

3

THE SCOPE OF SOCIO-ECONOMIC MEASURES IN RESPONSE TO COVID-19 IN BENIN

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Abstract

Recognised as a global pandemic, the 2019 coronavirus disease, COVID-19 or SARS-CoV2, has been declared a public health emergency of international concern, causing record disruptions to trade and value chains, reduced flows of foreign financing, capital flight, food crisis, weakening of the most resilient health systems, and exacerbation of gender-based violence. In response, countries have imposed many forms of restrictions to limit the spread of the virus, including general or partial isolation and the imposition of hygiene measures or barriers, followed by concrete measures to mitigate its socio-economic impact. The implementation of the response measures required a review to ensure that, in particular, the socio-economic measures taken by the Beninese state were in line with international standards. The present study is therefore necessary in order to deepen the legal thinking around the socio-economic measures adopted by Benin, particularly to ascertain whether they address the socio-economic difficulties of vulnerable people, exacerbated by the pandemic.

1 Introduction

Socio-economic measures include all the means used for the insurability of the right to housing, food, water, healthcare, education,¹ social security, family life,² trade, and the right to decent work for sustainable post-pandemic resilience of the national and even global economy.

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1 Article 17(1) of the African Charter on Human and Peoples' Rights adopted on 18 June 1981, ratified by Benin on 20 January 1986 and annexed to the Constitution of the Republic of Benin in the referendum of 2 December 1990.

2 Paragraphs 1 and 2 of art 18 of the African Charter on Human and Peoples' Rights.

According to Dr Tedros Adhanom Ghebreyesus, Director-General of the World Health Organisation (WHO) ‘the global spread of the virus has caused widespread social and economic disruption’³ by bringing societies and economies to a standstill. This spread requires not only defensive health measures, but also intervention measures with dual functions. The first function is to mitigate the socio-economic effects for an effective, rapid and sustainable recovery of the national and global economy postCOVID-19. The second function is the scrupulous respect of fundamental socio-economic rights which cannot be derogated from, especially in times of crisis, and which are promoted by the relevant international standards.

As far as ‘response’ is concerned, no legal definition has been established. However, the Larousse dictionary defines it as ‘an action that responds immediately and strongly to an attack’.⁴ The response must, therefore, be seen as spontaneous state actions, proportionate and limited to the risks presented by COVID-19 in its socio-economic aspect, in particular for the survival of the individual and the proper functioning of international traffic.

The response to COVID-19, particularly at the socio-economic level, in Benin was quickly imposed by the prior recourse to a state of emergency even though the procedure for declaring a state of emergency was not respected. The failure to comply with the procedure for declaring a state of emergency and the persistence of COVID-19 seem to give the Beninese state the prerogative to enact restrictive norms on trade and industry as long as COVID-19 lasts. Thus, at the advent of COVID-19, the Beninese government adopted measures to support certain companies, which legally constitutes public aid and therefore a practice that restricts competition. Such a practice is likely to facilitate the accession of the aided companies to a dominant position on the post COVID-19 market. This breaks the competitive balance between competing companies. This allegation will be justified later in this study.

In principle, article 3(1) of the International Health Regulations⁴ hereinafter referred to as IHR (2005), states that all Member States of the

3 World Health Organization (WHO) ‘COVID-19 Strategy Update’ (14 April 2020) para 3 of the foreword. Larousse <https://www.larousse.fr/dictionnaires/francais/riposte/69528> (accessed 2 September 2020).

4 Adopted on 23 May 2005 and entered into force on 15 June 2007 for Benin in accordance with art 22 of the Constitution of the World Health Organization and arts 59 and 64 of the IHR (2005), which provide that the Regulations entered into force on 15 June 2007 for the 191 States that did not make reservations to the Regulations, and on 8 August 2007 for the two Member States (India and the United States of America) of the WHO that did make reservations.

WHO are obliged, in adopting measures to respond to health emergencies – including COVID-19 – to respect the dignity of persons, human rights and fundamental freedoms.

In times of debilitating socio-economic emergencies, this enshrined obligation can be summarised as compliance with the minimum non-derogating international standards prescribed by the recommendations of the relevant international organisations. In fact, on ‘socio-economic levels, it is basically recommended that States, in order to mitigate the socio-economic effects of the crisis, take action focused on gender-sensitive social protection’.⁵ Therefore, the temporary and definitive recommendations and then the prescriptions constituting the said international standards recommend that States, at the socio-economic level, focus their intervention measures on the protection of vulnerable people, especially in the informal sector in countries where the rate of informality is growing, in order to ensure that populations have effective access to the minimum subsistence goods and services essential to human life, in strict compliance with equality and therefore non-discrimination.

However, in order to respond to COVID-19, the Beninese government formulated a package of social measures estimated to cost 1.7 per cent of the GDP (about US\$150 billion)⁶ during the IMF review mission in April 2020. In addition to this package of measures, the government initiated a COVID-19 ‘Preparedness and Response Plan’ with the overall objective of strengthening Benin’s capacity to stop the spread of SARS-CoV-2 by the end of May 2020. With an overall cost of 389.6 billion CFA francs (nearly US\$650 million),⁷ the gap⁸ in funding for this plan is initially around 365 billion CFA francs (US\$608.5 million), or 4 per cent of the GDP. However, depending on the means available to the country to effectively respond to COVID-19, on 10 June 2020 Benin adopted measures to mitigate the

5 The majority of the recommendations come from the International Monetary Fund, the World Bank, the Organization for Economic Co-operation and Development, the United Nations Development Program, the Global Compact, OCHA, the United Nations Foundation, UN-Women, and the World Food Program. UNICEF: Social Policy, Program Division ‘Gender-responsive protection during COVID-19: Technical note’ (2020).

