

Convening of the National Dialogue to Resolve Cameroon's Anglophone crisis: Contextual Developments and Analysis

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What priorities to prepare?

The Convening of National Dialogue creates an opportunity towards resolution of the crisis and had been called for by most national and international stakeholders.

In our assessment, a key input required for the Dialogue, and an area which its participants need to be well briefed on, is **familiarity with the Constitutional options** that are most suited to accommodating Cameroon's dual official linguistic, educational, and juridico-legal heritages. It is likely that the most appropriate mechanism through which to entrench the new or additional arrangements made for the two (2) regions, and the handling of the dual official linguistic heritages would be through some constitutional engineering, or extensive review and reform of legislation pertaining to sub-national tiers of Government, and the critical sectors affected by the dual heritages, notably: (i) the configuration of the local public

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administration in the two regions, (ii) official language use in those regions, (iii) the Anglophone education system, and the (iv) bi-jural legal practice system.

Can the Dialogue make proposals for Constitutional reform?

On the threshold question of **whether the National Dialogue on the Anglophone crisis will be able to propose constitutional reforms**, including any that concern the territorial units of the State, such as the status, attributes, or functions of its constituent regions (in particular the Anglophone regions), a clear analysis of both the Presidential statement announcing the Dialogue, and the process' intended outcomes is required. As demonstrated below, our reading is that such reforms are neither mandatorily required of, nor specifically excluded from the purview of, the Dialogue process – which appropriately allows it to diagnose the problems and propose solutions, without attempting to pre-determine the nature of its outcomes.

Textually, the President communicated on 10/09/2019 his decision 'to convene, from the end of this month, a major national dialogue that will, *in line with our Constitution (in French: 'dans le cadre de notre Constitution')*, enable us to seek ways and means of meeting the high aspirations of the people of the North-West and South-West Regions, but also of all the other components of our Nation'. If the Dialogue were to *propose for consideration* a number of constitutional amendments, it would not be violating, or acting out of line with Cameroon's Constitution, for *the Constitution itself explicitly provides a procedure for its amendment*. It is 'in line' with a Constitution to propose its amendment, provided it is pursued through the constitutionally required procedure (Article 63), and does not attempt one of the four types of reform that are expressly prohibited (Article 64). It does not violate a law to submit, or advocate suggestions for the law's modification, provided the correct procedure is followed, and the proposals do not offend other rules. Part XI of the Constitution provides as follows and is quoted *in extenso*:

PART XI: AMENDMENT OF THE CONSTITUTION

Article 63

1. Amendments to the Constitution may be proposed either by the President of the Republic or by Parliament.

2. Any proposed amendment made by a Member of Parliament shall be signed by at least one-third of the members of either House.

3. Parliament shall meet in congress when called upon to examine a draft or proposed amendment. The amendment shall be adopted by an absolute majority of the Members of Parliament. The President of the Republic may request a second reading; in which case the amendment shall be adopted by a two-third majority of the Members of Parliament.

4. The President of the Republic may decide to submit any bill to amend the Constitution to a referendum; in which case the amendment shall be adopted by a simple majority of the votes cast.

Article 64

No procedure for the amendment of the Constitution affecting the *republican form, unity and territorial integrity* of the State and the *democratic principles which govern the Republic* shall be accepted.

French text:

Article 64

Aucune procédure de révision ne peut être retenue si elle porte atteinte à la forme républicaine, à l'unité et à l'intégrité territoriale de l'État et aux principes démocratiques qui régissent la République.

