



DECENTRALIZATION: FINANCE & MANAGEMENT PROJECT

Managed by
Associates in Rural Development, Inc.

In collaboration with
Syracuse University • Metropolitan Studies Program/Maxwell School of Citizenship & Public Affairs
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**PROGRAM OF REFORM IN THE AGRICULTURAL
MARKETING SECTOR, PHASE I
(PRAMS I)**

**Program of Research on Market Transitions
(PROMT)**

**CROSSCUTTING CONSTRAINTS
AND POLICY REFORM**

**Decentralization: Finance and Management Project
Associates in Rural Development, Inc.**

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FOREWORD

This report is one of a series of studies produced by the Program of Research on Market Transitions (PROMT), the research arm of USAID/Cameroon's Program for Reform of the Agricultural Marketing Sector, Phase I (PRAMS I). PROMT is one of many research programs conducted by the Decentralization: Finance and Management (DFM) project, sponsored by the Agency for International Development's Research and Development Bureau (AID/R&D). Like other DFM projects, PROMT draws on an Institutional Analysis and Design (IAD) framework to study the processes of institutional change associated with deliberate reform efforts in the developing world. DFM is managed by Associates in Rural Development, Inc. (ARD) of Burlington, Vermont. Under subcontract arrangements ARD collaborates with the Workshop in Political Theory and Policy Analysis at Indiana University and the Metropolitan Studies Program at Syracuse University.

PROMT was created to monitor and analyze the processes of market liberalization and privatization associated with various donor-assisted, policy reform programs in Cameroon, including but not limited to PRAMS I. Concerned with problems of both design and implementation, the research was focused, in particular, on two issues: (1) the relationship of sectoral reforms to cross-cutting reforms and constraints, and (2) alternative modalities for assisting the reform process as used by three donors--AID, the World Bank, and the Commission of the European Community (CEC). PROMT also examined other emerging difficulties with policy reform and further developed the IAD framework as a diagnostic tool for use in the policy reform process.

PRAMS I focused exclusively on reform and restructuring in Cameroon's arabica coffee sector. Arabica coffee is one of the country's leading agricultural exports, which also include robusta coffee, cocoa, and cotton. PRAMS I was preceded by the Fertilizer Sub-Sector Reform Program (FSSRP), USAID/Cameroon's first initiative into market-creating policy reform, and a companion program sponsored by the CEC, the *Programme Spécial d'Importation d'Engrais* (PSIE). These sectoral reform efforts occurred in the context of a comprehensive Structural Adjustment Program (SAP) supported by the World Bank. This set of reform activities provided the range of experience studied by PROMT researchers.

The theoretical base for PROMT research was both institutionalist and interdisciplinary, provided by the IAD framework in political science and the New Institutional Economics. The "new institutionalism" as used in PROMT was based on two key ideas:

- Goods and services exhibit differences, often subtle, that require different institutional arrangements for their effective provision, production, exchange, and use. Included are shades of difference among the great variety of private goods considered appropriate for market provision.

- Alternative institutional arrangements create very different incentives for individuals' behaviors, greatly affecting their capacity or incapacity to interact with one another in productive ways. Included among alternative institutional arrangements are alternatives within the private sector--various types of markets and industries.

This theoretical orientation leads to a pair of research hypotheses:

- The problems encountered in liberalization and privatization vary with the characteristics of the goods and services involved in emerging market relationships. Normatively, the design and implementation of policy reform programs should reflect the differences among economic goods.
- The success of policy reform depends on the institutional arrangements available for translating intentions into actions and outcomes. Normatively, the design and implementation of policy reform programs should reflect the differences among political institutions.

Methodologically, PROMT examined and compared different cases of policy reform, using programs undertaken by different donors in a single country. The period under study was roughly 1988 to early 1994. During this period the international economic situation affecting Cameroon deteriorated sharply, including a sagging world price for coffee. Toward the end of the period Cameroon's currency (along with the other Franc zone countries in West Africa) was devalued, a step long recommended by the World Bank. Also during this period Cameroon pursued political reforms, legalizing opposition parties and increasing the diversity of political expression, yet maintaining the dominance of the president and his party. Otherwise, the research design held constant the general institutional context, while varying, among the cases studied, both the goods and services involved and the design and implementation of policy reforms and accompanying programs of assistance.

The design of PRAMS I produced two major program components:

- A policy reform component that established a series of conditions precedent to the disbursement of funds, most of which were intended to liberalize the policy environment surrounding the marketing of arabica coffee, allowing for market-based pricing, private export, and competition among traders.
- A cooperative restructuring component focused on the North West Cooperative Association, a federation of 11 cooperative unions and initially 40 (now 73) cooperative marketing societies located in the North West Province.

Arabica coffee is also grown in West Province, where marketing is organized through a union of six marketing cooperatives. A collateral reform effort, one closely coordinated with a number of other donors, led to the adoption and dissemination of a new national cooperative law, affecting all cooperative organizations and similar groups in Cameroon.

The Cameroonian experience with policy reform in general and PRAMS I in particular is especially interesting due to two factors:

- The distinguishing characteristic of arabica coffee as a "hidden value" commodity and the challenge presented by this attribute to the conceptualization of an appropriate privatization program. The value of a commodity is hidden to the extent that its quality cannot be easily ascertained or measured at the point of initial purchase. This suggests the possibility that market institutions should be modified by introducing elements of nonmarket or collective decision-making. These considerations coincided, in the case of PRAMS I, with a privatization program focused largely on marketing cooperatives, not private entrepreneurs.
- The innovative approach to policy reform pursued by USAID/Cameroon during this period. Rather than introducing a policy change (e.g., a change in a regulation or the adoption of an official policy statement) and monitoring outcomes, USAID/Cameroon pursued a course of following each reform through the series of steps that lead from the initial intervention to intended (or unintended) outcomes. Instead of focusing only on the two end-points of the reform path, this approach, as used in both PRAMS I and the earlier FSSRP, involved monitoring performance along the entire path. Such close monitoring led to unforeseen donor interventions in the reform process. Monitoring the entire path of reform can also suggest ways to model the reform process. Models of policy reform, conspicuously lacking in the design of policy reform programs by major donors, could lead to better choices of initial policy interventions and better monitoring of performance.

The PROMT research effort has resulted in the following reports:

- *Institutionalism and Policy Reform.* A background paper on the IAD framework applied to policy-reform problems.
- *Organizational Approaches to Policy Reform.* A background paper on the models followed by USAID, the World Bank, and the CEC.
- *Crafting a Market: A Case Study of USAID's Fertilizer Sub-Sector Reform Program.* A case study of the Fertilizer Sub-Sector Reform Program.
- *Pitfalls of Privatization: A Case Study of the European Community's Programme Spécial d'Importation d'Engrais.* A case study of the CEC's Special Fertilizer Input Program (known by French acronym, PSIE).

- *Paths of Policy Reform.* Case studies of PRAMS I and Cooperative Law reforms.
- *Restructuring NWCA.* A case study of the cooperative restructuring component of PRAMS I in the North West Province.
- *Implementation of the World Bank's First SAL in Cameroon: A Case Study of Public Enterprise Reforms and Industrial and Commercial Sector Reforms.* A case study of selected components of the SAP in Cameroon.
- *Crosscutting Constraints and Policy Reform.* A set of four background papers dealing with investment, labor, commercial, and contract law in Cameroon.
- *The Analysis of Market Transitions.* The final report.

Copies of the reports are available from ARD, Burlington, Vermont.

The present report, *Crosscutting Constraints and Policy Reform*, examines four major sources of legal constraint on market performance: (1) commercial law, (2) investment law, (3) labor law, and (4) the enforcement of contracts. The purpose of each paper is mainly descriptive. PROMT was especially interested in the relationship between two types of reform activity--crosscutting reforms and commodity-slice reforms. The first are reforms aimed at the removal of legal constraints that "crosscut" a range and variety of market sectors. The second are sectoral reforms aimed at restructuring the vertical relationships among economic actors at various stages of production and exchange within a particular "commodity-slice" of the economy, such as the arabica coffee sector. How one type of reform is related to the other is examined in *Paths of Policy Reform*, which provides case studies of cooperative law reform (a crosscutting reform) and PRAMS I (a commodity-slice reform) and in *The Analysis of Market Transitions*, the PROMT final report.

Each type of crosscutting constraint examined here has witnessed significant efforts at reform during the period of study. Taken together, the various crosscutting reform efforts add up to nothing less than a program of general economic reform. Yet, it is safe to say that none of these efforts, to date, has produced the intended effect of stimulating private economic activity across the board. Both the importance of, and the difficulty of, crosscutting economic and legal reforms are among the lessons that emerge from these studies.

The report was prepared under a purchase order issued by ARD by the Private Sector Research Institution (PRISERI) of Cameroon. PROMT is grateful to the PRISERI team for their enthusiastic contribution to the research program.

Ronald J. Oakerson
PROMT Research Director

ACRONYMS AND ABBREVIATIONS

AID/R&D	Agency for International Development's Research and Development Bureau
ARD	Associates in Rural Development, Inc.
BCD	Cameroon Development Bank
CAPME	<i>Centre d'Assistance aux Petites et Moyennes Entreprises</i>
CEC	Commission of the European Community
CRTV	Cameroon Radio and Television
DFM	Decentralization: Finance and Management Project
FOGAPE	<i>Fonds de Garantie aux Petites et Moyennes Entreprises</i>
FSSRP	Fertilizer Sub-Sector Reform Program
GDP	Gross Domestic Product
GNP	Gross National Product
GTS	General Trade Schedule
ICSID	International Center for the Settlement of Investment Disputes
IFZ	Industrial Free Zones
ILO	International Labor Organization
JOC	<i>Journal Officiel du Cameroon</i>
MICD	Ministry of Industrial and Commercial Development
MIGA	Multilateral Investment Guarantee Agency
NEF	National Employment Fund
NLAB	National Labor Advisory Board

NOIFZ	National Office for Industrial Free Zones
OPIC	Overseas Private Investment Corporation
PRAMS I	USAID/Cameroon's Program for Reform of the Agricultural Marketing Sector, Phase I
PREPS	Program for the Reform of the Private Sector
PRISERI	Private Sector Research Institution
PROMT	Program of Research on Market Transitions
PSIE	<i>Programme Spécial d'Importation d'Engrais</i> (Special Fertilizer Input Program)
SAC	<i>Sociétés en Nom Collectif</i>
SACS	<i>Sociétés en Commandite Simple</i>
SAP	Structural Adjustment Program
SIBI	<i>Société d'Ingénierie Bancaire Internationale</i>
SNI	National Investment Corporation
SODECOTON	Cotton Growing and Ginning Company
SODERIM	Rice Production Company
SP	<i>Sociétés en Participation</i>
SSE	Small-Scale Enterprise
UDEAC	<i>Union Douanière des Etats de l'Afrique Centrale</i> (Central African Customs and Economic Union)
USAID	United States Agency for International Development

EXECUTIVE SUMMARY

The Cameroonian law governing economic activities is rooted in French and British laws that were extended to Cameroon during the colonial period. This applies to all four types of economic activity examined in this report: commerce and business formation, investment, employment and labor, and contracting.

In the case of commercial law, the French and British systems provided for different forms of business enterprise--differences that continue to differentiate the French-speaking and English-speaking areas of the country today. After independence, Cameroon embarked on a period marked by heavy state involvement in the private sector. A turning point came in 1988, when, in the midst of an economic crisis, Cameroon signed an agreement with the International Monetary Fund (IMF), setting the stage for a Structural Adjustment Loan (SAL-1) from the World Bank in 1990. SAL-1 led to a flurry of legislative activity intended to liberalize the rules governing commercial activity.

Prior to 1988, commercial activity was subject to a range of legal restrictions: long and complicated business registration procedures, import and export restrictions on numerous items, and price controls purporting to govern virtually all domestic trade. The 1990 reforms relaxed the entry rules governing business formation, reduced the number of items subject to import and/or export restriction, streamlined import and export procedures, and lifted price controls on many goods (although the price-control mechanism remains in place). Nevertheless, the vast majority of small-scale enterprises continue to operate in the informal sector, unregistered and therefore outside the domain of legal regulation.

Since independence, Cameroon has operated under three successive investment codes, enacted in 1960, 1984, and 1990. The 1960 code established a tradition of heavy public sector involvement in economic investment, which continued, with modifications, under the 1984 code. Investments were classified according to one of four schedules by a decision of the Presidency of the Republic on the recommendation of a national commission. Among its most salient features was a requirement that 65 percent of the share capital in a small- or medium-scale enterprise be held by Cameroonians. Moreover, investments related to mineral exploitation and natural resources, as well as other activities deemed to be vital to the economic development of the country, were subject to separate regulation under "establishment conventions" individually negotiated with the government under conditions of secrecy. The 1990 code reduced the share-ownership requirement for Cameroonians to 35 percent. It also provided foreign investors with legal protection against the expropriation of investment property and afforded access to alternative dispute-resolution mechanisms.

Cameroon has also operated under three different national labor codes: 1967, 1974, and 1992. The 1974 code divided employment into two categories: contracts of (1) specified and (2) unspecified duration. The 1992 code added three new categories: (3) a contract for a temporary job in replacement of an absent worker, (4) a contract for an occasional job, and (5) a contract for seasonal employment. The new code thus increases the choice of contract



forms that an employer may use to hire labor. The earlier codes created three territorial wage zones and classified occupations into four sectors, while the latest code provides for the determination of wages within the framework of negotiated agreements. The new code also increases flexibility in the terms of continued employment by allowing the contract to be amended at the initiative of either party and reducing the amount of damages payable for wrongful termination.

The law governing contracts, like that for commercial activity, differs between the French-speaking and English-speaking portions of the country. Cameroonian law also distinguishes between informal and formal contracts and, within the category of informal contracts, between structured and unstructured contracts. Structured informal contracts are those governed by the customary practices and traditional usages of the local area in which the contract is made. Disputes are initially referred to a traditional council or chief, with the possibility of an appeal to customary courts and finally to modern courts, where the basis for a decision remains the customary law. Unstructured informal contracts, found mostly in urban areas where traditional ties have been weakened by social heterogeneity, rely on personal relationships and mutual trust, sometimes reinforced by third-party guarantees (especially in relation to informal credit arrangements). Among formal contracts, the general contractual rules derived originally from foreign law continue to apply, except where the Cameroonian government has intervened by law or decree. The latter includes public sector contracts (regulated by a 1986 decree that gives public agencies the power to terminate a contract without recourse to the courts), and insurance contracts, in addition to the employment contracts discussed above.

The legal rules governing economic activity in general suffer from institutional uncertainty that makes it difficult to predict one's legal rights and duties in advance. This institutional uncertainty derives from several factors, including the weakness of the national legislature, the wide scope given to executive and administrative discretion, and the unreliability of the judiciary. Laws enacted by the National Assembly frequently leave substantial areas of the law to be determined by presidential decree and administrative orders. This tends to undermine the credibility of legal reform. Economic actors therefore react slowly and cautiously to changes in the law, and, as a result, most of the reforms adopted since 1988 have not yet led to the intended increase in economic activity.

TERMS AND CONDITIONS OF WORK IN CAMEROON

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I. INTRODUCTION

Cameroon became a German colony in 1884, and after the first world war, it was a mandated territory to Britain and France with France taking a larger portion of the territory. The unification of the French and British territories of Cameroons in the Federal Republic of Cameroon in 1961 retained the respective colonial institutions.

Today Cameroon has an estimated population of 12.6 million people with a total area of 475,450 sq. km. The country presents great physical, climatic, and vegetational diversities. Agriculture is the main economic activity of the population. More than two-thirds of the population is involved in agricultural activities producing less than one-third of the Gross Domestic Product. The other two-thirds is produced by a smaller proportion of the population. In effect, only a small proportion of the labor force works in the formal sector.

Cameroon has carried out major censuses in 1976 and 1987. In 1976, Cameroonians in the age group 0-14 years and those 60 years and above accounted for 52% of the total population. The remaining 48% was then the major source of the labor force.

Between April 1987 and April 1993, the population increased from 10,490,000 to 12,603,000 inhabitants at an average annual rate of 2.87%. The sex and age-group distributions have changed very slightly (Table 1). During the same period, the rural and urban distribution of the population changed significantly (Table 2).

It is observed that of the total population of 9,360,000 in 1983, only 3,501,000, or 37.4% of the total, were actively working; of this number, 691,000 were gainfully employed in the modern sector of the economy, while 1,926,000 were self-employed in the informal sector. A total of 882,000 were unemployed. By April 1993, the figures stood at 780,000 for the modern sector, 2,487,000 self-employed, and 1,446,000 unemployed. The rate of unemployment increased from 25.2% in 1983 to 30.7% in early 1993.

In 1983, the 691,000 persons estimated to be gainfully employed in the modern sector represented 19.7% of the active population and 7.4% of the total population, respectively. By April 1993, the figures had dropped to 16.5% and 6.2%, respectively. On the other hand, the 1,926,000 persons estimated to be gainfully self-employed in the informal sector represented 55.07% of the active population and 20.6% of the total population. By April 1993, these ratios had dropped to 52.8% and 19.7% relatively, although in absolute numbers, the number of persons gainfully employed in the informal sector had risen from 1,926,000 in 1983 to 2,487,000 in 1993 (Table 3).

Because of the large informal sector, the labor rules and regulations govern only a very small fraction of the labor market. This paper discusses the labor market and laws governing the terms and conditions of work. The labor market is examined in Section II Section III starts by looking at the origin of Cameroon labor legislation, then examines labor-law organs and institutions. There is an evaluation of the Cameroon labor legislation in Section IV, which concludes the paper.

TABLE 1 THE POPULATION OF CAMEROON
(Sex and Age-Group Distributions) in 1000

AGE GROUP	SEX	1985	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995
0-4	Males	902	929	956	985	1,016	1,047	1,080	1,113	1,148	1,183	1,220
	Females	922	948	976	1,007	1,037	1,070	1,103	1,137	1,172	1,209	1,246
	TOTAL	1,824	1,877	1,932	1,992	2,053	2,117	2,183	2,250	2,320	2,392	2,466
5-9	Males	746	767	789	813	839	865	891	919	948	977	1,007
	Females	761	783	806	831	856	883	911	939	968	998	1,029
	TOTAL	1,507	1,550	1,595	1,644	1,695	1,748	1,802	1,858	1,916	1,975	2,036
10-14	Males	629	647	666	687	708	730	752	776	800	825	850
	Females	643	661	680	701	723	745	767	792	817	842	869
	TOTAL	1,272	1,308	1,346	1,388	1,431	1,475	1,521	1,568	1,617	1,667	1,719
15-24	Males	853	878	903	931	960	990	1,021	1,052	1,085	1,119	1,153
	Females	871	896	923	951	981	1,011	1,042	1,075	1,108	1,142	1,178
	TOTAL	1,724	1,774	1,826	1,882	1,941	2,001	2,063	2,127	2,193	2,261	2,331
25-59	Males	1,502	1,545	1,590	1,640	1,690	1,743	1,797	1,853	1,910	1,969	2,031
	Females	1,534	1,579	1,625	1,675	1,727	1,780	1,835	1,892	1,951	2,012	2,074
	TOTAL	3,036	3,124	3,215	3,315	3,417	3,523	3,632	3,745	3,861	3,981	4,105
60+	Males	271	279	286	295	305	314	324	334	344	355	366
	Females	276	284	293	302	311	321	330	342	352	362	374
	TOTAL	547	563	579	597	616	635	654	675	696	717	740
ALL AGES	Males	4,902	5,044	5,191	5,352	5,517	5,689	5,865	6,047	6,235	6,428	6,627
	Females	5,008	5,152	5,302	5,466	5,636	5,810	5,990	6,176	6,368	6,565	6,770
	TOTAL	9,910	10,196	10,493	10,818	11,153	11,499	11,855	12,223	12,603	12,993	13,397

Economic Planning of Cameroon, Yaounde 1986 pp. 3-8 (c) DEMO 87
By SOPECAM BP. 1218, Yaounde.

Table 2 THE POPULATION OF CAMEROON
RURAL-URBAN DISTRIBUTION IN 1000

	RURAL	URBAN	TOTAL	URBAN AS % OF TOTAL
1980	5,387	3,204	8,591	37.3
1981	5,523	3,297	8,840	37.3
1982	5,704	3,393	9,097	37.3
1983	5,869	3,491	9,360	37.3
1984	6,039	3,593	9,632	37.3
1985	6,214	3,696	9,910	37.3
1986	6,393	3,803	10,196	37.3
1987	6,579	3,914	10,493	37.3
1988	6,783	4,035	10,818	37.3
1989	6,993	4,160	11,153	37.3
1990	6,784	4,715	11,499	41.0
1991	6,994	4,861	11,855	41.0
1992	7,212	5,011	12,223	41.0
1993	7,436	5,167	12,603	41.0

Based on (a) Data and Ratios supplied by results of the 1987
General Census "DEMO 87, SOPECAM BP, 1218, Yaounde, 1987 p, 5
and
by (b) Human Development Report, UNDP New York, 1992, p, 169,

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Table 3 ESTIMATES OF THE ACTIVE AND INACTIVE POPULATION IN 000

	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993
I. ACTIVE POPULATION	3,501	3,602	3,707	3,813	3,925	4,046	4,165	4,301	4,433	4,572	4,713
a) FORMAL ECONOMIC SECTOR											
i) Urban Employment	471	439	452	465	478	493	508	506	500	482	501
ii) Rural Employment	220	227	234	240	247	255	263	255	263	271	279
b) INFORMAL ECONOMIC SECTOR											
i) Urban Self-Employment	480	452	466	480	493	508	524	595	613	632	652
ii) Rural Self-Employment	1,448	1,491	1,533	1,583	1,624	1,675	1,725	1,675	1,727	1,780	1,835
c) UNEMPLOYED											
i) Urban	649	731	752	769	797	821	843	883	910	940	960
ii) Rural	233	262	270	276	286	294	302	387	420	467	486
II. INACTIVE POPULATION	5,859	6,030	6,204	6,383	6,568	6,771	6,988	7,198	7,422	7,651	7,890
a) Preschool Age	2,097	2,158	2,220	2,284	2,350	2,423	2,498	2,576	2,656	2,738	2,823
b) In School	2,321	2,389	2,458	2,529	2,603	2,683	2,766	2,852	2,940	3,031	3,126
c) Housewives	952	980	1,008	1,037	1,067	1,100	1,134	1,169	1,206	1,243	1,282
d) Others	489	503	518	533	548	565	582	601	620	639	659
TOTAL POPULATION (I plus II)	9,360	9,632	9,911	10,196	10,493	10,818	11,153	11,499	11,855	12,223	12,603

* Based on 1987 Census, on MTPS Information Yaounde, and on the 6th Five-Year Plan. 1991

II. LABOR MARKET

Compared to the product market, the labor market has special characteristics or attributes. The supply of the worker is inseparable from the services he/she offers to the employer, while the labor demanded is derived from the demand for the goods that labor produces. This makes labor market analysis different from that of the product market. In fact, the rules and regulations governing the labor market--the demand for and supply of labor--are different from those that govern product markets.

In the first decade of independence, the labor force was less well-qualified, and the economy was largely subsistence and traditional. The manufacturing and service sectors were almost negligible in size. There was a problem of training the labor force and transforming the economy. This problem is still very relevant today; although the public sector has gradually become the major employer in the formal sector, the structure of the economy has not been drastically transformed or changed. Changes in the structure of the economy have been quite slow despite the increasing size of the labor force, as well as increasing urbanization and schooling. Certain variables such as industry, educational attainment, income level and distribution, wage structure, and economic potentials are essential for proper labor market analysis. Unfortunately, the lack of data preclude such a detailed analysis.

From the colonial period Cameroon has maintained an agriculturally based economy with an insufficient number of industries to absorb unemployed graduates and high school dropouts as their numbers increased (Table 4). There is no doubt that Cameroon has an abundance of human resources suitable and capable of satisfying the demands of modern industries. Being an agriculturally based economy, by 1982 the agricultural sector employed some 68,000 wage-earners. This number has been reduced due to the ongoing Structural Adjustment Program, which has meant privatization and liquidation of some state-owned enterprises. The liquidation of some state enterprises has rendered many workers unemployed with no new industries to absorb them. Many have become self-employed. Agriculture, being labor-intensive, has not attracted the educated labor force, which has usually sought employment in the public services.

Occupations that were at earlier stages filled by persons without higher education now demand more trained manpower. Moreover, the educational system has not put greater emphasis on training for the private sector of the economy; rather, the stress has been on employment in the public sector. It has been difficult for an entrepreneurial class to emerge to satisfy industrial demand. The greatest problem facing the labor market is the inappropriateness of training. This is particularly acute in Cameroon. Though financial and human resources are equally important, others, such as facilities and equipment, also play an important role. The economic crisis has curtailed government expenditures on labor administration, particularly in the parastatals. Few resources are left for educational purposes. The government has let go a considerable number of civil servants who may find difficulties in fitting into the private sector.

A. Labor Supply

In the 1960s the labor force was less qualified than today, and the agricultural-based economy was able to absorb the available labor force. Since then, there have been significant demographic changes leading to greater increases in labor supply. In 1983 the total labor supply was estimated to be 1,573,000 and has grown to 2,226,000, representing 17.7% of the total population. Table 5 shows estimates of labor supply for the period 1983 to 1993.

The spatial distribution of population shows a concentration of population in large towns. Urbanization has grown from 37.3% in 1989 to 41% in 1993. The migration of youths to urban centers is usually to Yaounde or Douala. The rural population is largely illiterate and engaged in agricultural activities, using stagnant technology that gives very low labor productivity. The situation in the rural sector (agricultural sector) may not improve as the youth migrate, leaving the aging population behind, unless strong measures are taken to improve the rural sector.

B. Labor Demand

The demand for labor is a derived demand for goods and services, and the production of different types of products depends on the structure of the economy. Hence, employers' demand for labor depends on the demand characteristics of the product market and the process of production. The hiring of labor is a function of labor's contribution to the production of goods and services for sale. With a small industrial sector, much of the labor force is concentrated in the agricultural and service sectors; a smaller fraction works in the formal modern sector.