6 International Monetary Fund ‘IMF reaches staff level agreement on the sixth review of Benin’s Extended Credit Facility (ECF)’ Press Release 20/178 (21 April 2020) <https://www.imf.org/fr/News/Articles/2020/04/21/pr20178-benin-imf-reaches-staff-level-agreement-six-review-ecf-arrangement> (accessed 16 March 2021).

7 Average rate 1 dollar = 600 FCFA.

8 This is the gap that remains given the funding announced by the following donors by name: Islamic Development Bank; Early Childhood Development Nutrition Project/World Bank, the redesigned REDISSE Project; the New World Bank Fast Track Financing COVID-19 WB, BADEA and WHO.

socio-economic effects of COVID-19⁹ through a programme of support for the productive sector valued at 74 billion CFA francs, with a view to providing financial support to businesses, artisans and small tradesmen, and then granting subsidies to all citizens. In addition, on 29 July 2020, in the Council of Ministers, the government took additional measures to support agricultural enterprises and micro, small and medium-sized enterprises as part of the mitigation of the socio-economic effects of the coronavirus pandemic.¹⁰

The measures adopted by Benin reveal two things. On the one hand, the measures only aim at ‘reviving the national economy post-COVID-19’,¹¹ on the other hand, these measures only concern certain formal enterprises, artisans and agricultural enterprises.

According to the United Nations Economic Commission for Africa (ECA),¹² between January and March 2020, while the Food and Agriculture Organization of the United Nations (FAO) food price index lost 5 per cent, cotton, a major export product of Benin, fell by 26 per cent. Meanwhile, the International Monetary Fund (IMF), notably in April 2020, estimated that in low-income countries the evolution of Gross Domestic Product (GDP) will be negative for large oil and commodity exporting countries, while for other low income countries, growth rates will be much lower than expected, but would remain on average above 1.6 per cent. South Africa, ‘which entered a recession in the fourth quarter of 2019, has seen its two main sources of foreign exchange, the mining and tourism sectors, particularly threatened’¹³ also due to the pandemic. In addition, the IMF projects negative growth in 2020 for sub-Saharan Africa (-1.6 per cent), with a marked situation in Nigeria and South Africa.¹⁴ Faced with these forecasts, can African states south of the Sahara in general, and Benin in particular, adopt economic and social measures in

9 II-1 of Circular n°22/2020/PR/SGG/CM/OJ/ORD of the General Secretariat of the Government dated 10 June 2020 on the minutes of the Council of Ministers of Wednesday 10 June 2020.

10 Official website of the 24 heures newspaper in Benin ‘le gouvernement expose les mesures complémentaires au public’ <https://www.24haubenin.info/?Le-gouvernement-expose-les-mesures-complementaires-aupublic> (accessed 3 September 2020).

11 WHO (n 1) para 3 of the foreword.

12 ECA ‘COVID-19 in Africa: Saving lives and the economy’ (April 2020).

13 Official website of the Ecofin Agency <https://www.agenceecofin.com/gouvernance-economique/2304-75973afrique-du-sud-un-plan-de-riposte-de-26-miliards-pour-sauver-l-economie-touchee> (accessed 12 September 2020).

14 According to IMF projections, the South African economy is expected to shrink by 5.8 per cent in 2020.

line with the aims of international recommendations with this profound degradation of value chains? Hence the interest of this study.

This study has a dual theoretical and practical interest. In theory, it allows us to assess whether the state intervention measures set out by the Beninese government are in line with the socio-economic prescriptions and recommendations laid down by the competent organisation for an effective response. In practice, it provides an opportunity to identify the inadequacies of the response measures raised, and to indicate corrective solutions for these measures, with a view to a response that conforms to the aims of international standards for not only an effective response, but above all for sustainable socio-economic post-pandemic resilience.

This raises the question of whether the socio-economic measures in response to COVID-19 in Benin sufficiently respect international prescriptions and recommendations in terms of protection of vulnerable people. The present study actually aims to demonstrate that the socio-economic measures taken by Benin in response to COVID-19 insufficiently protect vulnerable people and disrupt competition because of their relative compliance with international recommendations.

Under the seal of poverty in the presence of a high demography aggravated by a high threshold of public debt of African countries; to reflect on such a study consisting in the analysis of the conformity to international standards of the socio-economic measures in response to the COVID-19, requires the adoption of a double approach. This is why, after having demonstrated the insufficient conformity of the socio-economic measures in response to COVID-19 with international prescriptions and recommendations, it will then be necessary to demonstrate the insufficient conformity with international standards of the implementation of the economic and social measures adopted.

2 Measures not in line with international standards

This shortfall is easily explained by the incompleteness of the targeted beneficiaries, compounded by the unfavorable economic treatment.

2.1 Incompleteness of the targeted beneficiaries

According to international standards, vulnerable social groups¹⁵ (girls and women,¹⁶ children, the elderly, ethnic minorities and people living with disabilities,¹⁷ forcibly displaced persons²⁰ (namely, refugees, asylum seekers, internally displaced persons, returnees) and then stateless persons and migrants)²¹ on the one hand, and businesses or self-employed professionals in the formal and especially the informal sector on the other hand, should be the main beneficiaries of emergency socio-economic measures in response to COVID-19.

According to Achim Steiner, Administrator of the United Nations Development Program (UNDP): ‘Women are the most affected by the COVID-19 crisis,¹⁸ as they are more likely to lose their source of income and less likely to be covered by social protection measures’.¹⁹ Meanwhile, the Director-General of the International Labor Organization (ILO)²³ has sounded a warning that ‘as the pandemic wipes out family incomes, many families may resort to child labor if not helped’.²⁴ The impending need to heed this warning is the simple fact that as families are forced to resort to whatever means they can to survive, especially ‘in times of crisis, child labor is becoming a coping mechanism for many families’, says United Nations Children’s Fund (UNICEF) Executive Director Henrietta Fore.

