

Prosecuting the Offence of Misappropriation of Public Funds: An Insight into Cameroon's Special Criminal Court

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Date published

11 April 2017

Editor Prof W Erlank

How to cite this article

Agbor AA " Prosecuting the Offence of Misappropriation of Public Funds: An Insight into Cameroon's Special Criminal Court" *PER / PELJ* 2017(20) - DOI <http://dx.doi.org/10.17159/1727-3781/2017/v20n0a770>

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DOI
<http://dx.doi.org/10.17159/1727-3781/2017/v20n0a770>

Abstract

The fight against the misappropriation of public funds perpetrated by individuals, especially public servants, for private gain, enjoys different degrees of commitment by different countries. The enactment of laws and establishment of institutional mechanisms towards this end are partly a reflection of the attainment of such a mission and can also be the measure by which such a commitment can be assessed. Rated as one of the most corrupt countries in Africa by Transparency International, the global anti-corruption watchdog, the Republic of Cameroon recently enacted a law that created a Special Criminal Court. This comes as one of the most robust and significant legislative developments in the fight against the misappropriation of public funds. The mandate of the Special Criminal Court is to bring to justice persons who "cause loss of at least 50.000.000 CFA Francs (equivalent to about USD 100.000) relating to misappropriation of public funds and other related offences provided for in the Cameroon Penal Code and International Conventions ratified by Cameroon". This paper examines the offence of the misappropriation of public funds. It looks at aspects of the Special Criminal Court as provided by the Law that established it as well as supplementary legislation enacted to address specific issues related to the Special Criminal Court. The paper also examines the offence for which individuals are prosecuted in the Special Criminal Court. As a bold step in fighting and defeating the "invisible enemy amongst us" (that is, corruption), this paper argues that an institutional mechanism like the Special Criminal Court that has docked several top-notch politicians and former cabinet members for trial, is an example to emulate and confirms that corruption can be fought if and only if the political will to do so is present.

Keywords

Corruption; misappropriation of public funds; Special Criminal Court; embezzlement; political corruption.

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1 Introduction

On 14 December, 2011, Cameroon enacted a Law which established the Special Criminal Court (hereafter the SCC).¹ The SCC exercises exclusive jurisdiction over a specific class of offences committed across the national territory.² In consequence, a number of arrests, prosecutions and convictions have taken place since this Law went into operation.

Like previous legislative prescriptions, the Law does not make use of the word "corruption". Rather, it uses the formulation "misappropriation of public property", which is very similar in content to the offence of "misappropriation of public funds" as stipulated in Section 184 of the *Penal Code*.³

Part One of Book II of the Cameroon Penal Code ("Particular Crimes") is entitled "Felonies and Misdemeanours against the State". It contains an array of offences against the State, amongst which is the offence of the misappropriation of public funds as stipulated in Section 184 of the *Penal Code*. The primary objectives of the criminalisation of the misappropriation of public funds include the protection of state property and upholding, promoting and protecting the integrity of those who occupy public office and

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¹ *Law No 2011/028 of 14 December 2011*, as amended by *Law No 2012/011 of 16 July 2012*.

² See s 2 of *Law No 2011/028 of 14 December 2011* which provides as follows: "The Court shall be competent to hear and determine matters, where the loss amounts to at least 50 000 000 CFA Francs [approximately USD 100 000] relating to misappropriation of public funds and other related offences provided for in the Penal Code and International Conventions ratified by Cameroon." However, s 2 (New) of the amended version of the Law (*Law No 2012/011 of 16 July 2012*) stipulates the jurisdiction of the SCC as follows: "The Court shall be competent to hear and determine matters of misappropriation of public property and related offences where the value of the loss is at least fifty million (50,000,000) francs CFA [that is approximately USD 100 000] as provided for by the Penal Code and International Conventions ratified by Cameroon."

³ Section 184 of the *Penal Code* provides as follows:

- "(1) Whoever by any means takes or keeps dishonestly any property, moveable or immovable, belonging to, in transmission to or entrusted to the United State, or to any authority of corporation either public or subject to the administrative control of the State, or in which the State holds directly or indirectly the majority of the shares, shall be punished:
- (a) Where the value of the property is more than half a million francs with imprisonment for life; and
 - (b) Where the said value is half a million francs or less, but over one hundred thousand francs with imprisonment for from fifteen to twenty years;
 - (c) Where the said value is one hundred thousand francs or less with imprisonment for from five to ten years and with fine of from fifty thousand to five hundred thousand francs."

conduct the business of the State. Shockingly, despite fascinating evidence that has given the country an excellent scorecard on corruption,⁴ the jurisprudence from the courts indicates that the offence of the misappropriation of public funds is highly under-reported, under-investigated and under-prosecuted. A few questions have to be asked: first, has the offence of the misappropriation of public funds been normalised into the national social fabric to the extent that even when it is committed *en flagrante*, it is trivialised, and consequently, becomes under-reported, under-investigated and under-prosecuted? Secondly, is it really a question of political will that is needed to stop, prosecute and convict persons who misappropriate public funds? Or is the legal system too fragile, dilapidated, broken, or too consumed by the very ailment (corruption) it is supposed to be immune to, so that the laws and institutional mechanisms are now too ineffective in preventing corruption within State-owned and run institutions?

The establishment of the SCC to investigate, prosecute and convict individuals who misappropriate public funds with a value of at least 50.000.000 Francs CFA (equivalent to US\$ 100.000) came as a shock to the Cameroonian people who, for so long, never foresaw the establishment of such an institution with that specific mandate. The restitution of the *corpus delicti* as provided for by law, the issuing of orders for the repayment of the funds misappropriated as spelt out in the relevant judgments, the levying of interest on the funds misappropriated by the accused, and the imposition of fines for the offences(s) committed speak eloquently of a country whose resources are drained by public servants who ought to protect them, the severe damage that corruption does to its socio-economic development, and the institutionalisation of a political philosophy that public service is a means to the accumulation of private wealth at the expense of the Cameroonian people. The arrest, the prosecution, and in some cases the conviction of top political figures such as the former Premier, the former Minister of Finance, the former Minister of Public Health, the former Minister of Basic Education, the former General Managers of several State-owned corporations, bankers, accountants, tax inspectors, civil administrators, engineers and educators may be perceived as the manifestation of political will in the fight against corruption in Cameroon, especially against the misappropriation of public funds committed by individuals entrusted with the

⁴ In 1998 and 1999, Transparency International's survey classified Cameroon as the most corrupt country. For an insight into the nature of corruption in Cameroon, see Fombad "Endemic Corruption in Cameroon" 234-260; Fombad "Dynamics of Record Breaking Corruption" 357-394.

management of State property.⁵ In addition, it highlights the ascendancy of the "rule of law" over "rule by law" as it subjects everyone to the law, making no one above the law.

This paper examines the offence of the misappropriation of public funds as stipulated in Section 184 of the Cameroonian *Penal Code*. It also delineates the Law which created the SCC which, with nationwide jurisdiction, has the mandate of prosecuting only specific categories of individuals: those who misappropriate public funds of a certain value (at least, 50.000.000 Francs CFA). The paper also examines the different supplementary laws that have been enacted. Its specific emphasis is on the administrative functioning of the SCC, the establishment of a Specialised Corps of Judicial Police Officers and the modalities on restoring the *corpus delicti* (the misappropriated funds) for which the accused are investigated and prosecuted. Lastly, the paper gives a synoptic recapitulation of the most eminent of the individuals who have been indicted at the SCC.

It is important to note that the Law creating the SCC neither establishes nor introduces any new offence into Cameroonian criminal law. Rather, it sets up the SCC as a special court that would try only individuals who ordinarily would be prosecuted for the misappropriation of public funds by the Court of First Instance (in cases of misdemeanours) or High Court (in cases of felonies). The SCC cannot be challenged as being retroactive as it simply investigates and prosecutes persons who committed a specific category of offence contained in the *Penal Code* (the offence of the misappropriation of public funds under Section 184(1) of the *Penal Code*). It therefore becomes necessary to have an insight into the offence of the misappropriation of public funds as defined in Section 184(1) of the *Penal Code*.

⁵ Examples of these include the following: Ephraim Inoni (former Prime Minister and Assistant Secretary General at the Presidency); Jean-Marie Atangana Mebara (former Secretary-General at the Presidency and former Minister of Higher Education); Polycarpe Abah Abah (former National Director of Taxation and Minister of Economy and Finances); Etogo Mbezele Luc Evariste (Chief Inspector of National Treasury); Ambassa Zang Dieudonné Télesphore (former Minister and former Deputy at the National Assembly); Iya Mohammed (former General Manager SODECOTON); Haman Adama née Halimatou Kangué Maonde (former Minister of Basic Education); Nguini Effa Jean Baptiste de la Salle (former General Manager SCDP); Yves Michel Fotso (former General Manager, CAMAIR); Ntongo Onguene Roger (former General Manager ADC); Endale Marthe (Director, SOCANET); Eny Rosper (Director, SOTRACAM); Obouh Fegue Clément (former General Manager, SNEC); Olanguena Awono Urbain (former Minister of Public Health); Metouck Charles (former General Manager SONARA).

