

AFRICA

CAMEROON'S RESPONSE TO THE COVID-19 PANDEMIC: COMBATING A DEADLY PANDEMIC WITHIN A WEAK RULE OF LAW FRAMEWORK

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SUMMARY: I. Introduction. II. The constitutional and regulatory framework for dealing with such emergencies. III. Measures taken to control the spread of Covid-19. IV. A critical review of the government response. V. Conclusion.

I. INTRODUCTION

As the COVID-19 crisis deepens, with no obvious end in sight, the measures that African countries are taking to limit the spread of the virus increasingly comes into focus. This is mainly because it comes at a time that many countries on the continent are facing diverse economic and political challenges. This is particularly so with Cameroon, which since 2016 has been grappling with a crippling civilian armed conflict. The gravity of the impact of the pandemic on the country is underscored by the results of a recent study carried out by TV5Monde and published on their website, dated 14 July 2020, which shows that Cameroon is the third most affected country in Africa, behind South Africa and Nigeria.¹

Cameroon, like most other countries must at one stage or another deal with emergency situations such as those posed by the COVID-19 virus. Providing for special powers to be exercised during these exceptional times is now a practice common to all states, whether democratic or not. The criti-

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¹ <https://information.tv5monde.com/afrique/coronavirus-en-afrique-quels-sont-les-pays-impacts-350968>.

cal issue with the exercise of emergency powers is not only to ensure that these are exercised in a manner that effectively deals with the crisis but also that the extraordinary powers usually vested on government are not abused. Prior to 1990, emergency powers in Cameroon had largely been used to perpetuate an authoritarian system noted for its regular violations of human rights. A new framework for regulating declarations of states of emergency was introduced in the revised Cameroonian Constitution of 1996. The responses to the COVID-19 pandemic gives us today an opportunity to assess whether these reforms succeeded. This raises two main issues. First, the effectiveness of legal framework for exercising emergency powers and secondly the effectiveness of their implementation.

In examining Cameroon's response to the pandemic, the next section of this chapter will provide a general overview of the constitutional and regulatory framework for dealing with such emergencies. This is followed by section 3, which examines some of the main measures put in place by the Government to control the spread of the virus. Section 4 takes a critical look at the Government's response. In concluding, it is contended that for a deadly pandemic like this, the weak measures put in place by the Cameroonian government have been compounded by the generally weak framework for constitutionalism and respect for the rule of law.

II. THE CONSTITUTIONAL AND REGULATORY FRAMEWORK FOR DEALING WITH SUCH EMERGENCIES

The global COVID-19 pandemic is a perfect example of the emergency situations that states may face and which may therefore require recourse to the law of emergency. In Cameroon the legal framework for dealing with emergencies is spelt out in the 1996 Constitution and other subsidiary legislation. We will briefly look at the constitutional framework, followed by the regulatory framework and the oversight mechanisms provided for preventing any abuse of emergency powers.

1. *Constitutional framework*

Cameroon has a long history of declaring states of emergency. Before the 1990s this was the main instrument used for silencing critics of the regime and was enforced by a notorious law, the 1962 Ordinance to Repress Subversive Activities (Ordinance No. 62/OF/18 of 12 March 1962). The

repeal of this law and the constitutional entrenchment of a special regime to deal with states of emergency was one of the reforms carried out when the constitution was revised in 1996. The new regime dealing with states of emergency is provided for in article 9 of the 1996 Constitution, which states as follows:

1) 'The President of the Republic may, where circumstances so warrant, declare by decree a state of emergency which shall confer upon him such special powers as may be provided for by law.

2) In the event of a serious threat to the nation's territorial integrity or to its existence, its independence or institutions, the President of the Republic may declare a state of siege by decree and take any measures as he may deem necessary. He shall inform the Nation of his decision by message.

The question, however, is whether this provision reduces the considerable risks that declaration of states of emergency pose to human rights and progress towards a culture of constitutionalism and respect for the rule of law. This, will depend on the safeguards provided for by the constitution and relevant regulations for checking against any abuses. But before we consider these safeguards, we will briefly look at the relevant legislation implementing this regime of state of emergency.