This is easy to understand as the pandemic reduces the financial resources of families in the absence of concrete social assistance. This situation, which has the effect of wiping out the standard of living of these families, leads to children dropping out of school due to a lack of school fees or to the closure of schools. This impossibility of access by children to school education leads to a greater number of children going into the world of work. To counter this, the ILO and UNICEF recommend that states ensure the protection of children and their families, with a view to

15 HE Amb Minata Samate Cessouma: Commissioner for Health, Humanitarian Affairs and Social Development, African Union Commission ‘The impact of the coronavirus pandemic (COVID-19) on refugees, internally displaced persons, migrants and returnees’ Addis Ababa, 29 May to 11 June 2020, <https://au.int/en/speeches/20230620/official-statement-he-amb-minata-samate-cessouma-commissioner-health-humanitarian> (accessed 24 September 2023).

16 UNDP ‘COVID-19 will widen poverty gap between women and men, new UN Women and UNDP data shows’ (2 September 2020) <https://www.undp.org/press-releases/covid-19-will-widen-poverty-gap-between-women-and-men-new-un-women-and-undp-data-shows> (accessed 13 September 2020).

17 As above.

18 Cessouma (n 15) 2.

19 UNDP (n 16).

curbing the threat of child labour, by focusing interventions on a vision of ensuring broader social protection, easier access to credit for poor families, promotion of decent work for adults, measures to get children back to school, including the elimination of school fees, as well as increased resources for labour inspection and law enforcement.

In order to assess the socio-economic impacts of the COVID-19 pandemic²⁰ on households and businesses in Benin, the National Institute of Statistics and Economic Analysis (INSAE) conducted two surveys during the third quarter of 2020.²¹ The first survey, conducted in July 2020 by telephone and involving a sample of 1 500 households, is nationally representative. The second survey, conducted in August 2020 in the field, with a sample of 2 361 households and 1 254 businesses (formal and informal), is representative at the departmental level and according to place of residence. The report shows that ‘nationwide, 37% of households were vulnerable to COVID-19’, and that ‘80% of households cancelled trips and reduced their use of public places such as markets and food shops’. Also, after the closure of schools,

parents of students took measures to avoid school dropouts. During the school closure period, more than 60% of households had at least one child in school. Of these, 47% worked online on out-of-school activities, 22% completed teacher-provided assignments online, and 19% attended teacher-recorded classes.²²

However, according to the same report, ‘less than one fifth (16%) of households have benefited from internet services’.²³

The shortcoming of the report²⁴ of these surveys is the lack of disaggregation of the household data. In fact, the household data do not show the number of poor households prior to COVID-19 that were counted, nor the number of households that became poor at the advent of COVID-19. But in a terse sentence in the report of the two surveys, it was stated that ‘nationwide, 37 per cent of households were vulnerable

20 As above.

21 Institut National de la Statistique et de l'Analyse Economique du Bénin (INSAE) ‘Enquêtes réalisées par l’Institut National de la Statistique et de l’Analyse Economique dans le cadre de l’évaluation des impacts socio-économiques de la COVID-19 au Bénin’ <https://insae.bj/actualites/214-enquetes-realisees-par-l-institut-national-de-lastatistique-et-de-l-analyse-economique-dans-le-cadre-de-l-evaluation-des-impacts-socio-economiques-de-lacovid-19-au-benin> (accessed 25 June 2021).

22 INSAE (n 21) 2.

23 INSAE (n 21).

24 As above..

to COVID19',²⁵ even though during the same period '80% of households cancelled trips and then reduced use of public places such as markets and food shops'²⁶ and only 'less than a fifth (only 16%) of households benefited from internet services'.²⁷ Worse still, the report is silent on the cause of the 80 per cent of households who cancelled their use of public places such as markets and food shops. This silence makes it impossible to truly appreciate the impact of COVID-19 on households in Benin. This is because this cancellation may be the result of several factors, including poverty during the pandemic due to either 'the closure of bars, restaurants, nightclubs, or refreshment stands' or the limitation of travel caused by the delimitation of the health cordon.

However, the closure of bars, restaurants, nightclubs, or even refreshment stands, which form a large part of the country's informal economy, will result in an increase in the number of unemployed and therefore in poverty. This raises the question of the basis for the allegation in the report of the two surveys that 'nationwide [only] 37% of households were vulnerable to COVID-19'.²⁸ Also, how only 'less than one fifth (16%) of households had access to internet services'²⁹ and yet

during the period when schools were closed, over 60% of households had at least one child in school. Of these, 47% worked online on non-school activities, 22% completed teacher-provided assignments online, and 19% followed teacher-recorded lessons.³⁰

Even though working online requires an internet connection, which is conditional on having access to the internet. And only 16 per cent of the households surveyed had access. Or are we talking about the 47 per cent of children in the 60 per cent of these 16 per cent of households that had access to the internet, who were able to work online? So much concern about the report due to the lack of disaggregation of the data. It should also be noted that:

50% of heads of households [of which 87% were men and 13% were women] who were employed before the crisis were unable to carry out their activities during the period from March to July 2020. Also 46.1% of heads of households

25 INSAE (n 21) 1.

26 As above.

27 INSAE (n 21) 2.

28 INSAE (n 21) 1.

29 INSAE (n 21) 2.

30 As above.

were unemployed and 50.9% of heads of households had difficulties carrying out their main activities.³¹

But at least for this abandonment or suspension of work on the part of heads of households, the three reasons identified in the report are: 'fear of being infected by the virus, prohibition of assembly and lack of activity'.³²

With regard to forcibly displaced persons, the Permanent Representatives Committee (PRC) of the African Union (AU) recommends³³ that Member States pay particular attention to ensuring that refugees, asylum seekers and migrants enjoy the measures and full rights contained in the 1969 Refugee Convention and the 2009 AU Convention on internally displaced persons.