2 A legislative overview of the offence of the misappropriation of public funds

Section 184 of the *Penal Code* is entitled "Misappropriation of Public Funds", which is defined as follows:

- (1) Whoever by any means takes or keeps dishonestly any property, moveable or immoveable, belonging to, in transmission to or entrusted to the United State, or to any authority of corporation either public or subject to the administrative control of the State, or in which the State holds directly or indirectly the majority of the shares, shall be punished:
 - (a) Where the value of the property is more than half a million francs with imprisonment for life; and
 - (b) Where the said value is half a million francs or less, but over one hundred thousand francs with imprisonment for from fifteen to twenty years;
 - (c) Where the said value is one hundred thousand francs or less with imprisonment for from five to ten years and with fine of from fifty thousand to five hundred thousand francs.

Like most other offences in Cameroonian criminal law, Section 184(1) of the *Penal Code* makes use of some important words and phrases that are worthy of discussion. Some of these issues are, firstly, its limitation to public funds; secondly, the manner in which the offence is committed; thirdly, the determination of the appropriate sentence; and fourthly, the absence of any watertight definition.

2.1 Section 184 is limited to public funds

Section 184 of the *Penal Code* is entitled "Misappropriation of Public Funds". In effect, this distinguishes this crime from the misappropriation of private property.⁶ An important element of the *actus reus* of the offence of the misappropriation of public funds is that the property in question is public. This test is satisfied if such property, moveable or immoveable, belongs to, is in transmission to, or is entrusted to the State, or any authority or corporation, either public or subject to the administrative control of the State, or in which the State holds directly or indirectly the majority of the shares.⁷ Under Section 184 of the *Penal Code*, the property must not belong to the State: by including the phrase "belonging to, in transmission to or entrusted

⁶ Section 318(1)(b) of the *Penal Code* (falling under the rubric of offences entitled "Felonies and Misdemeanours Against Private Interest": Part Three of Book II of the *Penal Code*). See generally the unreported case of *The People of Cameroon v Check Emmanuel & Sofa Meji Stanislaus* High Court of Mezam Division, Bamenda, Suit No. HCMB/75C/2015 (hereafter the *Check Emmanuel et al* case).

⁷ Section 184(1) of the *Penal Code*.

to the State",⁸ it becomes self-evident that the State is required to have some interest in the funds in question for Section 184 of the *Penal Code* to apply. The property in question must not be under the complete authority of the State; it is sufficient that it belongs even to a corporation. Such a corporation could be either public or, failing that criterion, subject to the administrative control of the State, or a corporation in which the State holds directly or indirectly a majority of the shares.⁹ Examples of these corporations include the National Refinery Company (*Société Nationale de Raffinage*: SONARA); Cameroon's National Water Supply Corporation (*Société Nationale des Eaux*: SNEC – defunct, and replaced by *Cameroun des Eaux*: a French acronym); Cameroon's National Electricity Corporation (*Société Nationale d'Electricité*, SONEL – a defunct Corporation replaced by AES Cameroon and later by ENEO Cameroon SA); Cameroon's National Cotton Development Corporation (*Société de Développement du Coton*: SODECOTON); Cameroon's Company of Oil Depots (*Société Camerounaise des Dépôts Pétroliers*: SCDP); Cameroon Radio-Television (CRTV); Cameroon's Airports Management Authority (*Aéroports du Cameroun*: ADC).

Section 184(1) of the *Penal Code* makes use of the words "whoever takes or keeps dishonestly".¹⁰ These words appear very simplistic as they suggest that the mode of taking or keeping is irrelevant. This was the bone of contention in the case of *Tanyi Schwartz & 2 ORS v The People of Cameroon* (hereafter the *Tanyi Schwartz et al* case).¹¹ Five accused persons stood trial for three different counts: Tanyi Schwartz and Egbe Samuel for the offence of aggravated theft contrary to and punishable under Section 320(1)(c) of the *Penal Code*;¹² Eyong Fidelis for aiding the commission of aggravated theft contrary to and punishable under Section

⁸ Section 184(1) of the *Penal Code*.

⁹ Section 184(1) of the *Penal Code*.

¹⁰ Section 184(1) of the *Penal Code*.

¹¹ *Tanyi Schwartz, Egbe Samuel, Eyong Fidelis v The People Court of Appeal, North West Province, Bamenda, Suit No BCA/3C/94* (hereafter the *Tanyi Schwartz et al* case).

¹² Section 320 of the *Penal Code* (as amended by *Law No 90-61 of 19 December 1990*) provides as follows: "(1) The penalties provided for in Section 318 [imprisonment for from five to ten years and with fine of from 100,000 to 1,000,000 frs: that is approximately from USD200 to 2,000] for the offences of theft, misappropriation and false pretences] shall be doubled if the theft was committed: (a) With force, or (b) Bearing weapons, or (c) By breaking in, by climbing in, or by the use of false key, or (d) With a motor vehicle." It is important to note that prior to the enactment of this 1990 Law which prescribed less severe penalties for aggravated theft, capital punishment (the death penalty) was the sentence imposed on persons who committed aggravated theft: see s 320 of the *Penal Code*.

320(1)(c) read together with Section 97(1)(b) of the *Penal Code*;¹³ and Enow William and Folabit Amos for receiving property obtained by means of aggravated theft contrary to and punishable under Section 324(2) of the *Penal Code*.¹⁴ Including other participants who did not appeal, the High Court of Ndian Division convicted all and sentenced them accordingly. Before the Court of Appeal of the North West Province,¹⁵ it was contended that the accused persons were indicted, tried and convicted under the wrong charge (aggravated theft as spelt out in Section 320(1)(c) of the *Penal Code*). As they had used false keys to gain access to the Principal's office wherefrom examination question papers were "stolen", the question the Court of Appeal had to decide was whether these facts warranted an indictment and conviction under Section 184(1) which defines the offence of misappropriation of public funds in terms of "whoever by any means takes or keeps".¹⁶ The Court of Appeal construed the wording of Section 184(1), especially the phrase "by any means takes or keeps" to mean that the mode through which the property was taken is irrelevant.¹⁷ Therefore, whether through breaking, use of a false key, or electronically, these modes of participation are all contemplated in the words "by any means takes or keeps". Secondly, even though Section 184 of the *Penal Code* is entitled "Misappropriation of Public Funds" and the word used in the different sub-sections is property, the approach to be used is to find the value of the property in question in order to determine what applicable sub-section to charge the accused with as well as to determine the appropriate sentence. As alleged, examination question papers were stolen. Therefore, the Prosecution ought to have appraised the value of the question papers to determine the appropriate charge against the accused and the sentence thereof upon conviction.

¹³ Section 97 of the *Penal Code* deals with the imposition of criminal responsibility on accessories. It provides as follows:

"(1) An accessory shall mean a person who abets the commission of a felony of misdemeanour, that is:

(a) Who orders or in any manner causes the commission of an act or omission so defined; or

(b) Who aids or facilitates the preparation or the commission of such an offence."

¹⁴ Section 324 of the *Penal Code* as amended by *Law No 90-61 of 19 December 1990*, deals with the offence of receiving defined as follows:

"(1) Whoever holds, disposes of anything procured by the commission of misdemeanour, whether knowingly or having reason to suspect the criminal origin of the property, shall be punished with the penalties prescribed by Section 318.

(2) In case of felony, the punishment shall be doubled."

¹⁵ *Tanyi Schwartz et al case*.

¹⁶ *Tanyi Schwartz et al case*.

¹⁷ *Tanyi Schwartz et al case*. Also see *Check Emmanuel et al case*.

Evidently, the lawmaker makes use of the words "Public Funds" in creating the offence. However, in its definition of the offence, the word "property" is used. Why is there a mismatch? The interchangeable use of these words as employed by the lawmaker does not lead to any apparent confusion. The stipulation of the penalty is calibrated on the value of the property misappropriated. Funds qualify as property, even though property does not qualify as funds except where such property itself is funds. The use of the word "funds" therefore does not raise any uncertainty or ambiguity. Even if it did, a solution to this legal puzzle is directly provided by the relevant provisions dealing with the imposition of penalties, as it uses the financial value of such property in the determination of the punishment. As was held by the Court of Appeal in the *Tanyi Schwartz et al* case, prosecuting an individual for the offence of the misappropriation of public funds as stipulated in Section 184(1) of the *Penal Code* requires that the Prosecution should determine the value of the property misappropriated (as a material element of the offence) and also because the value will be used in determining the appropriate sentence given the fact that the stipulated terms of imprisonment vary depending on the value of the misappropriated property in question. This, as would be observed, was not done by the Legal Department, as they brought the charge under the wrong section of the *Penal Code* (Section 320: aggravated theft).¹⁸ In this regard, it is submitted that the Legal Department lacked a thorough understanding of the material elements of the misappropriation of public funds as defined in Section 184(1) of the *Penal Code*; and how these differ from the material elements of the offence of aggravated theft as stipulated in Section 320 of the *Penal Code*.