2. *The regulatory framework*

The main regulatory instrument is Law No. 90/047 of 1990 Relating to the State of Emergency (hereinafter, 1990 Emergency Law), which gives more details on situations that can lead to the declaration of a state of emergency and regulates the powers of administrative authorities in the event of such a declaration. According to article 1 of this Law, a state of emergency may be proclaimed in the event of an occurrence which, by its nature and gravity, is considered a national disaster, or a series of disturbances undermining public order or the security of the state, or a foreign invasion.

Article 5 of the 1990 Emergency Law states that upon proclamation of a state of emergency, competent administrative authorities at national, regional and divisional level are given powers which enable them make certain orders that are immediately enforceable and these may, for example;

a) subject the movement of persons and property to restriction, and, if necessary, to administrative authorisation;

...

- c) prohibit all meetings and publications that foster disorder;
- d) prescribe areas of protection or of security within which the presence of human beings shall be subject to regulation;
- e) call, in prescribed form, upon the military authorities for standing assistance in the maintenance of law and order;
- ...
- g) order the detention of persons deemed dangerous to public security in any premises, including special prison cells for duration of 7 days by Senior Divisional Officers and 15 days by Governors.

In addition to the above powers given sub-regional authorities, the Minister in charge of Territorial Administration is empowered to, by ministerial orders, take measures such as ordering the closure as and when necessary, of entertainment halls, drinking and meeting places of any kind, disperse any assembly or suspend any association which may provoke armed demonstration.

Several other pieces of legislation of a general nature can be invoked to deal with emergency situations. These are laws that are provided for to ensure the maintenance of law and order and these laws can be enforced regardless of whether a formal state of emergency or a state of siege has been declared or not. Perhaps the most important of these is Law No. 90/054 of 1990 relating to the maintenance of public order which gives the administrative authorities the power to take measures such as limiting the movement of persons and goods, ordering the police or gendarmerie to act in order to restore peace and order. Besides this, a number of other laws give general powers to sub-regional authorities (governors at the level of the region, senior divisional officers (SDO) at the level of the division and divisional officer (DO), at the level of the sub-division) to take a variety of measures to ensure the maintenance of order within their administrative competence.

It is to the issue of the checks provided to ensure that these powers are not abused that we will now turn.

3. Oversight mechanisms of the exercise of emergency powers

The primary oversight institutions provided for checking against any governmental arbitrariness in the exercise of emergency powers in Cameroon are the legislature and the judiciary.

A. Legislative oversight

Article 9 of the Constitution confers almost absolute powers on the President of the Republic with respect to the declaration of a state of emergency. The only qualification to this is article 9 (2) which requires him, insofar as the state of siege is concerned to inform the nation by message. Any other limits depend on the law that Parliament enacted to implement article 9.

Generally, legislative oversight is exercised in at least two instances. Firstly, under article 3(b) of the 1990 Emergency Law, Parliament may only intervene after the declaration of a state of emergency in the event where the President of the Republic desires to extend it beyond six months. They may only intervene to extend it for a non-renewable period of three months. However, even the effectiveness of this is doubtful because the Law is vague and makes it clear that the President merely consults Parliament and not that Parliamentary approval is necessary for the extension. Secondly, although articles 34-35 of the Constitution provides various modalities for Parliament to hold the executive accountable, such as through a vote of no confidence, and oral and written questions, it must be noted that this does not apply to the President. It is only ministers and other administrative officials that can be subject to this.

What must be noted therefore is that there are no constitutional constraints on the measures that the president may take or the limitations on fundamental rights that he may impose, in spite of the fact that Cameroon is a party to the International Covenant on Civil and Political Rights (ICCPR). Ensuring that any declaration of a state of emergency does not threaten fundamental human rights, respect for the rule of law and constitutionalism therefore depends on judicial scrutiny.

B. Judicial scrutiny of state of emergency

In Cameroon, judicial scrutiny of the exercise of emergency powers should place on the basis of its role as guardian and enforcer of the constitution. There are two main possibilities, one by taking action for any measures that violate the constitution and the other, action against administrative authorities who abuse the powers conferred on them by the emergency laws.