The PRC calls on States that have not yet domesticated the above-mentioned international conventions to proceed with their adoption and ratification and rightly calls on States to strongly condemn mass expulsions, xenophobia, stigmatisation, racism, intolerance, inhumane treatment of migrants, refugees and asylum seekers. Since the upheaval of the global economy has forced companies in various sectors to temporarily close down or adapt their usual working conditions, it is recommended that States assist companies facing serious difficulties to ensure their viability.³⁴

In response to COVID-19, Benin adopted socio-economic measures on 10 June 2020 to support the productive sector for the benefit of businesses, artisans and small tradespeople, and all citizens. In addition, on 29 July 2020, in the Council of Ministers, the government took additional measures to support agricultural enterprises and micro, small and medium-sized enterprises.

It is, therefore, clear that, of the beneficiaries recommended by international organisations, Benin on 13 September 2020 has only taken socio-economic measures for businesses and independent professionals (artisans and those working in small trades). But also 'presumptuously' for all citizens. This last case is not true. For the content of the measures is not, strictly speaking, aimed at all citizens. Estimated at 5.76 billion

31 As above.

32 INSAE (n 21) 3.

33 Cessouma (n 15) 4.

34 International Labor Organization (ILO) 'Restructuring for recovery and resilience in response to the COVID-19 crisis' (24 April 2020) https://www.ilo.org/empent/areas/covid-19/briefing-notes/WCMS_742725/lang-en/index.htm (accessed 13 September 2020).

CFA francs,³⁵ this subsidy, which is supposed to be aimed at the entire population, should not only cover electricity and water rates, but also extend to a special subsidy for the poor. And the malaise is that these poor will only be identified ‘as soon as the identification process is completed’ during the pandemic. These poor will be assisted by the mechanism of project ARCH which existed long before the pandemic and whose beneficiaries are Beninese citizens. As a result, contrary to international recommendations, stateless people will unfortunately not receive social assistance in Benin during the COVID-19 pandemic. Moreover, Benin does not know the number of stateless persons on its territory, because it does not have a procedure for determining statelessness.

Indeed, the package of measures, which literally claims to be formulated for the entire population, raises many questions. How can one formulate measures for all, and say for the identification of beneficiaries that it concerns only a tiny fraction of the population, notably the poor? Even though the poor assisted are none other than those identified through the ‘Assurance pour le Renforcement du Capital humain’ (ARCH) project. Access to the ARCH system requires the possession of a biometric identity card. This suggests a priori the possession of an identification document proving Beninese nationality. As a result, people who were born in Benin, but who have never been declared in the civil register, will unfortunately not be taken into account even if they live on less than 0.5 dollars a day. The wording of the measure is therefore misleading. And it does not mitigate the socio-economic effects of the entire population, even though the pandemic was reaching the limits of all the economic reserves of the families of the entire population without any distinction based on social class.

Therefore, it is the partial or even selective inclusion of recommended beneficiaries that explains the incompleteness of the targeted beneficiaries. However, in order to take into account, the specific realities of the populations and in full compliance with international recommendations, in principle, an in-depth study and specific surveys should be carried out to identify the real beneficiaries. This has only been partially done with failure due to the chronic absence of disaggregation of data essential for the appreciation of the true socio-economic impact of the pandemic in Benin on: girls and women,^{36 37} children, the elderly, ethnic minorities and

35 II-1 of Circular n°22/2020/PR/SGG/CM/OJ/ORD (n 9).

36 UNDP (n 16).

37 As above.

people living with a disability,³⁸ and possibly on forcibly displaced people³⁹ that is, refugees, asylum seekers, internally displaced people, returnees and then on stateless people and migrants⁴³ without forgetting businesses or independent professionals in the formal and especially the informal sector.

The question that could be asked is whether, in the absence of full consideration of the recommended beneficiaries, at least the equality of assistance between the measures adopted for the targeted beneficiaries is respected.

2.2 Unfavorable economic treatment

The IMF estimates that two-thirds of the economic disruption will not be caused by the pandemic itself, but by a decline in consumer and business confidence and a tightening of financial markets.⁴⁰

In fact, in Benin, the pandemic affected 43.2 per cent⁴¹ of households economically. In particular, ‘heads of households working in the restaurant/accommodation, industry and trade sectors were on average 1.5 times more affected by the pandemic than those working in the primary sector’.⁴² This finding should lead to an increase in economic measures, either in favour of women and men, the disabled and the elderly working in the catering/accommodation, industrial and commercial sectors, or in favour of companies in the catering/accommodation, industrial and commercial sectors, without ignoring the vulnerable in the primary sector. Since the aim is to mitigate the economic effects of these vulnerable people, without discrimination on the basis of whether they are in the formal or informal sector.

In relative conformity with these prescriptions, the adoption of economic measures in Benin has taken place in two stages: the time of the generalisation of measures on the one hand and the time of the specialisation of measures on the other. However, the emphasis here will be on the first phase, since the second cohort of so-called complementary measures is only intended to support agricultural enterprises, which is already antinomic to the INSAE’s observation that the restaurant/accommodation, industry and trade sectors have been most affected. The additional measures are justified by the fact that the agricultural sector is a

38 UNDP (n 16) 4.

39 Cessouma (n 15) 2.

40 UNDP (n 16) 5.

41 INSAE (n 21) 4.

42 As above.

major contributor to the country's gross domestic product, not that it has been heavily impacted.

Indeed, the generalisation of the measures was built in three stages, defined in a programme called 'Support program for the productive sector evaluated at 74 billion'.⁴³ The first stage consisted of financial support for companies. A second stage aims to assist artisans and those engaged in small trades. Then a third and final stage consists of providing subsidies to all citizens, on electricity and water rates.