2.2 Section 184: means of commission irrelevant

In creating the offence of the misappropriation of public funds, the lawmaker stipulates in Section 184(1) of the *Penal Code* that "whoever by any means takes or keeps dishonestly any property" is guilty of the offence. The words "by any means takes or keeps", when construed according to their natural, plain and ordinary meaning, would mean that the mode through which the property was taken is irrelevant and immaterial. In other words, the misappropriation of public funds can be committed through or involve any of breaking in, climbing into, using force, physically transferring, or transferring through electronic transactions.¹⁹ This analysis was endorsed by the Court of Appeal in the *Tanyi Schwartz et al* case where it was held

¹⁸ *Tanyi Schwartz et al* case.

¹⁹ *Tanyi Schwartz et al* case.

that even if the appellants broke into the public office wherefrom they took property falling within the ambit of Section 184, it would be right to indict, prosecute and convict them under Section 184 given the fact Section 184(1) uses the words "by any means takes or keeps".

The lawmaker makes the mode of participation irrelevant by including the words "by any means takes or keeps dishonestly property". As such, breaking in, climbing in, or using force in the acquisition or retention of the property are included. It does not matter how the property was taken or kept; it suffices if such taking or keeping was done dishonestly.²⁰

2.3 The value of the property determines the gravity of the offence

Cameroon's legal system recognizes three categories of offences: firstly, felonies, which are defined as offences whose punishment comprises a prison term of ten years and above, a life sentence or the death penalty.²¹ Secondly, misdemeanours, which are defined as offences punishable with a loss of liberty that exceeds ten days but does not exceed ten years, and a fine of more than twenty-five thousand CFA francs.²² Thirdly, simple offences, which are offences punishable with a loss of liberty for up to ten days or with a fine of up to twenty-five thousand CFA francs.²³ The classification of offences plays an important role in determining which court would exercise jurisdiction over a criminal matter. Courts with criminal jurisdiction include the Courts of First Instance, the High Courts and the Military Tribunals.²⁴ From these courts, appeals are made to the Court of Appeal and Supreme Court.

In defining the offence of the misappropriation of public funds, the lawmaker imposes different terms of imprisonment depending on the value of the property misappropriated. Section 184(1)(a)-(c) of the Penal Code stipulates different penalties. Where the value of the property is above a half a million CFA Francs, the penalty is imprisonment for life.²⁵ Where the value of the property is less than half a million CFA Francs but above one hundred

²⁰ *Tanyi Schwartz et al case; The People of Cameroon v Killi James & Mbanong Christian* High Court of Mezam Division, Bamenda, Suit No HCMB/24C/2014 (hereafter *the Killi James et al case*); *Check Emmanuel et al case*.

²¹ Section 21(1)(a) of the *Penal Code*.

²² Section 21(1)(b) of the *Penal Code*.

²³ Section 21(1)(c) of the *Penal Code*.

²⁴ See generally *Law No 2005/007 of 27 July 2005 (the Criminal Procedure Code)*; *Law No 2006/015 of 29 December 2006 (Law on Judicial Organisation)*; and *Law No 2008/015 of 29 December 2008 (Law on the Organisation, Functioning and Competence of Military Tribunals)*.

²⁵ Section 184(1)(a) of the *Penal Code*.

thousand CFA Francs, the penalty is imprisonment from fifteen to twenty years.²⁶ Lastly, where the value of the property is below one hundred thousand CFA Francs, the term of imprisonment is five to ten years and a fine.²⁷ Therefore, the first two cases carrying an imprisonment for a period of ten years and above are classified as felonies. The third case is a misdemeanour because the penalty prescribed is below ten years.

In cases where the misappropriation of public funds attracts a term of imprisonment for less than ten years, the Court of First Instance has jurisdiction since the offence is a misdemeanour. The Court of First Instance exists at every sub-divisional level,²⁸ and has the jurisdiction to try only simple offences and misdemeanours.²⁹ In cases where the term of imprisonment is ten years and above, including life imprisonment, the High Court will exercise jurisdiction, since the offence is a felony. The High Court exists at every divisional level,³⁰ and is empowered to try felonious offences.³¹ From the above, it is clear that the offence of the misappropriation of public funds could qualify as a misdemeanour or felony. The classification depends entirely on the value of the property that has been misappropriated.

Irrespective of which court has jurisdiction, the court procedures are defined in the *Criminal Procedure Code*.³² Section 74 of the *Penal Code* defines the imposition of criminal responsibility, which is key to any criminal charge brought against any accused indicted for any offence in Cameroon.

Prior to the establishment of the SCC, Section 184(1) of the *Penal Code* was the legislative piece that dealt with cases of the "misappropriation of public funds" by "whoever". However, as will be seen in the following discussion, the creation of the SCC in Cameroon did nothing more than introduce a new court into the country's court system to exercise jurisdiction over conduct that had been criminalized by the country's existing laws.

²⁶ Section 184(1)(b) of the *Penal Code*.

²⁷ Section 184(1)(c) of the *Penal Code*.

²⁸ Section 13 of *Law No 2006/015 of 29 December 2006 (Law on Judicial Organisation)*.

²⁹ Section 15(1)(a) of *Law No 2006/015 of 29 December 2006 (Law on Judicial Organisation)*; s 289(1) of *Law No 2005/007 of 27 July 2005 (Criminal Procedure Code)*.

³⁰ Section 16 of *Law No 2006/015 of 29 December 2006 (Law on Judicial Organisation)*.

³¹ Section 18(1)(a) of *Law No 2006/015 of 29 December 2006 (Law on Judicial Organisation)*; s 407(1) of *Law No 2005/007 of 27 July 2005 (Criminal Procedure Code)*.

³² *Law No 2005/007 of 27 July 2005*.

It is worthy of note that the offence of the misappropriation of public funds is only one legislative dimension of combating corruption in Cameroon, especially cases of the embezzlement of public funds.³³ Despite this legislative prescript, the incidence of misappropriating public funds was very high, especially within the ranks of top political figures such as cabinet members and the senior managers of state-owned corporations.³⁴ The adverse impact of this is undeniable: it slowed down socio-economic development, compromised the rule of law that would hold everyone accountable, unduly enriched some individuals, and drained the corporations and the State of their resources.³⁵ This culture was rampant,

³³ Misappropriation of public funds is one of many corrupt acts criminalised in Cameroon's legal system. There exist numerous other offences that attract a criminal sanction. Some of these include electoral fraud (s 122 of the *Penal Code*); corruption and violence (s 123 of the *Penal Code*); interest in grant (s 135 of the *Penal Code*); undue demand (s 142 of the *Penal Code*); favour (s 143 of the *Penal Code*); procuring influence (s 161 of the *Penal Code*); fraud at examinations (s 163 of the *Penal Code*); removal and destruction of public records (s 188 of the *Penal Code*). In addition to the criminalisation of corrupt practices, there exists a legislative instrument that requires specific holders of public offices to declare their assets prior to occupying the said office: the *Law No 003/2006 of 25 April 2006 relating to the Declaration of Assets and Property*. In addition, art 66 of the 1996 *Constitution* stipulates as follows: "The President of the Republic, the Prime Minister, Members of Government and persons ranking as such, the President and Members of the Bureau of the National Assembly, the President and Members of the Bureau of the Senate, Members of Parliament, Senators, all holders of an elective office, Secretaries-General of Ministries and persons ranking as such, Directors of the Central Administration, General Managers of public and semi-public enterprises, Judicial and Legal Officers, administrative personnel in-charge of the tax base, collection and handling of public funds, all managers of public votes and property, shall declare their assets and property at the beginning and at the end of their tenure of office. The other categories of persons to whom the provisions of this article shall apply and the conditions of implementation thereof shall be determined by law."

³⁴ Examples of such individuals include Ephraim Inoni (former Prime Minister and Assistant Secretary-General at the Presidency); Jean-Marie Atangana Mebara (former Secretary-General at the Presidency and former Minister of Higher Education); Polycarpe Abah Abah (former National Director of Taxation and Minister of Economy and Finances); Etogo Mbezele Luc Evariste (Chief Inspector of National Treasury); Ambassa Zang Dieudonné Téléphore (former Minister and former Deputy at the National Assembly); Iya Mohammed (former General Manager SODECOTON); Haman Adama née Halimatou Kangue Maonde (former Minister of Basic Education); Nguini Effa Jean Baptiste de la Salle (former General Manager, SCDP); Yves Michel Fotso (former General Manager, CAMAIR); Ntongo Onguene Roger (former General Manager, ADC); Endale Marthe (Director, SOCANET); Eny Rosper (Director, SOTRACAM); Obouh Fegue Clément (former General Manager, SNEC); Olanguena Awono Urbain (former Minister of Public Health); Metouck Charles (former General Manager, SONARA).

