

**The constitutional requirement of an assenting *regional* vote
on Special Status for the Northwest and Southwest regions:
the imperative of building consensus with these Regions
instead of recourse to nation-wide majoritarianism**

23/12/2019

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1. As the Bill to institute a General Code of Regional and Local Authorities, which contains Special Status provisions for the NW and SW Regions has recently been adopted at Cameroon's Senate, there is **a constitutional dimension to what has happened at both houses** sitting in Ngoa-Ekelle and Tsinga respectively, that should not be lost sight of.
2. As we have stated extensively in previous publications explaining the constitutional process used to establish dozens of Special Status and Special Autonomous Regions around the world, in order to enter into force, Special Status laws are not only voted by the State's Parliament at the centre. **To be binding on and applicable to the Region(s) they also have to be voted favourably by the Regional Council, or Assembly of the said Region(s). It is those two concurrent votes, that seal the constitutional transaction between the State and the said Region(s).** One party cannot unilaterally bind the other.
3. This has probably not been said enough in the public discourse, and Cameroonians may celebrate that a Special Status was finally granted in December 2019 by the national Parliament. **NO: that view should be corrected. Nowhere in the world, where Special Status, Special Regional Autonomy or similar arrangements are established do they become law, or go into effect without a corresponding, assenting vote, by the Region's own representative Council or Assembly. That vote is a not a "formality" – it is part of the "meeting of the minds" between the State and the Region, required to make the arrangement binding on the parties.**
4. If the Regional Councils or Assemblies do not vote it, or if they seek to modify it substantially, the process is in trouble. That is why it is perennial, in order to seal the national pact of trust with those Regions, to seek a consensus with them. **It**

would have been critical to avoid using national demographic parliamentary majorities to override concerns raised on a non-partisan basis by those Regions' very own elected MPs and Senators. The content of the Special Status should have been designed not to meet new opposition at regional level, nor should it be unfamiliar to the actors who should vote and validate it there.

5. In every single country around the world with Special Status regions, **the enactment that determines the content of that Special Status, and amendments made to it, are generated through a process that involves the representative body (Regional Council or Assembly) of the Special Status region. This includes taking initiative in the preparation of the proposed enactment, voting the draft text, and mandatorily being consulted prior to the National Parliament enacting it into law.** Among the approaches used in other countries, we note the following:
 - (i) Consultation with, and soliciting a formal Opinion/Position of the deliberative Regional Assembly before passage of the Special Status by the National Assembly, in an Organic Law (**France**),
 - (ii) Special statute is prepared at the initiative of the Region concerned, consulting with Local Governments within its remit, and sent to the national Houses of Parliament for approval into Law. The right of the Regional Assembly (Parliament) to initiate amendments to the Special Status, and the obligation of the national Government to notify the Regional Assembly of drafts of national laws intended to modify the Status (**Italy**),
 - (iii) Special Autonomy Statutes are drafted by an assembly consisting of members of the council of the Region/Province concerned, and sent to the National Parliament for enactment into an Act, and dual initiative of the regional Parliament and the national Government/Parliament to amend the Statute (**Spain**),
 - (iv) Draft laws on the region's political and administrative Status are drawn up by the Legislative Assemblies of the autonomous regions and sent to the national Assembly. If it amends or rejects, they are returned to the regional Assembly for consideration, and returned to the national Assembly for final discussion and vote. Once enacted, the initiative to amend Special Status lies with the regional Assembly, which drafts and approves a Bill which is presented to the national Assembly (**Portugal**),