Firstly, during the first stage, the economic measures estimated at CFAF 63.38 billion granted to businesses are intended to cover, depending on the case, 70 per cent of the gross salary of declared employees over a period of three months, the reimbursement of VAT credits and the exemption from payment of the Motor Vehicle Tax (TVM).⁴⁴ It also extends to the full payment of electricity bills for three (3) months for hotels and travel agencies to the tune of CFAF 4.1 billion.⁴⁵ Also, through a subsidy fund of CFAF 30 billion, the State guarantees a line of credit of CFAF 100 billion at zero interest for the benefit of targeted economic actors via banking establishments and decentralised financial systems (SFD), on condition that the credits granted are at zero per cent interest and repayable over a period of three years maximum for banking establishments and one-year maximum for decentralised financial systems (SFD).

Secondly, during the second stage, the economic measures estimated at CFAF 4.98 billion and intended for craftsmen and those practicing small trades, this financial support will help 55 000 professionals in hairdressing, sewing, welding, carpentry, small saleswomen, and the like, who have registered on the digital platform opened for this purpose, as well as in the town halls and social promotion centers.

Thirdly, during the third stage, the economic measures, estimated at 5.76 billion CFA francs, were intended not only for electricity and water tariffs, but also extended to a special subsidy for the poor once the identification process was completed.

Of the measures outlined, two observations must be made. The first concerns the scale of the economic measures taken for the benefit

43 II-1 of Circular n°22/2020/PR/SGG/CM/OJ/ORD (n 9).

44 For those who have not yet paid it for the year 2020, to its conversion into a tax credit, for the year 2021, for those who have already paid it, to the assumption of commercial rents over three months for the benefit of declared travel agencies.

45 II-1 of Circular n°22/2020/PR/SGG/CM/OJ/ORD (n 9).

of companies. The second relates to the Beninese government's lack of concern or indifference to the social situation of the entire Beninese population as a whole.

With regard to the first observation, it must be said that all the socio-economic measures taken and which have a concrete impact on mitigating the socio-economic impacts are those taken with regard to businesses: travel agencies and hotels which were not requisitioned by the State during the containment operations, and then the tourism agencies. In addition to these businesses, there are 55 000 professionals in hairdressing, sewing, welding, carpentry, small saleswomen, and the like, who have registered on the digital platform opened for this purpose, as well as in the town halls and social promotion centres.

In the first case, the measures taken for the benefit of businesses involved the full payment of electricity bills actually consumed in the quarter in question. The artisans, for their part, were granted financial subsidies that they received via electronic payments (MTN Momo or FLOOZ).

In the provision of these subsidies to artisans, the Minister of Social Affairs and Microfinance states:

No artisan in the unidentified informal sector will take less than 20 thousand per month. No artisan in the identified informal sector will take less than 30 thousand per month. No artisan in the formal sector will take less than 45 thousand per month.⁴⁶

Also, it continues that:

[E]ach month, and this for three months, the actors of the unidentified informal sector will benefit from a subsidy ranging from 20 thousand to 48 thousand; those of the identified informal sector will take between 30 and 97 thousand and the actors of the formal sector will benefit from a subsidy between 45 and 100 thousand.⁴⁷

This difference in treatment between artisans, based on the sector and the ability to be identified or not is arbitrary. Especially when it is noted that the informal sector in Benin is clearly superior to the formal. But

46 Official website of the daily newspaper La Nation <https://lanationbenin.info/mesures-dattenuation-des-effets-socio-economies-du-COVID-19-les-modalites-doctroi-des-diverses-subventions/> (accessed 16 September 2020).

47 As above.

this discrimination could be seen as an opportunity to encourage artisans to move from the informal to the formal sector. However, the idea that should prevail in this period of COVID-19 should be an assistance of an egalitarian nature, focused on the protection of the artisan, simply because of his quality of human being. Also, these measures should be of greater concern to women artisans, the disabled, children, and the elderly because of their increasing vulnerability to COVID-19. The absence of a breakdown of the data relating to the 55 000 professionals assisted, according to the categories of vulnerable people assisted, makes it difficult to assess the effectiveness of this measure.

In the second case, it must be noted that the subsidy granted to all citizens was, strictly speaking, only imaginary, because, if one looks closely at the measures, it is easy to understand that it was not a measure to take charge of the total number of kilowatt-hours of electricity consumed, as the measure seems to announce. It was not until 12 June 2020 that the Minister of Finance, Romuald Wadagni, said concretely that the said measure 'actually takes charge of the increase in electricity prices decided by the Electricity Regulatory Authority (ARE), which should have been implemented from March, but the arrival of this crisis meant that the State decided not to apply these new tariffs, which would lead to an increase in bills'. Moreover, the six months covered by the subsidy will end at the end of September. What is also surprising about the wording of the measure is that it is supposed to cover water and electricity bills for all citizens. But nothing of the sort was done. It was only intended to pay for the increase in electricity prices for a period of six months, particularly with regard to the tariff differential that should have appeared on the bill and which has not done so since the advent of COVID-19. This so-called subsidy is hollow and, strictly speaking, has brought nothing to the Beninese people in socio-economic terms. Notwithstanding the advent of COVID-19, the Minister of Finance reminds us that: 'Beninese people must understand that water and electricity bills are still to be paid. The Beninese state only pays for the increase in the price of electricity decided by the AER'. Given this statement and the socio-economic crisis caused by COVID-19, the question that must be asked is whether the AER⁴⁸ is above the Beninese State so that the Beninese State cannot ask for the date of the tariff increase to be postponed and for the subsidy to be used to reduce the amount of real electricity costs consumed. This is because the population is in a difficult economic situation due to the closure of the borders by the border states as a response to COVID-19. It can therefore be seen that the Beninese state has missed a great opportunity to take a commendable step in granting at least one real measure of mitigation of the socio-economic impacts to the

entire population. However, Togo, a neighboring country, has had to do so even if the comparison is not always right.