³⁵ It is undeniable that the impact of the misappropriation of public funds diverts resources earmarked for developmental projects and inhibits the development of the country.

not because of the absence of laws and institutional mechanisms to apply to perpetrators but as a result of a lack of political will to do so.³⁶ Speech after speech was made on the need to combat corruption, especially the embezzlement of public funds, and would earn applause on political podiums while the individuals concerned were busy consigning huge sums of state funds to foreign banks. It therefore became an acceptable norm within Cameroon's public service to engage in the siphoning off of resources that would result in the amassing of private wealth without question from the authorities. The lack of political will to develop and set the mood for combatting corruption and identifying and prosecuting the important individuals who committed corrupt acts made efforts to put an end to the practice, especially via prosecution, absolutely impossible. Cases of the misappropriation of public funds were therefore limited to ordinary, low-level administrative officials, who often did not have the necessary political network or support from the political elite to evade prosecution.³⁷ The establishment of the Special Criminal Court and the seniority of the individuals who have been brought to account are indicative of a growing political will to combat this kind of corruption. The national mood has changed, and the nation is now prepared to make such an effort. It is perceived that individuals who engage in corrupt practices of this nature are within the reach of the law. Put simply, a Special Criminal Court was needed to deal with a special class of perpetrators of the misappropriation of public funds.

3 The SCC: an overview of the legislative enactment

Law No 2011/28 of 14 December 2011, amended by *Law No 2012/011 of 16 July 2012*, created the SCC, thereby introducing into Cameroon's court system a new and special court (based on the exercise of jurisdiction). The Law addressed issues that are purely procedural in content: the jurisdiction and composition of the SCC, its conduct of proceedings, the initiation of an appeal, and the right to bail. It does not address any substantive issue such

³⁶ On the question of political will, and its importance in the fight against corruption, see Kpundeh, "Political Will in Fighting Corruption".

³⁷ The investigation of alleged cases of the misappropriation of public funds, in some cases, especially those involving top political figures, would gain public attention, yet terminate at an incomplete stage, when no further action would be taken, such as prosecuting the suspect. A case in point would be that of the former Minister of Post and Telecommunications, who in 2001 was investigated for having misappropriated the sum of Frs CFA 11 billion. There was also the 1998 scandal involving the former National President of the *Fédération Camerounaise de Football* (FECAFOOT) which drew public condemnation but was never followed by any significant judicial proceeding, especially the imposition of charges against the alleged offender.

as the creation and definition of any crime. Neither does it spell out any penalty that will be imposed by the Court if an accused were found guilty, an observation which suggests that the SCC may have to revert to relevant aspects of the *Penal Code* for the determination of the appropriate sentence,³⁸ any accessory penalties,³⁹ preventive measures,⁴⁰ aggravating or mitigating circumstances.⁴¹

3.1 Jurisdiction

The jurisdiction of the SCC is bifurcated. In other words, it is two-staged. First, the value of the loss must be at least 50.000.000 CFA Francs. Secondly, the loss must be related to or caused by the misappropriation of public funds committed by anyone who through any means takes or keeps property that belongs to the State.⁴² Put simply, the loss suffered by the State must have been caused by misappropriation or other related offences provided for in the *Penal Code* or International Conventions ratified by Cameroon.⁴³

Like the wording of Section 184 of the *Penal Code*, the Law creating the SCC does not define "misappropriation". In ordinary jurisprudential parlance, this would mean making use of something in a way other than that for which it was intended. Two issues related to the Law that created the SCC require emphasis: first, the loss that is suffered, and second, how the loss is caused. There is a minimum threshold of loss suffered, expressed as a financial value. Such a loss must have been brought about as a result of some form of misappropriation.⁴⁴ This highlights a key distinction between Section 184 of the *Penal Code*, which deals with the offence of Misappropriation of Public Funds, and Section 2 (new) of the Law creating the SCC. While the latter makes use of a broader and more generic phraseology ("Misappropriation of Public Funds"), Section 2 (new) of the Law on the SCC talks of the loss of a minimum amount. The focus therefore is on both the result (the loss) and the manner by which such a result (the

³⁸ These penalties vary and are stipulated in s 184(1)(a)-(c) of the *Penal Code*.

³⁹ Section 35 of the *Penal Code*, which deals with confiscation. For a general understanding of the nature and content of accessory penalties under Cameroonian criminal law, see ss 30-35 of the *Penal Code*.

⁴⁰ See ss 36-45 of the *Penal Code*.

⁴¹ See ss 88 (previous convictions) and 89 (public servant) of the *Penal Code*, which do serve as aggravating circumstances for any crime committed in Cameroon. For a list of factors which may have the effect of either diminishing or expunging criminal responsibility, see generally ss 77-86 of the *Penal Code*.

⁴² Section 2 of *Law No 2012/011 of 16 July 2012*.

⁴³ Section 2 of *Law No 2012/011 of 16 July 2012*.

⁴⁴ Section 2 of *Law No 2012/011 of 16 July 2012*.

loss) is caused. However, not all kinds of losses will attract the jurisdiction of the SCC. For the SCC to exercise jurisdiction, such a loss caused by misappropriation must reach a minimum value of 50.000.000 CFA Francs.⁴⁵ Section 184 of the *Penal Code* is entitled "Misappropriation of Public Funds". In defining this offence the lawmaker used the word "property", especially in the allocation of the appropriate sentence. In choosing to mete out the appropriate penalty, the lawmaker's calibration was based on the financial value of the property misappropriated.⁴⁶ Even though "funds" and "property" are the terms used, this does not cause confusion, as "property" in this context is used to mean anything with a financial value.⁴⁷ Taking or keeping any property that comes within the purview of Section 184(1) is construed as taking or keeping public funds, because the property in question would have a financial value. The reasoning of the Court of Appeal in the *Tanyi Schwartz et al* case is persuasive in this regard.

The coming into force of the Law on the SCC gave the SCC immediate and supreme jurisdiction. Any court that is seized of offences that fall within the jurisdiction of the SCC shall immediately declare itself incompetent. In addition to this immediate exercise of jurisdiction, the *Procureur-Général* of the SCC is empowered to request for the same procedure by seizing his counterpart of the Court of Appeal of the court referred to in Section 8(1) of the Law.

In cases where the loss caused is less than 50.000.000 CFA Francs, the *Procureur-Général* of the SCC shall transfer the case file to the competent *Procureur-Général*.⁴⁸ This means that the jurisdiction exercised by the SCC is both superior and complementary.

The stipulation of the exercise of jurisdiction of the SCC has important implications: first, it presupposes the fact that other criminal courts are competent to try cases that fall within their jurisdiction. Second, where the SCC is incompetent because the amount misappropriated does not meet the minimum threshold, other criminal courts would be competent to exercise jurisdiction.⁴⁹

⁴⁵ Section 2 of *Law No 2012/011 of 16 July 2012*.

⁴⁶ Section 184(1) of the *Penal Code*.

⁴⁷ *Tanyi Schwartz et al* case.

⁴⁸ See the proviso to s 7(6) of *Law No 2011/28 of 14 December 2011*.

⁴⁹ This line of reasoning flows from a construction of the proviso to s 7(6) of *Law No 2011/28 of 14 December 2011*. See also ss 9(7), 10(7); and 11(1) of *Law No 2012/011 of 16 July 2012*.

The Law makes reference to "other related offences provided for in the Penal Code and International Conventions ratified by Cameroon" in defining the competence of the SCC.⁵⁰ The offence specifically and directly related to the offence over which the SCC has jurisdiction is the offence of the misappropriation of public funds under Section 184 of the *Penal Code*. In addition, Section 184 defines the appropriate penalty based on the value of the property/funds misappropriated. Where the said value is above half a million CFA Francs, the punishment is imprisonment for life.⁵¹ Where the value of the property is above a hundred thousand CFA Francs, the penalty is imprisonment for between fifteen and twenty years.⁵² Lastly, for any property whose value is a hundred thousand CFA Francs or below, the penalty is both imprisonment for five to ten years and a fine.⁵³

Cameroonian criminal law uses the prescribed penalty for an offence as the major criterion in classifying it as a felony, misdemeanour or a simple offence.⁵⁴ The jurisdiction of criminal courts also depends on this classification. The *Law on Judicial Organisation* and the *Criminal Procedure Code* spell out the jurisdiction of the different courts in Cameroon.⁵⁵ Only the High Court exercises jurisdiction over felonies.⁵⁶ Courts of First Instance exercise jurisdiction over misdemeanours and simple offences.⁵⁷ In effect, as jurisdiction over the offence of the misappropriation of public funds depends on the value of property misappropriated, the offence could be either a felony (triable by a High Court only) or a misdemeanour (triable by a Court of First Instance).