- (v) Amendment and repeal of the Special Status may only be made by the “consistent actions of the Parliament of the State and the Parliament of the Special Status region”. At the national parliament, amendments shall use the procedure provided for amendment of the Constitution, and in the regional assembly, by at least two-thirds votes cast in favour (**Finland**),
 - (vi) Government’s Bills which concern matters of interest to, and for application in the Special Status Region are submitted to the authorities of the Special Status region for consideration and comments, before they are issued and enforced in the said Region (**Denmark**),
 - (vii) Draft laws prepared by the national Parliament that directly involve the governance of the Special Status region are developed with the consultation, and advisement of the Special Status region’s Parliament, and any planned amendment to the Special Status Law must be considered by, and entail consultations with the Region’s Parliament. (**Indonesia**).
6. For Cameroon, the introduction of *regional Special Status provisions inside a wider Bill to reform aspects of the central State’s relationship with its Regions and Local Governments*, is a quite unusual way to create and endow Special Status to Regions. (The usual practice is stand-alone legislation applicable only to the Special Status region). While it may appear to be an act of legislative economy to proceed as the Law does (reducing the number of texts tabled) it carries its own risks, such as the inability to dissociate or sever provisions related to one aspect (Special Status for NW/SW), from the other (general rules on Regions and Local Councils).
 7. The issue of severability arises because when the Northwest and Southwest’s Regional Councils or representative bodies will need to vote on the text, will they be able to “sever” it, and vote on only the Special Status provisions? What if the said Regions seek to modify aspects contained in the Law’s General Chapters governing all Regional and Local Authorities as it applies to them, e.g. by derogating from certain rules stated to apply to all Regions?
 8. An important reason that would have advised against using an overly-majoritarian approach to the Bill, is how Members of the National Assembly (lower house) and Senate (upper house) representing constituencies in the other eight (8) Regions of Cameroon approached it, given that their constituents are not “directly” concerned by its section on Special Status, but *are* very concerned about the general provisions applicable to all Regions and Local Councils.
 9. It is important, indeed crucial to be aware of the almost “contractual” nature of the dual legislative actions (at National and Regional levels) needed to create a

binding Special Status or Regional Autonomy agreement. Otherwise, **there would be a tendency to resort to “raw” majorities, either along political party lines, or along regional lines, and to adopt the legislation at the national Parliament at all costs, without seeking a consensus with, or even despite strong reservations from MPs or Senators from the concerned Regions, i.e. those being endowed with Special Status. That is a grave mistake.**

10. Below, we explain why this would be so (in constitutional terms), and further apply that to Cameroon’s current political and security situation in the Northwest and Southwest regions. **We deduce therefrom, that in fact the elective office mandate holders from the Northwest and Southwest regions, held a constitutional quasi-veto power over the Special Status provisions of the said Bill.** If in their majority they dissented from it, the binding effect of the said provisions on the said Regions and its applicability to them, would be highly doubtful as a matter of constitutional law and policy.
11. The first postulate in our argument, is that **a national majority, even an overwhelming majority in the national Parliament in Yaoundé, cannot, on its own, enact a legally valid Special Status arrangement binding on the NW and SW Regions.** Even if every MP or Senator from outside the 2 Regions (145/180: lower house, 80/100: upper house) voted in favour of the Bill and its Special Status provisions giving it a clear national-level supermajority of 80% (well beyond two-thirds), that would not in itself give the Special Status provisions binding effect. They need a corresponding assenting vote in, and by the concerned Regions’ Councils or representative assemblies.
12. The next quandary is that the **NW and SW do not yet have their Regional Councils (representative assemblies) established, so who will undertake this function of providing the assenting vote on Special Status on behalf of those Regions,** once the national Parliament has voted? There are two possible options. The *first*, is that following the holding of *yet-to-be convened elections for the Regional Councils*, those for the NW and SW will be set up, and will have as one of their first agenda items, to validate the Special Status through a regional legislative Act.
13. However, that first option raises the practical question of whether the said elections, can effectively take place across the NW and SW Regions, given the current conflict and security context. The October 2018 Presidential polls provide a warning comparator in terms of low voter turnout. It should also be borne in mind that as elections get “closer to home”, elections can themselves increasingly become the objects and targets of direct violence.