Table 4 ESTIMATES OF ANNUAL GRADUATIONS IN 000

	1983	1984	1985	1986	1987	1988	1989	1990	1991	1992	1993
General Secondary Education	39	39	40	40	40	44	49	55	62	62	63
Industrial Secondary Education	3	2	2	1	1	2	2	2	2	3	3
Commercial Secondary Education	2	2	2	2	2	2	2	3	3	3	3
General Post-Secondary Education	1	1	2	2	3	3	4	4	4	5	5
Industrial Post-Secondary Education	0	0	0	0	1	2	2	2	2	2	2
Commercial Post-Secondary Education	2	1	1	1	2	2	2	3	3	3	3
General University Education	-	-	-	0	2	3	3	3	4	4	4
Professional University Education	-	-	-	0	2	2	2	3	3	4	4
TOTAL	47	45	47	46	53	60	66	75	83	86	87

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Table 5 LABOR SUPPLY IN CAMEROON IN 000

	1983	1985	1987	1989	1991	1993
Total Supply	1,573	1,708	1,808	1,916	2,093	2,226
As % of Active Population	47.8	46.1	46.1	46.0	47.2	47.2
As % of Total Population	17.9	17.2	17.2	17.2	17.7	17.7

Table 6

	Employees	Percent
Public Service	160,000	28%
Parastatals	62,800	11%
Modern Private Sector	350,000	61%
TOTAL	572,800	100

Source: Ministry of Labor and Social Insurance 1986

According to the Ministry of Labor's statistical department, the modern sector employs 572,800 persons, which represents 15% of the labor force. Of this figure, 222,800 people work with the public sector while the private modern sector employs 350,000 persons. The number of public sector employees seems to have increased up to 1990, with a reduction starting in 1991 (Table 7).

**Table 7 PUBLIC SERVICE EMPLOYEES BETWEEN
DECEMBER 1988 AND JUNE 1992**

Status	December 1988	December 1989	December 1990	December 1991	June 1992
Civil Servants	55,397	60,122	75,972	71,194	72,949
Contract Officers	10,456	9,620	10,402	10,229	9,529
Non-established Personnel	56,693	55,739	56,190	52,887	44,712
Staff on Salary Advance	14,103	17,573	12,186	8,721	6,438
Auxiliary Workers	290	258	206	206	167
TOTAL	136,939	143,312	154,956	143,338	133,795

Source: Ministry of Public Service (General Secretariat, Computer Department, Situation General de L'emploi dans le secteur public, 1988-1992.

In 1983, total demand for labor was estimated to be 691,000, increasing to 780,000 in 1993, almost a 1.4% yearly increase (Table 8). However, this estimate includes both the informal and formal sectors of the economy.

Table 8 LABOR DEMAND IN CAMEROON IN 000

	1983	1985	1987	1989	1991	1993
TOTAL DEMAND	691	686	725	771	763	780
As % of Active Population	19.7	18.5	18.5	18.5	17.2	16.5
As % of Total Population	7.4	6.9	6.9	6.9	6.4	6.2

Beginning in 1987, the economic crisis caused a sharp reduction of employment in the formal sector. Table 9 indicates the total number of persons laid off by province and sectoral activities, with Yaounde and Douala suffering the most. According to Table 10, the number of persons who lost their jobs increased yearly, although there was a drop in 1991, from 23,870 in 1990 to 11, 412. There was a total decline of 46,220 for the period of 1988 to 1991.

Some estimates¹ put the total figure slightly higher at 58,689 workers. Table 11 indicates derived estimates of unemployment calculated from Tables 5 and 8. This table indicates a high unemployment rate, higher than those shown by official figures.

Whatever the case, the trend has been a drastic reduction of employment, particularly in the public sector and modern private sector. Both underemployment and unemployment rates have increased, with the informal sector absorbing a greater portion of the displaced workers, where people carry out marginal economic activities with very low earnings (DIAL/DSN 1993).

Increases in underemployment and unemployment have been mainly due to liquidation, rehabilitation, and privatization in the public sector. The Structural Adjustment Program (SAP) has shifted production activities from the public sector to the private sector, but it has also resulted in greater unemployment and under-employment. The situation is not likely to improve. The demand for labor is declining, while the supply of labor is increasing rapidly with additional qualified job-seekers (Table 4).

C. Price of Labor

Today there are no active unions capable of strongly influencing the factors affecting their conditions of work. The formal sector of the economy, particularly the public sector, has salary scales that are institutionally determined or policy induced. The government or individual firms determine salary scales, while in the informal sector (including the agricultural sector), remuneration tends to be determined by market forces or collective bargaining. However, non-market forces are equally important, partly because of the lack of labor market information and limited labor mobility.

Table 9 Distribution of Lay Off Activities and Province (1987)

Regim/Province	Primary Sector	Secondary Sector	Territory Sector	Unclassified	TOTAL
	1987-1988	1987	1987	1987	1987
Adamaoua	--	446	110	4	556
Centre excl Yaounde	135	145	0	8	288
Yaounde	139	2691	513	4	2347
Littoral excl Douala	287	49	16	0	352
Douala	153	3195	1383	86	4817
Nord	0	71	205	0	276
Extreme-Nord	300	97	245	0	642
Nord-West	192	30	37	86	345
South-West	0	263	41	0	304
South	44	460	206	165	875
West	42	60	32	0	144
TOTAL	1,292	7,769	2,788	349	12,520

Source: MPTS Direction de la Prevision.

**Table 10 LAY OFF IN PUBLIC AND PRIVATE SECTOR
1988-1989**

Year	Technical Unemployment	Lay Off	Closure	Total out of Employment
1988	85	858	713	1,656
1989	3,495	4,482	1,305	9,282
1990	9,576	13,941	353	23,870
1991	2,280	6,028	3,104	11,412
TOTAL	15,436	25,309	5,475	46,220

Source: Ministry of Labour (CD/SSI DT/SRP) Evolution du Climat Social. 1991

Table 11 ESTIMATED REAL UNEMPLOYMENT IN CAMEROON IN 000

	1983	1985	1987	1989	1991	1993
Labor Supply	1,573	1,708	1,808	1,916	2,093	2,226
Less Labor Demand	691	686	725	771	763	780
Excess Supply	882	22	1,083	1,145	1,330	1,446
Excess As % of Supply	56.1	59.8	60.0	60.0	63.5	65
Excess as % of Population	25.2	27.6	27.6	27.5	30.0	30.7

Since 1987, the beginning of the implementation of Cameroon's Structural Adjustment Program, the labor market has been undergoing structural change. The public sector, the major modern sector employer, has seen a significant reduction of its labor force and a drastic cut in salaries. Public service employees' salaries have been cut in many different ways.² First, basic salary index points and categories were reduced from 4% to 20%, ranging from lower to higher index points and categories, respectively. In November 1993, further cuts ranged from 2% to 70%. Second, many allowances³ and fringe benefits were either eliminated completely or cut by 50%. Since 1987, there have been no salary increases, and there has been a continuous accumulation of salary arrears. Cumulatively, these reductions have caused some groups of workers to lose over 50% of their salaries, and in certain cases, there has been nonpayment of the salaries and the workers have gone for months without payment. The failure of the modern sector to meet its obligations has had far-reaching

repercussions on the rest of the economy. The impact has been quite severe, since the public sector has been the main employer as well as the principal supplier of major contracts, including major social expenditures. Contracts with many enterprises have dried up.

D. Social Security and Pension Schemes

The Cameroon social security scheme does not provide for unemployment benefits. Those who have lost their employment and have joined the unemployed population have made it easy for wage flexibility. The quantity of human resources is thus readily available, but quality has become a problem because the public sector (major employer) pays according to academic qualification and not according to competence and productivity or performance.

For the same level of qualifications, remuneration levels in the private sector are several times higher than those in the public sector. This is why so many officials prefer to move to other sectors or to be seconded to para-public enterprises. This trend, however, has slowed down from the early 1970s when categorization and classification of occupations was introduced in the private sector of the economy. In addition, in 1973, the payment of child allowances was introduced. In 1974, the pension scheme (made up of old age pension, invalidity pension, and survivors pension) was also introduced, and the employer was obliged to contribute to this pension scheme. The employee's own contribution towards his old age pension was also fixed by legislation.

The classification of occupations and categorization in 1971 greatly inflated the wage bill of almost all enterprises in the private sector, and the National Collective Bargaining and Wages Board's yearly wage and salary increases up to 1 July 1985, worsened the situation further. Instead of enterprises expanding and opening up employment opportunities, they tended to compress in order to meet up with the increased wage bills. Today most of these allowances have been either eliminated or reduced.

III. LABOR LEGISLATION

The rules governing the terms and conditions of work in Cameroon today, have been influenced partly by received foreign laws (British and French colonial labor laws) and the International Labor Organization's conventions and recommendations, and partly by the prevailing economic and social conditions of the country. The received influences are so strong that most pieces of imported labor legislation appear verbatim in Cameroon labor laws.

A. External Influences on Labor Legislation

After the British and French acquired Cameroon from Germany in 1916, the territory was partitioned with the French taking the larger portion and later placed under a League of Nations Mandate in 1922. With the demise of the League of Nations in 1946, Cameroon became a trust territory.

The mandate and trusteeship agreements gave Britain and France full powers of administration and legislation, and Cameroon was to be administered as an integral part of their territory. Britain proceeded to administer its own sector of Cameroon along with the contiguous territory of Nigeria. Laws that Britain had already introduced in Nigeria were extended to the British Cameroons. France administered her portion of Cameroon as part of French Equatorial Africa. The French legislated for the whole of that vast territory by means of decrees.

1. *British Labor Legislation Influences*

The enabling statute for the application of the English common law, or what is now referred to as received English law in former West Cameroon, is the Foreign Jurisdiction Act of 1890. On the basis of this, Section 11 of the Southern Cameroons High Court law was enacted in 1955, providing for the applications of the common law, doctrines of equity, and statutes of general application in England on 1 January 1900.

In accordance with the terms of the mandate, the British Cameroons order-in-council No. 1621 of June 1922, which fused purposes, made the same legislation applicable to both territories. As a result, various labor ordinances that were enacted for Nigeria were extended to Cameroon.⁴

These ordinances had to take account of the fact that a majority of the labor force was still illiterate or semi-illiterate. Oral employment contracts were recognized, but a special duty was imposed on employers to explain all the working terms and conditions to their workers. Particular attention was paid to "expatriates," then mostly British whites, who were to have one-half of their wages and salaries paid in the local currency and the other half deposited on their behalf with the labor office in their home town in their country of origin. These expatriates were also entitled to some free facilities such as clothing, furnished housing,

fuel, and medical services. This caused a wide disparity between the working conditions of the indigenes and the expatriates. These incentives may well have been introduced to induce much-needed skilled staff, which was then almost totally absent, but today some of these privileges have continued to be maintained under various guises at great social cost. Another incongruity inherited from the preceding German colonial practice was the official recognition of forced labor in a separate enactment--the Forced Labor Ordinance. Though moderated by the condition that its execution was subject to emergencies such as war, epidemics, and floods, its existence was controversial and opposed vehemently by the International Labor Organization. In 1958, this ordinance was repealed (by 1945 it had become a dead letter).

These labor ordinances in many ways set the pattern and seriously influenced the enactment and interpretation of post-independence labor legislation in Cameroon. The most significant contributions were in the structures set up to administer labor legislation and trade union matters.

2. *French Labor Legislation Influences*

A French decree of 22 May 1922 extended to Cameroon the laws and decrees promulgated by France for French Equatorial Africa prior to 1 January 1924. Although initially these laws and decrees were mostly meant to apply to French citizens living here and to the small section of the indigenous population who had attained the "citoyen" status, it was eventually applied to the rest of the Cameroonians as well. In labor matters, the short-lived Manlet Code of 17 October 1947 laid the foundation for the more complete French overseas labor code of 15 December 1952 that replaced it.

The provisions of this 1952 text as applied to the French Cameroons were very different from those of the Nigerian labor ordinance of 1945 as applied to the British southern Cameroons. However, the 1952 code was followed by a series of orders and decrees implementing it. This had the effect of extending facilities enjoyed by workers in France to workers in French Cameroon, although substantial modifications were made to take account of Cameroon's colonial status and level of development.

There were very close similarities in the maintenance of industrial relations between the British Southern Cameroons and the French Cameroons. In Buea as in Yaounde, the protection of trade union rights, the promotion of full employment, the prevention and settlement of labor disputes and collective bargaining were all guaranteed and administered by the government. Generally, industrial activities and the social welfare system were far more developed in French Cameroons than in the British Southern Cameroons, such that the Federated State of East (French) Cameroon had more allowances and social benefits than West Cameroon. But it must be stressed that the local population had no say in the conception or importation of these labor laws. In most cases, the laws were not adapted to the local conditions.

3. *International Labor Conventions*

By virtue of Article 35 of the International Labor Organization (ILO) convention, the powers administering Cameroon were obliged to conform to the labor standards and norms laid down by the ILO. In fact, it was pressure from the ILO that led the French to abolish the rampant practice of forced labor. On attaining independence, Cameroon became a full member of ILO and the various codes that Cameroon has legislated have either directly or indirectly been influenced by ILO conventions and recommendations.

B. Cameroon Labor Codes

After independence and the reunification of the British and French Cameroons, the 1952 labor code for French overseas territories, previously applicable only to French Cameroon, was rendered applicable to the whole of Cameroon by law No. 67/LF/6 of 12 June 1967 and came to be known as the Labor Code of 1967. This code was evidently transitory as commissions were set up to draft a new code that would reflect Cameroon's bi-jural heritage. The new code came into force on 27 November 1974, and, although substantially based on the 1967 code, a few Anglo-saxon notions were introduced. Today, the 1974 code has been superseded by a 1992 code, which now forms the basis of the applicable terms and conditions of working in many respects in Cameroon.

In appreciating the impact of the 1992 code⁵ and its effects on the Cameroonian drive toward economic recovery, three important factors that have played a significant role in its orientation must be remembered: the bi-jural legal heritage, the duty to conform to ILO standards and recommendations, and the economic crisis.

In its formulation, the 1992 code, like the preceding ones, has drawn but minimum benefit and inspiration from the Anglo-saxon labor heritage. This comes through very clearly as regulatory provisions (such as those on wages, hours of work, and safety) have played a far greater part than collective bargaining in determining the applicable rules and principles. This may have the merit that such regulatory regulations tend to be deliberately directed toward subjects that do not lend themselves well to collective bargaining or that, owing to weaknesses of organization or other reasons, cannot be adequately dealt with in collective agreements. However, they have the drawback of providing too much scope for state interference.

As regards the real impact of ILO standards and recommendations, it is sometimes quite difficult to reconcile these norms with parts of the text implementing the labor code or what obtains in practice. The International Labor Office has usually taken the view that it is in principle for each member nation to determine the measures to be taken to make the norms of a convention or recommendation effective in its territory. This quasi-option for compliance may explain some of these conflicts.

The ever-changing economic and political situation has necessitated changes to the regulatory standards laid down in the codes. Both the 1967 and 1974 codes were formulated at a time of relative economic prosperity and growth. Although regarded at the time as openly biased toward workers, there was no concerted, sustained opposition. By the 1980s, however, the 1974 code, in particular, was already considered out-dated, and it was giving employers cause for concern. Besides being too pro-worker, the exorbitant powers it conferred on the state were frequently abused. Strikes and lock-outs were strictly controlled, and enterprises in difficulty could not dismiss workers or make other alternative arrangements that would enable them to survive without being seen as violating the code.

One of the main objectives of labor rules is to protect what can be termed the legitimate expectations of both employer and worker by regulating, supporting, and restraining the power of the former against the power of the latter. In the case of Cameroon, there is an additional complication--the power of the state. It is a delicate balancing act.

The present code appears to have been formulated mainly as one of the government's most powerful weapons for fighting the economic crisis and as an answer to some of the criticisms levelled against the preceding codes. Just how effective this solution can be will be appreciated by looking at three aspects of the rules and conditions introduced: the classification of employment contracts; the flexibility in the performance of such contracts; and the modalities for resolving disputes. But it must be noted that the new code is of much wider application and probably includes, where possible, the informal sector, but continues to exclude, among others, civil servants and servicemen (Section 1 [1], [2], and [3]).

1. The Classification of Employment Contracts

A major innovation in Cameroon labor law was introduced in the classification of employment contract, probably as a response to increasing bankruptcies and the employers' complaints that they resulted from the rigidity of the 1974 code.

To the two pre-existing categories of employment--contracts for specified and contracts for unspecified duration--three new, flexible categories were added. The pre-existing two were redefined with greater precision and modified to suit exigencies of the times.

A contract of unspecified duration is now, according to Section 25 (1) (b), one whose termination is not fixed in advance and may be terminated at any time by the will of either the worker or the employer, subject to a notice contemplated in Section 34. A contract of specified duration, on the other hand, is defined as one whose termination is fixed in advance by both parties. Such a contract may not be concluded for a duration of more than two years, renewable once. Two examples of such a contract are given: first, a contract whose termination is subject to a future and certain event that is precisely indicated but whose occurrence does not depend exclusively on the will of the parties; second, a contract concluded for the execution of a specified task. These changes enable a worker to reasonably

predict when his contract would come to an end. Once there is any uncertainty as to the duration of employment, according to the wording of Section 25, such a contract cannot be qualified as one of specified duration. A distinction is also made between Cameroonian and foreign workers, with fewer and less rigid formalities for the former (Sections 25 [2] 2 [3] and 27). These, however, compare much more favorably with some of the excessive bureaucratic formalities that were required under the 1974 code.

The three new categories of a typical contract constitute one of the key anti-crisis measures encouraged. The first is a contract for a temporary job in replacement of an absent worker, or one whose contract has been suspended. Also included here is a contract for the completion of a piece of work within a specific time limit and requiring additional manpower (Section 24 [4] [a]). The second category is a contract for an occasional job aimed at coping with unexpected growth in the activities of the company as a result of certain economic conditions or entailing urgent works to prevent imminent accidents, organizing emergency measures or repairing company equipment, facilities, or buildings that are dangerous for the workers (Section 25 [4] [(b))). Finally, there is a contract for seasonal jobs that may be generated by the cyclical or climatic nature of company activities (Section 24 [4] [c]). The detailed conditions for implementing these measures were to be determined by decree (Section 26 [7]). A decree of July 1993, about a year later, fixed, inter alia, the duration of these contracts: 3 months for a temporary job, 15 days for an occasional job, and 6 months for a seasonal job.⁶

One of the merits of these provisions is that they increase the choice of contract forms that an employer may use to hire labor and in this way increase the stability of employment within the category chosen. Perhaps the most significant aspect is the protection given workers engaged under these terms who were formerly outside the purview of the law and recruited under informal terms. They are thus given official recognition and reasonable job security, and it is in this respect that the 1992 code can be said to cover certain informal workers. A dark shadow is cast by the implementing decree, which confuses the rather clear description of the three different categories of contracts by introducing time limits. Will a temporary job properly described as such cease to be one merely because it exceeds three months? If so, what does it become? It is not necessarily a seasonal job if it does not otherwise fit that description. Were this to be an issue in a dispute, the clear wording of the code should prevail over those of the decree; that is, on the principle that an implementing text must be interpreted in such a manner that it will not contradict the enabling text.

2. *The Performance of Employment Contracts*

One of the most controversial aspects of the earlier codes and some of the implementing texts made under it relate to the creation of professional categories and wage zones. A decree of 1968⁷ divided the territory into three wage zones with minimum professional guaranteed wages. Another text⁸ created a national sectoral classification of occupations into four sectors--primary, secondary, tertiary I, and tertiary II.

The mobility of labor rendered these texts unworkable, and the new code perpetuates only the distinction between the public and the private sector. Wages are now to be determined within the framework of collective or company agreements (Section 63). Commissions or sundry bonuses may even replace wages (Section 65).

Flexibility in the performance of employment contracts is enhanced with the possibility given employers to modify the contract on economic grounds as a way of avoiding the more unpleasant and dramatic measure of dismissal. This could lead to such measures as reduction of working hours, layoffs, and wage cuts (Section 40 [3]). Now, unlike under the 1974 code, the contract of employment can be amended at any stage at the initiative of either party in accordance with the procedure laid out in Section 42.

Another reflection of this flexibility is in the reduced amount of damages payable for wrongful termination (Section 39). This makes it much easier to dismiss a worker without running the risk of astronomical damages being inflicted.

3. Modalities for Resolving Disputes

Under the 1974 code, strikes and lock-outs were prohibited before the conciliation and arbitration procedures had been exhausted, and the authorities were allowed to take action where necessary to stop any strike.

A more tolerant and liberal approach was adopted by the 1992 code, a more pacific method with an emphasis on dispute prevention. Instead of labor courts, sections 158-168 provide a special procedure for handling collective labor disputes, comprised of two stages--conciliation and arbitration.

Conciliation is a compulsory first stage unless the collective agreement has made provisions for its own conciliation procedure. While conciliation is handled by an inspector of labor, arbitration is undertaken by an arbitration board. These boards are established within the jurisdiction of each court of appeal (Section 161 [1]).

Negotiations today have a dual role. The first is its usual role, where trade unions representing workers and employers' associations representing employers, or groups of employers, sit to discuss the terms and conditions of work. In this sense, negotiations can be considered a secondary source of labor law. A second role is where the discussions between the parties are principally aimed at preventing or avoiding litigation. An example of this arises when, under Section 40 (4), the employer contemplates dismissing a worker on economic grounds.



C. Professional Organs and Institutions

In addition to the content of the ILO conventions, which are reflected in the contents of Cameroon labor legislation through the labor code, there are some professional institutions that are intended to assist the government in the process of labor law implementation.

The National Joint Collective Agreements and Wages Board

This Board was set up under the Minister of Labor and Social Insurance and was presided over by him or his representative. It consisted of an equal number of employers' representatives and workers' representatives designated by the most representative employers' and workers' organizations. The Board was required to perform many functions that limited the powers of trade unions and employers' associations, according to the provisions of the 1974 Labor Code. This Board has been abolished, and in the 1992 Labor Code, is to some extent replaced by the National Labor Advisory Board, which performs a role similar to the previous board, but gives greater freedom to the trade unions' and employers' associations as seen below.

The National Labor Advisory Board (NLAB)

This Board was established under the jurisdiction of the Minister of Labor and Social Insurance to study all labor problems, vocational guidance and training, labor movements, migration, placement, improvement, improvement of material conditions of workers, trade unions' and employers' associations, and social insurance. In addition, it was to give opinions and formulate proposals and resolutions relating to the laws and regulations to be made in these matters. The Board is chaired by the Minister of Labor and Social Insurance, and its membership comprises:

- an equal number of workers and employer representatives who are appointed by order of the Minister of Labor and Social Insurance on the recommendation of the most representative organizations of workers and employers; and
- experts and technicians sitting in an advisory capacity, appointed by the Minister of Labor and Social Insurance, depending on the agenda for a given session.

Also within the Board, there is a standing committee to which powers may be delegated to make proposals and recommendations. Ad-hoc committees are formed when necessary.

The National Commission for Industrial Health and Safety

This Commission is also under the Minister of Labor and Social Insurance, and has to be chaired by him or his representative. Its membership is composed of technicians and experts of unquestionable competence in the fields of industrial medicine, industrial hygiene, and safety. During its sessions, the Commission may call upon the assistance of experts whenever it deems necessary. Workers and employers shall be represented in equal numbers within the Commission. The National Commission is responsible for the following:

- the study of problems related to industrial medicine, and the hygiene and safety of workers;
- suggestions and recommendations concerning laws and regulations to be made in these fields; and
- any work of a scientific nature falling within its sphere of activity.

The Staff Representatives

The Staff Representative is a worker, male or female, duly elected to the office by the workers of an enterprise. Representatives serve as middlemen between the workers and the employer, and between the workers and the Labor Inspector. They play a vital role in the implementation of the labor law within the enterprise.

Labor Unions

The single-party system looked on the trade unions as a force that could constitute an obstacle to nationalization and dictatorial policies. The necessity arose to attack free trade unionism. The attacks on trade unions invariably saw the infringement of ILO Convention No. 87 on freedom of association and Convention No. 98 on the right to organize and bargain collectively. African political leaders in one-party states (including Cameroon) propagated the idea that a one-party government elected by the people is the sole genuine representative of all sectors of the community, including the workers. As a consequence, the trade union should not presume to remain an organization apart, but should accept the directives of the government and possibly even become integrated into the government, as has been the case with the Confederation of Cameroon Trade Unions (Appendix 3). However, the 1992 Labor Code gave greater autonomy to trade unions and also replaced the National Joint Collective Agreements and Wages Board, although employers retain the upper hand in discussing the terms of employment.

In strong economies, labor laws have evolved with the influence of industrial development and the growth of independent and free trade unions. The government cannot introduce any piece of labor legislation without prior consultation with the trade unions. In

Cameroon's situation, the trade union is dependent and weak, and the government does not consult it, although there is provision for such consultations.

National Employment Fund (NEF)

The Fund was created in 1990 with many objectives that include:

- promoting employment;
- providing information to job-seekers as well as to potential employers;
- helping young Cameroonians work in the different sectors of the economy; and
- assisting in the training of workers and in the creation of microenterprises.

In practice, the NEF is unable to fulfill these objectives, not only because of lack of financial resources, but also because its mission is all-embracing to the point that its objectives are vague and unclear. Even a single objective such as providing information to job-seekers as well as potential employers entails much. Such a clearinghouse could be more useful than having a multipurpose organization that does not function. Employment information does not exist formally. Since persons are employed mainly through informal information networks, an employment information center could be very useful.

IV. AN EVALUATION OF LABOR LEGISLATION

All labor legislation, such as those laws imposing standards on working hours, safety, minimum wages, and hygiene, directly lays down rules of employment. Any such legislation quite obviously restricts the power of employers, and it does so irrespective of whether or not, and to what extent, workers are organized. These rules are usually the legislators' attempt to mitigate an inherent disequilibrium in the labor market. It is supposed to be done in such a way as to achieve a fair, just, and equitable balance between the competing interests of employer and worker. At the end of the day, the rules governing the terms and conditions of work are a complex amalgam of regulatory legislation dictated by the state and collective agreements reached between the employer and workers.

In Cameroon, until the 1992 code came into force, regulatory legislation played a far greater role than collective agreements. The new code came with a sudden shift toward collective agreements. This appears to have been too dramatic, and labor history shows that such changes that involve a process of social reconstruction are only feasible over a long period, when both employers and workers can be brought to understand and share in the process of the change itself.

