retire in most African legal systems at a very ripe age, and much later than other civil servants, may be too old to be effective.<sup>61</sup>

The power, autonomy and capacity of election authorities in many African countries are undermined by the lack of financial autonomy. Electoral administration entails huge economic costs and financial outlays that the cash-strapped African governments struggling to revive their economies in the present economic crisis usually find it difficult to bear. Lack of the necessary communication and logistical facilities has in many countries compromised the ability of the EMBs to operate

<sup>59</sup> See D Pottie & T Lodge 'Electoral management in Southern Africa' <[http://www.idea.int/ideas\\_work/22\\_s\\_africa/elections\\_1\\_electoral\\_mgmt.htm](http://www.idea.int/ideas_work/22_s_africa/elections_1_electoral_mgmt.htm)> (accessed 28 February 2003).

<sup>60</sup> See <[http://www.eisa.org.za/WEP/WEP\\_7.htm](http://www.eisa.org.za/WEP/WEP_7.htm)> (accessed 28 February 2003).

<sup>61</sup> Eg, in Botswana, after a 2001 Constitutional amendment, judges can now retire after they are 70 years old.



effectively. In many cases, such as the Zambian elections of 1991 and the Ghanaian elections of 1992, the funding came from foreign governments and international organisations, but this is often a one-off source. Even the South African Independent Electoral Commission, which represents a level of managerial efficiency and administrative sophistication that few countries in Africa can hope to command, raises questions about the financial sustainability of its operations.<sup>62</sup> Too often, as is the case with the NEO, African EMBs, because of lack of resources depend on the government for the deployment of public servants to perform electoral or election-related duties or the use of government buildings, vehicles and other facilities for election purposes.<sup>63</sup> This often compromises the position of the EMB because it becomes very difficult to distinguish between public servants and members of the ruling party or the government and the ruling party.

In general, EMBs in Africa have been bedevilled by the same phenomena — encroaching politicisation and political manipulation resulting in the gradual narrowing of the political space and the erosion of the competitive element in many recent elections. The Cameroonian 2002 elections in this respect merely reflects a trend that had already become manifest in the late 1990s. In this, there is a danger that EMBs, instead of being used as the instruments for promoting free and fair elections in Africa, might become part of the new strategy to perpetuate the *status quo ante* whilst maintaining a facade of competitive electoral democracy.

## 6 Challenges and prospects

The recent June 2002 elections in Cameroon, the first organised by the NEO, reveals some of the major challenges that Africa faces in its faltering attempt to institutionalise liberal democracy and respect for the rule of law. Mere electoralism, supported by institutions such as the NEO, is unlikely to guarantee long-term stability. Perhaps the most serious consequence of electoral malpractices is its capacity to destroy faith in peaceful change through the ballot box and raise the spectre of change by use of force. In the famous and frequently quoted words of the late President JF Kennedy, 'Those who make peaceful change impossible, make violent change possible',<sup>64</sup> or one could even say, inevitable. Elections could lose their relevance as an effective means of

<sup>62</sup> n 58 above.

<sup>63</sup> See A Chaligha 'Management of the elections: The role of the National Electoral Commission' in SS Mushi & RS Mukandala *Multiparty democracy in transition. Tanzania's 1995 general elections* (1997) 56.

<sup>64</sup> Cited in BO Nwabueze *Constitutionalism in the emergent states* (1973) 148–149.

enforcing governmental responsibility and accountability and may give rise to the feeling that a government can neglect the people's welfare as much as it likes and still manage to return to power against the will of the people. As Nwabueze points out, election rigging is a tragic aberration more for what it portends for the future than for the harm it has done in the past and the present.<sup>65</sup>

The possibility of a peaceful change of government is the hallmark of a liberal democracy or any country that seriously aspires to the ideals of liberal democracy. This is what keeps the political actors in such a polity committed to playing by the rules of the game. It institutionalises uncertainty, which is viewed as healthy precisely because it provides incentives for continued play within the rules as opposed to violent conflicts in the streets and *coups*.<sup>66</sup> If you feel that you have a chance of winning someday, you have the motive to play according to the rules. Independent EMBs are today considered as one of the best means for ensuring a level playing field between all political actors and guaranteeing free and fair elections. Most of the election observer and monitoring missions that have become part and parcel of African elections today have advocated for the establishment of autonomous and independent EMBs. These observer and monitoring missions have joined opposition parties and members of the general public to express reservations about the value added by many existing EMBs.

Many constitutions or other statutory instruments in Africa today provide for the establishment of an EMB in one form or another, but as the Cameroonian NEO has shown, there remain serious problems about their design and effectiveness. There may well be no single irreproachable model that is good for all societies at all times, nevertheless the basic principles that are required to ensure that such a body can remain politically neutral and operate in an independent and impartial manner to guarantee electoral fair play and transparency are too well established to raise any doubts.

What bodies like the Cameroonian NEO do is to remove the incentives on political actors to play according to the rules. They do no more than create a system of what Huntington and Moore have described as 'exclusionary elections' or liberal-Machiavellian elections, whereby the overall objective of the government is to prevent the authentic manifestation of popular wishes, while retaining a liberal façade.<sup>67</sup> If it is recognised that EMBs are a necessity, then the best means for ensuring that they work properly is to entrench them in the constitution itself and supplement this with other electoral legislation.

<sup>65</sup> *Democratisation* (1993) 78–80.

<sup>66</sup> See TD Sisk & A Reynolds (eds) *Elections and conflict management in Africa* (1998) 3.

<sup>67</sup> See S Huntington & CR Moore (eds) *Authoritarian politics in modern society* (1970) 15; and also K Johnson *Mexican democracy* (1971) 20.

The goal should be to have a body that is free from the political control of any party, and has adequate and secure funding to discharge its functions in an efficient, professional and independent manner. Finally, the most that the NEO can accomplish in its present form is a strategic power transfer, as happened in Zambia between former President Chiluba and his successor Levy Mwanawasa, and not a genuine constitutional change that can be brought about under free and fair elections. If future elections are to cease to become a predictable and meaningless ritual without any political meaning, then the Cameroonian NEO must be substantially redesigned to limit the avenues for any form of political interference with its proper functioning.