These measures have also led to further dissatisfaction with international standards.

3 Towards an unsatisfactory implementation of the measures

This dissatisfaction is explained, on the one hand, by the plurality of exclusivist criteria and, on the other hand, by the exacerbation of pre-existing inequalities.

3.1 A plurality of exclusivist criteria

The purpose of the international norms governing the special powers of States in times of health crises with disastrous socio-economic effects is undoubtedly to ensure that, in the adoption of measures to respond to any socio-economic victim of COVID-19, no one is left out or left behind in the benefit of measures to mitigate the socio-economic effects of the crisis.

But in Benin, the alarming fact is that, in order to benefit from the support measures adopted, you have to be either a company or a professional on the one hand, or poor or extremely poor on the other. In addition to all these criteria, the most imperative thing is that you have to register either in the town halls or social centres or on the digital platform created for this purpose.

The first category of quality, namely being a company or professional, still requires special attention. For in this category, it must be noted that not all companies are concerned, and even less so all professionals. As regards the companies concerned, the first group of so-called socio-economic impact mitigation measures in response to COVID-19 concerns travel agencies, tourism companies and hotel businesses. For the second category of so-called complementary measures, only companies in the agricultural sector are beneficiaries.

In order for the companies in the first cohort of measures to benefit from these measures, additional imperative conditions had to be met. Either it was necessary to pay salaries to the employees during the period and above all it should be known that these employees had to be declared to the National Social Security Fund (CNSS). Also, travel agencies must have a head office in rented premises in order to benefit from the payment of the three-month rent subsidy. Not to mention that the travel agencies

concerned in this case are those declared. Therefore, travel agencies in the informal sector are excluded.

Even if the plurality of criteria is likely to inevitably restrict the number of beneficiaries of the measures, it must nevertheless be admitted that several common reliefs for businesses are planned. These include the reimbursement of VAT credits, the exemption from payment of the Motor Vehicle Tax (MVT) for those who have not yet paid it for the year 2020 and its conversion into a tax credit for the year 2021 for those who have already paid it. This measure is extremely beneficial specifically with regard to the reimbursement of VAT credits, because 'it happens that some companies, given the nature of their activities, almost never manage to fully offset deductible VAT with that collected'.⁴⁹ This results in 'a clear cash flow problem for the businesses concerned'.⁵⁰

Moreover, in these measures, which appear to be generally beneficial to all companies, two criteria⁵¹ which are fundamentally exclusivist should be raised. These are, on the one hand, the companies eligible for VAT credit refunds and, on the other, the types of refundable VAT credits. In Benin, only companies under the real profit regime⁵² can invoice VAT. Consequently, it is logical that companies subject to the synthetic business tax (GST) cannot invoice VAT and are therefore systematically excluded from the beneficiaries of the VAT credit refund. And even within companies subject to the actual profit regime, three conditions should be met. Firstly, 'a VAT credit must be available at the end of a calendar month'.⁵⁷ Secondly, 'an application for refund must be submitted by the last day of the month following the calendar month in which the VAT credit arose'. Thirdly and finally,

all supporting documents must be produced to prove the reality of the deductible VAT, the effectiveness of the export declarations, the invoice for

49 Direction générale des Impôts du Bénin 'Remboursement de la TVA: Que prévoit la législation fiscale béninoise' <https://www.impots.finances.gouv.bj/remboursement-de-la-tva-que-prevoit-la-legislationfiscale-beninoise/> (accessed 19 September 2020).

50 As above.

51 Government of Benin 'Clarification of tax measures to support businesses in the context of managing COVID-19' (26 June 2020) <https://www.gouv.bj/actualite/731/clarification-mesures-fiscales-soutien-entreprises-dans-cadre-gestion-covid19/> (accessed 19 September 2020).

52 Companies with an annual turnover equal to or greater than (F CFA 50 000 000) fifty million CFA francs. 57 Direction générale des Impôts du Bénin 'Remboursement de la TVA: Que prévoit la législation fiscale béninoise' <https://www.impots.finances.gouv.bj/remboursement-de-la-tva-que-prevoit-la-legislationfiscale-beninoise/> (accessed 19 September 2020).

the acquisition of capital goods and all other documents justifying the claims of the taxpayer.

Of these conditions, the first analysis, based on the absence of the adoption of special procedures to relax the above conditions for obtaining the refund, is that businesses newly admitted to the real profit scheme are excluded from the category of beneficiaries because either because they do not yet have a VAT credit at the end of a two-month period, or because they have not yet completed the formalities for obtaining a VAT registration certificate in order to start invoicing VAT, or because they have not been able to make the request within the one-month period following the two-month period in which the VAT credit arose. Or because they no longer have at their disposal certain invoices that have been destroyed or lost in circumstances of force majeure. Even if this last case was a bit of a guess and not a constant case, it should not be overlooked that such reasons are also implicitly the basis for the imposition of the standardised invoice on all businesses.

In addition to the above conditions for obtaining refunds, and as if the restriction of the field of beneficiaries of VAT credit refunds were not still restricted enough, article 243 of the General Tax Code in force in Benin establishes four types of business that can apply for VAT refunds. Under the terms of this article, a distinction is made between:

[P]roducers, taxable persons who carry out more than half of their annual turnover in export operations or similar operations, taxable persons who acquire investment goods entitling them to a deduction for a value of more than forty million francs, including all taxes, and those approved in accordance with the provisions of the Community Investment Code.

This legally exhaustive enumeration of businesses eligible for VAT credit refunds makes one wonder who the main beneficiaries of VAT credit refunds are in the end, with all this legal sifting. But no hesitation should remain in case of any attempt to answer such a concern. For the companies that can benefit from the reimbursement of VAT credits are those that meet the first three conditions in addition to at least one of the last four listed above. These are companies that produce, export or are approved in accordance with the provisions of the Community Investment Code or that have achieved more than half of their annual turnover from export operations or similar operations.