A. Limited Scope

The full impact of the 1992 code cannot be known yet for several reasons. First, most of the implementing texts are yet to be enacted. Second, there has not yet been enough time to investigate and appreciate the rest of the sections that have been in force. Finally, perhaps the most serious difficulty arises from the fact that Cameroon has no history in keeping proper records, nor has any virtue been seen in compiling labor or any other court decisions in the form of a law report. Notwithstanding these obstacles, it is still possible to evaluate the code from both a practical and theoretical point of view and arrive at certain conclusions.

One may start by questioning whether it is either prudent or desirable to allow a single preoccupation--the economic crisis--to dictate every aspect of employer/worker relationship in particular and a labor code in general. This cannot be the most realistic approach, and a solution determined substantially by this premise is unlikely to be long-lasting. The gravity of the economic situation and the urgency with which foreign investments are required call for some bold and ingenious initiative to reassure foreign investors of the security of their investments and of a good operating climate with their Cameroonian collaborators. The 1992 code tries to balance the interest of the employer and worker in particular and reserves an important role for the state. It does not quite succeed and leaves a general impression of an uncompleted task.

While it has a broader scope of application, compared to the 1974 code, there is still no clear justification for excluding some categories of workers, especially civil servants⁹ whose freedom of association has been confiscated and who have had to bear, silently and

helplessly, hard prescriptions forced down their throats by the government with no means to present a united front to protest.

B. The State's Discretionary Powers and Unions Registration

There is a timid attempt to restrict the state's role in labor matters. For a system inspired by the Napoleonic legal tradition, which exults in the supreme authority of the state and those who incarnate it, the reality is not surprising. The new code, unlike that of 1974, makes provision for 20 decrees, 28 ministerial orders, and 25 places (for the future) for the intervention of the National Labor Advisory Board and the National Commission on Industrial Health and Safety. This excessive interference becomes particularly overbearing when it is realized that the first series of decrees and orders implementing this code made their innocuous appearance only toward the end of 1993. It is therefore clear that old decrees and orders implementing the 1974 code continued to apply on certain matters even after the 1992 code came into effect. For instance, Section 176 (2) of law No. 92/007 of 14 August 1992 states that "Regulations drawn up pursuant to above-mentioned law No. 74/14 of 27 November 1974, or those applicable to the said law but not repugnant to this shall remain in force until repealed or replaced."

Some of the crucial innovations in the new code depend on too many questionable assumptions or may again be frustrated by the excessive discretionary powers that the state possesses. Unlike in the past, there is no prescribed minimum wage. Instead, wages are to be determined within the framework of collective agreements between trade unions and employers' associations. In this regard, the code recognizes the "right of workers and employers, without distinction whatsoever to set up freely and without prior authorization (trade unions and employers' associations), with the only requirement being that of registration" (Section 3). According to Section 11 (b), the application to register must be made to the registrar of trade unions or employer's associations and if no receipt acknowledging registration or its rejection is received, then after a month, such a union or employers' association can consider itself registered. The government, however, has used this apparently simple, clear and straightforward procedure to frustrate and refuse recognition to trade unions whose policies it does not like. One of the numerous examples is the fate of SYNES, the Higher Education Teachers' Union, which applied for registration and after a month's silence, using the receipt of the deposit of its application as evidence, has been acting as a registered trade union. Both the Ministry of Higher Education and the University of Yaounde authorities have declared it illegal, and since 1992, frustrated its activities by constantly threatening and intimidating its officials, some of whom have received either suspensions or disciplinary transfers.

But even if a union or employers' association was properly registered, its certificate of registration can be canceled at any time (Section 13). The creation, registration, and operation of trade unions is completely under the control of the government, and it has tended

to recognize and register only such unions that are sponsored by it or pose no serious threats to its policy because they can easily be persuaded to comply with its wishes.

Thus, there is no tradition or experience of independent trade unionism in Cameroon. It is therefore absurd to imagine that a trade union and its officials whose existence does not depend on its supposed membership can genuinely represent and defend the real aspiration of such membership. The whole concept of collective bargaining is doomed, but not because it is inherently bad. In fact, it has been argued, and rightly so, that the welfare of a nation and its continuity may depend on a system of collective bargaining. The absence of the appropriate institutional framework, such as laws guaranteeing properly organized and independent trade unions, coupled with arbitrary discretion of the government, which doesn't usually act as an independent arbiter, cast serious doubts about the whole system of collective bargaining¹⁰ in the 1992 code. The truth is that as trade unions become weaker, the significance of collective bargaining diminishes, and the scope for legislative interference increases.

C. Unfulfilled Objectives

Other important objectives of the code may not be easily achieved. In recognizing with more precision the right to strike action and lock-out, this may be handicapped by a complex and protracted mandatory procedure for conciliation and arbitration. There is enough scope for a recalcitrant party who is also unscrupulous to resort to delay tactics and frustrate the process with the complicity of a corrupt labor inspector.

Generally, there is some evidence from the incoherence¹¹ and sloppy draftsmanship to suggest that the code was hurriedly prepared without adequate consultation of either trade unions and employers' associations or other experts in the field, and pushed through parliament. That the pre-1992 codes were pro-worker was understandable. The much-awaited changes that were bound to follow after 18 years did not justify a swing from one extreme to the other--that is, the pro-employer stance.

Unfortunately, the informal sector is growing with the intensification of the economic crisis and demographic changes. This has resulted in some employers disregarding most provisions of the law. For instance, the statutory working hours per week is 40 hours, yet most employees in small business put in more than 70 hours per week for the pay of 40 hours of work. Not only are children and women prohibited from performing certain activities, they are to be allowed to rest for at least 12 consecutive hours. Yet, in practice, children carry out adult work in dangerous environments with little rest and are given children's pay.

D. Conclusion

The implementation or application of labor legislation has been grossly ineffective and perverse, largely because, from conception to application, the workers and employers have not been fully involved. The bureaucratic hierarchy has ignored popular participation in the rule-making process. A paternalistic, autocratic, rule-making process has alienated those concerned. They therefore seek all sorts of ways to avoid the law or the consequences of breaking the law.

Moreover, the laws have tended to govern a small fraction of the labor market, the formal sector, which is continuously dwindling. This is alarming. The November 1993 Seminar on Information in Yaounde concluded that about 44% of the Cameroon Gross Domestic Product is currently being produced by the informal sector. Yet this sector, as well as the large rural agricultural sector, is unaffected by the labor norms. As the economy continues to deteriorate with the latest devaluation shock, it may be realized that solving the crisis does not require desperate short-term solutions. It is time to take a more realistic, long-term perspective to formulate labor legislation or adjust the present one to take account of the abnormalities.

The national labor legislation has not been effective, partly because the laws have been wholly imported without proper adoption to local realities. There has been very little attempt at matching the institutional arrangements to the characteristic of the real world; consequently, the outcomes have been perverse. Because patterns of interaction have produced such perverse outcomes, relationships have to be restructured by changing the rules. That is, a total revision of labor legislation is desirable. In doing this, consideration has to be given to full participation of all those concerned and equally to matching the institutional arrangements to the attributes of the real world.

ENDNOTES

1. There is serious problem of obtaining accurate data, even the same source gives different figures for the same variable.
2. The Prime Minister announced on 24 November 1993 that there would be further drastic cuts in salaries as from January 1994.
3. Such as housing and transport allowances.
4. Labor Code, capt. 91 of the Revised Laws of the Federation of Nigeria and Lagos, Vol. 3; Trade Unions Ordinance, capt. 200 of the Revised Laws of the Federation of Nigeria, Vol. 6; Wages Board Ordinance, capt. 211 of the Revised Laws of the Federation of Nigeria, Vol. 6; and the Trade Disputes (Arbitration and Enquiry Ordinance), capt. 201 of the Revised Laws of the Federation of Nigeria, Vol. 6.
5. Commentary by Paul-Gérard Pougoue, 12 *Juridis Info*, pp. 35-44.
6. Decree No. 93/577/PM of 15 July 1993 fixing the conditions for the employment of temporary occasional and seasonal workers.
7. Decree No. 68/DF/272 of 15 July 1968.
8. For over two months, civil servants in some parts of the country have been on strike because of drastic salary cuts. They have formed a civil servants union, but it is still not nation-wide.
9. Ministerial Order No. 16 of 12 June 1967.
10. Otto Kahn-Freund, *Labor and the Law*, London: Stevens and Sons, 1972, p. 2.
11. Paul-Gérard Pougoue, *op. cit.*

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INVESTMENT LEGISLATION IN CAMEROON

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I. INTRODUCTION

By Sub-Saharan African standards, Cameroon is particularly blessed with an endowment of resources that offers great opportunities for investments. These investment opportunities may be considered from the following perspectives.

A. Natural Resources

Natural resources create opportunities and potentials in agriculture, forestry, and mining. Cameroon has quite a large expanse of farm and grazing land, over 165,000 square kilometers of forests, 140,000 square kilometers of which are exploitable, and considerable deposits of minerals. These offer potential investment activities mostly in the rural areas.

Shortly after independence in 1960, the leaders of the country saw direct state involvement in the economy as the way to provide for balanced economic growth. Thus, state investments for rural development were carried out especially in the north, and to a lesser extent the eastern part of the country, mostly through the creation of agro-complexes, such as the cotton growing and ginning company, SODECOTON, and the rice production company, SODERIM. This approach led to a rapid expansion of the public sector.

The technologies available to exploit these resources varied. For the non-traditional export crops, the technologies used were primitive, including low use of fertilizers leading to low yields. As for the traditional export crops--coffee, cocoa, cotton, bananas, and rice--the level of technology used to exploit these has been mixed, beginning from an initial period of low fertilizer use, through a period of high fertilizer use when fertilizers were heavily subsidized, up to a fairly recent period when the reduction of subsidies by the Fertilizer Sub-Sector Reform Program (FSSRP) at first led to a decreased use of fertilizers. At present, however, that project has encouraged fertilizer distribution and farmers are receiving the right type of fertilizer, when and where they need it, at competitive prices. For coffee and cocoa, the technology for cultivating, pruning, and harvesting is the same as elsewhere in the world.

In the area of mining, the level of technology in use is mixed, depending on the type. For example, in the petroleum industry modern technology is used, while for the other minerals, because of the small quantities being mined, the level of technology used is relatively low.

As for logging, the level of technology in use is moderate. As should be evident, investments made in these areas are invariably on site, and mostly in rural areas.

B. Transformation and Industry

There exists a great deal of investment potential in the area of transformation, especially of agricultural products. The very high rate of food loss and the need for increased value-added call for investments in transformation of primary products into finished and/or semi-finished products. Small and medium size industries, which are labor-intensive, seem to be most appropriate here.

Investments in transformation have often been made on the site of the raw material or at a more appropriate location with infrastructural facilities. Thus, transformation is done in rural, semi-urban and urban areas, near or in the centers of consumption and shipping. The level of technology used varies, but is generally low, and is quite often also a constraint to transformation.

C. Commerce and Services

There is a lot of potential for investments in commerce and services, including tourism. Investments in these areas are mostly in urban settings, with some spillover to the rural areas. The major shopping centers and banks are also in the urban areas. It is obvious that infrastructural constraints and the demand for services and commercial activities do influence the location of these activities and their sizes. Nevertheless, the demand for investments in this sector is still quite great.

The decision to create the Free Trade Zone¹ was an attempt to allow investments to flow into any part of the country, and also to change the relationship between resources, especially labor and capital.

Investments follow areas of high return in the private sector, while public sector investments may have developmental and/or political motivations. However, the relationship between the two is important to private sector outcomes and the survivability of public sector investments.

Human resources supplement and complement these opportunities. With a literacy rate of 59%, and an active population of 39% (over 4 million), there is enough available manpower for any investor to use in Cameroon.

¹The Free Trade Zone was introduced in Cameroon by Ordinance No. 90/001 of January 29, 1990 and will be discussed in detail below.

D. Recent Investment Trends

Table 1. Changes in Investments, External Debt and GDP, 1986/1987 to 1992/1993

Year	Total Investments	Private Investments	Public Investment	GDP	External Debt
	Billions of FCFA				Millions US\$
1986/87					4032
88	779	496	283	3378	4220
89	638	471	167	3319	4790
90	660	463	197	3261	5990
91	617	460	157	3197	6278
92	538	436	102	3086	6278
93	521	451	70	3023	

Sources: Ministry of Finance: Loi des Finances de l'Exercice 1993/94 and World Bank: World Debt Tables, 1992-93

Table 1 shows that investments have been declining. From FY 1987/88, to FY 1992/93, total investment declined by 33 percent, from 779 billion FCFA to 521 billion FCFA. Disaggregating investments, private sector investment declined by 9 percent, from 496 billion FCFA to 451 billion FCFA, and public sector investment declined by 75.3 percent, from 283 billion FCFA to 70 billion FCFA. During this same period the GDP declined by 10.5 percent, from 3378 billion FCFA to 3023 billion FCFA. While investments and the GDP have been declining, external debt has been increasing (about 50 percent) during the period. What has been happening is that public investment has become largely dependent upon external financing. The growth in external debts, especially without an accompanying economic growth, has the effect of chocking off investment. The weak economic performance, especially since 1986, can be explained in part by an overvalued exchange rate² and a large non-tradeable sector, especially the public sector.

According to a recent "African Investment Monitor"³ sovereign debt issued by the Government of Cameroon was trading on secondary markets at 15 to 30 percent of the present value of the promised stream of payments, indicating that Cameroon is considered a very risky country in which to invest.

²Cameroon exchange rate had been tied at a fixed rate of 50 to 1 to the French franc from 1948 to January 12, 1994 when it was changed to 100fcfa to 1FF.

³AIM, June 1993, Vol. 3 No. 10811, p. 10

In economic parlance, the factors of production (i.e., labor, capital in the form of land, and various resources) are available for potential investors. That investors are not beating a path to Cameroon means there is something wrong.

II. INSTITUTIONAL ARRANGEMENTS

The location of any investment activity is usually, but not always, determined by the type of investment activity the investor wishes to engage in. Among the factors commonly taken into account in making the decision to invest are the physical structure of the location and the metaphysical structure defined by institutions set up by human beings. The basic legal texts containing rules governing investment are in codes that, since independence, have been enacted in 1960, 1984, and 1990. Changes that have occurred in the codes over time show the need to continually modify the institutional arrangements so as to make for a better exploitation of the physically structured world and to meet the nation's economic objectives.

It is almost axiomatic that an institution or institutional arrangement is a coherent rule structure that applies in common to individuals in a community. Investment Codes in Cameroon have been drawn up with this axiom in mind. But the application of the rules contained in the various codes has encountered a variety of problems, due to "who decides what in relation to whom" within the Cameroonian polity. In part, this confusion is due to the philosophical underpinnings of economic development as viewed by Cameroonian policy-makers. In part also, it is due to the multiplicity of the sources of investment rules as well as the multiplicity of institutions that hold sway over invoking the rules. Even when they have been invoked, applying and enforcing them has equally posed problems. Almost from independence, Cameroon adopted a centrist, state-led approach to economic development, which in hindsight bore the seeds of its own destruction. The state's philosophical approach, initially premised on slogans like planned-liberalism and self-reliant development, has since moved through "communal liberalism" to the present preoccupation with liberalized, market-oriented growth.

The constitution compounds the problem in the way it assigns and distributes legislative and rule-making powers. Article 19 of the Constitution⁴ provides that law-making power is vested concurrently in the President of the Republic and the National Assembly. Although Article 20 lists a number of issues deemed to be the preserve of the legislature, Article 21(1) provides that these matters may be delegated to the executive for legislation by ordinance. Moreover, Article 22 provides that matters not reserved for the legislature "shall come under the jurisdiction of the authority empowered to issue statutory rules and orders."

In principle, such provisions should have provided the basis for a healthy symbiosis for framing legislation that is comprehensive, easy to access, and characterized by certainty in application. In practice, however, it lays down the baseline for an ambivalent cacophony. This makes ascertaining legal rules with regard to any subject-matter in Cameroon an intellectual hazard. Whether by accident or design, these provisions have been constantly interpreted and applied to suit an authoritarian governance structure, characterized by a unitary state with dominant authority vested in the president.

⁴Ministry of Information and Culture (1991) "The Cameroon Year Book."

This institutional mix seems to have been the basis of Pierre Flambeau Ngayap's analysis in 1983⁵ on "who governs Cameroon." Today, in the era of multi-party politics, this analysis is still highly relevant. What is essential is that his study revealed that there were roughly a thousand people who rule Cameroon and, starting from the president himself, hold top positions in the government, including the administration, legislature, party, judiciary, army, and business world. Antonio Granusci also theorized that when a class of people has secured social hegemony, the values of that ruling alliance and its *modus vivendi* seep through society, shoring up its power.⁶ Under these circumstances the judicial system is essentially an extension of the administration. These institutional incongruities hold some very hard challenges for Cameroon's economic future.

A. Institutional Uncertainty

In the area of investments, the main challenges for Cameroon now are:

- how to stimulate investment and bring back massive holdings of flight capital; and
- how to regain the confidence of both foreign investors and domestic entrepreneurs and investors.

These challenges will be examined in the context of institutional uncertainty. Institutional uncertainty on the part of economic actors is caused by malfunctioning rules in general and by the unlimited discretion of the government to change almost any rule, at any time, for any reason. Such institutional risks are a dead-weight burden on the economy, reducing investments and limiting the spread-effects of any remaining investment. This type of uncertainty is deeply entrenched in the Cameroonian system; it affects everyone. Institutional uncertainties lead to substantially greater unpredictability for economic agents and to substantially lower levels of investments. Indeed, the net result of this kind of atmosphere is that many economically sound investments remain unrealized since the aggregate risks are too high. In extreme cases, institutional uncertainty can make any investment prohibitive.

The traditional cures for macro-economic instabilities are fiscal discipline, tax reform, exchange rate devaluation, privatization, deregulation, and financial as well as trade liberalization. This package forms what has been called the "Washington consensus" on

⁵Ngayap Pierre Flambeau: *Cameroun, Qui Gouverne? De Ahidjo à Biya, L'Héritage et L'Enjeu*, Paris: Editions l'Harmattan, 1983.

⁶See Granusci, Antonio: *Selections from the Prison Notebooks*; New York: International Publishers, 1971.

policy reform,⁷ or what is evident in Cameroon as Structural Adjustment Program (SAP). These measures provide a necessary but not a sufficient condition for economic growth, especially for investment. The package can even increase government discretion and rent seeking if the institutional setting remains the same.

B. Forms of Institutional Uncertainty

Institutional uncertainty manifests itself in two different forms at the level of the economic agents:

- Unpredictability of government intervention. This form of uncertainty concerns the relationship between the state and the private sector and stems from the discretionary power of the state, which renders the institutional environment of private decision makers quite volatile. For example, in 1992, the Ministry of Health came up with an order closing down a milk products company, SAPLAIT⁸, alleging that the company did not meet health requirements--this, even though the company had been in operation for many years and had been having regular visits from the health inspectors. After a public outburst that the order was politically motivated because the director and major partner in the business was an active supporter of an opposition party, the order was dropped.
- Lack of consistent enforcement of private contracts. Because of the discretionary powers of the executive, and the lack of independence by the judiciary, people with influence within the system do shape the enforcement of contracts, both private and public, to their advantage.

C. Negative Effects of Institutional Uncertainty on Individual Behavior

To act rationally, households and firms (investors) have to consider institutional uncertainties as constraints on their individual optimization. Uncertain rules and shaky enforcement bias their decisions in two fundamental ways:

- too little formal economic exchange, which implies a retreat to personal transactions with private enforcement mechanisms; and

⁷Silvio Borner, Aymo Brunetti, and Beatrice Weder, "International Obstacles to Latin American Growth" ICEG Occasional Paper No. 24. (1992).

⁸SAPLAIT produces liquid milk, butter and yoghurt from powdered milk imported from Europe. The business concern is a partnership of Dutch and Cameroonian partners.

- too little inter-temporal exchange, which implies very short time horizons and strong preferences for present consumption instead of investment.

When these two effects are combined, they greatly reduce individual incentive to invest and hamper economic growth. Inter-temporal exchange implies buying an uncertain "tomorrow" for a certain "today." The decision to invest has to be based on some idea about what the future will bring (i.e., potential investors have to form expectations). They compare the cost of an investment with the discounted value of future returns. These calculations usually take account of economic and institutional risks that arise from the discretionary power of the state.

Instead of investing today, Cameroonian investors would rather wait for tomorrow, or they prefer to invest abroad (capital flight). Large-scale capital flight can be interpreted as capital safely parked in foreign (i.e., institutionally certain) countries to wait for better times at home.⁹ The consequence is clear. Investment today, although economically efficient, will remain the exception. Even in the absence of capital flight, individuals try to remain as liquid as possible, thus withholding much needed liquidity from the formal economic circuit.

To the extent that institutions are considered as decision-making arrangements, the foregoing provides the framework within which Cameroon's investment legislation, since independence, can be analyzed.

⁹On August 3, 1993, the Minister of Finance announced over Cameroon Radio and Television, CRTV, that from 1982 to 1992, over 1000 billion (FCFA (about twice the annual state budget) had been taken out of the country in capital flight. In 1992 alone, capital flight was 211 billion FCFA, 42 percent of the state budget for that year.

III. THE INVESTMENT CODES

We examine hereunder Cameroon's three investment codes that have been enacted since independence as well as the Industrial Free Zone Legislation, which was enacted by the passage of Ordinance No 90/001 of January 29, 1990. These form the core legislative instruments to which a potential investor must turn to satisfy himself that his investment activity would conform to Cameroonian legislation and be guaranteed certain minimum incentives. But it may also be necessary for an investor to examine the Five-Year-Development Plan to see what orientation exists in terms of government thinking and priorities, as well as the motivations for instituting certain texts that impact on investments. Cameroon's investment codes have mostly reflected the government's investment and development philosophy.

Over time a major imbalance has persisted between urban and rural areas. At independence over 90 percent of non-agriculture investment was concentrated in the urban areas, especially in the city of Douala, and to a lesser extent, Yaounde. To shift investment to rural areas required that incentives be created that would outweigh the comparative advantage enjoyed by the urban areas. The 1960 Investment Code gave a lot of incentives to potential investors in rural areas, especially in the North and East. The Code also protected Cameroonian investors from competition (unfair) by foreigners. Yet, the level of investments in these areas did not increase in any significant way.

A. The 1960 Code

The 1960 Code was enacted during the colonial period and promulgated at independence by the Head of State for use in the French-speaking part of the country. In 1961 it was extended to include English-speaking Cameroon as well.

At the time, emphasis was on public sector involvement in the economy to the detriment of the private sector. Practically all powers and discretion were vested in the executive. Given the low literacy rate at the time, the public sector was the main employer and, as a consequence, incentives for private sector investments were minimal.

B. The 1984 Code

The 1984 Code continued to reflect the same philosophy of balanced economic growth. Article 5 stated that economic activity "should contribute to the balanced development and increased competitiveness of all sectors of the national economy." In order to fulfill this balanced development requirement, the location of undertakings was required to be consistent with the requirements of regional development and planning at the economic, social and cultural development levels. It was further stated in the code that "the state may subject the award or the maintenance of the benefits provided by this law to the attainment of

[the above objectives]." Consequent to this underlying philosophy, the Code classified investments according to four schedules.

1. Schedule A

This was the Special Undertaking Schedule of the Code. Investments under this schedule had to be greater than 500 million FCFA and be located in border regions to which access is difficult. Furthermore, the activities had to yield high value-added with preference being given to adapted technologies and the use of large numbers of skilled local manpower. Given the level of industrial development in Cameroon at the time this Code was enacted, and the need to assure that its green revolution was a success, the emphasis on adapted technologies is understandable. In effect, the government's policy stressed that because there were minimal capital requirements for investments under this schedule, whatever technologies and machinery were brought into the country for investment activities should easily be adaptable to local conditions in terms of cost and the ability to find maintenance expertise for such technology.

2. Schedule B

This was the Priority Undertakings Schedule of the Code. Investments thereunder had to be greater than 2,500 million FCFA and be located in non-port, border areas. Investments under this schedule also had to develop sectors recognized as priority sectors by the government and contribute in a considerable and long-lasting way to improvements in the balance of payments in the sector.

3. Schedule C

This was the Small and Medium-Size Enterprises Schedule. The code required enterprises under this schedule to possess a characteristic similar to the indigenous ownership requirements contained in other countries' investment codes. In effect, for an enterprise to qualify as a small or medium-size enterprise, it was required that at least 65 percent of its share capital be held by Cameroonians.

Such a requirement seems to have been an attempt at indigenization on a Cameroonian model. Indigenization is a concept that developing countries began to use in the late 1970s to preserve their economies from what they perceived as economic neo-imperialism. On the African continent the concept seems to have been used legislatively for the first time in the Nigerian Enterprises Promotion Act of 1977. Its practical effects were tested in the Nigerian case of Kehinde v Registrar of Companies.¹⁰

¹⁰See 1979, 3 L.R.N., at p.213

In that case some Nigerian investors had entered into a joint-venture enterprise with a Japanese company for the purpose of setting up an assembly plant in Nigeria. Under the articles of association of the proposed company, its authorized capital was divided into two classes, "A" and "B" shares. Class "A" shares constituted 70% of the entire capital and were to be held by Nigerians, while the "B" shares constituting the rest were to be held by the Japanese partners. Clause 62 of the articles of association required that every resolution of the company must be supported by a majority of the holders of each class of shares in attendance, meaning that no resolution could be passed by the Nigerian shareholders alone, despite their 70% majority, without the approval of the Japanese partners. Moreover, clause 95 provided that in relation to "special matters" the "A" directors should have one vote per director and the "B" directors three per director.

When the articles of association were submitted together with the memorandum of association to the Nigerian Registrar of Companies for registration, he declined to do so on account of these clauses, since he found them objectionable as being "in conflict with the intent of the Nigerian Enterprises Promotion Act 1977." The Nigerian promoters and subscribers to the memorandum sought a writ of mandamus to compel the Registrar to register the company. The trial judge was in no doubt that clause 95 was "a clever device to circumvent the requirements of the Act" which "made a mockery of the majority shareholding in favor of Nigerians as provided for by the Act."¹¹ However, he decided that the Registrar could not lawfully refuse to register the company and on the basis of this granted the order sought by the plaintiffs.