There is no possibility of bringing an action for measures taken that violate the constitution in Cameroon because the main victims of abusive use of emergency powers, the ordinary citizens, under article 47(2) of the

Constitution, have no *locus standi* before the Constitutional Council that has exclusive jurisdiction over constitutional review. As explained below, excessive judicial deference to the executive has limited the effectiveness of taking action against administrative authorities for abuse of office.

III. MEASURES TAKEN TO CONTROL THE SPREAD OF COVID-19

So far, the Cameroon Government has not declared a state of emergency to fight COVID-19, and there is no emergency legal framework peculiar to situations of health emergency either. Unlike other states, Cameroon has not enacted any specific legal regulations tailored to deal with the pandemic. It has instead relied on the existing legal framework. Again, unlike in most African countries where the presidents have come out and taken the lead in coordinating the different measures adopted to deal with the crisis, the Cameroonian president, Paul Biya, has hardly been seen since the start of the crisis. Occasionally, the Government-owned media makes announcements about instructions that are supposed to have been given by the President. The measures that have been adopted have been at the national and sub-national level.

At the national level, a series of measures were said to have been prescribed by the President of the Republic and made public by the Prime Minister. The measures, taken on the basis of a document referred to as, Government Strategic Response to the Coronavirus Pandemic, included the closure of borders; the closure of schools and universities; the ban on gatherings of more than 50 people; the closure of drinking spots, restaurants and other places of leisure as from 6 p.m.; and the restriction of urban and inter-urban movements.² A broadcast press release of 18 March 2020, signed by the Secretary General of the Prime Minister announced additional measures again said to be under the instructions of the President of the Republic.³ After pressure from the international community, a presidential decree of 15 April 2020 commuted the prison sentences of certain prisoners and provided for the release of others.

² See the Government Response Strategy to the Coronavirus Pandemic published on <https://www.prc.cm/en/multimedia/documents/8228-government-response-strategy-to-the-coronavirus-pandemic-covid-19> made public on the 17th March 2020 and its supplement of the 9th April 2020.

³ https://www.cabri-sbo.org/uploads/files/Covid19BudgetDocuments/COMMUNIQUEZRA-DIOZ-ZAPPLICATIONZDESZMESURESZDEZRISPOSTEZCONTREZL_1.pdf.

As part of the Government Strategic Response to the Coronavirus Pandemic, the Prime Minister published a series of economic measures aimed at cushioning the effects of the pandemic on businesses, trade unions, and households. These measures included the suspensions for the second quarter of 2020 of general accounting audits; the postponement of the deadline for filing statistical and tax declarations; the granting of moratoria and deferrals of payment to companies directly affected by the crisis; the cancellation of penalties for the late payment of social security contributions due to the National Social Insurance Fund and the increase of family allowance from CFA 2800 francs to CFA 4500 francs.

In announcing the measures, the Prime Minister referred to consultation with an Inter-Ministerial Committee Responsible for Monitoring and Evaluating the Implementation of the Government Response Strategy Against the COVID-19 Pandemic, which is said to have been meeting weekly. However, there is little information as to the date of its creation, its composition and its meetings.

As the sub-national level, the regional Governors, the SDOs and DOs in different parts of the country have taken diverse and sometimes conflicting measures, acting under their mandate to maintain public order in order to arrest the spread of the virus in their administrative areas.

IV. A CRITICAL REVIEW OF THE GOVERNMENT RESPONSE

Four major problems have had a negative impact on the ability of the Cameroon government to deal effectively with the COVID-19 crisis, first, the weak and uncertain legal framework, secondly the lack of a clear and coordinated policy and thirdly, the absence of effective oversight and finally, the frequent abuses of the wide ranging powers assumed to deal with the pandemic.