⁵⁰ Section 2 (new) of *Law No 2012/011 of 16 July 2012*; s 2 of *Law No 2011/28 of 14 December 2011*. Article 45 of the *Constitution* of Cameroon makes all duly ratified treaties and international agreements sources of law and laws in Cameroon. In addition, they do have a superior status over domestic legislation and override national legislation.

⁵¹ Section 184(1)(a) of the *Penal Code*.

⁵² Section 184(1)(b) of the *Penal Code*.

⁵³ Section 184(1)(c) of the *Penal Code*.

⁵⁴ Section 21(1) of the *Penal Code* stipulates three kinds of offences in Cameroonian criminal law: felonies, misdemeanours and simple offences. See s 21(1)(a)-(c) of the *Penal Code* respectively.

⁵⁵ See generally *Law No 2006/015 of 29 December 2006 (Law on Judicial Organisation)* and *Law No 2005/007 of 27 July 2005 (Criminal Procedure Code)*.

⁵⁶ See s 18(1)(a) of *Law No 2006/015 of 29 December 2006 (Law on Judicial Organisation)*; s 407(1) of *Law No 2005/007 of 27 July 2005 (Criminal Procedure Code)*.

⁵⁷ See s 15(1)(a) of *Law No 2006/015 of 29 December 2006 (Law on Judicial Organisation)*; s 289(1) of *Law No 2005/007 of 27 July 2005 (Criminal Procedure Code)*.

3.2 *Composition*

The Law creating the SCC spells out its composition.⁵⁸ It comprises three distinct sections: the Bench, the Legal Department and the Registry.⁵⁹ The Bench comprises a President, one or more Vice-Presidents, one or more judges and one or more Examining Magistrates.⁶⁰ At the Legal Department, there is a *Procureur-Général*, one or more Advocates-General and one or more Deputy *Procureurs-Général*.⁶¹ The Registry comprises a Registrar-in-Chief, one or more Section Heads, one or more Registrars and Registrars working with the Examining Magistrate.⁶² Judicial officers, court registrars and judicial police officers assigned to the SCC are bound by the rules and regulations of their respective professions.⁶³

3.3 *Proceedings*

As mentioned above, the Law creating the SCC simply introduces a new Court into the Cameroon judicial system, with a specific and superior jurisdiction over a specific class of offences. The Law does not create any new criminal offence. Neither does it introduce a new procedure to be applied by the SCC. In fact, it states clearly that the "rules of procedure shall be the same as those provided for by the Criminal Procedure Code".⁶⁴

Complaints, accusations or petitions relating to any of the offences over which the SCC has jurisdiction shall be subject to investigations.⁶⁵ Such investigations shall be ordered by the *Procureur-Général* of the SCC.⁶⁶ The *Procureur-Général* performs the functions of the State Counsel during preliminary or judicial investigations,⁶⁷ and has control over a specialized corps of judicial police officers charged with the responsibility of investigating and carrying out rogatory commissions.⁶⁸

The conduct of preliminary investigations is limited to thirty days, after which they must be closed.⁶⁹ This period, however, is renewable twice.⁷⁰ In

⁵⁸ Section 4 of *Law No 2011/028 of 14 December 2011*.

⁵⁹ Section 4 of *Law No 2011/028 of 14 December 2011*.

⁶⁰ Section 4 of *Law No 2011/028 of 14 December 2011*.

⁶¹ Section 4 of *Law No 2011/028 of 14 December 2011*.

⁶² Section 4 of *Law No 2011/028 of 14 December 2011*.

⁶³ Section 5 of *Law No 2011/028 of 14 December 2011*.

⁶⁴ Section 6 of *Law No 2011/028 of 14 December 2011*.

⁶⁵ Section 7(1) of *Law No 2011/028 of 14 December 2011*.

⁶⁶ Section 7(1) of *Law No 2011/028 of 14 December 2011*.

⁶⁷ Section 7(2) of *Law No 2011/028 of 14 December 2011*.

⁶⁸ Section 7(1) of *Law No 2011/028 of 14 December 2011*.

⁶⁹ Section 7(4) of *Law No 2011/028 of 14 December 2011*.

⁷⁰ Section 7(4) of *Law No 2011/028 of 14 December 2011*.

determining how long an accused person shall be remanded in custody, reference must be made to the *Criminal Procedure Code*.⁷¹ Upon closure of the preliminary investigations, the case shall be forwarded to the *Procureur-Général*, who may either close the case file or order the conduct of a judicial inquiry.⁷² In cases where the loss complained of is below the amount stipulated in Section 2, the *Procureur-Général* of the SCC shall transfer the case file to the competent *Procureur-Général*.⁷³

A trial Court seized of offences falling within the competence of the SCC shall immediately declare itself incompetent.⁷⁴ In addition, the *Procureur-Général* may request for the same procedure by seizing his counterpart of the Court of Appeal of the Court exercising jurisdiction over such an offence.⁷⁵

Upon receipt of a holding charge, the President of the SCC shall designate a judicial officer to carry out a preliminary investigation into the matter.⁷⁶ Detained individuals may petition for release on bail. Applications for bail must be made to the Examining Magistrate, who shall hear and determine them in terms of the provisions of Section 25(3) of the *Law on Judicial Organisation*.⁷⁷ At establishment, the Law required the Legal Department to be notified of all petitions for bail lodged with the Examining Magistrate. It required that they be processed within forty-eight hours.⁷⁸ The amended Law does not stipulate any time limit.

Preliminary inquiries shall be closed within one hundred and eighty days after the preferment of a holding charge.⁷⁹ The Examining Magistrate is required to forward the non-committal order to the Legal Department and the parties within forty-eight hours of closure.⁸⁰ No appeal can be filed against a committal order. Any appeal made in this case shall only be put in the case-file.⁸¹ In essence, these provisions mean that a decision to remand

⁷¹ Section 7(4) of *Law No 2011/028 of 14 December 2011*.

⁷² Section 7(6) of *Law No 2011/028 of 14 December 2011*.

⁷³ Section 7(6) of *Law No 2011/028 of 14 December 2011*.

⁷⁴ Section 8(1) of *Law No 2011/028 of 14 December 2011*.

⁷⁵ Section 8(2) of *Law No 2011/028 of 14 December 2011*.

⁷⁶ Section 9(1) of *Law No 2012/011 of 16 July 2012*.

⁷⁷ Section 25(3) of *Law No 2006/16 of 29 December 2006* in effect empowers the Examining Magistrate to grant bail to a defendant.

⁷⁸ Section 9(2) of *Law No 2011/028 of 14 December 2011*.

⁷⁹ Section 9(3) of *Law No 2012/011 of 16 July 2012*.

⁸⁰ Section 9(3) of *Law No 2012/011 of 16 July 2012*.

⁸¹ Section 9(4) of *Law No. 2012/011 of 16 July 2012*.

a suspect or accused in custody is not subject to appeal. Any appeal made in such a circumstance shall be for the record only.

Cases closed by a non-committal order or by a partial non-committal order with a committal order may be appealed against by the *Procureur-Général* of the SCC.⁸² Such appeal shall be filed before the Inquiry Control Chamber of the Supreme Court within seventy-two hours of service of the Examining Magistrate's ruling on the *Procureur-Général*.⁸³

It is permissible to raise objections before the SCC. Objections relating to a lack of jurisdiction raised before the Examining Magistrate shall be deposited in the case file and referred to the SCC when the closure of the Preliminary Inquiry is by a committal order.⁸⁴ However, appeals made against the rulings of the Examining Magistrate as to nullity relating to public order shall be forwarded to the Inquiry Control Chamber of the Supreme Court.⁸⁵ The applicability of these provisions governing the proceedings of the SCC is extended to every ordinary criminal court in Cameroon, specifically, the Court of First Instance and the High Court (as they are empowered to exercise jurisdiction over matters involving loss caused by misappropriation falling below 50,000,000 CFA Francs.⁸⁶ In such cases, appeals as provided in Section 9(5) and (6) shall be filed by the competent State Counsel. Such appeals shall be made before the Inquiry Control Chamber of the Supreme Court. Such appeals shall be heard and determined within a maximum period of fifteen days from the date of seizure.⁸⁷

Noteworthy is the fact that the Law that creates the Special Criminal Court and the amendment thereto oust the jurisdiction of the Court of Appeal on matters relating specifically to offences tried by the SCC. The *Criminal Procedure Code* states that all judgments, including those delivered by a Military Court, are subject to appeal, unless otherwise provided by law.⁸⁸ Such judgments, as contemplated above, refer to judgments from the Courts of First Instance and High Courts (with ordinary criminal jurisdiction over simple offences, misdemeanours and felonies respectively). As spelt

⁸² Section 9(5) of *Law No 2012/011 of 16 July 2012*.

⁸³ Section 9(5) of *Law No 2012/011 of 16 July 2012*.

⁸⁴ Section 9(6) of *Law No 2012/011 of 16 July 2012*.