The provision of Section 26 of the 1984 Code was, *mutatis mutandis*, quite similar to the intent and purpose of the Nigerian Enterprises Promotion Act, 1977, discussed *supra*. The ownership requirement in that provision indicated a double desire on the part of the Cameroonian public authorities to ensure that the whole economy did not fall under the control of foreigners and that an indigenous entrepreneurial class effectively took root. The first of these desires appears to have been consistent with the nationalistic feeling in most third world countries in the era of the petroleum crisis. Foreign investment was perceived as necessary for economic development, but issues of capital ownership had to be considered carefully so as to avoid economic imperialism and neocolonialism.

This schedule of the investment code was therefore envisaged as the springboard for Cameroon's economic take off. This expectation is apparent not only from the capital investment provisions of the code but also from the fact that an enterprise qualified as a small or medium-size enterprise if its job-creation expenses were low and continuous vocational training for local employees was guaranteed.

¹¹Id. at p. 221

An enterprise qualified by these criteria as a small or medium-size enterprise was entitled to benefit from a reduced rate of import duties of 5% for a period not exceeding ten years and during the validity of its approval document. In addition, it was exempt from duties and taxes levied on certain local purchases (such as equipment, materials, machines and tools directly necessary for the manufacturing and processing of produces), purchase of parts or spare parts clearly recognizable as belonging to the foregoing equipment, raw materials or products wholly or partially used to make its finished or manufactured products, and disposable raw materials or products intended for packaging or wrapping its finished or manufactured products.

In addition, as an incentive to encourage the balanced regional development of Cameroon, Section 28 provided the possibility of extra incentives for enterprises located outside areas with high industrial concentration like Douala and Yaounde. Benefits accruing to such enterprises were entitled under Section 27(1) to be extended for a further period of five years, making them eligible for incentives under section 23 for 15 years. Furthermore, under Section 27(2) they were entitled to additional incentives for a contemporaneous period of eight years. These other benefits included exemptions from taxes on share capital, taxes on credit distribution, registration fees, company tax, and the tax on industrial and commercial profits beginning from the year in which the first sale was effected.

To underscore the importance attached to the creation of small and medium-size enterprises in the Cameroonian economy even further, Section 17 of Decree No. 84/1489 of November 21, 1984 provided a simplified procedure for the approval of applications to create them. In effect, that section provided that Provincial Approvals Committees, which were the technical bodies of the National Investments Commission at the provincial level, were "competent to make recommendations in respect of applications under Schedule D.... and the Inland tax on Production for the Schedule." Recommended applications were then forwarded to the Governor of the Province concerned, who had no discretionary power to exercise in the matter. Rather, in accordance with Section 27 of Decree No. 84/1489, placement under Schedule C of the investment code was "approved by order of the Governor who ... immediately" forwarded a copy of the approval to the Minister in charge of Industry. This provision mandated the administrative authority, the Governor, to act in a very precise manner.

The capital mix requirement of Schedule C of the 1984 Investment Code was an attempt to encourage joint ventures. Whether that attempt succeeded or not is debatable. A condition *sine qua non* for the success of any joint venture, whether it be international in character or not, is proper respect for the laws and policies of the host country. But the laws and policies of the host country may sometimes compel a pattern of interrelation between the parties that is not optimal for success. The requirement that 65 percent of the equity ownership in any small or medium-size enterprise be in the hands of Cameroonian nationals was tantamount to mandating control of an enterprise by people of doubtful entrepreneurial skills and a weak capital base. This is especially limiting if the enterprise is the result of an international joint-venture partnership.

The problem posed here can perhaps be resolved by differentiating ownership and control. That is to say, in this particular context a single foreign partner could agree to associate with a diverse number of local shareholders on the condition that the foreigner would control the management process. In a joint-venture business situation of this sort, it is not the ownership of shares that is important but the right to manage and draw financial benefits.¹² One possible way of bringing this about is by using a management contract. A careful reading of *Klockner Industries Anlagen GmbH et al v. United Republic of Cameroon and Société Camerounaise des Engrais*, an arbitration proceeding still pending before the International Center for the Settlement of Investment Disputes (ICSID) of the World Bank, however, indicates otherwise. Far from being a miraculous solution to the problems created by Section 26, some very thorny and difficult-to-resolve issues may be inherent in the management contract device.

One such issue is indeed a very practical one, and arises from the fact that "control" like "power" is often elusive, tenuous, frequently shifting, and incapable of precise definition.¹³ Another issue may arise as to whether the obligation assumed under the management contract is for the technical or commercial management of the enterprise. These are separate and distinct criteria on which management of an enterprise may be based. Often, in developing countries such as Cameroon, a foreign partner may be called upon, on the basis of his expertise, to assume technical management, while the local partner, on account of knowing the local administrative and market conditions well, assumes the commercial management.

Yet another issue that may arise is whether the management obligation subsumes only an obligation to provide a means that ensures the smooth running of the enterprise or one that seeks to achieve a certain result for the common venture. This is a particularly crucial issue that needs to be addressed from the outset in order to avoid potential disputes that might hamper the smooth functioning of the venture and frustrate the parties' common intent. A management contract may, for example, be deemed to provide an obligation to achieve a result when it specifies exactly what it is the parties hope to attain at the end of the period when the contract expires.¹⁴ In such a case, the obligation contained in the contract is termed an "obligation of result" ("*une obligation de résultat*") and is only deemed to have been fulfilled when the specified result has been attained.

¹²See Emile Benoit, "The Joint Venture Route to East-West Transactions", *American Management Association Monograph*, No. 119, 1968.

¹³See, A Berle and G. Means, *The Modern Corporation and Private Property*, 1967 at p. 66; E. Hermann, *Corporate Control, Corporate Power*, Ch. 2, 1981.

¹⁴See, G.A.E. Penn, *Legal Aspects of Foreign Investment in Cameroon*, unpublished S.J.D. Thesis, University of Pennsylvania Law School, May 1989.

But it is necessary to point out as well that when a party undertakes to manage a venture, there are no grounds for assuming profitable results.¹⁵ This is presumably because the party who undertakes to manage a venture only undertakes to apply all the means that can reasonably be required to ensure management that is "on par with that of a prudent manager placed in a similar situation."¹⁶ However, there seems to be no conceivable situation in which parties would agree to pool their resources only so that one of them can provide diligent means, without anything further.

4. *Schedule D*

Undertakings under Schedule D were those considered to be vital to the economic development of Cameroon. These were characterized under section 29 as companies that "operate in economic areas recognized as strategic in the implementation of the government's economic, social and cultural development plan...". An enterprise that met this litmus test was required to sign an "establishment convention" with the state not to exceed a period of fifteen years. The convention specified general conditions for production; government guarantees concerning the stability of legal, economic and financial condition; access to the labor market; freedom of choice of supplies; renewal of forestry and mineral-production permits on a case-by-case basis; access to water and electricity supply, transportation of goods and use of port-handling facilities.

Enterprises falling under Schedule D benefitted from incentives provided in sections 31-34. Establishment conventions have usually been granted by the Cameroonian government only to enterprises engaged in the exploitation of minerals and other natural resources. Because these domains are considered akin to domains of sovereignty, the exact content and scope of the conventions is usually a well-guarded secret.

As a result, it is quite difficult to precisely define an establishment convention under Cameroonian law, nor has a definition of its exact nature and scope ever been attempted by Cameroonian scholars. But it is fairly safe to assume that establishment conventions, as conceived under Cameroonian law, are almost invariably economic development agreements that contain intricate patterns of reciprocal rights and duties between the investor and the state. However, whether described as establishment conventions or economic development agreements, their clear purpose is to create a suitable legal climate for long-term private investments in a given developing country.

Thus, economic development agreements exhibit a superficial similarity with treaties, which is apparent both in their negotiation and drafting. In spite of this formal similarity and, indeed, because economic development agreements are entered into between subjects and

¹⁵See F. Niggemann, "The ICSID Klockner v. Cameroon Award: The Dissenting Opinion", 1 J. Int'l Arb. 331 at p. 337 (1984).

objects of international law, Kronfol has pointed out that they cannot properly be regarded as treaties.¹⁷ Yet, because one party is a sovereign state, economic development agreements are not simply private contractual arrangements. This is why under Cameroonian legislative practice, they are usually negotiated by the executive branch of government but signed only after parliament passes a law authorizing the President of the Republic to do so. Because they vary in their object, type, and legal nature, the extent and scope of discretionary power embedded in them escapes public scrutiny. The only thing about them that is public knowledge is that they are agreements by the state to grant a privilege to conduct an enterprise of some sort for a definite period, which under the Cameroonian Investment Code of 1984 was 15 years.

The placement of an investor under any of schedules A, B and D of the Investment Code depended on the recommendation of the National Investments Commission. Applications under Schedule C were for their part, submitted to the various provincial delegations of trade and industry, and channelled to the Provincial Approvals Committee, which made recommendations to the Governor of the Province concerned for their approval. On the other hand, placement under the other three schedules mentioned above was only possible after the applications had been studied by the National Approvals Committee and then transmitted to the National Investments Commission, which recommended them to the Secretariat General of the Presidency of the Republic. Where the recommendation was favorable for placement under either Schedule A or B, the President of the Republic was empowered to issue a decree granting that status.

In the case of applications under Schedule D, these were forwarded to the Presidency under the same conditions as for the two previous schedules, except that the application had to be also accompanied by an establishment convention drafted by the investor and approved by the Minister in charge of trade and industry. In this case, the President of the Republic had the discretion to approve or not approve the provisions of the establishment convention. But where he approved them, he would then empower the Minister of trade and industry to initial them with the investor, with the provision that its validity shall be subject to its being voted into law by the National Assembly.

Both the National Approvals Committee and the Provincial Approvals Committee, as well as the National Investments Commission, were comprised of senior officials of various ministerial departments and their provincial counterparts. There were no independent members, as such, and their duties were limited to studying application files and making recommendations. However, once an application had been approved, either by the Governor in the case of Schedule C, the President of the Republic in the cases of Schedules A and B, or a law of the National Assembly in the case of Schedule D, the investor had a period of three years within which to realize his investment activity or else the approval instrument would become null and void.

¹⁷See Kronfol, Z.A., *Protection of Foreign Investment*, Leiden, 1972 at p. 42 et seq.

C. The Free Zone Legislation

On December 29, 1989, the National Assembly passed Law No. 89/029 delegating to the President of the Republic the authority to enact by Ordinance a special law on Industrial Free Zones (IFZ). This delegation of power became effective on January 29, 1990 when Ordinance No. 90/001 was passed. The declared objectives of this delegated legislation were threefold. First, it was meant to promote new investments, thus implying that previous legislation had not been very successful in this domain. Secondly, the legislation was geared towards facilitating export development. Lastly, it was supposed to aid in the creation of new jobs for Cameroonians. All of these objectives were salutary and especially so as the economy, which had been hitherto based mainly on the export of primary products, was slowly but steadily gliding into recession.

Cameroon thus fell in line with other countries in Sub-Saharan Africa that found IFZ's attractive, not only because of the economic crisis they were facing but also because of the success the Export Processing Zone had achieved in the Island of Mauritius since 1982. For Cameroon, especially, an added attraction was the country's geographic location, which placed it at a strategic crossroads as an important export market to other African countries.

Be that as it may, there seems no gainsaying the fact that the Free Zone Legislation constituted an innovation on Cameroon's statute books in the economic domain. This is because of the attractiveness of its provisions in matters of infrastructure as well as other incentives for IFZ investments, and also because the time-limit required for obtaining various administrative authorizations required for investing in IFZs was, in principle, shorter than for investments under the investment code. These shorter time-limits seemed to augur well for potential investors since the time saved in obtaining administrative papers through the National Office of Free Trade Zones represented much needed economies in terms of transaction costs.

In summary, the key provisions of the Cameroonian Free Zone Regime were as follows:

- All enterprises that produce goods and services exclusively for export or for sale to buyers resident outside of Cameroon or goods and services that will not be deleterious to the environment can be admitted to the Free Zone Regime. Apart from this, developers and operators of industrial free zones are also considered as free zone enterprises under the law.
- Once a firm has qualified under the Free Zone Regime, it has the liberty either to install itself within an industrial free zone (i.e., an industrial park that has been designated as a Free Zone), or it may become a special industrial free zone in the sense that it installs itself in a factory-specific industrial free zone (for enterprises which must locate near their source of raw materials).

- Incentives and benefits are provided under the Free Zone Regime, including:
 - streamlined administrative procedures with a one-stop shop (the NOIFZ) to issue operating licenses within 30 days of request, as well as on-site customs inspection and immediate transfer of goods and services between ports of embarkation and debarkation;
 - commercial benefits such as exemption from all licenses, authorizations and quota restrictions on imports and exports; exemption from all price and margin controls; selling part of annual productions in the local economy after all relevant customs duties and taxes have been paid;
 - fiscal concessions such as a ten year tax holiday on all taxes; profit/loss carry forward during the tax holiday period and a flat rate of 15% corporate tax on profits beginning in the eleventh year, as well as continued exoneration from all other taxes during existence;
 - financial transactions benefits, which include the right to hold foreign exchange accounts in the domestic banking system, no restrictions on purchase and sell of foreign exchange as well as exemption from all currency export taxes and guaranteed right to transfer abroad all funds earned and invested in Cameroon;
 - labor-related concessions such as exoneration from the Standard Wage Classification Scheme provided for in the Labor Code, right to freely negotiate terms of employment between employers and employees, automatic acquisition of work permits for expatriate staff, and the right to replace the National Social Security scheme with a private package of equal or better benefits; and
 - infrastructural benefits such as the right to install the enterprises' own power generation and telecommunication systems, if they so desire, or pay preferential electricity rates and port charges, as well as be exempt from all rent and tenancy controls and price controls;
 - furthermore, the IFZ legislation provides for enterprises under it to benefit from all the general guarantees laid down in the Investment Code, and permits aggrieved enterprises to be able, at their discretion, to make appeals on unsatisfactory administrative decisions to courts of first instance in Cameroon or the International Arbitration Association.

It is thus noteworthy that the establishment of a free trade zone regime, as a means of increasing employment, diversifying production, and increasing exports seems to have been a well thought out process. In support of this argument is the fact that the implementation

regulations of the Free Zone Ordinance, comprised in Arrêté No. 51/MINDIC/IG1 of December 28, 1990, are not only quite detailed, but leave no room for discretionary interpretation and application. Moreover, these seem to be the only implementing regulations that in all of Cameroon's legal history make it possible for a private entity, the National Office for Industrial Free Zones (NOIFZ), operating as a non-profit, economic-oriented organization, to administer the processes and issue the documents for business entities to operate in the country.

This notwithstanding, a fair amount of public opinion is of the view that though the IFZ regime was designed to be one of the main innovations of Cameroon's investment legislation, this objective has not been achieved. In support of this allegation, they argue that most of the IFZ legal regime, even as written into the Investment Code of 1990, is nebulous. Because of this, they say, the fine institutional set-up, as well as various circulars issued by the Ministry of Trade and Industry, have not had the impact originally expected by the public authorities. Moreover, public authorities had counted on the fact that the American Government through the Overseas Private Investment Corporation (OPIC) and USAID/Cameroon's Program for the Reform of the Private Sector (PREPS) was going to be an essential partner in the Free Zone Regime's flourishing in Cameroon and meeting its objectives. Yet, the effect of Section 599(b) of the U.S. Foreign Assistance Appropriations Act of 1993 has been to dampen, or even halt, those aspirations. In effect, that Section provides that the American Government should not employ funds provided by American tax payers to finance activities whose ultimate effect would be to cause a loss of jobs in the United States. Implicitly, an Export Processing or Free Trade Zone, such as Cameroon's, is an activity that falls into this category, and that is what has led to its demise.

As against this, there is a non-negligible margin of opinion that argues that the Free Zone Regime in Cameroon has been fairly successful. At least nine enterprises have obtained authorization to function as Free Zone Enterprises, out of which at least eight¹⁸ are functional. This success is all the more glaring, the argument continues, if one takes into account not only that there was a considerable gap between the beginning of the legislative framework and the setting up of the institutional framework, but also the fact that any business that dared to strike out as a Free Zone Enterprise did so at a time of political and institutional uncertainty. This was evidenced not only by the "villes mortes" phenomenon but also by the uncertain period following the 1992 Presidential elections. Moreover, comparing Cameroon with other countries that have tried the Free Zone experience, having eight operational enterprises in Cameroon's IFZ Regime that started in May 1992 is not that bad.

¹⁸These eight include at least three wood processing entities and other business concerns denominated as follows: PROLEG, SFID, PLANTECAM-MEDICAM, NOTACAM, SIC-CACAOS, ECAM-PLACAGES, CAMOR, C.P.P.C., and PROPALM-BOIS.

Be that as it may, it seems clear that Cameroon's IFZ Regime has not received the attention it requires--either from Cameroonian Public authorities or from Cameroonian scholars. In spite of its rather detailed implementing regulations, the regime suffers administrative bottlenecks due to the fact most ministerial departments required to cooperate in its functioning do not recognize the competence of the Ministry of Trade and Industry in having adopted subsidiary legislation that they are called upon to obey and execute. While this state of things seems to be a consequence of the ambiguity pointed out earlier about Article 22 of Cameroon's Constitution, it also betrays the lack of a spirit of team-work within the executive branch of government.

D. The 1990 Code

On November 8, 1990, the President of the Republic signed Ordinance No. 90/7 to institute a new investment code in the Republic of Cameroon. It is probably not superfluous to note that this was the third successive code of its kind to be enacted in the country since independence in 1960. The presidential action in this regard was carried out pursuant to a delegation of power made to him by the legislature under Law No. 89/28 of 29 December 1989. The said Law empowered the chief executive of the republic, by way of Ordinance, to amend Law No. 84/3 of 4 July 1984, which instituted the second investment code in the country's history.

Without belaboring the issue of whether the delegated authority was properly exercised within the confines of the mandate defined by Law No. 89/28, the first thing worth remarking is that Ordinance No. 90/7 falls within the purview of the guidelines of the government's program for structural adjustment and economic revival. It thus, together with Ordinance No. 90/001 of 29 January 1990, constitutes the crux of attempts, through legal policy, to liberalize the economy through granting more attractive incentives for productive investments.

But unlike the Ordinance on the Free Zone Regime, whose declared objectives are to promote new investments, facilitate export development and create new jobs for Cameroonians, the Ordinance instituting the new investment code goes much further in terms of objectives. The new Law includes the objectives listed above plus the rationalization of benefits; setting up of a competitive and national industrial fabric better adapted to the promotion of the transfer of appropriate technology; production of competitive goods and services for domestic and export consumption; and the improvement of the quality of living in urban and rural areas through environmental protection and increased budgetary revenues.

The enactment of legislation that creates civil and commercial obligations such as Ordinance No. 90/7 is usually a domain reserved to the legislature under Article 20(2) of the Constitution of 1972. However, as seen earlier, such power to legislate may be specifically delegated to the President of the Republic under Article 21(1), which allows him to legislate by Ordinance for a limited period and for given purposes. But Article 21(2) requires such

pieces of legislation to be tabled before the legislature for ratification, and this was done, in the case of the Ordinance instituting the new investment code, during a session of the National Assembly by Bill No. 486/PJL/AN to ratify Ordinance No. 90/7 of 8 November, 1990 relating to the investment code of Cameroon.

The purpose of analyzing the Code's provisions here is twofold: First, by making a comparison with Law No. 84/03 of July 4, 1984, to highlight what the innovative features of the new investment code are. Secondly, to point out to prospective investors, and others who are interested in the evolution of the legislative process in this area of the law what unanswered questions and other shortcomings still persist in the investment code.

1. The Innovative Features of the New Investment Code

General Provisions

To begin with, it is necessary to note that every piece of legislation has costs and benefits inherent in it. This implies that the relative worth of any law can be assessed either in terms of its anticipated or, where apparent, its actual consequences. This having been noted, the new code seems to a very remarkable degree to be more liberal than the one that it replaced. But the first question that comes to mind is whether this liberalism makes it as attractive and competitive as others of its kind in the Sub-Saharan African region. Perhaps the first attempt in the code to answer this lingering question is to be found in Article 3(1), which accords national treatment to all natural persons and corporate bodies operating economic activities in Cameroon either individually or in partnership. Furthermore, this kind of treatment is accorded irrespective of the legal form taken by such economic activity.

On an *a priori* evaluation, this would seem to be the most liberal provision of the investment code because it seems to permit all and everything, immorality or illegality, notwithstanding. But such a wide interpretation of this provision would to all intents and purposes be wrong because the provisions of the code have to be always read to conform with those of legislation in related matters, especially in the criminal law area.

Be that as it may, it is worth noting that Article 3(2) continues the principle of reciprocity, which was already entrenched in the old code under section 10, by allowing investors of foreign nationality to enjoy the same rights as those granted to Cameroonians in their countries of origin. This right to reciprocal treatment, however, is subjected to the provision of treaties and agreements, either of a bilateral or multilateral nature, concluded between Cameroon and these investors' countries of origin.

Moreover, Article 4 of the new code contains a new kind of provision that is only just gaining ground in Developing Country Investment Codes. This requires that no expropriation, nationalization or requisition of investment property be carried out without a declaration as to its being for a public purpose. What seems all the more encouraging, especially to prospective foreign investors, is the fact that where such expropriation or other

taking of property is deemed necessary, it shall be subject to the prior payment of compensation to the investor that is just, equitable, and based on a proper evaluation of the undertaking by an independent third party. This particular provision, while being a little short of the Hull formula that requires prompt, adequate and effective compensation, should be heartening to foreign investors for at least two reasons. First, it runs counter to the famous Calvo Doctrine, whose effect has often been to sharply curtail the right of a capital-exporting country to intervene on behalf of a national's property or contractual interests through diplomatic protection. Second, and as a corollary of the former, it mitigates the basic sovereign right of the state to expropriate foreign-owned property located within its territorial jurisdiction and specifically makes that right subject to the fulfillment of certain conditions (a declaration that the expropriation is for a public purpose and the prior payment of just and equitable compensation).

Besides, Article 5 of the Ordinance provides for investors in Cameroon to be able not only to enter into, but also to execute and perform any contract that they consider to be in their interest. Apart from the fact that such contract must comply with the laws and regulations in force in the country, the provision seems to be an all-embracing freedom given the parties through delegated legislation, which is almost tantamount to making a contract between parties a legal system of its own. This impression is reinforced by the fact that Article 6 gives investors the freedom to recruit and dismiss staff as they wish, provided they comply with the social and labor legislation in force. The one doubt, however, is whether this provision is compatible with the provisions of the Labor Code in force at the time of passage of the Ordinance. In any case this might not be so given that this provision even conflicts with Articles 20(1)(a); 25, first condition; 28(2); and 32(2), of the Code itself.

The above-stated examples of innovations in the general provisions of the 1990 investment code are reinforced by a provision in Article 9 in respect of guaranteeing non-commercial risks that is quite salutary. This provision is to the effect that non-commercial risks shall be guaranteed in compliance with Article 15 of the treaty instituting the Multilateral Investment Guarantee Agency (MIGA). The MIGA was established as the newest affiliate of the World Bank on April 12, 1988. Its objective is to encourage the flow of investment among its member countries, especially to the developing ones like Cameroon. It achieves this mostly by providing insurance guarantees against non-commercial risks and also carrying out a broad range of consultative and advisory activities.

The scope of the MIGA guarantee coverage is set out in chapter one of the Operational Regulations of the Agency adopted at the initial meeting of its Board of Directors on June 22, 1988. That chapter sets out the scope of MIGA's guarantee program in terms of forms of investment eligible for coverage; relationship between a guarantee recipient and a member country of MIGA; eligible host countries for guaranteed investment; and the types of risk for which cover is offered. It is therefore in the interest of any investor who may desire the benefits of MIGA coverage as stipulated in Article 9 of the Investment Code to consult the Agency's Operational Regulations (which are beyond the scope of this paper) to find out about their eligibility for such coverage.

Schedules

Part III of the Code deals with what are styled as "special schedules." These are the schedules that grant special benefits that investors may want to take advantage of for the benefit of their enterprises. The innovative feature in this regard is not only that the schedules are now styled "Special" but also that they are divided into three broad categories depending on whether an investor is setting up an entirely new enterprise, setting up one that is solely export-oriented, or expanding an already existing enterprise. Further, these investment schedules are now five in number and differ from the four in the previous Investment Code in various respects. First, there is the Basic Schedule, the benefit of which accrues to enterprises that fulfill certain conditions laid down in Article 16, 17 and 20 of the code. This schedule is created to provide a certain number of social benefits that range from the creation of permanent jobs for Cameroonians at the rate of at least one per ten million francs investment by the undertaking, annual export activity of a certain percentage excluding tax, and the use of national natural resources. This schedule is thus open to all potential investors and its various incentives would normally be granted for a period of 8 years, which is split into two phases: a three-year period which is considered as the establishment phase of the project and entitles the undertaking to the benefits of Articles 21 and 22; and a five-year period considered as the operational phase that entitles the project to the benefits of Article 23 and is non-renewable.

What seems unclear is whether this specific reference to a non-renewable period of five years in the operational phase implies that the three-year period in the establishment phase is renewable. This is an issue that needed to be specifically addressed in the implementing regulations of the code. The same implementing regulations also needed to more specifically address the simplified system of administrative authorization to which enterprises under this schedule are entitled as of right under Article 24.

Second, there is the small and medium-size undertakings schedule, which already existed under the old Investment Code. There seems to be no specific reference as to whether enterprises that were created under the similar schedule in the old Investment Code would continue to have the same status. However, to be eligible for this schedule, an enterprise must also fulfill the general conditions of Articles 16 and 17. It must further be able to create permanent jobs for Cameroonians at the rate of at least one per five million francs investment; have invested an amount less than or equal to 1,500,000,000 FCFA; and at least 35% of its equity must be owned by Cameroonians.

What is important about this provision is the fact that, recognizing the need for such micro-economic decisions to be left to entrepreneurs, and Cameroon's lack of them, the share-ownership requirement for Cameroonians in small and medium-size enterprises has been reduced to 35% rather than 65% under section 26 of the former code. This can only mean a willingness on the part of public authorities to encourage productive joint ventures between Cameroonians and foreigners. Management and control of such ventures would thus be a matter of internal regulation within the entity created, and decided upon as the respective

partners see fit. However, what is necessary to note is that once an undertaking qualifies as a small and medium-size undertaking under this schedule, it is entitled to most of the benefits of the previous schedule (Basic Schedule) for a period of 3 years in the establishment phase and 7 years in the operational phase. Thus its incentives accrue for a total period of 10 years.