14. **If any future elections in the NW/SW (Legislative, Municipal, Regional) recorded dismally low levels of turnout, they would produce elected “representatives” widely regarded as unrepresentative.** Entrusting the validation of Special Status – a unique constitutionally-derived formula for addressing those Regions’ historical specificities and concerns – to unrepresentative bodies, would spell the death knell to Special Status, thereby narrowing the options out of conflict.
15. This context therefore highlights the importance of having legitimate elected Representatives from the affected Regions who can give their imprimatur to a regional autonomy / Special Status arrangement. The *immediate* future looks bleak in terms of obtaining such representatives through elections with a reasonable turnout and safety in both regions. Hence, the **importance during the extraordinary session of the elective mandate-holders from the said Regions**, voted in 2013 and early 2018 respectively when the voter/electoral college turnout, and security situation did not call to question their legitimacy.
16. Although it would not replace the need to have (when circumstances permit) a duly constituted Regional Council or Representative Assembly, vote in formal session and enact the Special Status arrangements in order to give the corresponding Regional nod to the national Parliament’s vote on same, **the actual voting decisions by the currently-elected Representatives of the population in the Northwest and Southwest regions, namely their 35 MPs in the National Assembly, and their 20 Senators, constitutes the best constitutional proxy presently available, of assent or dissent by the Regions to the Special Status.**
17. If a significantly Regionally split vote occurred, **with a majority of MPs from both Regions abstaining or voting in dissent to the Bill, or trends that show the Bill did not attain a *simple majority* (more yes, than no and abstentions), *absolute majority* (more than half) or *supermajority* (two-thirds) of the 35 MPs and 20 Senators from the Northwest and Southwest Regions, then the very validity of the resulting Special Status arrangements would be put into question.** In fact, until a duly constituted, electorally representative Regional Council or Assembly voted and assented to the Special Status provisions *at regional level*, it is **highly questionable whether they could be considered as legally binding on**, or applicable to the said Regions.
18. It should be borne in mind that Special Status, regional autonomy, or enhanced regional competence frameworks, are intended to give voice to *the Region* in the management of its historical and related specificities. **It does not suffice to say**

a national, demographic majority of the whole country voted, and decided on what to grant the two (predominantly Anglophone) regions.

19. Cameroon's partners, such as the African Union, European Union, Francophonie, Commonwealth, United Nations, and its key bilateral diplomatic partners will also be watching that dynamic, and asking the question: **how was the Special Status as enacted received in the said Regions? It is doubtful that Cameroon's partners who have invested in helping find peaceful, constitutional solutions to the crisis will consider as a helpful outcome and way forward, a Special Status arrangement that was dissented to by elected Representatives of the said regions** – as that would continue the problem of the majority deciding for the minority. The arrangements' acceptance is a harbinger of the ability to use them as a lever for peace. The message to the armed groups would be: “lay down your weapons and take this special form of regional autonomy hereby granted, to manage your specificities”.
20. An additional point is that **the Official Languages Bill (or Law) and the Special Status provisions of the Regional and Local Authorities Code need to be seen as part of the same legislative action.** Government tabled them sequentially (albeit in ordinary and extraordinary sessions) as part of the same set of actions to respond to the Anglophone crisis. In addition, one Bill (Official Languages) purports to regulate nationwide, an issue which is eminently centrifugal (use of the official languages between Regions), and which is a prime area on which the Northwest/ Southwest seek to assert a regional variation in the Special Status. It is worth noting the extent to which, irrespective of their political affiliations, that text gave rise to deep concerns and complaints by MPs from the 2 Regions.
21. For Parliamentarians from the other regions of Cameroon, the Special Status should have constituted an important occasion to demonstrate their commitment not only to **national solidarity** (between all Cameroonians) but also to **inter-regional solidarity** (between regions of the country). **For no-one knows when, and for what reason, their own region may find itself in need of special arrangements or of particular attention from the entire Nation.** We cannot forget how only a few years ago, persons from some of Cameroon's northern regions were collectively accused of orchestrating or facilitating acts which have now been established to be the work of a complex, transnational, jihadist movement, the response to which has required combined efforts from several countries.
22. History also teaches us to exercise some caution when we resort to national-level majorities in order to attain certain specific objectives, brushing aside the concerns of certain components of the Nation. **Exactly 50 years ago, Law No.**

69/LF/15 of 10 November 1969 was adopted. This Law specifically permitted the recourse to a direct popular referendum of the entire country to effect changes to Cameroon's then Federation. It was subsequently used to divert from the procedure for amendment that had been established under Section 47 of the 1961 Constitution of the Federal Republic of Cameroon, which required a consultative process, between the 2 federated States of East and West Cameroon. Thus, instead of a process which would balance the positions of the components of the country (one of which was the forebear of today's Northwest and Southwest regions), a nationwide majority was resorted to. 50 years later, the country is faced with a similar choice – has it learnt its lessons 50 years later?