⁸⁵ Section 9(6) of *Law No 2012/011 of 16 July 2012*.

⁸⁶ Section 9(7) of *Law No 2012/011 of 16 July 2012*.

⁸⁷ Section 9(7) of *Law No 2012/011 of 16 July 2012*.

⁸⁸ Section 436 of *Law No 2005/007 of 27 July 2005*.

out in this Law, any appeal against any judgment rendered by the SCC can be made only to the Supreme Court.

The President of the Court, after consultation with the *Procureur-Général*, shall fix a hearing date.⁸⁹ A hearing shall be scheduled no more than thirty days after the committal order.⁹⁰ The Court shall sit in a panel to hear and determine the matters referred to it.⁹¹ The panel shall be appointed by the President of the Court.⁹² Unlike the criminal procedure in ordinary criminal courts, the SCC determines the number of witnesses to be summoned for each party in the case.⁹³ Where there is a procedural objection relating to the jurisdiction of the SCC, the objection shall be determined alongside the entire judgment on the merits.⁹⁴ The Court shall hear and determine the matter within six months.⁹⁵ However, this period may be extended by three months by Order of the President of the Court.⁹⁶

The jurisdiction is original. However, unlike other courts in Cameroon, appeals against decisions of the SCC shall be made directly to the Supreme Court.⁹⁷ Appeals made by the Legal Department shall be based both on the facts and on points of law.⁹⁸ Appeals of other parties shall be based solely on points of law.⁹⁹ An appeal must be lodged within forty-eight hours after the SCC has handed down its judgment.¹⁰⁰ The appeal must be examined within six months.¹⁰¹ This, again, is another key difference in the criminal procedure during and after trials by the SCC: the time-limit set for appeals against judgments delivered by Courts of First Instance, High Courts and Military Courts is ten days with effect from the day following the date of delivery of the judgment.¹⁰²

4 Supplementary legislation on the SCC

In addition to the relevant Laws creating and amending the SCC, three presidential decrees were passed to address the administrative

⁸⁹ Section 10(1) of *Law No 2012/011 of 16 July 2012*.

⁹⁰ Section 10(1) of *Law No 2012/011 of 16 July 2012*.

⁹¹ Section 10(2) of *Law No 2012/011 of 16 July 2012*.

⁹² Section 10(2) of *Law No 2012/011 of 16 July 2012*.

⁹³ Section 10(3) of *Law No 2012/011 of 16 July 2012*.

⁹⁴ Section 10(5) of *Law No 2012/011 of 16 July 2012*.

⁹⁵ Section 10(6) of *Law No 2012/011 of 16 July 2012*.

⁹⁶ Section 10(6) of *Law No 2012/011 of 16 July 2012*.

⁹⁷ Section 11(1) of *Law No 2012/011 of 16 July 2012*.

⁹⁸ Section 11(2) of *Law No 2012/011 of 16 July 2012*.

⁹⁹ Section 11(3) of *Law No 2012/011 of 16 July 2012*.

¹⁰⁰ Section 12 of *Law No 2012/011 of 16 July 2012*.

¹⁰¹ Section 13(3) of *Law No 2012/011 of 16 July 2012*.

¹⁰² Section 440(1) of *Law No 2005/007 of 27 July 2005*.

organisation of the SCC; the establishment and organisation of Specialised Corps of Judicial Police Officers of the SCC, and lastly, the decree fixing modalities for the restitution of the *corpus delicti*. Below is a discussion of these three presidential decrees.

4.1 Presidential Decree No 2012/223 of 15 May 2012 on the Administrative Organisation of the SCC

The purpose of this Presidential Decree was to set up the administrative organisation of the SCC.¹⁰³ Two administrative units having operational relevance to the functioning of the SCC were created: the Registry and the Legal Department. The Registry is headed by a Registrar-in-Chief, who must possess the rank of at least a Senior Court Registrar. The Registrar-in-Chief provides oversight and is responsible for the functioning of the Registry of the SCC. Divided into two criminal sections (Criminal Section I and Criminal Section II), each of these sections shall perform the following functions: the treatment of criminal matters and cases of the misappropriation of property worth above or equal to 50000000 CFA Francs and related offences; ensure hearings are carried out; draft judgments; register judgments delivered and issue authentic copies, copies and engrossed copies thereof to the parties; prepare records of proceedings and statistical returns; prepare criminal records; register challenges and appeals filed by parties; and transmit appeal files that are ready to the Registry of the Court of Appeal.¹⁰⁴

The Legal Department is split into three sub-units, each performing different tasks. These are the Administrative and Financial Affairs Services; the Criminal Affairs Services and the Court Registry, Legal Department and Judicial Professions Control Services.¹⁰⁵ Each of these sub-units is headed by a different calibre of employees.¹⁰⁶ The Criminal Affairs Services comprises the Mail and Card-file Bureau,¹⁰⁷ the Criminal Matters Bureau,¹⁰⁸ the Transit Matters Bureau¹⁰⁹ and the Execution of Sentences and Criminal Statistics Bureau.¹¹⁰

¹⁰³ Section 1 of *Presidential Decree No 2012/223 of 15 May 2012*.

¹⁰⁴ Section 5 of *Presidential Decree No 2012/223 of 15 May 2012*.

¹⁰⁵ Section 6 of *Presidential Decree No 2012/223 of 15 May 2012*.

¹⁰⁶ Sections 7, 9, and 11 respectively of *Presidential Decree No 2012/223 of 15 May 2012*.

¹⁰⁷ Sections 9, and 10(1) of *Presidential Decree No 2012/223 of 15 May 2012*.

¹⁰⁸ Sections 9, and 10(2) of *Presidential Decree No 2012/223 of 15 May 2012*.

¹⁰⁹ Sections 9, and 10(3) of *Presidential Decree No 2012/223 of 15 May 2012*.

¹¹⁰ Sections 9, and 10(4) of *Presidential Decree No 2012/223 of 15 May 2012*.

4.2 Presidential Decree No 2013/131 of 03 May 2013 on the Organisation and Functioning of the Specialized Corps of Judicial Police Officers of the SCC

The Presidential Decree created a specialised Corps of Judicial Police Officers of the SCC with its base at the Headquarters of the SCC.¹¹¹ Judicial Police Officers have national jurisdiction.¹¹² They operate under the supervision and control of the *Procureur-Général* of the SCC, and are responsible for conducting investigations concerning the embezzlement of public funds and related offences where the loss amounts to a minimum of 50000000 CFA Francs; and the execution of court warrants and rogatory commissions falling within the jurisdiction of the SCC.¹¹³ Judicial Police Officers receive instructions from the *Procureur-Général*.¹¹⁴ They conduct their investigations in accordance with the provisions of the *Criminal Procedure Code*.¹¹⁵ Reports of these investigations are forwarded to the *Procureur-Général*.¹¹⁶ In performing their duties, Judicial Police Officers may solicit the assistance of experts.¹¹⁷

The Judicial Police Corps comprises two main Units: an Investigations Division and an Administrative Services Division.¹¹⁸ The Investigations Division is composed of a Division Head, a Deputy Division Head and Research Officers.¹¹⁹ The Administrative Services Division comprises the General Affairs Service, the Personnel, Training and Retraining Service, the Records Service and the Seals Office.¹²⁰

4.3 Decree No 2013/288 of 04 September 2013 Fixing Modalities for the Restitution of the corpus delicti

As discussed earlier, the jurisdiction of the SCC is limited to individuals who bear responsibility for the misappropriation of public funds of at least 50000000 CFA Francs. The amount of funds misappropriated determines whether jurisdiction will be exercised by the SCC or by the High Court or Court of First Instance.

¹¹¹ Section 1 of *Presidential Decree No 2013/131 of 03 May 2013*.

¹¹² Section 2 of *Presidential Decree No 2013/131 of 03 May 2013*.

¹¹³ Section 3 of *Presidential Decree No 2013/131 of 03 May 2013*.

¹¹⁴ Section 4(1) of *Presidential Decree No 2013/131 of 03 May 2013*.

¹¹⁵ Section 4(1) of *Presidential Decree No 2013/131 of 03 May 2013*.

¹¹⁶ Section 4(2) of *Presidential Decree No 2013/131 of 03 May 2013*.

¹¹⁷ Section 4(3) of *Presidential Decree No 2013/131 of 03 May 2013*.

¹¹⁸ Section 6 of *Presidential Decree No 2013/131 of 03 May 2013*.

¹¹⁹ Section 7(1) of *Presidential Decree No 2013/131 of 03 May 2013*.

¹²⁰ Section 8(1) of *Presidential Decree No 2013/131 of 03 May 2013*.

Given the fact that the *corpus delicti* of the offence involves the misappropriation of public funds (as construed, funds include property, whose value is assessed in order to determine what court is to exercise jurisdiction), modalities on restitution of the *corpus delicti* (the misappropriated funds) are addressed in the Presidential Decree of 2013.