Third is the Strategic Undertakings Schedule. Although the issue is not expressly articulated in the terms of the code, this schedule would seem to approximate schedule D of the former code because undertakings under it are eligible for signing an agreement with the State. In any case, to be eligible as an undertaking under this schedule, an enterprise must fulfill one of the conditions of Article 16, and it must be one that is considered to be "strategic" for the country's Industrial Pilot Project. The term strategic is not defined, but it should normally include enterprises in the mining and natural resources sector of the economy as well as those engaged in research and technological development. Such enterprises must also fulfill one of the two conditions laid down in Article 28(1) as well as the one in Article 28(2) with regard to the creation of permanent jobs for Cameroonians at the rate of at least one per investment of twenty million francs CFA. Benefits under this schedule accrue for a total period of 17 years.

The fourth schedule is the Free Trade Zone Schedule. Undertakings eligible for it must be exclusively export-oriented since the Free Trade Zone is a "Special Economic Activity Zone."

The fifth schedule is the Reinvestment Schedule, which has been introduced to sustain the existing industrial fabric of Cameroon with a view to expanding it. An undertaking is eligible for this schedule when it fulfills both the general conditions outlined in Articles 17 and 26 and the specific conditions detailed under Article 32. What is more, an undertaking under this schedule is entitled to certain benefits for a total period of 3 years both under Article 22 (a very ambiguous provision in the English text of the statute) and Article 33.

Penalties and Settlement of Disputes

This sub-heading falls under Part IV of the Code, which deals with Follow-up and Control Procedures as well as Penalties and Dispute Settlement. This replaces Parts IV and V of the old Code, which dealt with Offenses and Penalties, respectively. The remarkable things about the sub-heading are found in Articles 43, 45 and 46. To begin with, Article 43 sets up a procedure for implementing penalties for the non-respect of conditions that are imposed on undertakings under the provisions of the statute through the approval of documents for various schedules. This procedure should normally apply according to the dictates of Cameroonian municipal law, as rightly provided for in Article 43(1). However, Article 43(2) specifically provides that the preceding provision will not apply to particular undertakings which chose a dispute settlement mechanism under Article 45.

The effect of this is that Article 43(2) seems to subject municipal law to any choice of law, or even forum, that may be made in the approval document for an undertaking. This means that an investor may by contract with the public authorities, through the approval document, oust both the application of local law and the intervention of the local courts. If this interpretation is correct, it may have the impact of encouraging joint ventures, and even private financing for government projects, because there would be no fear in the investor's mind that concepts such as sovereign immunity, act of state, etc., may later be invoked to frustrate the agreement.

Furthermore, Article 45 provides a novel dispute settlement mechanism that is almost tantamount to the abdication of sovereignty by a State in dispute settlement issues. Article 45(1) in particular is quite salutary in that it does not restrict the subject-matter of the dispute which shall "...be conclusively settled in accordance with an arbitration or conciliation procedure where an undertaking cannot amicably settle such dispute with the State." Also, the article makes provision for a variety of forums from which the parties can make a choice for such dispute settlement. It is true, of course, that alternative dispute settlement mechanisms have not been a bone of contention between the Cameroonian State and investors, as they have been elsewhere. This is clearly evidenced by *KLOCKNER et al. v. UNITED REPUBLIC OF CAMEROON*, which has been going on at the International Centre for the Settlement of Investment Disputes (ICSID) since April 10, 1981. But it is quite encouraging to investors that these dispute settlement mechanisms have now been expressly provided for within the confines of the Investment Code without any discrimination between the rights of foreign and local investors to use them. This is so provided, however, that a choice of one of these dispute settlement mechanisms is made by the investor either at the time of setting up his enterprise or in the application for approval of that enterprise.

Be that as it may, the most important innovation under this rubric is the redress that is now specifically provided to investors under Article 46 for administrative excesses. It is probably common knowledge that such excesses have hitherto been the bane of many an investor wishing to invest in Cameroon. It is thus quite encouraging that the Code provides a very simple procedure for dealing with them. First the investor has to engage an amicable procedure for conciliation and then only appeal to the Administrative Chamber of the Supreme Court when such process is exhausted without satisfaction. It would seem, therefore, that a decision on an appeal to the Chamber finally settles the issue, no matter how it turns out.

Briefly, these are the innovations that stand out from the Investment Code promulgated by Ordinance No. 90/7 of 8 November 1990. But this comment would be unbalanced without an attempt to point out some flaws that still exist in the text, both in terms of style and substance.

2. *The Shortcomings of the Code*

The shortcomings of the Code are mostly stylistic. To begin with, it seems regrettable that there is no definition section in the Code that would give some guidance on such issues as how an enterprise is defined as a Cameroonian or foreign national. Also, there seems to be a necessity for some clarification to be made on certain issues. For example, Article 17 provides that "any undertaking seeking to be granted the benefits of one of the schedules provided for by this Ordinance must comply with all the laws and regulations that apply to this Ordinance." It seems unclear what all such laws and regulations that apply to the Ordinance are. The question, therefore, on the minds of most investors is whether there is some kind of schedule to the Ordinance or its implementing regulations specifying them or whether this refers to the whole panoply of Cameroonian Law, or what? This is surely one issue that may to some extent impact on the success of this piece of legislation, given that a risk-averse investor may not be willing to invest under the Ordinance without knowing exactly what other legislation binds him.

Furthermore, some stylistic flaws exist, as for example in Article 18, which obscures the meaning of the terms of the statute. That Article states that an enterprise may be placed under one of the schedules of the Ordinance by regulation on the basis of an approval application, and so forth. The doubt that this engenders is whether reference is being made to an application for approval or an approval application and if the latter, whether there is any difference between it and the approval document mentioned in the next article. This stylistic ambiguity is continued in Article 22, which appears, to all intents and purposes, to be the most undecipherable provision of the statute. What, for instance, is meant by a reduction of a joint and several guarantee? That article which in the French text reads "Il est donné mainlevée des montants cautionnés ou des cautions fournies à la fin de la période d'installation de l'entreprise dans les conditions prévues aux articles 36 ci-dessous" is so poorly translated that one gets the impression from the English text that the guarantees would be made, rather than refunded, at the end of the establishment phase.

On the substantive side, there seem to be quite a number of lacunae that may be pointed out, but this paper will limit itself to four. To begin with, the Code totally ignores the fact that by their very nature, some investments cannot benefit from most of its incentives until several years after their establishment. This is especially true of large agricultural and forestry projects, which very often do not become operational till after five or six years from their inception. This implies, therefore, that an establishment phase of three years, such as is applied across the board to all the schedules of the Code, excepting probably the reinvestment schedule is definitely misguided, especially in the case of agro-industries. This is because until produce can be grown by such undertakings, there would be nothing objective to show that the enterprise is established and therefore nothing on which the operation of Articles 36 and 37 can be based.

As a corollary of this, the capitalization requirement of 1,500,000,000 FCFA for undertakings under the small and medium-size schedule of the Code seems to be more draconian than in its predecessor. However, the provision itself as contained in Article 25 envisages investments of less than or equal to that amount. This means, probably, that to qualify as an enterprise under that schedule an investor may invest anything from a *de minimis* amount to the upper limit of capital, which is 1,500 million FCFA. Given an economic crisis characterized by liquidity shortfalls and limits on bank lending, this interpretation would appear to be the right one. But this cannot, however, be confirmed, inasmuch as no precision was brought to bear on this provision in the implementing regulations of the Code. It should be noted that flexibility in the interpretation of that provision would be extremely important to investors given the circumstances.

Another significant substantive flaw in the Code is the fact that there is a bland attempt to alleviate the rigors of unemployment by requiring enterprises under every schedule to create permanent jobs for Cameroonians. This attempt at creating employment through legislation is flawed for at least two reasons. First, it seems to go against, and contradict, both the letter and spirit of Article 6 of the Code. Second, although the legislation merely requires that at least one permanent job be created for a Cameroonian for a certain quotient of investment, it says nothing about the quality of that job. It would thus seem to be quite arguable that each time an investor qualified for the Basic Schedule of the Code, for instance, creates a job for a sweeper, gardener, or other such unskilled employee per 10 million FCFA of new investment, such an investor has fulfilled the terms of the Ordinance. However, this argument may turn out to be quite specious when it is considered that the State is the prime object of economic power, and in all matters of social planning remedial action lies with it. In other words, the fox is powerful in the management of the coop and the chickens must look to it for redress.

Yet another substantive issue that does not seem to have been satisfactorily addressed by the Ordinance is the stable tax schemes that have been customarily provided in Cameroonian investment legislation since independence in order to attract foreign capital. That practice, which is continued in Article 50(1) of the new Code, without limit as to time, seems to go against all objective economic reason. This is because, as has been pointed out, such tax privileges, which are really government expenditures, do tend to favor the foreign fisc more than they do the foreign investor, whom they may be intended to attract. This is especially so for foreign investors whose home countries have enacted a system of tax credits for taxes paid abroad.

Overall, the basic problem with the investment legislation is that the guarantees in it rely on the benevolence of the executive. If these rights can be implemented simply by writing a decree, it is also possible to suspend them with the stroke of a pen. The fact that a powerful executive issues a law does not give the investor the certainty that it is going to be enforced. Credibility cannot be installed by decree. A mere declaration does not overcome institutional uncertainty. Investors need a credible commitment through predetermined

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safeguards, which are not there. And this is especially so because of the lack of well-reasoned, certain and predictable jurisprudential rules to which reference can be made.

Thus, the economic reforms embodied in such measures require a framework of up-to-date, state-of-the-art laws and regulations relating to real property, company law, secured transactions, contracts and competition law. All these are ingredients of an enabling environment that attracts investors and investment activity. In this regard, laws can be described rightly as either good, bad, or indifferent. And although good laws and legal institutions are difficult to describe in the abstract, the way investors relate to the rules governing investment and commercial relations in any given context may permit us to determine how good or bad these institutions are.

Economists have used such phrases as "unsystematic risk" to describe extra-legal factors that impact investment decisions. Though in general this perception reflects an attempt at balancing such factors as the return on certain types of investment, fair and efficient competition, and the degree of control on labor practices, it also reflects their perception of the impact of operational, authoritative, and constitutional rules. Given the level of guarantees and incentives included in Cameroon's successive investment codes, it is reasonable to assume that factors other than these legal rules have a determining effect on the wariness of investors to stake their investments in the economy.

IV. CONCLUSIONS

The institutional arrangements in Cameroon present a real hazard to any investor. The modification in the investment codes without an institutional arrangement to support application and enforcement of the code has led to the type of outcomes the nation is experiencing. There is too much institutional uncertainty. The investment code has been updated and modernized, with most of the rigidities removed, along with facilities being provided under the IFZ regime, but the intended investment boom has not materialized. This is a very disillusioning result for the government. It symbolizes the fact that quick-fix analyses and solutions often miss the deeper causes of the problem: lack of credibility. Potential investors have acted completely rationally even in a strictly neo-classical sense.

Signing a piece of paper does not eliminate the deeper institutional problems of a country. Investors believe that the government is acting in bad faith and is not very committed to what is on paper. The decrees and laws can be changed at any time, as the executive sees fit. The government (executive) has almost uncontrolled power. Individuals who are still interested in investing are retreating into informal personal relation networks¹⁹ to minimize the influence of this potential source of sudden change.

The main cause of institutional uncertainty in Cameroon is that there are no checks and balances. Instead of the three balancing powers, Cameroon has a very powerful executive that can change laws and enforcement at will. In effect, the judiciary is incapable of monitoring and checking executive power and action. On its part, the legislature, which is practically an extension of the executive, cannot efficiently protest against its discretionary power. And neither can the electorate. In sum, the executive can do virtually whatever it likes, and the only reaction of investors is to try to escape by submerging themselves in the informal sector or, for those who can, by leaving the country.

Theoretically, a democracy is a mechanism designed to bind the rulers to the will of the people by giving the people the right to elect people they choose. Ideally the parliament should be the forum where rule-making takes place, in a legislative process that guarantees that rule-setting reflects the needs and wishes of society. In reality, the parliament is very weak. It is a one-party parliament of the executive, with the president as head of the party and head of state. The multiplicity of discretionary powers and the inability of bureaucracy to function properly lead to dysfunctioning institutions. Bureaucrats reap a lot of discretionary power, which they use for rent seeking and the selective application of rules.

¹⁹This relation functions mostly through rent-seeking, encouraged by investors.

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Institutions function best when a large majority thinks rules of the game are just and establish fair conditions. Broadly based social consensus is the best foundation for a well-functioning society. In Cameroon, a situation of social conflict, not consensus, prevails. For these reasons, it is no surprise that investors are fleeing the country, and the country is sinking into an economic abyss.

The government's objective in providing rules governing investments is to promote economic growth and development. Economic growth provides the government with a wider base for revenue collection to meet its expenditures. For private investors, the primary objective is profit and sometimes company growth, except for private nonprofit organizations that invest to improve the well-being of citizens.

Over the years, there have been company failures, and recently, a rapidly contracting rate of investments, as investors have lost confidence. The rules gave the state too much authority and administrative discretion, which has been used very abusively. Over the past three years, the monolithic socio-political situation has exacerbated the situation and sent investors looking elsewhere. The rules have tended to increase the transaction costs of investments, and with a collapsed economy, it is not possible to pass on the additional costs to consumers. Investors therefore prefer to pull out. Cameroonian investors with no possibilities of pulling out enter the informal sector. The recent devaluation of the franc CFA is likely to cause further economic reticence.

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RULES GOVERNING CONTRACTS IN CAMEROON

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I. INTRODUCTION

Institutional Studies have become very important in most developing countries (LDCs) because of the dismal performance of their economies. According to North (1992) "Institutions and the way they evolve shape economic performance. Together with technology employed, they determine the cost of transacting and producing they structure incentives in exchange, whether political, social or economic." In fact, institutional arrangements pervade the structure and functioning of the whole economy. The pervasive effect of institutions, therefore, calls for analysis, especially in a country such as Cameroon, where institutional research has had a minimal role in the formulation of economic policy. Most policies have been formulated bureaucratically at different levels of government without an in-depth analysis of their impact on the performance of the economy and without public consensus. Consequently, the results obtained are, in many cases, counterintentional.

Sustainable economic growth has been the single most important objective of all countries. In order to achieve this goal, the Cameroonian authorities have, since independence, adopted a state-led approach to economic planning and management. Policies were designed and adopted bureaucratically and passed down to the different economic sectors for implementation. The adverse effects of these policies were not immediately felt because the early period of independence coincided with a period of general economic growth and relative prosperity. However, since the 1980s the dismal performance of the economy in general and the public sector in particular has led to disenchantment over continued government control and ownership of productive activities. Disengagement from major economic activities by the state in favor of a more market oriented economy became imperative. However, for market forces to thrive, it is important to establish the necessary institutional framework to develop and sustain them. The institutional framework creates the necessary incentives that encourage or discourage important economic activities and decisions, especially in the domain of investment, which is an important ingredient in the development and growth process of a nation.

Most LDCs have depended substantially on foreign investment. To attract and maintain the level of investment capable of sustaining continuous economic growth, certain conditions, one of the most important of which is the incentive structure, must be put in place. One such incentive structure is the contracting system.

The contracting system must be able to support and control the multitude of agreements that collectively make up the economy. To have a stable economy, the law must guarantee the freedom of individuals and the protection of property--real, personal, and intellectual. Contract law is the link between investors and resources. Investors like to know well in advance the rules governing the formation and performance of contracts and whether these rules are sufficiently certain to protect their investments. Although contract law operates mostly in the context of dispute resolution in courts, it is also of great importance in

dispute prevention by empowering the parties to commit themselves to legally enforceable agreements. This latter aspect raises the issue of proper contract planning which, as a built-in dispute avoidance measure, requires an understanding of the prevailing contractual rules.

II. CONTRACTUAL ARRANGEMENTS IN CAMEROON

Generally speaking, Cameroon's contract law is based on the principle of freedom of contract in the sense that it does not restrict the terms on which parties may contract. For instance, the Preamble of the Constitution asserts the right guaranteed by law to everyone to use, enjoy, and dispose of property. This principle of freedom of contract is still largely true, although substantial legislative and judicial inroads have considerably restricted its scope.

Contracts may be either formal or informal and fall within either the public or private sectors. While private sector contracts tend to be either formal or informal, public sector contracts are usually formal although some element of informality is now emerging here too because of the deteriorating economic situation.

A. Informal Contracts

Informal contracts in contradistinction to formal contracts can be described as contracts that cover those areas of economic activity that, for one reason or another, operate outside the applicable rules and regulations. This includes contracts relating to activities prohibited by law.

If the structure of the Cameroonian economy made the existence of the informal sector inevitable, its rapid growth in the last 8 years is a reflection of the loss of confidence of economic actors in legal institutions caused by malfunctioning rules in general and the worsening economic situation in particular.

Informal contractual arrangements are usually made by word of mouth, but they can be partly by word of mouth and partly written or entirely in writing. In any case, informal contracts can be considered either structured or unstructured.

1. Structured Informal Contracts

Structured informal contracts, though not governed by any written laws, are to a large extent subject to the customary practices and traditional usages of the area in which the contract is concluded. These contracts vary in form and content from tribe to tribe and can be concluded either between individuals or between individuals and groups within a given traditional and cultural setting.

Disputes relating to the interpretation or application of such contracts are usually brought before and settled by either the traditional council or the chief in accordance with the prevailing customary practices and traditional usages. In earlier times, the decision of the village council or the chief as ultimate arbiter was final and binding. There is now the possibility of an appeal to customary courts and eventually to modern courts, such as the Court of Appeals, although the basis of decision will still be the local customary practice and usage.

The continuous application of customary practices and usage was recognized by section 27 of the Southern Cameroons High Court Law of 1955. This provision, however, does not play a very significant role in informal contractual arrangements today because customary practices and usages apply only to persons traditionally subject to them and who live in rural areas and follow their traditional way of life. Structural informal contracts are thus restricted to rural areas, leaving out urban and semi-urban areas, which are growing. Another reason is that customary practices and usages will only be recognized and enforced by a court of law if they are not repugnant to natural justice, equity and good conscience and are not incompatible with any law in force, nor contrary to public policy (Section 27(1) of the Southern Cameroons High Court Law 1955).

The effect of intervention by modern courts is to transform the informal contractual arrangement into a formal arrangement, which is then enforced in accordance with existing laws provided that the repugnancy test is satisfied.

2. Unstructured Informal Contracts

Unstructured informal contracts are associated with urban and semi-urban communities where the population is more heterogeneous and cosmopolitan. Informal contractual interaction between members of such a community is dictated by such factors as professional affinity, geographical propinquity, and friendship. Unstructured informal contracts operate in the context of associations that are not legally registered and act essentially as self-help mutual benefit associations.

The best illustration of this occurs in the financial sector of the Cameroonian economy, where the "njangis" or "tontines", operating informally, are rapidly taking over some of the functions of banks (Sikod, 1990). "Njangis" may take several forms, as influenced by the social and financial considerations that led to their formation. They act as an alternative system for saving money from which loans on favorable terms can be obtained, a forum for meeting friends and exchanging ideas, and as a solidarity group to assist one another in times of trouble. Within the framework of such an association, three types of contracts can be identified: guaranteed contracts based on trust; contracts guaranteed through a third party; and non-guaranteed contracts.

A guaranteed contract based on trust arises when a member of a "njangi" obtains a loan without providing the normal security or collateral that a bank would require. The arrangement is usually by word of mouth, but sometimes the terms may be put down in writing. Such an arrangement appears risky but works quite well because it is based on mutual trust and the personal reputation and good standing of the member in the group. Default will lead to the member's expulsion, and information about this will quickly spread and make it difficult for him to join another group. Generally, the personal ties between the members make for a very low rate of default. However, these interpersonal exchanges, because they are based on personal knowledge and contact, reduce the amount that can be loaned as well as the number of possible transaction partners.

In the second type, contracts guaranteed through a third party a member guarantees a loan either by pledging his savings or issuing post-dated checks to cover the entire amount and interest, or by getting another member to pledge his savings to guarantee repayment. Mutual trust and personal knowledge continues to be important here. It must, however, be pointed out that a check, even if it is certified, has ceased to be a reliable and safe means of securing a loan. Too often desperate debtors whose salaries are paid through the banks obtain the complicity of corrupt bank officials to withdraw the funds from an account against which a certified check has been issued, thereby frustrating payment. Although it remains a criminal offense punishable by up to 2 years imprisonment under section 253 of the Penal Code to issue checks without cover, judicial indifference, due partly to corruption and partly to widespread abuse of this provision, has made prosecutions on this ground alone very rare. The main drawback of this type, of unstructured informal contract as of the first type, is that the amounts that can be given out as loans are very limited. This explains why informal economic activities, although thriving, remain small-scale.

The last type, non-guaranteed loans, carry a high risk of default because of the absence or insufficiency of the guarantee provided. A common example is the unregistered money lender who gives a loan to a desperate businessman at extortionary rates. Such contracts, being "ex facie" illegal, are unenforceable in any court of law but such money lenders usually have the ability to enforce repayment by physical violence and intimidation.

Quite apart from the structured and unstructured contracts considered above, there are other varieties of informal contracts covering almost every aspect of economic life in Cameroon. In the domain of employment, many workers are informally recruited without regard to the procedures laid down by the Labour Code. As a consequence, contractual arrangements with respect to wages and hours of service do not conform to those required by law.

When, as a result of its informality a contract is illegal because it violates the law or rules and regulations made by the President, ministers or other administrative authorities, or where the contract is contrary to public policy, the principle "ex turpi causa non oritur actio" applies. This means that the contract is void "ab initio" and treated in law as if it had never been made at all, and neither party will be allowed to seek any redress before the court (Furmston et al., 1986; Treitel, 1987).

The common feature of all informal contractual arrangements is their strong dependency on interpersonal relationships, leading to a reduced scale of business operations. Unstructured informal contracts are now increasing as a substitute for the large-scale, formal contractual interactions needed to stimulate employment and revive the economy. The informal sector is stimulated by growing unemployment and the minimum-wage requirements of the government.

B. Formal Contracts

Formal contracts can be described as those concluded in accordance with and operating within the applicable rules and regulations. Cameroon law, obviously influenced by the English Common law and the French Civil law, distinguishes between general rules of contract, which apply to all formal contracts generally, and special rules developed to regulate particular types of formal contracts. Though some general rules apply, contracts governed by special rules have come to be viewed as separate legal subjects on their own. Examples of formal contracts regulated by special rules are employment contracts, public sector contracts, and insurance contracts.

1. General Rules Applicable to Formal Contracts

As a result of its colonial past, Cameroon has a bi-jural legal system in which received English Common law applicable in the Anglophone provinces (former West Cameroons) and received French Civil Law applicable in the Francophone provinces (former East Cameroon) co-exist. The applicable general rules of formal contracts reflect this judicial division.

Received English Common law applies on the basis of section 11 of the Southern Cameroons High Court Law of 1955. This Act renders the Common law, doctrines of Equity, and statutes of general application that were in force in England on 1 January 1900, applicable. The French Civil Code, on the other hand, applies by virtue of a French decree of 22 May 1922, which extended to Cameroon the laws and decrees promulgated by France in French Equatorial Africa prior to 1 January 1924. As a result, the general rules applicable in any formal contractual transaction in Cameroon will depend, at least in principle, on which of the two legal districts the contract was made in, unless there is an express provision to the contrary. Despite the trend towards uniform laws, there is yet no uniform Cameroonian legislation in this area.

2. *Special Rules Applicable to Particular Types of Formal Contracts*

Agency contracts, contracts for sale of goods, employment contracts and contracts for the carriage of goods are usually classified as formal contracts subject to special rules. Also included in this category are public sector contracts, while private sector contracts are regulated by the ordinary general rules of contract. Unlike the general contractual rules, which continue to depend on received foreign laws, the Cameroon legislature has intervened in several areas with laws regulating employment, insurance, and public sector contracts.

Public sector contracts are governed by decree No. 86-903 of 19 July 1986. According to Article (1) of this decree:

"A public sector contract is a contract concluded under the conditions laid down in this decree by which a person who is governed by either public or private law enters into an agreement with the state, a local authority, a public establishment or a semi-public body in which the state holds a majority of the shares to carry out any work on its behalf or under its supervision or to supply it with goods or services in return for a sum of money."

These contracts may give rise, according to Article 7, to sub-contracts, joint contracts, and subsidiary orders. Contracts concluded with para-statals such as the National Electricity Corporation (SONEL), the National Water Corporation (SNEC), and the National Investment Corporation (SNI) fall under public sector contracts. These public sector contracts, are to be distinguished from private sector contracts, which, as indicated earlier, are almost entirely regulated by received foreign laws and consist mainly of commercial agreements between business and business, business and employee, or business and consumer.

The 1986 decree appears to create a regime of standard terms on which the government or, following the rather broad definition in section 1(1), any of its affiliated bodies is prepared to contract. It gives them the power unilaterally to impose penalties for what they perceive as delays (Articles 139-140) and to terminate the contract (Articles 141-142) without recourse to the courts. When disputes do arise, in the absence of any International Conventions or agreements to the contrary, only the Supreme Court in Yaounde is competent to decide the issue. This can be quite expensive and inconvenient for a small provincial economic operator who contracted on terms virtually imposed by the 1986 decree.

Employment contracts are based on a new Labour Code instituted by law No. 92-007 of 14 August 1992, replacing the 1974 Labour Code based on Law No. 74/14 of 27 November 1974. The 1974 Code was considered to be too protective of workers. Although it worked reasonably well during the period of prosperity, it became unsuitable in a period of recession, when many businesses were closing down. As a measure to check further closures, redundancies and resulting unemployment, the 1992 code was made more flexible and adaptable to the prevailing situation in three important areas: the terms of the employment contract, working conditions, and conditions of dismissal.