It should be borne in mind that the National Dialogue does not 'in itself' have the standing or capacity to submit constitutional proposals (if it generates any) to the legislature or to a referendum. Article 63 of the Constitution is clear on which institutions have those prerogatives (the President of the Republic and Parliament). In the event proposals for a constitutional amendment were advanced, they would also have to withstand Article 64's scrutiny, namely that such proposals cannot: (i) change the State from a Republic (*res publica*, or a public property) to a monarchy, and cannot *undermine, infringe, or jeopardise* ²: (ii) the unity of the country, (iii) the

² It should be noted that the term used in the English version of Article 64 of the Constitution, which forbids an amendment "**affecting**" certain sacrosanct principles, is at variance with the term used in the French version of Article 64 : "**porter atteinte à**". The French expression would mean in English "**violates, infringes, or jeopardizes**", while the English expression used ("affecting") used would be rendered in French as "**qui touche à**".

territorial integrity (physical borders) of the country, and (iv) the democratic principles upon which the Republic is governed.

A correct reading of the National Dialogue's remit as delineated by the President should be that it needs to address the specific subject matter assigned to it, and then *propose* solutions (which may be of a policy, legislative, constitutional, developmental, budgetary, or other nature). The said subject matter includes: 'issues of national interest such as national unity, national integration and living together', the core values of 'peace, security, national unity and progress', and 'issues that can address the concerns of the population of the North-West and South-West Regions, as well as those of the other regions of our country such as bilingualism, cultural diversity and social cohesion, the reconstruction and development of conflict-affected areas, the return of refugees and displaced persons, the education and judicial system, decentralization and local development, the demobilization and reintegration of ex-combatants, the role of the diaspora in the country's development, etc.' (citations from the speech of 10/09/2019).

What constitutional routes are possible following crises over regional specificities?

An important point to be internalised by stakeholders in the Dialogue, is that discussions on optimal arrangements to accommodate the country's dual heritages *appear at an impasse*, mainly because of a **lack of clarity about and familiarity with, the various territorial / regional organisation options available to Cameroon**, as an officially bilingual country with a linguistic minority inhabiting primarily a geographically defined area for historical (pre-independence) reasons. The discussion has often been structured exclusively in terms of three (3) options:

- (i) **separatism**: which generates the most-feared consequences, of boiling over into a full-blown and prolonged war, similar to the fall-out of separatism around the world (Angola's Cabinda enclave, Sri Lanka's Tamil region, Turkey's south-eastern Kurdish region, Senegal's Casamance region, etc), and which is prohibited under Article 64 of Cameroon's Constitution;
- (ii) **federalism**: which would in one variant return the country to an arrangement similar to the 1961 – 1972 federation, or in another, to a new multiple federated-State configuration. This however entails the constraint

that nationwide assumption of full federal status would transform the *entire* country, that is, its other regions, whereas there is not the same mobilisation or demand for, and even understanding of, federal status in the eight (8) other regions of the country; and

- (iii) **unitarism**: which is seen as embodying the current state of affairs that has had challenges in protecting Anglophone specificities.

While this three-part typology is commonplace, it is far from comprehensive on the options available to States with these territorial minority dynamics. **Territorial asymmetry**, in which some regions (e.g. Northwest / Southwest) would be granted certain attributes and competencies different from those granted to other regions (which do not have the same specificities or demands) is widely practised in States around the world. These include non-exhaustively: India, Malaysia, Russia, Spain, and even China (Hong Kong and Macau). In modern constitutional engineering, '*variable geometry*' in handling regions – a concept treated with disdain or trepidation by some analysts in Cameroon – is neither an obscene nor alien concept.

Importantly, **such 'Special Status' Regions exist and are accommodated in both States using a federal model, and in States with a Unitary model**. Some countries have a 'progressive' model of empowering regional autonomies, with not all regions acquiring the same functions at the same time. Regions can acquire these at a variable pace based on their needs and capacity (the United Kingdom's devolution process and Spain, are examples). Modern constitutional engineering therefore allows for both *variable geometry* and *variable speeds*, in empowering regions of a country.