The restitution of the *corpus delicti* is contemplated in Presidential Decree No 2013/131 of 03 May 2013 establishing the organisation and functioning of the Specialised Corps of Judicial Police Officers of the SCC, where it is stipulated as follows:

Any offer to reconstitute the *corpus delicti* in cash or in kind in the course of the preliminary investigation shall be recorded in the report forwarded to the *Procureur-Général* of the SCC.¹²¹

The essence of this provision is to indicate to the authorities during the course of preliminary investigations that the accused against whom sufficient evidence exists for having misappropriated public funds has offered to restore such funds to the state coffers. As prescribed by the Presidential Decree fixing the modalities for the restitution of the *corpus delicti*, cases where such restitution takes place before the seizure of the Court by the committal order of the Examining Magistrate or by the judgment of the Inquiry Control Chamber of the Supreme Court, the *Procureur-Général* may, upon a written authorisation by the Minister of Justice, enter a *nolle prosequi*.¹²² However, if the restitution is effected after the Court is already seized of the matter, the *Procureur-Général* of the SCC may, upon a written authorisation by the Minister of Justice, enter a *nolle prosequi* against the proceedings prior to any judgment on the merits and the Court seized of the matter shall inflict the forfeitures under Section 30 of the *Penal Code* and mention will be made in the criminal record.¹²³

The restitution of the *corpus delicti* may be in cash or in kind.¹²⁴ Restitution in cash occurs where the accused restores the totality of the sum of money he is accused of having misappropriated or restores the monetary value of the misappropriated property.¹²⁵ On the other hand, restitution in kind refers to where the accused person restores the misappropriated property whose value amounts to the sum for which he is said to have misappropriated.¹²⁶

¹²¹ Section 5 of *Presidential Decree No 2013/131 of 03 May 2013*.

¹²² Section 3(1) of *Presidential Decree No 2013/131 of 03 May 2013*.

¹²³ Section 3(2) of *Presidential Decree No 2013/131 of 03 May 2013*.

¹²⁴ Section 4(1) of *Presidential Decree No 2013/131 of 03 May 2013*.

¹²⁵ Section 4(2) of *Presidential Decree No 2013/131 of 03 May 2013*.

¹²⁶ Section 4(3) of *Presidential Decree No 2013/131 of 03 May 2013*.

Restitution in cash is effected by payment to the Public Treasury, against which a receipt is delivered on the total amount the accused is said to have misappropriated. Such proof of payment is handed to the authority before whom proof of restitution in cash is made. It may be effected at a preliminary investigation, at the preliminary inquiry, at the Legal Department of the SCC, before the President of the SCC, or during a session of the Court.

In cases of a "proposal of restitution in kind", the application shall be exclusively made before the *Procureur-Général* of the SCC.¹²⁷ The *Procureur-Général* shall draw up a report expressly mentioning the application for a *nolle prosequi* by the accused.¹²⁸ Such a report and proof of the physical existence of the said property shall be forwarded by the *Procureur-Général* to the Minister of Justice within 72 hours.¹²⁹ The Minister of Justice shall seize the competent administrative body thereof for the evaluation of the property offered in restitution within a time limit prescribed by him.¹³⁰ Expertise expenses and fees related to such an evaluation shall be borne by the accused.¹³¹

Restitution of the *corpus delicti* does not automatically translate into the termination of criminal investigation or the entering of a *nolle prosequi*. It is merely a factor that may be adjudged by the competent authorities as to whether it suffices to discontinue criminal investigations. Depending on the stage at which an offer for restitution is made, it may result in a *nolle prosequi*, the imposition of the forfeitures provided in Section 30 of the *Penal Code* and the entering of a criminal record.

Even though the jurisdiction of the SCC is limited to cases of the misappropriation of public funds of at least 50000000 CFA Francs, different courts that are seized of this offence as stipulated in Section 184(1) of the *Penal Code* shall apply the modalities prescribed in this Decree.¹³² In other words, restitution of the *corpus delicti*, whether in cash or in kind, is not limited to accused persons tried by the SCC. Accused persons indicted and investigated for the offence of the misappropriation of public funds may offer to restore the *corpus delicti* in cash or in kind.

Since the enactment of this Decree, numerous individuals suspected of or investigated for the misappropriation of public funds have restored the

¹²⁷ Section 11(1) of *Presidential Decree No 2013/131 of 03 May 2013*.

¹²⁸ Section 11(2) of *Presidential Decree No 2013/131 of 03 May 2013*.

¹²⁹ Section 11(2) of *Presidential Decree No 2013/131 of 03 May 2013*.

¹³⁰ Section 11(3) of *Presidential Decree No 2013/131 of 03 May 2013*.

¹³¹ Section 11(3) of *Presidential Decree No 2013/131 of 03 May 2013*.

¹³² Section 12 of *Presidential Decree No 2013/131 of 03 May 2013*.

corpus delicti. In some of these cases the criminal proceedings were discontinued.¹³³ The judgments rendered in such cases ordered the restitution of the *corpus delicti*. In addition, guilty persons were ordered to pay damages as the *Criminal Procedure Code* permits the institution of both criminal proceedings (by the Legal Department) and civil action (by the affected party).¹³⁴ In addition, a fine, one of the principal penalties of Cameroonian criminal law, could be imposed, in addition to a term of imprisonment.

5 SCC in operation since 2011

Given Cameroon's record of corruption, especially cases of misappropriation perpetrated by top political figures, it was unimaginable to conceive of the day that political rhetoric echoed by the Head of State would be translated into a reality through a law holding accountable those who perpetrate the offence of the misappropriation of public funds. On numerous instances, the Head of State expressed his displeasure with public servants who siphon off state resources for their personal gain.¹³⁵ The will to combat

¹³³ For example, see the case of *Ministère Public et Etat du Cameroun (Ministère de l'Education de Base – Partie civile) C/Haman Adama née Halimatou Kangue Maonde, BAORO née AZO'O NKOULOU Christine, Malonga Isoa née Nnougou Annick Joëlle, Willayi Richard, ZEGA Stanislas, Mvondo Nyina Barthelemy, Mbeng Boniface Blaise, Besong John Besong, Ntsama Zoa Pierre, Ngo Um Deborah Angèle, Fouda François, Matat Joseph, Mekougou Ondoa Joseph et Lebongo Blaise*, Tribunal Criminel Spécial, Yaoundé, Arrêt No 026/CRIM/TCS du 19 Septembre 2013. Twelve of them paid to the Public Treasury the sum of 369.048.876 Frs CFA being the *corpus delicti* of the offence of misappropriation of public funds. Per *Ministerial Correspondence 214/CR/CAB/MINETAT/MJ/GDS of 18 September 2013*, criminal charges against twelve of the accused persons were dropped: of the remaining two accused persons, the sum of 19.812.500 Frs CFA was to be paid by Mr Mekongou Ondoa Joseph. The remaining sum of 75.004.245 Frs CFA was to be paid by Mr Lebongo Blaise, who perished in the course of the trial.

¹³⁴ The purpose of a civil action is to provide compensation for damages resulting from the commission of an offence. Civil action can be instituted at the same time with the criminal proceedings only if such damage arose from the offence for which the accused is charged: see ss 59, 60 and 61 of *Law No 2005/007 of 27 July 2005 (Criminal Procedure Code)*.

¹³⁵ On various occasions the President addressed the entire nation on the issue of corruption. To mention a few of these, in his address to the nation on 6 November 1982 he remarked as follows: "... in these hard times we live in, the great and arduous task of nation-building involves ... rigorous management and perseverance in effort with respect to demoralization ... demobilization or destabilization manoeuvres". In his address to the nation on 31 December 2005, he said "[t]he embezzlement of public property is done to the detriment of the national community. Today I want to say solemnly that it must stop". In his communication during the Ministerial Council of 12 September 2007, the President reiterated his revulsion at this particular form of corruption in the following words: "The misappropriation of public funds, whatever the form, is a crime against the people who is deprived of the resources it deserves. It

and stop the misappropriation of public funds had been very absent: the fact that such acts could be perpetrated by top political figures who could misuse their political power and affiliations to victimise any prosecutor intending to investigate them was the biggest challenge. The establishment of the SCC and the calibre of the individuals investigated, arrested, prosecuted and convicted by this Court are evidence that such an institution was more than needed in order to defeat this invisible enemy of the Cameroonian people.