Employment contracts have been liberalized in two ways. First, they have been diversified, with new more flexible categories introduced. In addition to the contracts of specified and unspecified duration inherited from the 1974 code (Sections 25(1) 2(2) of new Code), three forms of employment contracts were introduced. These are, contracts for temporary jobs (section 25 (4) (a), contracts for occasional jobs (section 25(4)(b)), and contracts for seasonal jobs (section 25(4)(c)). It is not as if such contracts never existed. They did, but were never formally contemplated and regulated by the Labour Code. This is one of the recent moves toward regulating and controlling the spread of the informal sector, which previously had at best been ignored but was often actively discriminated against with measures ranging from harassment to extortion by both police and the administration. Informals are now acknowledged, not only as an important source of revenue, but also as a crucial part of the economic recovery strategy. Second, the administrative formalities for employment contracts have been considerably reduced. Under section 27(1) every contract of employment of specified duration exceeding 3 months or requiring the worker to live away from his usual place of residence must simply be in writing with only a copy sent to the Labour Inspector of the area. This is in contrast to the 1974 code, which also required the endorsement of the Minister of Labour with the attendant administrative bottlenecks. For a contract involving a foreign worker, although the Minister of labour's endorsement is still required, his silence after two months following the reception of the application is deemed an endorsement (Section 27(2) and (4)).

Extensive changes were also introduced to make working conditions more flexible. Professional categorization and wages were left open for negotiations by mutual or collective agreements (Section 61-66).

Furthermore, wages can now be negotiated and paid either in cash or by way of bonuses (Sect. 61(1) and 65(d)). A novel provision contemplates special negotiations that could be undertaken by an employer in economic difficulties and his employees in the presence of a Labour Inspector. Such discussions could lead to a reduction of working hours, shift work, part-time work, lay-offs, review of various allowances and benefits, and even wage cuts (Section 40(3)). According to Section 42(2) the contract of employment can be amended at any time at the initiative of either party.

Finally, the conditions for terminating the contract of employment were made more flexible. In this regard, Section 39 limits the amount to be paid as damages for wrongful termination to a month's salary per year of service with a minimum of 3 months salary. Where the worker was lawfully dismissed, but the required procedures were not respected, the amount of severance pay shall not exceed one month's salary. By limiting the amount payable as damages, the 1992 code makes it much easier for a worker to be dismissed without the risk of astronomical damages being awarded him, as was the case under the 1974 Code.

It is abundantly clear that, in desperately trying to keep business activities going, rather extreme measures have been introduced that potentially leave the worker completely at the mercy of the employer. Not much thought was given to providing some countervailing measures to check abuses. Employers may now freely determine how much to pay workers and may dismiss them at their convenience without too much fear of litigation. Even if an employee were to win a case of unfair dismissal, the damages that he is likely to receive under the new code are unlikely to make up for the costs and inconveniences of litigation.

Insurance matters are subject to Ordinance No. 85/003 of August 31, 1985, which concentrates on defining classes of insurance companies allowed to operate and the scope of insurable risk covered (Articles 11-30 and 32). It also confers wide regulatory powers over these companies on the state. However, Articles 52-54 can be interpreted as reserving disputes concerning contracts between the insurance companies and private individuals for determination in accordance with the received English Common law and French Civil law. There is scope for uncertainty in the applicable rules as too many issues are left for determination by subsequent rules and regulations (Articles 41-44). The state can intervene at any stage, according to Article 61, to impose contractual clauses or to fix the rate for certain operations. Such uncertainty creates problems of application and enforcement.

III. THE ENFORCEMENT OF CONTRACTUAL AGREEMENTS

The mere existence of contractual rules and regulations does not provide, on its own, enough incentive to enter into contractual relationships. There must in addition be a satisfactory and efficient enforcement mechanism in place.

The enforcement of contractual agreements in Cameroon gives rise to a lot of problems because the relevant applicable rules are sometimes complicated, contradictory, and so unpredictable in application that an economic operator may find it difficult to know the law that applies in a given transaction. The resulting institutional uncertainty may not affect all economic operators to the same degree. Smaller actors are increasingly moving into the informal sector where they can more easily resort to self-help, private enforcement measures with the attendant insecurity.

Institutional uncertainty manifests itself in three main forms:

- uncertainty in applicable contractual rules
- unpredictable legal interpretation, and
- an unreliable judiciary.

A. Uncertainty of Applicable Contractual Rules

Cameroon continues to be haunted by its complex bi-jural legal heritage. This is particularly so with respect to areas where there are no uniform national laws applicable throughout the country as in the case of rules governing contracts generally or some specific areas of contracts, such as contracts for the sale of goods, contracts for the sale of land, and agency contracts. The applicable law depends on the legal district in which the matter is brought -- received English common law in the Anglophone provinces and received French Civil law in the Francophone provinces. A contracting party, especially a foreign investor, must have the knowledge and foresight to determine which of these laws will apply in his dealing, when his business dealings cover both legal districts. Even this does not necessarily resolve the uncertainty.

In the Anglophone provinces, the enabling text, section 11 of the Southern Cameroons High Court Law of 1955, uses rather vague and confusing language. There continues to be conflicting opinion among scholars and judges as to whether the limiting date of 1st January 1900 applies only to statutes of general application or extends also to the common law and doctrines of Equity (Fombad, 1991). Even more problematic is the question whether post-1900 developments in the common law and Equity are included. Consequently, it is impossible for a contracting party, before deciding whether or not to risk the expenses and inconveniences of litigation, to predict with a reasonable degree of certainty the likely interpretation a judge will adopt.

Matters may be further complicated when a contract is concluded, for example, in Bamenda (which is in the Anglophone province where received English common law applies), and is to be executed in Yaounde (which is in the Francophone provinces where received French civil law applies), and during its conclusion none of the parties consider the question of applicable law. When a dispute arises, is it the received English common law of an indeterminable date to be applied on the basis of Bamenda being the "Lex loci contractus" or received French Civil law because Yaounde is the "Lex loci solutionis"? What weight will be given to such factors as both parties being Anglophone, or one of them being Anglophone and the other Francophone, or the registered place of business of one or both parties being in one or the other legal district? Some of these difficulties can be overcome as more uniform legislation applicable through the national territory is formulated. This, however, will create its own problems of divergent interpretation.

B. Unpredictable Legal Interpretation

Examples of uniform laws relating to contracts mentioned earlier are the Labour Code of 1992 and the 1986 decree on regulations governing public sector contracts. In other areas, there are the Civil Status Registration Ordinance of 1981 and the Penal Code of 1965-1967. A close analysis of these texts shows that the process of making uniform laws for the whole country is hasty, haphazard, and influenced more by short-term political and sectional expediency than by an objective, scientifically motivated search for sound laws, well adjusted and adapted to our local conditions (Fombad, 1991). The Labour Code, especially the 1974 text, was based substantially on a similar French Code with a few English common law notions added here and there to give some semblance of harmonization of two legal systems.

In the final analysis, whether as a result of poor translation or inability to get exact English legal equivalents for French legal concepts, it is common to find the same provision in the official English and French texts saying different things. For instance, in the 1986 decree on public sector contracts, it is difficult to determine the meaning of Article 10(1), which states: "The price of a contract shall remunerate the contract holder responsible for providing or the beneficiary body." Other similar examples are found in Articles 2(1), 4(c), 7(1) and 11(1). Because the English and French texts are equally authoritative, an unscrupulous party can capitalize on such errors to escape from his contractual obligations.

Because of some of the fundamental conceptual differences between the common law and the civil law, the formulation of uniform laws does not conclusively resolve all problems of unpredictability. By virtue of his legal training and methods of analysis, an Anglophone judge will not necessarily interpret a uniform law the way a Francophone judge would. A Francophone judge, accustomed to finding the law in codes, in seeking to interpret an obscurely worded legislative enactment feels uninhibited in having recourse to the legislative history, academic writings, opinions of eminent jurists, and even reasoning by analogy. These methods are alien to the Anglophone judge when interpreting the very same text. As a result, the interpretation of a uniform law will depend on the legal district in which it is presented. This difficulty seems to have been anticipated and resolved in the case of disputes concerning public sector contracts, which according to Article 143 of the 1986 decree, can only be brought before the Administrative Bench of the Supreme Court in Yaounde and determined following the principles of administrative law.

C. Unreliable Judiciary

The administration of justice through the courts is today in a pathetic state. Not only is the access to courts expensive, but proceedings are as time-consuming as corruption is rife, and the executive retains wide discretionary powers of intervention.

Having the state play its role as a third party to contracts greatly enhances the range and scope of contracting possibilities and ensures enforcement of the agreed terms. But because in Cameroon the executive not only has the right at any stage to change laws, but also can directly intervene and interrupt legal proceedings in which either state interests or the interest of some politically influential party is at stake, the whole judicial system is put into question. Perhaps the most recent and dramatic illustration of such executive interference, though in a different context, was the refusal by the government to comply with a Bamenda High Court ruling ordering the release of persons detained after the 1992 post-presidential election violence. This was followed by their deportation outside the court's jurisdiction to Yaounde where they were subsequently released at the government's convenience. Such interference is to be expected in a system where there is no judicial independence because the appointment, promotion, transfer and dismissal of judges is at the discretion of the executive. There is no system of checks and balances to control the use of these powers.

Uncertainties in the applicable rules have made the courts an ideal place for bargaining, corruption, and rent seeking. A few powerful individuals have ready access to the courts and can easily influence decisions and cause matters to be left pending for years. In short, the Cameroon judiciary has failed to guarantee that justice not only will be done but manifestly and undoubtedly seen to be done.

IV. EFFECTS ON ECONOMIC OPERATORS

Credible contract rules with predetermined safeguards are crucial factors in attracting investments within an economy. In fact, the contract is the legal cornerstone of all transactions in business and consumer life; it facilitates the exchange of goods and services between individuals and groups in the community. Clearly, precise and consistent rules will enable economic operators to know how best to plan their activities in the knowledge that the rules followed will be binding on those with whom they interact. The institutional uncertainties resulting from unpredictable rules and an unreliable enforcement machinery have combined with the economic crisis to make a speedy recovery and economic growth more difficult. This has manifested itself in several ways.

The most immediate effect is the increasing incidence of informal arrangements. According to recent studies, the informal sector constitutes about 44% of the Gross Domestic Product and is growing every day. In Yaounde, out of a working population of 275,000, about 124,000 are in the informal sector, according to a recent Cameroon Television News Broadcast on the Informal Sector. By evading or avoiding existing rules and regulations, whether fiscal or health, either because of their complexity or sometimes because they appear designed to favor certain interest groups in society, informals reduce the scale of their business activities. Public finances have suffered at a time of strong pressure, both external and internal, on the state treasury. Some hurried but futile attempts, motivated more by reasons of increasing state revenue than anything else, have been made to regulate the informal sector in a series of laws passed in August 1990, followed by decrees of application

of November 1990, to check clandestine transporters and beer parlours. They attempted to liberalize these commercial activities by reducing bureaucratic bottlenecks and the cost of registering such businesses. Enacted without the benefit of sufficient empirical research on the causes and nature of these activities, these palliative measures were insufficient, and they have had little impact by way of encouraging informal operators to move into the formal and legal economy.

Instead they appear to have created a third sector -- the semi-formal sector. Those complying with the new rules enjoy the best of two worlds in the sense that they are not fully formal, and thus subject to high taxes, but neither are they fully informal, and are now subject only to occasional harassments. In the absence of comprehensive research, it is difficult to make a judgment as to whether the informal and the emerging semi-formal sectors undermine national economies or reinforce them. Even without statistics, there is growing evidence that the informal sector is not only thriving but growing. It seems that even if it does not contribute much directly to state coffers, it is nevertheless doing much for the welfare of the society as a whole by keeping many potentially unemployed people active.

Informal contractual arrangements are not limited to private sector contracts, as would have been expected. The government's inability to fulfil its financial obligations under public sector contracts coupled with the cumbersome terms and unsatisfactory enforcement measures has encouraged the emergence of an alternative legal framework. Government ministries and affiliated services, for instance, individual hospitals under the Ministry of Public Health, are now authorized to negotiate directly with economic operators without necessarily complying with the exact terms of the 1986 decree that, in principle, should regulate all such contracts. In so doing, they are able to obtain safeguards that standard-form public sector contracts do not normally provide.

V. REMEDIES AND CONCLUSION

The fundamental objective of any alternative solution must be to check the major causes of the existing institutional uncertainties, especially the excessive discretionary powers possessed by the executive (See Section III, Rule-Making Process, in *Rules Governing Commerce in Cameroon*, by Clement N. Ngwasiri, et al., 1994).

The first step is to determine from the myriad of laws and implementing decrees, orders, rules and regulations which of them applies, and when. As the two legal systems and districts are bound to co-exist as permanent birth marks, it is imperative in the case of the Anglophone provinces to state clearly whether the limiting date for reception of English common law excludes post-1900 developments. It may also be necessary to indicate the extent to which there can be judicial adjustments and modifications that take account of local circumstances.

Differences in conceptual approach and the risk of divergent interpretation should not discourage the formulation in certain legal areas of uniform rules that will be appropriate and work perfectly well in both legal districts. In fact, the legal needs of the community are basically similar on both sides of the legal divide. What is needed is a more scientific, objective, and broad-minded philosophical orientation in the process of making uniform laws for the whole country, dictated solely by the needs of justice and fairness.

The fundamental differences between the common law and the civil law renders the possibility of formulating uniform laws on general rules applicable to all contracts extremely unlikely. This in itself should not be a problem for economic operators. A plurality of laws within a state can no longer be regarded with the same abhorrence that was common a few decades ago. There are now many countries in which one or more legal systems co-exist harmoniously and this has in no way impeded or restricted contractual arrangements between economic operators. Besides, it is quite remarkable the extent to which the civil law systems do in fact reach results similar to the common law.

Ideally, in formulating laws, the interest groups likely to be affected are consulted and closely involved. This is hardly the case in Cameroon. Labour Unions were not involved in the new Labour code and it was virtually forced through the National Assembly without adequate discussion and without parliamentarians being allowed to modify some of its unpopular provisions. Today the code remains controversial and there are already plans to substantially revise it.

There is a more serious problem, which is at the heart of the prevailing institutional instability. It is that the Cameroon National Assembly is too weak. It is hardly in a position to enact laws that reflect the real aspirations or the needs of the citizenry. This is coupled with a judiciary that is virtually without power, under the control of an executive with expansive discretionary powers to change laws and enforce them at will. This inevitably has led to the weakness of checks and balances that can provide a stable and secure climate for investments. That the democratization process will soon take root is the best hope for positive change. An independent judiciary capable of providing impartial and independent decisions and, therefore, guaranteed enforcement of contracts, together with a strong and active National Assembly, would mark a decisive step toward credibility and establish the institutional basis for investment and economic recovery.

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RULES GOVERNING COMMERCE IN CAMEROON

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I. INTRODUCTION

The purpose of this paper is to examine the rules that regulate business activity in Cameroon. It is divided into three parts. In the first, we attempt to describe the country's business environment, that is, the actors and their activities. The first half of part two discusses the rule-making process, from the highest to the lowest level, while the second, concentrates on rules institutional arrangements governing business. The third part tries to trace the patterns of interaction vis-à-vis these rules and assesses their outcomes, namely, their effect on the economy.

II. THE BUSINESS COMMUNITY IN CAMEROON

Business law in Cameroon today is still mostly derived from English and French laws. Unlike a few areas of the law like land, labor and investment legislation, which have been re-enacted since independence even if just to give them a Cameroonian complexion, the bulk of business law is still based on imported laws.

A. Reception of Foreign Laws

Disproportionate parts of the territory known today as Cameroon were administered separately by Britain and France under the League of Nations Mandates system from 1922 and under the United Nations Trusteeship Agreements from 1945. The mandates granted authority to each of the administering authorities, namely, Britain and France, to apply their laws in their respective spheres.¹

English Law

In the case of the British Cameroons, which was administered as part and parcel of Nigeria, Britain applied its Common Law, Equity, and Statutes of general application that had been enacted by the British Parliament up to January 1, 1900. This formula for the reception of English law into Cameroon was re-enacted locally in the same terms in 1954, when British Cameroons became autonomous territory outside Nigeria.² The main piece of company legislation, which thus applied and still applies to the English-speaking areas of Cameroon today, is called the Nigerian Companies Ordinance. It was lifted almost in its entirety from the English Companies Act of 1948, which simply consolidated legislation on Companies enacted between 1862 and 1929.³ To this must be added the English Partnership Act of 1890. Being a pre-1900 statute, it still applies to English-speaking Cameroon today by virtue of the Southern Cameroons (High Court) Law of 1955.

French Law

In the case of French-speaking Cameroon, a Decree of the French government dated May 22, 1924, rendered all its laws in force in French Equatorial Africa by January 1, 1924, applicable in the territory.⁴ So far as the laws governing business activities were concerned, the versions of the *Code Civil* and the *Code de Commerce* in force in French Equatorial Africa on January 1, 1924, constituted French Cameroon's business law. To these must also be added the Law of July 24, 1867, which regulated public companies, *Sociétés Anonymes*, and a Decree of May 14, 1930, which applied the provisions of the Law of March 7, 1925, and had created a new type of company in France called *Société A Responsabilite Limitée* (SARL). It should be mentioned here that the law of 1867 substantially resembled the English companies Act of 1862, having been enacted not long after the conclusion of commercial treaty with England in 1860.⁵ Amendments to the *Code de Commerce* in France were applied in Cameroon by simply publishing them in the *Journal Officiel du Cameroun* (JOC). This was the case, for instance, with article 2, dealing with the liability of persons aged 18 for business contracts, which was regulated in France by Decree of May 17, 1934 and published in the JOC of that year at page 438. This practice was discontinued in 1960 when French-speaking Cameroon became an independent state. The versions of the French *Code Civil* (2281 articles) and the *Code de Commerce* (638 articles) now in application in French-speaking Cameroon are thus the versions that were in force in France in 1960.⁶ Tientcheu is of the opinion that the real cut-off year was 1966, when there were profound legislative reforms in France, since these Codes remained intact until then.⁷ It should be noted that even today, the decisions of French courts in cases heard on any provisions of the codes civil and commercial have a very strong persuasive effect in Cameroonian courts. This legal landscape greatly conditions the types of business organizations that one finds in the territory today.

B. Types of Business Organizations

In the English-speaking areas private companies dominate the scene. There are just a few partnership businesses and virtually no public companies. The few public companies that operate in the territory, such as *Guinness* and *Brasseries du Cameroun*, have their head offices in Douala. In the French-speaking areas the scenario is similar, with more private than public companies, but also with more partnership-type businesses, probably because they are more highly developed under French law. There are three types of partnerships called *Sociétés en Nom Collectif* (SAC), *Sociétés en Commandite Simple* (SACS) and the *Sociétés en Participation* (SP). In the absence of published statistics it is difficult to say how many companies exist in the country. The Ministry of Plan and Regional Development has, however, over 56,000 companies currently registered with them.

The remainder of corporate entities engaged in business in the country are state corporations, which numbered over 100 in 1988. Other forms of activity operated for economic gain are in the services sector. The operators are liberal professionals such as barristers, surgeons, veterinarians, pharmacists, accountants, architects, engineers and town planners. They are based mostly in large towns.

An important business constituency that which must be mentioned is that of informals, the majority of whom are street vendors. They also operate in large towns, and their ranks continue to swell as a result of lay-offs in companies and unemployment due to the present economic recession. In Douala alone there are over 21.000 Small Scale Enterprises (SSEs), 90% of which operate in the informal sector.⁸

C. Types of Activities

The business organizations enumerated above engage in a variety of activities. These include industry (food and animal processing, manufacturing and extractive industries), construction and public works, transport, trade services and financial institutions. Street vendors sell items as diverse as tooth picks, drinking water, medicines, birds, flowers, sand, firewood, beauty products, food and clothes. Apart from food, most of these items are imported. Street vendors also provide a range of services. Some operate mobile haircut studios, while others carry out repairs of various household items right in the homes of their clients. These street entrepreneurs innovate all the time, as they are constantly in search of different ways of surviving with limited resources. The activities of some state corporations were primarily geared towards assisting SSEs. The activities of those which operate in Douala include the provision of services, trade, industry, food distribution and handicraft.

Public Sector Participation

Government economic policy during the first 25 years of independence was conditioned by the view that the private sector lacked the necessary resources and assistance for its take-off and that only the state could provide a solution. In 1960, the *Crédit du Cameroun*, which had been created by the French administration in 1949 to provide credit facilities to private sector enterprises, was transformed into the Cameroon Development Bank (BCD) with similar functions.⁸ Three years later, another state corporation, the National Investment Corporation (SNI) was created on June 19, 1963. Its main function was, and still is, to act as the state's main agent for equity participation in the private sector. The idea was to promote public investment in the industrial, agricultural, and commercial sectors by purchasing shares in companies operating therein.

State involvement in the private sector was further enhanced in 1970 with the creation of another state corporation called *Centre d'Assistance aux Petites et Moyennes Entreprises* (CAPME). Its mission was to train technicians to serve in industry, carry out feasibility and market studies for SSEs, and assist them in the preparation of applications for Investment

Code facilities and for bank loans. Fifteen years later, the conviction that the state was indispensable in providing solutions to private sector problems gained momentum. This led to the creation of yet another state corporation, namely, the *Fonds de Garantie aux Petites et Moyennes Entreprises* (FOGAPE), whose objective was to provide collateral for loans that commercial banks were willing to grant to SSEs. These banks were, by law, required to reserve 20% of their short term loans to SSEs.

The ineffectiveness of maintaining a very high level of state involvement in the private sector was masked for a long time by a buoyant economy which was, by 1985, marked by the country's rapidly growing per capita income, a high rate of investment in relation to GNP, a balanced budget and low external debt (Ministry of Plan, 1989). The period of prosperity suddenly ended in 1986. This was due mainly to a sharp reduction in world market prices of Cameroon's main exports, such as coffee, cocoa and petroleum, and by mismanagement of the economy. Caught in a severe and unprecedented recession, Cameroon was forced to sign a stand-by arrangement with the IMF in September, 1988, and to obtain a World Bank structural adjustment loan in July, 1989. As part of the Structural Adjustment Programme (SAP), two state corporations, which had provided assistance to the private sector, namely CAPME and BCD, were liquidated. The performance of FOGAPE, the only remaining state corporation now assisting SSEs, has been disappointing. Its role has been that of a passive institution that merely responds to loan guarantee applications channelled to it by commercial banks. The government itself has not been satisfied with FOGAPE. Another state corporation, called *Crédit Industriel et Commercial*, was created by decree in 1987 to replace it. FOGAPE thus has only a de facto existence, and its effective replacement has apparently been delayed due to want of resources for the new organization to become operational.

By 1988, when the state decided to reform the parastatal sub-sector, it either wholly owned or held equity in 153 corporations. The reform consisted in restructuring, privatizing, selling, or liquidating these corporations. So far, 44 have been liquidated, over 20 have been restructured, and 5 have been sold. Although the programme is now in its third year, 80 are still to find buyers. The pruning of the parastatal sub-sector has put over 14,000 people out of work. What is more, the state, which has been the major employer of university graduates, has employed almost none of the nearly 3,000 who have graduated yearly since 1988.⁹

III. RULE-MAKING PROCESS

By the terms of article 5(2) of the Cameroon Constitution, the power to define the country's policy belongs to the President of the Republic. Although this has been the case since 1960, it only became a constitutional provision on February 4, 1984, through an amendment of the constitution (article 5, new). With regard to sovereignty, the 1960 constitution specified that it belonged to the people who could exercise it through Parliament

or by referendum (article 2). With the 1972 constitution, the President of the Republic became one of the organs through which sovereignty could be exercised (article 2). This combination of constitutional provisions has been used to concentrate the power both to make policy and to enforce it in the hands of a hierarchy of administrative authorities that range from the President, through his Ministers, Provincial Governors, down to District Officers. Just as the President is, under article 9 of the constitution, commander of the armed forces, each of the said administrative authorities is commander of all the forces of law and order and the military in his area of jurisdiction. This system has been nurtured and reinforced by the single-party mechanism, and it was only in 1990, with the demise of the one-party system, that it has been seriously questioned.

In Cameroon, the conception, formulation, and application of rules is closely controlled by the state bureaucracy. Apart from international treaties and conventions, this power is exercised over all legal norms from the highest to the lowest.

A. Legislative Domain

Theoretically, power to make legislation belongs exclusively to Parliament. According to article 20 of the Constitution, matters concerning individual freedoms, labor, the status of persons, property and commerce, for instance, come under the jurisdiction of Parliament. All other matters not included in article 20 come within what article 22 terms the "regulatory domain," and the power to "regulate" them is the government's. It is clear, however, that there is no equality between government and Parliament in the sharing of rule-making power. This is because article 22 of the constitution empowers parliament to cede some of its powers to the President to legislate by ordinance. Examples of such accretions to the President's legislative power include the Lands Ordinances of 1974, the Investment Code of 1990 and the Free Trade Zone Ordinance of 1990. In reality, therefore, the President generates more legislation than parliament.

Laws

Laws constitute the apex of legal norms and are voted by Parliament and rendered executory through promulgation by the President.

Origins of Law

Bills sent to Parliament for enactment into law, originate from two sources: the President (government bills) or a member of Parliament (private member's bills). There are no regulations for the drafting of a private member's bill. In the case of government bills, their preparation is now regulated by General Instruction No. 002 on "the organization of government business" dated May 4, 1992, and signed by the President. The initiative to prepare a government bill may come from a minister, based on the instructions of the President (in the case of ministries attached to the Presidency) or the Prime Minister (in the

case of all other ministries). In any case, every government bill is sent to Parliament by the President with the name of the minister who has to defend it. Such minister is usually accompanied in this task by the Minister in charge of Relations with Parliament, and both attend the debates in Parliament with their collaborators.

The Standing Orders of Parliament stipulate that a private member's bill introduced in Parliament must be sent in triplicate to the President. The Constitution prohibits the passing of any private member's bill that would result in expenditure of public funds. These constraints have effectively killed any initiative to present private members' bills in Parliament. They are thus rare occurrences in the system.

Admissibility of Bills

A group in Parliament called "the Chairmen's Conference," composed of the Speaker, bureau members, the chairmen of committees, and the representatives of political parties, have the power to accept or reject a bill. A representative of the President attends the meetings of this body. Where there is disagreement between the government and the "conference" as to the acceptability of a government bill, the President or the Speaker may refer the matter to the Supreme Court.