1. *The weak and uncertain legal framework*

As pointed out earlier, no state of emergency was ever declared nor has any specific law been enacted by Parliament to deal with the crisis. Although the Prime Minister and other members of the executive have the powers under articles 27 and 28 of the Constitution to make rules and regulations, the document relied upon is the so-called Government Strategic Response to the Coronavirus Pandemic, which at best, is a policy document and thus not strictly binding. In spite of this, law enforcement officers

have strictly enforced the restrictions contained in this document at huge cost in some instances to citizens. For example, a minister ordered a private clinic to be closed for violating an order that created special centres for treating all COVID-19 cases, yet the order did not prohibit private clinics from admitting these patients.

As a result of not formally declaring a state of emergency or enacting a specific law to deal with the crisis, the Government has been able to implement measures that are only compatible with the declaration of a state of emergency without complying with the basic requirements, such as notification of the other state parties to the ICCPR on the derogating measures it has taken.⁴ In this way, it has avoided international scrutiny for its actions. Furthermore, it has left a legal predicament in which each administrative authority, as is shown below, more or less takes such measures as it thinks fit.

2. *Lack of clear and coordinated policy*

Although statements from the Prime Minister's office suggest that there was an inter-ministerial coordination committee, it is doubtful whether this is so or if so, whether it helped in planning and coordinating policies. On several occasions, there were conflicting policies not only between the central government and sub-national units but also between the different sub-national units. For example, the SDOs of two divisions, Menoua and Menchum, prohibited the entry or movement of all corpses regardless of the causes of death in their divisions. It was only after widespread public protest that this was limited to corpses of people who died from COVID-19. It nevertheless caused serious hardship to those transiting through these divisions. Another example occurred in the Littoral region where the Governor imposed more restrictive measures on the consumption of alcohol in his region than those imposed by the Prime Minister. Although the Prime Ministerial measures as the *lex superior* law take precedence over the Governor's, this did not prevent the local law enforcement officials enforcing the Governor's more restrictive measures.

3. *Lack of effective oversight measures*

Besides the problem of limited access to challenge constitutional violations, the fact that under article 37 of the Constitution, the President of the Republic has the powers to appoint, dismiss and transfer judges, has re-

⁴ See, article 4(3) of the ICCPR.

sulted in considerable judicial deference to the executive leading to a weak system of respect for the rule of law. As a result of this, the Cameroonian judiciary has been unable to exercise any effective oversight over executive excesses.

At the best of times, because of electoral manipulations, Parliament is dominated by the ruling party and has therefore hardly exercised any effective oversight over executive actions. Unsurprisingly, although a parliamentary session ended in June, not only were no specific laws adopted but the ravaging effects of the pandemic on the country was not even discussed!

4. *Abuse of powers*

On the whole, as in the pre-1990 period, perhaps with the difference that no state of emergency was declared, the government at central and sub-national level have used the pretext of maintaining law and order to violate the human rights of citizens on numerous occasions. Many individuals have been arrested and detained by the police, cars impounded and in many instances, bribes extorted from citizens based on restrictions whose legal force, as pointed out above, is questionable. Some of the regulations have been used to settle political scores. For example, the fundraising efforts of the opposition party, the Cameroon Renaissance Movement (CRM), designed to assist those affected by the pandemic, was arbitrarily stopped by the Minister of Territorial Administration because it was seen as a challenge to the Special Coronavirus Fund created by the President.

V. CONCLUSION

Although like most African countries, Cameroon tried to improve the constitutional and legal framework for dealing with emergencies, the manner in which the Government has acted in dealing with the COVID shows that the scope for abuse of emergency powers remains a major obstacle to entrenching a culture of constitutionalism, good governance, and respect human rights and the rule of law. Perhaps the main problem is the fact that there is no clear and comprehensive national legal framework, nor is there a national plan. This has resulted in conflicting policies and regulations at national and sub-national level.

It is therefore not surprising that in spite of its relatively small population, Cameroon now has the third highest number of infections in Africa. It

is clear evidence, not only of its weak and ineffective regulatory framework but also of the confused and uncoordinated measures that the government has taken so far. The virus is not likely to disappear any time soon. Unless the Government gets its act together, the situation in the country is likely to get worse.