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CONSTITUTIONAL OPTIONS PROJECT

PEACE POLICY PAPER

ASYMMETRICAL DEVOLUTION: COMPETENCIES, GOVERNANCE, AND AUTONOMY OF SPECIAL STATUS REGIONS

INFORMATION NOTE

This Policy Paper starts by noting that the quick progression of events from the National Dialogue (September/October 2019) to the adoption of Special Status provisions in the General Code of Regional and Local Authorities (December 2019) did not allow for inclusive consultations and extensive sensitization characteristic of their adoption elsewhere – although the conflict context was a significant contributing factor. It underscores that unlike Special Status regions almost everywhere in the world, Cameroon’s Special Status regions’ own institutions do not have the prerogative to initiate, draft, propose amendments, and undertake a concurring vote to assent to their enabling law. It recommends that in addition to affording them this prerogative, it should be routine practice for these Regions’ institutions formally to be consulted, when adopting texts (such as the expected separate instruments to lay down the specificities and particularities of Anglo-Saxon education and legal systems) which are fundamental to their Special Status.

In evaluating the legal entrenchment and anchoring of regional Special Status in Cameroon, the Paper notes that (unlike most comparable arrangements globally), it is not shielded from unilateral amendment or repeal through requiring *concurrent* action by the *national* legislature and the *regional* assembly. Cameroon’s Special Status regions, unlike the peers globally, do not have a constitutionally stable right of existence as entities (they are not yet explicitly designated in the Constitution as holding such status). Furthermore, Cameroon’s Constitution still provides for a power of the central Executive to modify the number, names, and boundaries of Regions without a requirement to consult either the national Parliament, or the Regional Councils/Assemblies concerned.

The Paper then focusses on defining *Asymmetrical Devolution* to regions as a concept – the novel technique of State ordering in which powers are devolved to subnational regions, but with differentiated, or non-identical attributes, to respond to marked regional specificities (which is what Special Status means). With reference to various country models around the world, it provides a detailed continuum of variations between Unitary – Composite – Regional – Federal States, in how the central State authority relates to the subnational regional tier, to show the options available to Cameroon. It emphasizes that a critical difference between Special Status and Federal arrangements is that the former changes *only* the relationship of the beneficiary regions with the central authorities; in the latter, the *entire* country enters a federal arrangement.

The Paper then examines the internal *organisational set-up and functioning* of Special Status regions established by the 2019 General Code on Regional and Local Authorities, and the actual *substantive competencies that are to be differently devolved* to the NW&SW – those domains in which they should exercise different prerogatives on account of their unique heritage, linguistic specificity, and particularities in educational system and legal traditions. It observes that while there are organisational differences for the Special Status regions (impeachment, Public Independent Conciliators), the organisational set-up for these regions is *not aligned* with the additional, differentiated competencies they are expected to discharge. Illustratively, they have no Committee/Commissioner tasked on the Anglo-Saxon legal system – a domain on which Special Status is based.

On the substantive, differentiated competencies devolved to the Special Status regions, the Paper identifies some areas of incongruence: the regions are afforded extensive powers to establish and manage regional development authorities (an area not marked by significant or emblematic demands driving the crisis), while they have roles as a mandatory participant (public policies on Anglo-Saxon education system), and optional participant (public policies on Anglo-Saxon legal system), in areas core to Special Status. Despite Special Status based in law on a “linguistic specificity”, the Special Status regions have no prerogatives thereon, even to be consulted on national policies related to bilingualism and official languages. The Paper’s assessment is that but for a few *organisational differences*, the Special Status regions have few operational prerogatives in *substantive domains of competence* that set them apart from the other 8 regions.

Drawing on principles of constitutional law, the Paper argues that the specific, named domains on which Special Status is founded (such as Anglo-Saxon education, and Anglo-Saxon legal system based on Common Law) necessarily constitute “regional interests” for them within the meaning of Cameroon’s Constitution, which allow those Regions to request constitutional arbitration to protect them. The Paper examines the issue of initiative to deliberate on areas recognized as “foundations” of, or integral to Special Status (linguistic specificity, Anglo-Saxon education and legal systems), namely whether the Regions must await to be consulted by national authorities for their opinion or can stay regularly seized thereof in their ordinary course of business, as matters within their deliberative capacity.

The Paper identifies areas in which relations between central State authorities and Special Status regions' institutions need to be reviewed: the compatibility of supervisory arrangements (*tutelle*) applied wholly and without differentiation to Special Status regions including in their domains of specificity; the need for differentiation in the regional public administration in Special Status regions; the appointment of officeholders in the Special Status region, including its principal administrative official without consultation of the region's authorities; the non-specification of a criterion of knowledge of the Regions' specificities for appointment of senior State officials thereto; and the lack of clarity on whether the powers to dismiss or dissolve a Regional Executive or Council respectively, require the assent of, and litigation with full hearing of the parties before the Constitutional Council, as a guarantee of due process.

Lastly, the Paper identifies some features of comparable Status Regions which should be emulated to strengthen the Cameroonian experience: (i) Special Status region should have a prerogative to be consulted prior to the adoption of laws, and signature/ratification of international treaties which directly affect the Regions' legally recognized domains of specificity, (ii) Central State staff appointees to those Regions working in their domains of specificity should fulfil a mandatory criterion of mastery of the Regions' specificities, (iii) a special revenue allocation formula should be crafted for Special Status regions which reflects their unique and additional areas of competence, (iv) Special Status regions should monitor and guide the action of Local Councils within their geographic remit, notably in domains of regional specificity recognized by law (such as Education – primary schools), and (v) Arrangements for dispute resolution between the State and Special Status region should be strengthened, and a Joint Process (Special Status region – central State authorities) established to evaluate and orient its implementation periodically.