Bills accepted by the "conference" are then sent to an appropriate committee for debate. It is before these committees that ministers defend government bills. At the close of work on a bill in committee, the latter presents it with a report to the full session of Parliament, which, depending upon the report, may adopt the bill without debate or after debate, or simply reject it. The government or a member of Parliament may object to the adoption of a bill without debate. In the case of a parliamentarian, his objection must be supported by a minimum of 15 of his colleagues in writing. Although the Standing Orders of parliament require the presence of at least 51% of its members for it to proceed to business, one-third of the House is empowered to adopt a bill if the higher figure is not attained two hours after the time stipulated for the commencement of business.

Bills that have been approved by Parliament must be sent to the President within 20 days. Unless the President returns the draft law to parliament for a second reading, or to the Supreme Court for its opinion, he must promulgate it into law within 15 days. Beyond this period, the Speaker may declare that the bill has become law, although this has never happened.

Ordinances

An ordinance has the same status as a law except that it is made by the President following the authorization of Parliament, which must take the form of a law. For instance, Law No. 90/015 of December 19, 1990, authorized the President "to lay down by Ordinance the restructuring of the coffee and cocoa sectors." An ordinance can only have the force of law after ratification by Parliament through the enactment of a law to that effect. Ordinance

No. 90/007 of November 8, 1990, which instituted the third Investment Code of Cameroon was ratified by Parliament by enacting law No. 90/071 of December 19, 1990, meaning that the Investment Code became law not on the date of the ordinance but on the date of the Law.

B. Regulatory Domain

Rules governing matters that are not included in the legislative jurisdiction of Parliament, matters described in the constitution as "regulatory," are made by a hierarchy of state bureaucrats from the highest to the lowest. These matters are regulated by the following hierarchy of:

- Presidential Decrees
- Presidential Regulations
- Decrees of the Prime Minister
- Regulations by the Prime Minister
- Ministerial Orders
- Ministerial Regulations
- Governors Orders
- Prefectorial Orders
- Orders of Municipal Authorities (Mayors)

These will be discussed only briefly. Matters that are regulated by Presidential Decree vary from rules for the establishment of passports and foreign travel (Decree No. 90/1245 of August 24, 1990) to rules governing the operation of public houses (Decree No. 1483 of November 9, 1990). At the time of enacting a law, Parliament may expressly reserve certain matters for future determination by Presidential Decree. The Prime Minister also signs decrees but only upon authorization by the President. Like government bills, decrees are drafted in ministries at the request of the President or the Prime Minister, or may be initiated by a Minister. The President also orders the modalities for rule-making. This is often done not by decree but by "Regulations" (see page 6, supra). Regulations may be made at every level of the administrative hierarchy for this same purpose.

Ministerial "orders" as well as "regulations" are made in respect of any matter that comes within the minister's "usual" jurisdiction or by virtue of an "express provision" in a superior norm or text. What we term here "usual" jurisdiction includes matters that, with time, have become traditional for a minister to regulate on a more or less regular basis. For instance, the Minister of Finance makes orders almost annually to regulate banking activities, just as the Minister of Industrial and Commercial Development, from time to time, regulates different aspects of domestic and foreign trade. "Express provisions" deserve special mention because of their pervasiveness. These provisions, which are widely used in Cameroonian legislation, constitute the hall-mark of the French system of legislation, whereby laws are drafted to outline the main issues only and their detailed application is taken care of by what are known as "texts of application." The tenor of these texts is determined by the administrative authority empowered to make them and, thus, at their discretion.

Administrative Discretion

The term "administrative discretion" is used here to refer to an express provision in a superior norm that empowers a subordinate administrative authority to determine certain specified matters in future by means of an inferior norm. As already mentioned, the use of this kind of discretion is part and parcel of the French system of legislation. We have tried to find out whether administrative discretion follows a certain pattern, or logic, or is simply an unintentional act to concentrate rule-making in the hands of the state bureaucracy.

Some laws state that the implementation norm shall be an "instrument." In such a case, it is not clear whether the law is supposed to be implemented by the President, the Prime Minister, or a minister. Some are more specific. Several provisions of law No.90/041 of August 10, 1990, which regulates the practice of architecture, have reserved some matters for determination by "instruments" and others, by "regulations." The only problem here is with matters to be regulated by instruments, for one is at a loss as to the type of instrument to expect. Again, some laws are contradictory in that they state in one section that a particular matter shall be dealt with by a given norm and in a later section that it shall be regulated by a different norm. The law dealing with the profession of veterinarians, for instance, states in section 1 that the law and its "instruments" of implementation shall regulate the practice of the profession and again in section 71 that the conditions of implementation of the law shall be fixed by "regulations."

The most objectionable aspects of administrative discretion are that it is widely used and that it may not only contradict but sometimes also outlive the law it set out to implement. First, the syndrome of administrative discretion persists even in some of the most recent legislation, which was paradoxically meant to be liberal. This is the case with the Investment Code of 1990 (wherein 9 matters have been reserved for determination by ministerial order and 10, by regulations) and the 1992 Labor Code, which postpones a total of 38 items for future decision (23 by Ministerial Order and 15 by presidential Decrees). The Free Zone Legislation deserves special mention. The Ordinance itself reserves just one item for decree and 11 for ministerial orders. When the Ministerial Order was eventually issued, it still reserved 18 other matters for further "ministerial orders." Secondly, texts of application, be they presidential decrees or ministerial orders, are subordinate instruments designed to clarify the law, yet they are often used in contradiction of laws passed by Parliament. Thirdly, a fundamental principle of French law, that a text of application continues to have the force of law even after the law that gave rise to it has been repealed, is part and parcel of Cameroon law. It received the blessing of the Supreme Court in a labor case heard in 1973 (see judgment no. 70 of May 17, 1973)¹⁰ and has been drafted into section 176(2) of the 1992 Labor Code, which states that texts of application of the repealed 1974 Labor Code remain in force.

IV. BUSINESS REGULATIONS

The operational difficulties that both formal and informal business operators face are largely due to the kind of regulatory environment in which they function. The environment has been characterized by active involvement of the state and state institutions in the private sector, especially during the first 25 years of independence, 1960-1985.

The philosophy that governed economic development policy in Cameroon at independence was styled "planned liberalism," which has been interpreted as meaning mixed economic control.¹¹ Two notions embedded in planned liberalism were balanced development and self-reliant development. Behind the first notion lies the idea that no region or ethnic group should forge too far ahead or lag too far behind the others. The second implied that nationals should depend primarily on their own development efforts and that resources from outside should only come as a supplement. These policies were grafted into Cameroon's first Investment Code, which was enacted just six months after the country's independence in 1960.¹² The Code was designed to attract investments and assist in the realization of the balanced development objectives of the state, as much as to help create a core of Cameroonian entrepreneurs.

In 1984, the government revised the 1960 Code, which had failed to achieve the objective of attracting investments to remote regions of the country in order to bring about balanced development. The latter was no longer considered important at the time of the 1984 Code.¹³ The country's authorities laid emphasis on the promotion of SSEs, which Cameroon then adopted as the basis of its economic take-off. The need to promote the emergence of a Cameroonian entrepreneurial elite was maintained. Cameroon's Sixth Five-Year Development Plan (1986-1991) also envisaged an elaborate programme for the resuscitation of SSEs. It included the modernization of agriculture through the creation of Small and Medium-Size Farms (SMFs), which would use modern production techniques, and a review of teaching programs in agricultural training institutions to provide courses for future farm managers, as well as encouragement of students to set up their own farms upon graduation. The introduction of the SAP, mentioned earlier, almost coincided with the enactment of a third Investment Code in 1990,¹⁴ which replaced the 1984 version. The present Code has brought in various innovations, the most significant being the creation of industrial free zones in Cameroon. The incentives for SSEs in the previous Code have been reinforced, and in order to encourage foreigners to invest in them the 1990 Code no longer requires a Cameroonian majority equity holding in SSEs.¹⁵

Cameroon is thus today at a critical policy cross-roads. To understand the changes that have taken place and evaluate the likely outcomes, this discussion will be sub-divided into two periods: the period before 1988 and the period from 1988 to date.

This division, which is meant to correspond, on the one hand, to a period when the state maintained a firm stronghold on the economy and, on the other, to when it started relaxing its

involvement, is not strictly accurate. By 1986, when the period of prosperity came to a halt, even the state controlled media was already becoming vocal about the virtues of a free private sector, and the government was already making some sporadic attempts to liberalize the economy. The dividing line of 1988 will, however, be maintained, as it marked the start of concrete action to ease the state's grip on the economy, marked by the signing of a stand-by arrangement with the IMF in September.

A. Period up to 1988

This period, which commenced with the enactment of the 1960 Investment Code, was clearly marked by a long list of laws, decrees, ministerial orders, and so forth, that regulated various aspects of business such as imports, exports, price fixing and foreign exchange. It should, however, be remembered that the relevant provisions of the *Code Civil* dealing with *Sociétés* (articles 1832-1873) and the *Code de Commerce* and its several annexures, already applied before independence in 1960.¹⁶ Dividing these rules into those that regulate business entry and those that deal with the conduct of business activities seems to be a logical method of presenting the numerous texts that applied during this period. As De Soto has argued, the two crucial moments when people evaluate their relationship with an economic activity are when they enter it and when they decide to remain in it.¹⁷

1. Business Entry Rules

Registration Procedure

The rules relating to the creation of business organizations or units, concern companies, partnerships, and sole traders. In the English-speaking areas of the country, the incorporation of companies, as earlier mentioned, was and is still regulated by the Nigerian Companies Ordinance (chapter 37 of the Laws of Nigeria 1948). A promoter who desires to form a company, be it public or private, is required to draft two documents, namely, a Memorandum and Articles of Association, and deposit them with an official, technically called "Registrar of Companies." This is the Provincial Delegate of the Ministry of Industrial and Commercial Development (MICD) in Bamenda or Buea. These documents, which must be bound in one volume, are sent to the Legal Department of the area for verification to ensure that they have been drafted in accordance with requirements of the Companies Ordinance. Though it is advisable, it is not a legal requirement that these documents be drafted by a barrister. The process of verification can take up to six months, for the Legal Department earns nothing for the job. The promoter pays incorporation fees (2% of the proposed company's registered capital) to the Provincial Delegate of MICD. When the Legal Department confirms that the documents are in order, the local MICD office issues a certificate of incorporation, which entitles the company to start business immediately if it is a private company or after convening and holding a statutory meeting if it is a public company. In the case of a partnership business, the partners are required to draft articles of partnership and follow the same procedure as in the case of companies. A sole trader who wishes to carry on business

under a business name may register such name at the local MICD office and obtain a certificate to that effect. Most sole traders did not find it necessary to register, especially as it involved the payment of a small fee for a process they could do without. Sole traders in the area operated mostly grocery stores and the only document required to start one was a license, called *patente* in French, obtainable from the local District Officer. The applicant must not have been convicted for acts or threats for violence. Those who wished to sell alcoholic beverages had to obtain a liquor license, in addition, from the same office. In the case of bars, the rules required and still require the approval of personnel of the Medical Department that the premises could be used as such.

There was much paperwork involved in obtaining authorization to operate a grocery store or a bar,¹⁸ and it could take several months to obtain if the applicant was unwilling to offer tips to the administrative authorities concerned. Prospective promoters of these kinds of businesses who were unwilling or unable to offer tips had to operate clandestinely or give up. Operating without authorization meant that they had to do everything to avoid prosecution, including the payment of bribes to state agents. No studies have been carried out in Cameroon on the incidence of operating clandestinely. In the case of Peru, De Soto has found that informals spend up to 10% of their profits in bribes. The bribes that the informals pay constitute a loss not only to them but to the state as well in the form of lost revenue. Informality is thus a double-edged weapon that is harmful both to the informals themselves and the state.

In the French-speaking areas, there is at least one aspect of business entry that is similar for businesses at different ends of the business spectrum. All forms of business, from large public companies (S.A.s) to sole traders (*entreprises individuelles*), must register in the *Registre de Commerce* (Business Registration Register).¹⁹ The *Registre de Commerce* deserves special mention. It was introduced into the territory by a Decree of the French government dated February 17, 1930 (JOC 1931, P. 610). Its provisions have governed business registration in Cameroon to this day. Inscription of the name of a business organization in the Register constitutes legal recognition of its creation. The procedure involved, however, depends upon whether the business is a *société* or an *entreprise individuelle*.

In French law, *société* is a generic term used to cover all types of businesses except sole traders. This word is used to refer to: public companies (*sociétés anonymes*), private limited companies (*sociétés à responsabilité limitée*), and the various forms of partnership in French law:

- Sociétés en nom collectif (pure partnerships)
- Sociétés en commandite simple (partnerships in which some partners enjoy the advantage of limited liability similar to the limited partnerships of English law)
- Sociétés en commandite par actions (limited partnerships whose capital consists in shares just as in companies).

The procedure for creating all the above five types of *société* is the same. First, the promoters must use the services of a *Notaire* in the preparation of the registration document called *statuts* (in plural). The *statuts* is a single document that carries the same information, in summary form, as the English Memorandum and Articles of Association. Secondly, the *Notaire* does not really draft the *statuts*. He simply fills in the information provided by the promoters on standard forms: the name of the business, its objects, location of head office, capital, names of directors and managers, type of business, description of types of shares, dividends or mode of profit sharing, shareholders rights, the powers of the organs, and the duration for which the business will operate (usually 99 years). The latter contrasts sharply with English law by which, once incorporated, a company enjoys perpetual succession. The *Notaire*, who is paid a fee for his services, then sends the *statuts* to the Court of First Instance of the locality, which is where the Register is kept, for inscription of the business therein. The business is considered as created on the date of inscription of its name in the Register. The legal effect of this operation in the case of *Société Anonymes* and *Sociétés A Responsabilité Limitée* is that they additionally acquire corporate personality. In the case of the other three types of *Société*, as well as *entreprises individuelles*, they simply acquire distinct names by which they are henceforth known, just as in the registration of a business name under English law, but they do not become corporate entities.

All six types of business organization are, upon registration, given a document stating the type of attribute acquired. A Decree of the French government of August 18, 1955 (JOC, 1955, p. 1490), required that the fact of registration must be published in the *Journal Officiel* (Official Gazette). With the virtual demise of the Official Gazette due to the economic crisis, publication is now in Cameroon Tribune, which is not published regularly. This is the stage at which the duties of the *Notaire* come to an end. The remainder of the process, which may be described as post-registration requirements, is the responsibility of the promoters.

Post-Registration Requirements

The post-registration requirements are eleven in number, but only two will be described in detail.²⁰ The two consist in a declaration at the Inspectorate of Stamp Duties and another at the Statistics office. The purpose of these declarations is to ensure the payment of business declaration taxes.

Inspectorate of Stamp Duties

Article 10 of the General Registration and Stamp Duties Code required that the declaration at the Inspectorate of Stamp Duties must be effected within one month of the registration of the business. The tax to be paid is calculated on the capital of the company. It varies between 0.25% to 2% of the capital, the latter figure applying to capital of up to 750 million francs and the former for capital from (5, 000 million) francs. This tax must be paid in one installment. However, if the business provides a bank guarantee, it could be allowed

to pay one-fifth of the amount due and the remainder by installments. The penalty for delays in payment is 6% per month or fraction of a month on the overdue amounts (article 54 of the Code).

The Statistics Office

There is just one Statistics Office for the whole country, located in Douala. After registration, every business must obtain a statistical number from this office, which is a Department in the Littoral Provincial Service of the Ministry of Plan. The statistical number is a serial number; so it is easy to say how many businesses have declared their registration at the office. The cost of obtaining a statistical number is a flat sum of 15,000 francs. Businesses that are willing to offer tips can obtain numbers within a week; otherwise the process can take up to two months or more. Businesses that have offered tips report that the amounts far exceed the tax itself. Not all businesses obtain statistical numbers, but it is difficult to determine the rate of non-compliance.

Other Entry Requirements

The remaining requirements for business entry concern minimum capital for banks, Cameroonian equity participation, foreigners and women. Up to 1988, the minimum capital for banks was fixed at 300 million francs. Some banks, such as BICIC and the defunct SCB, were already operating with capitals in excess of this figure. The 1984 code stipulated that for a Small Scale Enterprise to be entitled to its benefits, Cameroonians must hold a majority of its equity. Under Law No. 80-25 of November 27, 1980, foreigners who were desirous of engaging in business in Cameroon had to obtain government authorization. They could not, however, engage in ambulatory business activities, except to present shows and entertainment. Foreigners were also not allowed to effect direct investments in Cameroon without first filing a declaration with the Ministry of Finance, except when the investment was an increase in capital by means of reinvestment of undistributed profits. The *Code de Commerce* states in article 4 that a woman may set up a business of her own, unless her husband objects. The French legislator apparently tried to justify this provision by enacting article 5 of the same Code, which stipulates that a husband is jointly liable for his wife's business debts if their marriage was contracted under the joint property regime.

The Liberal Professions

Liberal professionals such as barristers, architects, doctors, and pharmacists, who are not *commerçants*, by definition, were not required to register in the *Registre de Commerce*. Persons with the necessary professional qualifications to practice had to apply for government authorization, which was granted by presidential decree. They also had to be admitted to membership of their respective associations. The rules governing the practice of these professions were haphazard and disparate. It was not until 1990 that they were standardized. They will thus be discussed later in the appropriate section.

After complying with this long list of pre-requisites in order to be eligible to set up in business, once the business has established, it had to be operated in accordance with other sets of rules.

2. *Rules Governing the Conduct of Business*

The rules that regulated business activities during this period may be subdivided into those relating to foreign trade and those concerned with domestic trade.

Foreign Trade

The first piece of legislation on foreign trade was a decree of 1967.²¹ Although expressly based on foreign trade, it regulated only imports. It was abrogated in 1980²² by a law on the orientation of business activities, which also did not say much about foreign trade as only four of its sections were devoted thereto. Section 24 stated that the details of the law would be worked out later in a decree of application. Because the decree has never seen the light of day, foreign trade has been regulated piecemeal by circulars of the Minister of Industrial and Commercial Development. These circulars take into account the terms of international conventions with other countries, the EEC/ACP convention, the GATT and the resolutions of UNCTAD. One such circular, which was issued in 1984, with annual modifications dictated by market trends in particular products, regulated foreign trade for the remainder of the period under discussion.

The Import Trade

The exercise of import trade was and is still subject to the possession of an import license. The procedure for obtaining the license depends upon whether the goods or commodities to be imported are restricted or not. There were three conditions for obtaining a license to import unrestricted items.²³ The applicant must have been operating an officially registered business with an up-to-date license, have appropriate business premises in the country, and a turnover for the year preceding the application of a least 15 million francs. Attestations certifying that the applicant met these conditions, the company's memorandum and articles of association, and an attestation from a bank willing to handle the financial side of the import transaction were the documents required by the Ministry of Industrial and Commercial Development to process the application.

The procedure for restricted items was slightly longer. After completing the formalities just described, the applicant obtained an "import authorization," which was a precondition for obtaining an import license for a given restricted product. A discussion of the different classes of imports will make this clearer. Import restrictions covered three classes of products, namely, sensitive, twin, and other.

Licenses for importing sensitive products were granted only in exceptional cases. These products, which include flour, sugar, cement, matches, wheat, cotton and toilet tissue, were produced locally in quantities that exceeded domestic demand, which justified the import restriction. In the case of twin products, importation was subject to the one condition that the importer market certain quantities of similar, locally-produced commodities. Items in this class were rice, jute bags, shoes, woven fabrics and suitcases, to name but a few. The classification of some of these items does not appear to be logical. There seems to be no explanation or reason for classifying cotton as a sensitive product and cotton fabric as a twin product. These classifications suggest that the cotton industry needed greater protection than the textile industry. The products were classified by the Ministry of Industrial and Commercial Development, which monitored their market trends, but the Ministry did not have adequate resources to obtain reliable information about the market. Although no statistics are available, some importers complain that the Ministry restricted the importation of photocopying paper, of which the Ministry itself was often in short supply. Nothing need be said about products in the "other imports" class, other than that they were those not included in the list of sensitive and twin products, and the same remark applies to products whose importation was prohibited. These products include military uniforms, McRay Scotch Whisky, Turkey brand cooking oil, and recently, a range of medicated soaps produced in neighboring Nigeria, which had also been banned by the Nigerian government.

Two other import systems in operation in Cameroon were the simplified import system, and imports from countries of the Central African Customs and Economic Union (UDEAC).²⁴ The simplified import system, introduced by the 1984 circular, was meant to facilitate the importation of raw materials needed by enterprises that had won important export contracts to enable them to meet their obligations to their foreign clients. Under the system, the Minister of Industrial and Commercial Development could authorize a provincial service to issue provisional import licenses for importing the necessary raw materials. The formalities to be met by the importer were so numerous and the range of documents to file so diverse that the question has been raised whether the system was really a simplified one. In the case of the UDEAC, the importation of goods manufactured in member states did not require prior "import authorization." Provided the suppliers came within the single tax system of the union, all the importer needed was an import license.

Apart from the import restrictions considered above, the 1980 Law also restricted the importation of certain products to protect home industries in the same line of production. Section 11 of the 1980 Law laid down the conditions under which the products of new industries could be protected to enable them to hold their own in the home market. This must not lead to a monopoly situation in the market; the protected products must be of good quality and meet the needs of consumers, their prices must be equivalent to those of similar imported goods. They were protected for five years from the date the industry went into operation.²⁵ The provisions of section 21(2) suggest that this period could be extended. This subsection empowered the government to take appropriate action to correct any damage that might be done to the national economy if it thought that importing a certain product might adversely affect any branch of activity. The wording of the subsection appeared to suggest

that if an imported product affected a branch of activity without harming the national economy there was no need to restrict its importation.

The Export Trade

The export trade also was regulated by annual circular of the Minister of Industrial and Commercial Development.²⁶ There were three categories of controlled exports. Some products were strictly controlled, others were subject to export quotas, and the rest to ordinary controls.

Strictly Controlled Products

The export of cash crops such as coffee, cocoa and cotton was strictly controlled through a complex procedure for obtaining an export license. These main export commodities were the principal source of revenue for the state²⁷ and the subject of bilateral and multilateral trade agreements with various countries. Therefore, the purpose of stringent export rules was to enable the state to fulfil its obligations with trading partners.

Products Subject to Export Quotas

The products subject to export quotas were mainly food crops. Cameroon is self-sufficient in food, but its neighbors are not and some of them were known to buy large quantities of food in Cameroon. If this trend was unchecked, it might result in a scarcity of food and its attendant repercussions. Export quotas were thus meant to control the quantity of food leaving the country. Licenses for exporting food, animal and fish products could be obtained from the administrative officer of the place of residence of the exporter, who must respect the quotas to which he was entitled.

Products Subject to Ordinary Control

Medicinal plants, residues and waste from food industries as well as processed animal fodder fell in the category of products subject to ordinary export control. The control was justified on the grounds that certain production units located in the territory needed them for their own purposes. Apart from the export license requirement it was not clear from the Ministerial Circular what constituted ordinary control.

Freely Exportable Products

The 1984 Ministerial Circular stipulated that Cameroon's foreign trade was based on the principle of complete and unrestricted export of all products processed and harvested in the national territory. The products subject to control were thus exceptions to this principle. In Cameroon, freedom to export simply meant dispensing with the export license. The so-called freely exportable items, i.e. all industrial products, were not exempted from paying export duties, which in Cameroon ranged from 2 percent to 42 percent. Although the paperwork

involved in obtaining an export license was enormous, export duties were a greater burden on exporters. It is thus misleading to assert that there were any products in Cameroon that were freely exportable.

Domestic Trade

Other aspects of local enterprises have already been discussed; therefore this section will be limited to price fixing and banking activities.

Price Fixing

The price fixing system by which the government determined the prices of virtually all products and services started in Cameroon in a rather curious way. The system was formalized by a Decree of December 18, 1968²⁸ and ratified by law No. 68/LF/5 of June 4, 1969. The Law was abrogated three years later by Ordinance No. 79/11 of November 30, 1979. The system was completed by Decree No. 84/594 of June 25, 1984, which established the conditions for approving prices. The price fixing system is part of a wider concept. The price regime defined by the 1972 ordinance gave government power to regulate the determination and fixing of prices and the sale and circulation of merchandise, as well as practices that may lead to price increases or disturb justified price reductions.²⁹ Prices are fixed by Order of the Minister of Industrial and Commercial Development and, through delegation, by Orders of Provincial Governors, who are allowed to sub-delegate to Senior Divisional Officers. Exceptionally, public bodies approved by the Minister of Industrial and Commercial Development may, also by delegation, fix certain prices (article 3). It is not clear from the legislation what mechanism government uses to fix the prices of goods and services. All that one gathers from the Ordinance in this regard is that prices are determined by cost of production, and as the case may be, at every stage of distribution, either by establishing a ceiling or bottom line or by fixing a profit margin. At the national level, prices are fixed after consultation with the Central price Board and in the provinces in consultation with Provincial Boards. The main functions of these Boards are to propose price policy to government and to give their opinion on applications for the approval of prices that have been submitted by business enterprises.

The activities that constitute infringements of the provisions of the Ordinance are not stated in clear terms. For instance, the definition of "unlawful price increase," in article 6 of the Ordinance, includes charging a price that is lower than the minimum purchase price. Article 7 includes in what it terms "the practice of illicit prices" all sorts of activities, including "offers, propositions of sale of products or services, all purchases and offers to purchase," so long as these activities are effected at "illicit prices." In the final analysis, the Ordinance has avoided defining an offence for which it has prescribed sanctions.

Sanctions

The commission of the offence of practicing illicit prices by a trader may be brought to the attention of the Minister of Industrial and Commercial Development by written report of either the price control personnel of his Ministry, the police, gendarmerie, or personnel of other Ministries, or public bodies commissioned by him. All these persons must take an oath in court to lawfully perform their duties. A trader who has been reported to the Minister may, within 15 days of the report, apply to the Minister for the benefit of a negotiated settlement of the amount of the fine stated in the report. Approval of such application means that the matter will not be sent to court and payment of the fine by the trader extinguishes the offence (article 22 of the Ordinance). The fines vary from 30 to 50% of the illicit price charged and was raised to 100% in some cases by the Law of 1979, which also provided for the closure of the shops of second time offenders. Because it is a criminal offence to charge illicit prices, if the matter goes to court and the trader is convicted he might be imprisoned for up to 15 days (Penal Code, article 256). By June 1984, the products and services whose prices were by law³⁰ subject to prior approval were:

- imports, the list of which had to be fixed by the Minister in charge of prices;
- products of local industries;
- all types of services; and
- agricultural, stock-farming, fishery or forest products.