Cameroon's underlying historical, geographical, and linguistic features (a very diverse, 'Africa in miniature') tends to lend itself to an asymmetrical model – which is achievable in both federal and unitary systems. The **emphasis needs to be on what the regions in question seek to manage by themselves (and how their right to do so, is constitutionally protected and organised), and not on a binary discussion between unitarism and federalism as State-organisation labels**. An often-ignored provision in Cameroon's Constitution (introduced since its revision in January 1996), is the last article of Part X of the Constitution, devoted to Regional and Local Authorities. It provides thus:

Article 62

1. The aforementioned rules and regulations [meaning Articles 55 to 61 which lay down the rules governing Regions] shall apply to all regions.
2. **Without prejudice to the provisions of this Part, the law may take into consideration the specificities of certain Regions with regard to their organization and functioning.**

Unbeknown to many therefore, the drafters of the current Constitution *anticipated that variations between regions may well be considered in terms of their organisation and functioning*. It may be imagined that the drafters' intention was to accommodate variations such as between regions' demographic or linguistic composition, levels of development, or capacity to implement programs on their own (in a context of progressive transfer or devolution of functions from central to regional authorities). It is true that the current framework only provides for '*legislative*' consideration of such specificities (through laws) and does not *constitutionally establish* these specificities of regions, or detail how they may be exercised. It will therefore be necessary, in light of the specific recommendations of the Dialogue process, to analyse: **(i)** whether this framework is sufficient, or **(ii)** whether, given the significance of the crisis and the issues to resolve, the highest national legal norm (the Constitution) needs to provide a clearer framework to govern these regional specificities.

How will proposals on regions' attributes and functions be received?

While there are merits to exploring how constitutional options may better enable Cameroon manage its official language systems diversity, it should be noted that **proposals for structural reforms of the functions and attributes of territorial units may meet with varying degrees of resistance or misunderstanding** (whether such proposals are for enhanced devolution, asymmetry within a Unitary State recognising special attributes and functions to the predominantly Anglophone regions, or federalist options). At the onset of the Anglophone crisis late in 2016, the President of the Republic (*faced with federalist demands*) laid down a marker excluding any proposals in response to the crisis that would '*alter the form of the State*'. Fully federal arrangements impacting the entire country (erroneously conceptualised as the sole alternative to the status quo) would operate a fundamental transformation

of the State, and across all its regions: a significant task for a State which executes most of its actions through the central Government and its regional outposts, and has only modestly operationalised decentralised functions to local governments.

As has been indicated above, Cameroon's constitutional analysts, policymakers, and broader commenters have **not provided to the public, the full slate or array of options available to a country** which needs to manage such regional specificities. For, there exist across the world unitary States that recognize, organise, and empower specific regions to exercise certain functions or attributes that arise from those regions' linguistic, demographic, or other specificities. A *Unitary State decentralized symmetrically* to all its constituent regions, and a *Unitary State with certain functions or areas of competence devolved asymmetrically between regions* (to cater for regional specificities) are both Unitary States. What degree of alteration of the 'form' of the State would a transition from the former to the latter operate?

A fixation with the overview models of State organisation (unitary, federal), has prevented careful examination of the specific areas in which certain regions or segments of the country may require differential handling, and an assessment of how other countries (which harbour similar diversities) go about managing them. In its stead, calculations about the net loss or shift of power centres, the creation of new spaces for political office, and ever-present reflections about control, or loss of control of geo-strategic resources, and access to and spending from the public purse, appear to have muddled the discussion.

It will not be unique to Cameroon that – faced with these challenges of national togetherness, and in particular the scourge of a 3-year crisis – there is fear and anxiety about any form of territorial organisation, or constitutional tinkering. Some stakeholders in the dialogue process, and other segments of the country may be mobilised to worry that any form of recognition or empowerment of regional specificities will constitute a slippery slope: either towards (i) future separatist demands from those concerned regions, or (ii) a domino effect, giving incentives to other regions' regionalist demands, increasing centrifugal pressures on the State. Yet again, Cameroon's constitutionalists need to get to work – there exist multiple models for how countries (constitutionally) rein in the temptation of separatism, even while affording certain levels of regional specificity or autonomy.

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