On the other hand, as regards the VAT credits that can be reimbursed, in accordance with the provisions of articles 234, 241 and 242 of the General Tax Code in force in Benin, 'the VAT that can be reimbursed is

the VAT on the purchase of goods and services necessary for the business that could not be charged under the normal conditions for exercising the right to deduct'.⁵³ In general, this is:⁵⁴

- (a) invoiced or paid on the purchase or import of materials which form part or all of a taxable, effectively taxed or exportable transaction;
- (b) the tax shown on the purchase invoices and paid on the importation or selfsupply of goods and used for the performance of taxable transactions, effectively taxed or benefiting from the export scheme;
- (c) invoiced and paid for services relating to the above transactions. Where the goods or services contribute to the realization of taxable and non-taxable transactions, the VAT that may be refunded is determined in proportion to the taxable business carried out.

Thus, the refund of VAT is subject to strict compliance with the above conditions.

However, while the number of beneficiaries in terms of qualified companies was already the subject of alarm cries, due to the legal sieve observed, the criterion of VAT credits eligible for reimbursement makes the effectiveness of the majority benefit of the said measure illusory due to COVID-19.

From the previous analysis of the VAT credits eligible for reimbursement, an analysis of the said measures to support the productive sector seems to be necessary. However, since it is necessary to identify the real beneficiaries of the VAT credit refunds in order to assess the positive impact or not of the said measure, especially to deduce whether they comply with the ideals of the international standards which recommend taking into account all the actors of the same regime who are affected. A partial conclusion is necessary to this effect.

It is, therefore, simply a matter of declaring as beneficiaries of the said measures, with regard to the conditions specific to the quality of the companies on the one hand and to the nature of the VAT credits due, only those companies under the real system that have a VAT credit at the end of a calendar month and that have submitted a request for reimbursement at the latest on the last day of the month following the month in respect of which the VAT credit arose and that have produced all the supporting

53 Direction générale des Impôts du Bénin 'Remboursement de la TVA: Que prévoit la législation fiscale béninoise' <https://www.impots.finances.gouv.bj/remboursement-de-la-tva-que-prevoit-la-legislationfiscale-beninoise/> (accessed 19 September 2020).

54 As above.

documents attesting to the reality of the deductible VAT, the effectiveness of the export declarations, of the invoice for the acquisition of investment goods and all other documents justifying the claims of the taxpayer on the one hand and belonging to the category either of producers, or of taxable persons who carry out, for more than half of their annual turnover, export operations or similar operations, or of taxable persons who acquire investment goods entitling them to deduction for a value of more than 40 million francs inclusive of all taxes, or of approved persons in accordance with the provisions of the Community Investment Code on the other hand; and whose VAT to be reimbursed is VAT on purchases of goods and services necessary for the business which could not be charged under the normal conditions of exercise of the right to deduct.

If the number of such beneficiaries was absolutely limited, it should be noted that citizens and individuals should have expected this because the name of the programme of intervention measures first adopted by Benin to mitigate the economic and social effects of COVID-19 was titled: 'Program of support for the productive sector'. This systematically considers other non-productive sectors, on the one hand, and unfortunately within the sectors considered productive, also results in discrimination based on the nature of the social activity carried out. This would undoubtedly lead to the emergence in the post-pandemic period of a group of companies that are super powerful because they have seen the economic impacts of COVID-19 being wiped out by the State, to the detriment of other companies that would not have been able to benefit from the said measures even though they should have benefitted from them if this discrimination based on the social activities carried out had not been instituted. After COVID-19, unfair competition will no longer be to be decried because it is already well prepared during this pandemic period by the seemingly timely support of the State, but substantially dangerous for other non-beneficiary business actors in particular and for all Beninese trade in general because of the discrimination based on the nature of the social activity carried out to be eligible for the reimbursement of VAT credits.

Finally, the second cohort of beneficiaries are the 55 000 professionals in hairdressing, sewing, welding, carpentry and small-scale sales. And it does not matter whether they are in the formal or informal sector in order to benefit from the subsidy, even though being in the formal sector seems to be much more advantageous in terms of the value of the assistance.

But for professionals, it is compulsory to register on the digital platform opened for this purpose, as well as in the town halls and social promotion centres.

And it is in this last criterion that the whole debate deserves to be held. It is well known to all observers of the social life of the Beninese population that the distance between professionals in the informal and even formal sectors and social centres or town halls is enormous, which is a serious handicap for birth declarations if a link is to be made. As a result, during the pandemic, travel by informal sector professionals, especially to social centres or town halls, is almost impossible due to the cordon sanitaire, but not impossible in view of the need for subsistence, which seems to be satisfied by simply registering after having travelled dozens of kilometers, sometimes even on foot due to lack of transport costs.

It is important to bear in mind that the poor affected by the measure will be identified during the operation of their identifications during the pandemic. In the latter case, one or more questions remain unanswered for the time being and deserve to be considered. In particular, through the appearance of the measures, is the absence of a condition excluding beneficiaries of one measure from benefitting from another likely to lead to the granting of subsidies to the same beneficiaries, but according to other qualities? Wouldn't a professional be both a craftsman in the informal sector and extremely poor? Can a manager not be a craftsman in the formal sector and poor because of the pandemic at the same time?

So many questions that it is urgent to ask whether, in the end, the segmentation and restriction of the number of beneficiaries by the above-mentioned restrictive criteria are not likely to exacerbate pre-existing inequalities.