In 1986, however, the Minister of Industrial and Commercial Development reduced the number of items whose prices were subject to prior approval, meaning that their producers were at liberty to fix the prices. The products concerned were luxury cosmetics, cigarettes, and wooden and metallic furniture.³¹

By the close of the period under discussion, the government had effected a number of reforms, albeit sporadic and timid, as a start to liberalize the economy. No one could have predicted at that time that the next few years were going to witness the most sweeping and far-reaching reforms in thirty years.

Banking Activities

A couple of years after independence, a decree was passed regulating banking activities in Cameroon.³² It was abrogated just over a decade later and replaced by Ordinance in 1973,³³ which remained in force until August 31, 1985, when another Ordinance³⁴ repealed it.

Under both Ordinances, promoters of a bank had to obtain the authorization of the Minister of Finance (referred to in the Ordinance as "The Monetary Authority") and the approval of the National Credit Board, before they could register their business. Only two types of companies were allowed to operate as banks limited partnerships with shares (*société*

en Commandite par actions). The 1985 Ordinance added a third type, namely, Cooperatives or Credit Union-type organizations.³⁵ Private limited companies were forbidden to operate the business of banking.

Minimum Capital

In 1973, the minimum capital of banks stood at 300 million francs for banks that took the form of public companies and at 75 million francs for the limited partnership type. These figures could be halved for banks with only one branch or agency apart from its head office.³⁶ The minimum capital must be fully subscribed within a time-limit to be fixed by the Minister of Finance. The state must hold at least one-third of the shares in every bank.³⁷ The capital of every bank must be structured so as to show the equity holding of the state and private persons of Cameroonian and foreign nationality. The 1973 Ordinance prohibited foreign companies from operating banking business in Cameroon. It also prohibited non-resident persons from doing so. The first of these restrictions was, however, removed in the 1985 legislation,³⁸ and the second, relaxed, thereby enabling non-residents to operate for a maximum of four years before being required to reside in the country.³⁹

B. Period from 1988 to Date

The beginning of this period was marked by the signing of a stand-by arrangement with the IMF in September 1988 and the receipt of a World Bank structural adjustment loan in July 1989. The purpose of the Structural Adjustment Program (SAP) contained in a "Statement of Development and Economic Recovery" issued by the Cameroon government in May, 1989, was threefold:

- to gradually eliminate impediments to efficient markets;
- to re-orient the role of the state from direct control of production and marketing to facilitating private sector operations; and
- to redirect the public service toward improving the well being and productivity of Cameroonians.

In what was certainly the busiest parliamentary session in Cameroon since 1960, Parliament enacted a total of 22 Laws in December 1990 to liberalize various sector of the economy. The President, for his part, signed 23 decrees for the same purpose in the last three months of the same year. New rules of business entry and operation that have been instituted by this long list of enactments.

1. Relaxation of Entry Rules

The 1990 reforms addressed some of the areas of activity where delays have been legendary and corruption rife, namely, applications for licenses to operate bars, public transport, and practice the liberal professions. A license for the sale of soft drinks may be obtained from a District Officer, while one for alcoholic drinks can be issued only by the Senior Divisional Officer of the Locality. By the terms of article 7(3) of Decree No. 90/1466 of November 9, 1990, the license must be issued within 8 days of the application. The time-limit in the case of a public transport license is 30 days from the filing of an application. Each applicant is given a receipt bearing the date on which he deposited his application and he is, by law, entitled to start his business if the license is not issued within the stipulated time. Before 1990, it was an uphill task to obtain a license to practice a liberal profession such as veterinarian, pharmacist, doctor, dental surgeon, architect, barrister, or accountant. Since 1990, the rules of practice have been standardized, and precise time-limits set by law for the procurement of licenses by all these professionals. Once an applicant has put together all the items required for his application and filed the application at the head office of his professional association, the latter has a maximum of thirty days to take a decision. This decision, together with the application, must be communicated to the appropriate minister (for instance, the Minister of health in the case of a medical doctor), within the next 30 working days who must himself take action within another 30 days. If the professional's association rejects his application, he may appeal to the Appeals Board of the association, which must make a ruling within 2 months. If no ruling is made after this period, the applicant is entitled to start his practice. And if the Appeals Board of the association decides against admission, the applicant may appeal to the Supreme Court, on which the Laws of 1990 have imposed no time-limit. It follows that, although the 1990 reforms have endeavored to combat administrative delays, court delays have been left untouched. The 1990 Investment Code, for its part, is strewn with provisions designed to curb administrative red tape. It contains at least 26 time-limits for various kinds of administrative authorizations under the Code.⁴⁰ Four of the time-limits are appended with non-opposition clauses that entitle applicants to assume that their applications have been approved once the time-limit has elapsed. These are salutary measures against administrative delays. Nevertheless, they are likely to play into the hands of some unscrupulous businessmen, who may file incomplete applications and wait for the opportunity to start business if the government service concerned is not vigilant.

Every facet of the 1990 reforms is not liberal. They have left some obstacles to business entry untouched and, in a few cases, have enacted new ones.

2. Persistence of Certain Restrictions

The minimum capital for banks was raised in 1990 to 1 billion francs.⁴¹ This increase, coming at a time of severe economic hardship, has certainly deterred some promoters. One of them (the present General Manager of Amity Bank, with its head office in Bamenda and branch in Douala) attacked the decision even before it became law. He argued that it constituted an unnecessary restraint, especially to promoters who intended to set up just a

couple of branches.⁴² The rule that Cameroonians must hold one-third of the equity in every bank in the country has been maintained,⁴³ and the residency requirement for bank managers, which was relaxed in 1985, has been re-instated.⁴⁴ This clearly contradicts section 2(1) of the 1990 Investment Code which states that:

"All natural persons or corporate bodies of Cameroonian or foreign nationality may, irrespective of their place of residence, undertake and engage in an economic activity in Cameroon."

Also, the practice of most of the liberal professions is open to foreigners only on the basis of reciprocity or on condition that they practice in partnership with Cameroonians. This is the case with non-Cameroonian Chartered Accountants who are also non-nationals of the Central African Customs and Economic Union (UDEAC), whose other members are Gabon, Central African Republic, Chad, Congo and Equatorial Guinea. They can only join partnerships whose Cameroonian membership and equity holding will not, as a result, be reduced below two-thirds. And they can only start practice after obtaining UDEAC approval.⁴⁵ Also, the law requires foreigners who intend to operate a banking or insurance business in Cameroon to locate their head offices within the country, and their managers may not reside abroad.⁴⁶

C. New Rules of Business Operation

The main purpose of the 1990 reforms was to liberalize economic activities so as to stimulate domestic trade and render foreign trade more competitive. These activities have continued to be regulated by the Minister of Industrial and Commercial Development in the General Trade Schedule (GTS). The version of the GTS now in force was issued by the Minister on June 29, 1989, and was initially intended to be in force only up to 1991. The Minister stated in his foreword that the GTS had been inspired by the main guidelines of the country's new economic policy of liberalizing the economy, stimulating competition, increasing the performance of the national production machinery, and promoting the export potential.

1. Foreign Trade

Exports

The aim of the new export policy was to search for new markets and focus on the promotion of exports by streamlining export procedures, reducing and/or eliminating export duties. The GTS classifies exports into three categories: uncontrolled, regulated and forbidden products.

Uncontrolled Products

The export of "uncontrolled" products requires no government authorization. All that is required of an exporter of "uncontrolled" items is a customs declaration of the origin of the products and the address of the bank through which the proceeds of sale would be paid.

Regulated Products

The GTS states that although government aims at liberalizing all exports, certain factors make it necessary to regulate the sale of certain Cameroonian products abroad. These include:

- the need to stabilize and guarantee the purchase price to producers of commodities such as cocoa, robusta, coffee, and cotton;
- the need to maintain a minimum level of food security;
- the protection of wild-life, plants and the environment; and
- the need to guarantee the availability of raw materials for the budding pharmaceutical industry. The export of a regulated item requires prior authorization of the Minister in charge of trade and approval as an exporter.

Forbidden Products

There is not much to be said here other than that the export of certain products is forbidden by the GTS because they are hazardous to human, animal and plant life and contribute to atmospheric pollution and environmental degradation. They include products whose sale is forbidden, products withdrawn from sale, as well as toxic, industrial, and other waste whose evacuation to markets abroad is strictly regulated or controlled.

The GTS has forbidden the re-exportation to neighboring countries of goods imported into Cameroon without payment of duties and taxes. This is aimed at curbing fraudulent practices, which can undermine "the balancing of the state budget." Apart from re-exportation, all taxes on exports, which as earlier mentioned varied from 2-42%, have been removed.

Imports

The GTS enumerates four types of imports, namely, uncontrolled products, products subject to quantitative restrictions, those subject to technical control and those prohibited. The only formalities that an importer of uncontrolled products has to fulfill are the filing of a declaration for the purpose of import statistics, inspection, and control, and the endorsement of the declaration by the importer's bankers.

The importation of goods subject to quantitative restrictions and that originate from a UDEAC country is not subject to prior authorization, if the suppliers of such goods are approved under the UDEAC single tax system. The single tax system is an incentive system within UDEAC whereby a single tax is paid on goods exported within the zone with exemption from payment of customs duties and internal turnover tax. Quantitative restrictions have been removed on many imports. They have, however, been maintained on goods such as fabrics and some foods, including palm oil and rice, which are produced locally in large quantities, as well as other goods defined as "strategic." Technical control is effected on certain imports to ensure their suitability for consumption and for environmental protection. A good example is imported meat and fish, which are subject to control by the Ministry of Animal Breeding.

The conditions for becoming an importer have been relaxed, but the number of documents to be prepared and submitted to the Ministry in charge of trade remain the same, and the authorization may not be granted for more than one fiscal year. Government services, non-profit making organization and individuals importing for specific purpose do not require government approval. However, items imported occasionally by individuals for domestic use or by diplomatic missions are still subject to the prior authorization of the Minister in charge of trade. Also, in order to stem the magnitude of cross-border smuggling, a joint Order of the Ministers of Finance and Industrial and Commercial Development issued in February, 1993,⁴⁷ introduced a system of labelling certain specified imports "sold in Cameroon." The imports concerned are 23 in number ranging from detergents and travel goods to stationery and fabrics, mostly smuggled from Nigeria.

2. *Domestic Trade*

The main guidelines for the development of domestic trade, according to GTS, include the stimulation of competition in favor of the consumer and the improvement of the distribution network to ensure its transparency and flexibility in order to provide regular supplies for the markets and consumer information. The GTS has introduced a number of measures aimed at encouraging the emergence of a distribution network in the country.

The government has also introduced certain measures to ensure that food security is not jeopardized in the future. The distribution of foodstuffs such as rice, flour, oil and sugar is subject to the following conditions:

- producers must ensure sound management of their stocks to avoid abrupt shortages. They are required to keep a strategic stock of whose level the Ministry in charge of trade must be informed from time to time. They are also required to provide the Ministry with complete lists of distributors;
- the Ministry in charge of trade must maintain a list of the wholesalers of the above products; and

- the Minister in charge of trade may, in case of a shortage in the market, resort to importation to restore the balance.

3. *Price Fixing*

The Cameroon government has lifted price controls on many goods, but this has not meant dismantling the price control mechanism, whose days are certainly not numbered. On October 7, 1991, the Ministry of Industrial and Commercial Development issued an order enumerating a number of goods and services whose prices were still subject to government approval.⁴⁸ This list is clearly shorter than previous ones, meaning that more and more items are being taken off.

4. *Taxes*

Businesses in Cameroon are subjected to the payment of a variety of taxes. Corporate tax is levied on the net income of all companies operating in the country. Normal business expenses, including depreciation of assets, are deductible. Companies entitled to tax holidays under the Investment Code are exempted. There is a minimum tax on companies that is levied on all companies subject to corporate tax, if the latter falls below the minimum. The tax on industrial and commercial profits is not, strictly speaking, a business tax. It is levied on net income derived from investments in Cameroon by both residents and non-residents. A similar tax called "tax on non-commercial profits" is levied on the net incomes of all residents engaged in activities of a non-commercial nature, such as the liberal professions. The tax on income from securities is levied on dividends distributed to shareholders, interest, directors' emoluments and similar payments received from industrial, commercial and professional activities and services. To all these taxes must be added, the UDEAC tax unique, already mentioned, business tax (patente), licenses, and tax on imports and customs duties. It must be pointed out that this list is far from exhaustive and that the rates of these taxes are varied from year to year by Parliament when they vote the budget.

The above discussion of foreign and domestic trade suggests that the government has gone a long way in the direction of liberalization, but the persistence of administrative discretion seems to discomfit all these efforts.

It has been seen that the spate of legislative activity by Parliament and the President in the second half of 1990, aimed at liberalizing the economy, produced 45 laws and decrees. The activities targeted for this exercise were mostly commercial, ranging from the operation of private educational establishments, public transport, insurance and banking, to the practice of the liberal professions. We tried to measure the magnitude of administrative discretion in the case of 23 laws and decrees selected at random. We found that these texts purposely enacted to liberalize the activities concerned, contain a total of 207 matters (an average of 9, per text), kept aside for future decision. Since all of them concern the rules of business operation, it follows that a businessman can go into business without knowing all the rules that are supposed to govern his business. He is thus, from the outset, faced with a situation

of uncertainty. We have not found any reason behind this kind of rule-making other than an unexplained desire for obscurity, especially as most of the so-called texts of application never see the light of day. So far as the 207 matters are concerned, one should talk of an intention to liberalize rather than of a decision to do so.

V. OUTCOMES

In Cameroon, people's reaction, not only to the rules but also to the rule-making process, has produced certain results and it is with these that we conclude this paper.

The rule-making process, which excludes the participation of the people, has estranged them from government. They thus observe rules not because of some moral obligation but rather to avoid the consequences of breaking them. Government, for its part, spends large sums of money to police its unpopular laws. For instance, personnel of the Taxation Department are, by law, entitled to a pre-determined fraction of sums that they recover from tax defaulters.

In the case of the remaining restrictions on business entry, we will take just two examples: banking regulations and post-registration requirements. By reason of its one-third equity holding in almost every commercial bank, the state has meddled in the banking sector and hastened the demise of at least six banks in the last few years. The sector is now in ruins, and individual reaction has seen the emergence of burgeoning and virile informal financial institutions called "tontines." A study carried out by a French consortium called *Société d'Ingénierie Bancaire Internationale* (SIBI), at the request of the French Ministry of Finance, found that between 1985 and 1989 private savings in the banks fell by 222 billion francs. Most of this money has found

its way into tontines⁴⁸ and the rest into foreign banks. The present economic recession has admittedly contributed to the poor performance of the banking sector, but the state is mostly to blame.

With regard to the effect of post-registration requirements, it is difficult at the present stage of our research on the matter to determine the extent to which it has contributed to individual decisions not to register their businesses. Our study of 21,235 small scale enterprises in Douala in September, 1992, revealed that 90% were not registered. In July 1993, we interviewed a sample of 100, 83 of whom attributed their inability to register to the post-registration requirements, whereas 15 said it was because of inadequacy of capital.⁴⁹

Although further research is required in order to draw a conclusion, the fact that so many people are operating in the informal sector (we counted 96,690 street vendors in Douala recently),⁵⁰ suggests that the problem is the rules. It is, however, important to point out that, although thousands of businessmen have sought refuge in the informal sector, it is not the

best place to be. They suffer many disadvantages by operating as informals. First, they must stay small in order to avoid detection or to be able to go underground easily when police harassment is intensified. Secondly, they cannot take advantage of the facilitative aspects of the law. They cannot, for instance, enforce their contracts in courts of law because their businesses are not recognized by law. Thirdly, their clientele is necessarily restricted because they cannot enter into certain business engagements with people who are not personally known to them. Fourthly, they spend a significant fraction of their profits in bribing state agents and the police, from whom they regularly buy the "right" or privilege to continue to operate their businesses. The state, for its part, also suffers loss of revenue since bribes do not enter its coffers. Society also suffers from the persistence of informality since the tax burden is not borne by everyone.

A strong indicator of the burden of rules on business is that even those who have gained access to the formal sector sometimes operate informally either by dodging the rules or by doing business with informals. We have seen that certain rules of business operation maintained in the 1990 reforms clearly offend the principle of liberalization. The price fixing mechanism might have been emptied of the essential of its contents, but the system is very much in force. In the domain of foreign trade, some products are still subject to import controls and others are not freely exportable. These rules and restrictions are likely to bring about distortions in the economy and increase transaction costs. The same argument holds for the tax system. Some of the taxes have no place in the Tax Code, and their administration is burdensome on state resources.

Finally, administrative discretion has the effect of rendering the rules obscure. The system we have in Cameroon is similar to what has been aptly described as cryptoimperialism.⁵¹ It also causes institutional uncertainty, namely, the ever present possibility of the state intervening in the economy in ways which are difficult, if not impossible to predict.⁵² Such an atmosphere scares investors because they know just too well that such a system provides no safeguards and that what is offered as incentives in today's laws may be taken away in tomorrow's with impunity. Three years ago, Cameroon enacted what has been hailed as one of the most liberal Investment Codes in Sub-Saharan Africa,⁴⁰ but the investors targeted by the Code are still to respond. Given the pervasiveness of administrative discretion, it is difficult to predict the outcomes of the rules in Cameroon.

ENDNOTES

1. See article 5 of each of the mandates.
2. Section 11 of the Southern Cameroons (High Court) Law, 1955.
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4. _____, University of London Ph.D. Thesis, 1979 (unpublished).
5. Tientcheu, N.A. *Droit Commercial du Cameroun*, Yaoundé, 1984.
6. Tientcheu, N.A., op. cit.
7. Ibid.
8. Ngwasiri, N.C. "Small and Medium-Size Enterprises in Cameroon," paper presented at an international conference in Abidjan, Côte d'Ivoire, on April 20-24, 1993, on "Effective Implementation of Policies for Growth and Development in Africa.
9. Ibid.
10. *Bulletin des Arrêts de la Cour Suprême du Cameroun*, No.28, Imprimerie Nationale, Yaoundé, 1973.
11. Ngwasiri, C.N. "The Effect of Legislation on Foreign Investment: The Case of Cameroon," *Journal of World Trade*, Geneva, 1989.
12. Law No. 60/064 of June 27, 1960.
13. Law No. 84/03 of July 4, 1984.
14. Ordinance No. 90/007 of November 8, 1990.
15. The 1990 Code, article 25.
16. See page 2, supra.
17. De Soto, H. *The Other Path: An Invisible Revolution in the Third World*, Harper and Row, New York, 1989.

18. Olama, O.F., *Le Guide Pratique des Formalités Administratives et Juridiques du Cameroun*, Imprimerie Nationale, Yaounde (no date).
19. Present author's translation of Registre de Commerce.
20. • Publication in the Official Gazette, a special journal informing the public about the creation of the business.
 - Registration of the enterprise with SCIFE, B.P. 794, Douala, in return for a Statistical Number for the Enterprise.
 - Negotiation and conclusion of an agreement with a labor doctor (médecin de travail).
 - Filing of seven copies of agreement with labour doctor at the office of the Labour Inspector of the locality.
 - Registration of the personnel of the enterprise with the Manpower Service.
 - Registration of the personnel of the enterprise with the Labour Inspectorate of the locality in a special register called Employers' Register.
 - Sealing of the Employers' Register with the seal of the Court of First Instance of the locality.
 - Filing of list of employees at the local Labour Inspectorate, specifying their full names, qualifications and categories, and salaries.
 - Filing of draft internal regulations of the enterprise with the local Labour Inspectorate for approval.
 - Filing of a copy of the SCIFE registration at the Local Tax Office, payment for business license and collection of taxes to be collected from employees of the enterprise.
 - Registration of personnel of the enterprise with the Social Insurance Fund Office.
21. Decree No. 67/DF/81 of November 23, 1967.
22. Law No. 80/25 of November 27, 1980.
23. These were enumerated in section 11 of the 1967 Decree.
24. Other member states of UDEAC are Chad, Gabon, Congo, Central African Republic and Equatorial Guinea.
25. Section 22(3).
26. Ibid.
27. In 1983/84, these products accounted for 41.08% of the country's exports. See Sixth Five-Year Development Plan, p.178.
28. Decree No. 68/DF/486.

29. The 1972 Ordinance, article 2.
30. See Decree No. 84/594 of June 25, 1984, to lay down conditions for approving prices, article 1.
31. Cameroon Tribune, No. 3574 of May 17, 1986.
32. Decree No 62/DF/90 of March 24, 1962.
33. Ordinance No. 73/27 of August 30, 1973 relating to the exercise of banking activity.
34. Ordinance No. 85/002 of August 31, 1985 relating to the exercise of the activities of credit establishments.
35. 1985 Ordinance, activities 5(1).
36. Decree No. 73/514 of August 30, 1973, fixing the minimum capital of banks, article 1.
37. 1985 Ordinance, article 5(2)(b).
38. Ibid, article 6.
39. Ibid, article 9.
40. Ngwasiri, C.N. "Cameroon's Latest Investment Code" (forthcoming).
41. Decree No. 90/1470 of November 9, 1990, to fix the minimum capital of credit establishments.
42. Tasha, L.A. "The Capital of Banks." *Juridis Info*, Yaounde, December, 1989.
43. Law No. 90/019 of August 10, 1990, to amend and supplement certain provisions of Ordinance No. 85/002 of August 31, 1985, relating to the Operation of Credit Establishments, article 5(2)(b).
44. Ibid section 8(2).
45. Law No, 90/038 of August 10, 1990, relating to the practice and organization of the profession of professionally qualified Accountants.
46. Decree No. 90/1471 of November 9, 1990, to lay down the conditions for approving Credit Establishments and the Appointment of their Managers and Decree No. 90/1472 of November 9, 1990 to lay down the conditions for the Approval of Insurance Companies and their Managers.

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47. Order No. 012/MINDIC and MINFI dated February 18, 1993, instituting the labelling of certain imports.
48. "Challenge Nouveau", No.027 of April 1, 1993.
49. This study which was carried out by PRISERI, was financed by the International Center for Economic Growth, San Francisco, U.S.A.
50. This study of street vendors was financed by the University of Yaounde and carried out in Douala in September, 1993.
51. Ostrom, V. et al., *Rethinking Institutional Analysis and Development*, San Francisco, 1988.
52. Ngwasiri, C.N., "The Role of Change Agents in Legal Reforms affecting Small Scale Enterprises in Cameroon". Paper for presentation at an international conference on "Small Enterprise Development" scheduled to hold in Abidjan, Côte d'Ivoire, on November 30 - December 2, 1993, organized by the Committee of Donor Agencies for Small Enterprise Development.

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4. Decree No. 67/DF/81 of November 23, 1967, to regulate foreign trade.
5. Decree No. 68/Df/486 of December 18, 1968, on price fixing.
6. Law No. 69/LF/5 of June 4, 1969, rectifying Decree No. 68/DF/486 of December 18, 1968, on price fixing.
7. The Cameroon Constitution of June 2, 1972.
8. Decree No. 73/514 of August 30, 1973, fixing the minimum capital of banks.
9. Ordinance No. 73/27 of August 30, 1973, relating to the exercise of banking activity.
10. Law No. 80/25 of November 27, 1980, to regulate foreign trade.
11. Decree No. 85/594 of June 25, 1984, to lay down conditions for approving prices.
12. Law No. 84/03 of July 4, 1984, to lay down the Investment Code.
13. Ordinance No. 85/002 of August 31, 1985, relating to the exercise of the activity of credit establishments.
14. Law No. 90/19 of August 10, 1990, to amend and supplement certain provisions of Ordinance No. 85/02 of August 31, 1985, relating to the operation of credit establishments.
15. Law No. 90/023 of August 10, 1990, to ratify Ordinance No. 90/001 of January 29, 1990, to establish the Free Zone Regime in Cameroon.
16. Law No. 90/025 of August 10, 1990, to amend and supplement certain provisions of Ordinance No. 85/3 of August 31, 1985 relating to insurance business.

17. Law No, 90/029 of August 10, 1990, to amend and supplement certain provisions of Law No. 83/22 of November 29, 1983, relating to the metric system and the control of measuring instruments.
18. Law No, 90/030 of August 10, 1990, to lay down the conditions governing the carrying on of the business of Road Carrier.
19. Law No. 90/031 of August 10, 1990, relating to commercial activity in Cameroon.
20. Law No. 90/034 of August 10, 1990, relating to the practice and organization of the profession of Dental Surgeon.
21. Law No. 90/035 of August 10, 1990, relating to the practice and organization of Pharmacy.
22. Law No. 90/036 of August 10, 1990, relating to the organization and practice of medicine.
23. Law No. 90/037 of August 10, 1990 relating to the practice and organization of the profession of Technical Assessor.
24. Law No. 90/038 of August 10, 1990, relating to the practice and organization of the profession of professionally qualified Accountant.
25. Law No. 90/040 of August 10, 1990, relating to the practice and organization of the profession of Town Planner.
26. Law No. 90/041 of August 10, 1990, relating to the practice and organization of the profession of Architect.
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30. Decree No. 90/1463 of November 9, 1990, relating to the profession of Consulting Engineer.
31. Decree No. 90/1465 November 9, 1990, relating to the organization and functioning of private clinical laboratories.

32. Decree No. 90/1466 of November 9, 1990, to lay down the terms and conditions of obtaining the Road Carrier's License and the Public Transport License.
33. Decree No. 90/1467 of November 9, 1990, to lay down conditions for the construction and operation of Tourist Establishments.
34. Decree No. 90/1468 of November 9, 1990, to lay down the terms and conditions of opening Tourist Agencies.
35. Decree No. 90/1469 of November 9, 1990, to define credit establishments.
36. Decree No. 90/1471 of November 9, 1990, to fix the minimum capital of credit establishments.
37. Decree No. 90/1471 of November 9, 1990, to lay down the conditions of approving credit establishments and the appointing of their managers.
38. Decree No. 90/1472 of November 9, 1990, to lay down the conditions of approving insurance companies and their managers.
39. Decree No. 90/1473 of November 9, 1990, to lay down the conditions for the practice of the profession of Insurance Agent.
40. Decree No. 90/1474 of November 9, 1990, to determine the duties, composition and functioning of the National Insurance Board.
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42. Decree No. 90/1476 to lay down the conditions for approving prices.
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