3.2 An exacerbation of pre-existing inequalities

The lack of gender-disaggregated data on the Beninese government's response to women and girls during the pandemic will only exacerbate the impacts of the pandemic on them. According to data summarised in the UN Women Report 'From insights to action: Gender equality in the wake of COVID-19', the pandemic will push 96 million people into extreme poverty by 2021, including 47 million women and girls. This will bring the total number of women and girls living in extreme poverty to 435 million, with projections showing that this figure will not return to pre-pandemic levels until 2030.⁵⁵ Also, projections by the *Padee Center for International Futures* at the University of Denver show that by 2020, for every 100 men aged 25-34 living in extreme poverty (on \$1.90 or less a day to live on), there will be 118 women, and by 2030 there will be 181 women.

55 As above.

According to Achim Steiner, UNDP Administrator:

Investing in reducing gender inequality is therefore not only a smart and affordable approach, but also an urgent choice that governments can make to reverse the impact of the pandemic on poverty reduction.⁵⁶

The absence of economic measures for other non-agricultural companies or companies that do not carry out travel or tourism operations as a regular occupation, are likely to aggravate the existing economic inequality between them and are likely to create a group of actors that is economically super-powerful during the post-pandemic period because it has been subsidised by the state. And the worst thing is that there are structures that have also paid the salaries of their staff without being able to obtain a restitution of a tenth of what they would have paid to the employees during that period. One possibility of defence would undoubtedly be that the subsidised sectors are the most important in the Beninese economy and consequently have the largest number of employees. To do so is to fail to observe the principle of equal treatment of citizens before the law by the State.

The warning cry of exacerbation of pre-existing inequalities does not only come from international organisations. In Benin, notably in Cotonou, the *Cadre de concertation des acteurs non étatiques des secteurs eau et assainissement (Canea)* was held on Friday 21 August 2020. This media café was on the theme: 'Eliminating inequalities in the response to COVID-19',^{57 58} because they are aware that 'the COVID-19 pandemic is more dangerous for vulnerable people' and they plead for 'the elimination of inequalities of which [certain] social categories are victims'. This plea is part of a call for the achievement of Sustainable Development Goal 6 (SDG 6) on the need to care for the vulnerable.

The basic, but painful, pre-existing social inequality is that of water availability. For 'water is not available in all areas depending on whether you are in an urban or rural area'. Félix Adégnika, national coordinator of WSSCC,⁵⁹ rightly states that 'water, hygiene and sanitation are the key to the response. It is the key to preventing and stopping the spread of this virus'.⁶⁰ This statement, which aims to satisfy an inalienable social right, the right to water, is all the more imperative to be ensured and guaranteed

56 UNDP (n 16).

57 As above.

58 La Nation (n 46).

59 Water Supply & Sanitation Collaborative Council.

60 La Nation (n 46).

during this pandemic period, especially as hygiene measures, which are components of sanitary measures, recommend regular hand washing with water. But if there is no such water, or at least if quality water does not exist, how and on what basis would the basic response to prevent the spread be based? This is why, in urging the State to think about rural populations who do not have access to drinking water, the WSSC national coordinator says that: 'We must take into account the vulnerable'. Also, he adds, 'if we don't manage to put the vulnerable populations at the heart of our system, we will fail'.⁶¹ Given that water coverage in the Republic of Benin is still estimated at 60 per cent, it is absolutely necessary to act to save the 40 per cent of the territory that is not yet covered so that they can at least wash their hands of any infringement of the right to life that they hold in the same way as their fellow citizens living in the 60 per cent of the areas covered by water.

But Oxfam, through its hygiene and sanitation officer, Sylvain Kangni, also made it known during the same media café that inequalities in water, sanitation and hygiene are perceived in three dimensions. These are 'inequalities linked to availability, those linked to physical or financial accessibility and those linked to the quality of the service'. Knowing that urban areas are better off in Benin in terms of quality of service and water, sanitation and hygiene than 'peri-urban' and rural areas, he nevertheless points out that in the face of this pandemic, Oxfam, in reorienting its projects, rightly thinks of disadvantaged socio-economic groups, because 'forgotten, marginalized and discriminated'. These are specifically 'vulnerable people and people with disabilities'.

The absence of social measures for the entire student population is a great failure on the part of the Beninese government. The first and most vulnerable target on this occasion is the student population. But does the state have the means to grant a general subsidy to all students in a comprehensive manner, even though it is incapable of doing so for all economic actors, the lungs of the national economy?

Adopted on 23 May 2005 and entered into force on 15 June 2007 for Benin in accordance with article 22 of the Constitution of the World Health Organization and articles 59 and 64 of the IHR (2005), which provide that the Regulations entered into force on 15 June 2007 for the 191 States that did not make reservations to the Regulations, and on 8 August 2007 for the two Member States (India and the United States of America) of the WHO that did make reservations

61 As above.

4 Conclusion and recommendations

On balance, the measures adopted in response to COVID-19 in Benin are not directly focused on assistance or protection of the vulnerable (women, children, disabled, elderly) as promoted by international standards. Rather, these measures aim to provide financial support to businesses, artisans and small tradespeople, and then to provide subsidies to all citizens on the one hand, and to support farming, micro, small and medium enterprises on the other.⁶² The subsidies granted are imbued with a plurality of discriminatory or exclusivist criteria either between professionals or between competing enterprises.

Any attempt to bring the subsequent response measures to COVID-19 into line with the socio-economic plans should consist, on the one hand, of identifying the vulnerable people as described above among the professionals to be assisted. On the other hand, in order to prevent economic recovery measures from creating unfair competition by placing certain companies in a dominant position, free of charge, financed under the guise of intervention measures to mitigate the socio-economic effects of COVID-19, it is necessary to ensure that subsidies are available to all companies without any restriction based on sector of activity or social activity.

Finally, for the refund of VAT credits, the formalities established in article 234 of the General Tax Code must be suspended so that any company that can prove that it has a VAT credit that appears to be well-founded in principle, and that has regularly paid its tax liabilities for the previous three years, can simply have the credit refunded.

62 INSAE (n 21) 1.

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