5.1 *The arraignment of important individuals before the SCC*

Cases have been sent to the SCC from different courts across the country in instances where it was established that the funds misappropriated had reached the threshold sum of 50000000 CFA Francs. This threshold is quite high, and it is obvious that only individuals who oversee the day-to-day financial operations of State funds will be able to commit corrupt acts on such a scale. Numerous high level political figures have been taken before the SCC for misappropriating unbelievable sums of money belonging to the State. Among them are Inoni Ephraim (the former Prime Minister and Assistant Secretary General at the Presidency); Jean-Marie Atangana Mebara (the former Secretary General at the Presidency and the former Minister of Higher Education); Polycarpe Abah Abah (the former National Director of Taxation and Minister of Economy and Finances); Etogo Mbezele Luc Evariste (the Chief Inspector of the National Treasury); Ambassa Zang Dieudonné Télésphore (the former Minister and former Deputy at the National Assembly); Iya Mohammed (the former General Manager, SODECOTON); Haman Adama née Halimatou Kangué Maonde (the former Minister of Basic Education); Nguini Effa Jean Baptiste de la Salle (the former General Manager, SCDP); Yves Michel Fotso (the former General Manager, CAMAIR); Ntongo Onguene Roger (the former General Manager, ADC); Endale Marthe (the Director, SOCANET); Eny Rosper (the Director, SOTRACAM); Obouh Fegue Clément (the former General Manager, SNEC); Olangouena Awono Urbain (the former Minister of Public Health); and Metouck Charles (the former General Manager, SONARA).¹³⁶

must therefore be punished with the utmost severity." In his opening speech and General Policy at the 3rd CPDM Ordinary Congress of 15 September 2011, he said: "Ladies and gentlemen, know that my determination to fight this scourge is complete and the fight against corruption will continue to intensify, uncompromisingly, without discrimination, regardless of social status or political affiliation of the alleged offender. Nobody can consider themselves above the law." He further declared that "[t]he protection of public property must be imposed on members of our party. The party leaders, ministers, general managers and parliamentarians must lead by example".

¹³⁶ See generally the judgments delivered by the Special Criminal Court in cases involving the individuals named above.

The manner in which these individuals misappropriated public funds involved numerous persons within and outside the banking sectors, the establishment of fictitious business entities that would be awarded deals by the perpetrators, and the authorisation of electronic transfers and bank withdrawals that would be overseen by those within the joint criminal enterprise. The syndicated and complex nature of these illicit transactions, coupled with the high offices of the perpetrators, would have resulted in investigating them being a big legal puzzle to prosecutors, who are appointed based on their political affiliation, and are therefore inclined to attend to the requests of their appointers. In other words, such cases of top profile criminality were untouchable by the Legal Department, which focused on more ordinary individuals who misappropriated public funds.

The law must reach every individual. A fundamental principle of Cameroonian criminal law is that all persons shall be subject to the criminal law of the country.¹³⁷ No person is above the law. This is a cornerstone of the rule of law. The prosecution of important individuals who perpetrate the misappropriation of public funds is in fulfilment of these fundamental principles of Cameroonian criminal law, and accentuates the reach of the law and the justice system, as everyone, irrespective of position, should be subject to the law.

5.2 The diluted perception of the SCC

Across the nation different individuals have expressed different reactions to the establishment of the SCC, its purpose, the timing of its establishment, and the usefulness of its imposition of imprisonment of those it finds guilty. While speculation has been rife that the SCC was devised by the President as a ploy to identify and permanently contain individuals who pose a threat to his position, there is very little evidence to substantiate such a point of view.¹³⁸ In my opinion, this line of reasoning is untenable, unreasonable and illogical for several reasons. First, the offence of the misappropriation of public funds has existed since the demise of colonialism, as is evidenced by its enactment in 1960. Secondly, the perpetration of the crime has, in recent decades, grown tremendously. As indicated by the judgments, the misappropriation of public funds required the complicity of numerous

¹³⁷ Section 1 of the *Penal Code* provides as follows: "All persons shall be subject to the criminal law."

¹³⁸ Speculation may grow wildly, but as any criminal proceedings, a court is limited to the law and the evidence. The expression of different perspectives may be entertained, but legal analysts look at the crime in question and find an answer to whether there is evidence to sustain the charges brought against the accused.

individuals, both within and outside the public service. In these syndicated crimes, persons of different ranks played different roles over the years in acquiring public funds for private benefit. Thirdly, as in every society, different crimes may attract varying degrees of attention. Terrorism and the misappropriation of public funds have become the focal crimes that are being combatted by the State in Cameroon. In the past, it was armed robbery. Fourthly, even if the prosecution of these individuals is politically motivated, the greater issue is whether our focus should be to examine whether or not the accused persons misappropriated public funds as charged. Looking at things through a political lens makes no contribution to the rule of law. If the indicted persons committed the crimes then they should be prosecuted, for it is a cardinal principle of Cameroonian criminal law that everyone is equal before the law, and no one is above the law. The law must not be used as an instrument that targets only petty criminals who commit ordinary theft. Its reach must also be felt by individuals who, invested with public trust, dishonestly take or keep public property for personal gain.

The judgments also indicate that all individuals convicted for the misappropriation of public funds were ordered to pay the said sums into the State Treasury.¹³⁹ In addition, they have to pay interest accrued by such sums of money as well as a fine for the offence committed.¹⁴⁰ The restitution of the *corpus delicti*, added to orders from the Court that the accused repay the funds misappropriated, plus a fine, indicate a few things. The convicted perpetrator serves a term of imprisonment and he is deprived of the proceeds of the crime (the misappropriated funds). The Cameroonian public is not bereft of its funds (as the funds are restored or repaid). Put together, all of these factors work towards the deterrent and punitive ends of Cameroonian criminal law.

¹³⁹ There are numerous cases to prove this, but by way of example, a few are worth mentioning: *Ministère Public et Etat du Cameroun C/ Atangana Mebara Jean-Marie, Inoni Ephraim, Otele essomba Hubert Patrick Marie, Kevin Joseph Walls* Tribunal Criminel Spécial, Yaoundé, Arrêt No 28/CRIM/TCS du 02 Octobre 2013; *Ministère Public et Etat du Cameroun (Ministère des Finances – Partie Civile) C/ Yen Eyoun Lydienne épouse Loyse, Abah Abah Polycarpe, Engoulou Henri, Baleng Maah Célestin, Ngwem Honoré* Tribunal Criminel Spécial, Yaoundé, Arrêt No 021/CRIM/TCS/14 du 26 Septembre 2014.

¹⁴⁰ *Ministère Public et Etat du Cameroun C/ Atangana Mebara Jean-Marie, Inoni Ephraim, Otele essomba Hubert Patrick Marie, Kevin Joseph Walls* Tribunal Criminel Spécial, Yaoundé, Arrêt No 28/CRIM/TCS du 02 Octobre 2013; *Ministère Public et Etat du Cameroun (Ministère des Finances – Partie Civile) C/ Yen Eyoun Lydienne épouse Loyse, Abah Abah Polycarpe, Engoulou Henri, Baleng Maah Célestin, Ngwem Honoré* Tribunal Criminel Spécial, Yaoundé, Arrêt No 021/CRIM/TCS/14 du 26 Septembre 2014.

5.3 Conclusion

Even though this is not stated in the legislation, it is evident that the establishment of the SCC targeted the very senior public officials who embezzle public funds for their private gain. While corruption has plagued the development of the country, very little effort has been made to bring the perpetrators to account. As a result, corruption has grown into the fabric of Cameroonian society and can no longer be described as the invisible enemy of Cameroonians. Rather, it is the currency in which public service is conducted. The 1996 *Constitution* included a clause that called for the disclosure of assets by some individuals.¹⁴¹ Subsequent legislation was passed to give effect to this law. Yet, the growing incidence of corruption in the country confirmed the view that anti-corruption laws and institutions are inadequate if the political will to implement them is lacking. However, with the introduction of the SCC, which has actually targeted top politicians including a former Premier and cabinet ministers, there is a strong sentiment across the nation that the government is now determined to put an end to the corruption committed by persons in power.

However, the battle against the misappropriation of public funds remains only one dimension of the effort to combat corruption in Cameroon. While this step is commendable, it is highly recommended that other forms of corrupt practices should be dealt with vigorously, particularly ethical violations, administrative malpractices such as the abuse of authority, and criminal matters. From the use of fraudulent qualifications to enter the public service, electoral fraud and bribery to the high levels of unprofessional conduct on the part of law enforcement officers - institutional mechanisms should be put in place to check such malpractices. It is important for the country to embark on a socially responsible and economically sound developmental agenda. Cameroon must be committed to combatting

¹⁴¹ See *Law No 003/2006 of 25 April 2006 Relating to the Declaration of Assets and Property*; art 66 of the 1996 *Constitution* stipulates as follows: "The President of the Republic, the Prime Minister, Members of Government and persons ranking as such, the President and Members of the Bureau of the National Assembly, the President and Members of the Bureau of the Senate, Members of Parliament, Senators, all holders of an elective office, Secretaries-General of Ministries and persons ranking as such, Directors of the Central Administration, General Managers of public and semi-public enterprises, Judicial and Legal Officers, administrative personnel in-charge of the tax base, collection and handling of public funds, all managers of public votes and property, shall declare their assets and property at the beginning and at the end of their tenure of office. The other categories of persons to whom the provisions of this article shall apply and the conditions of implementation thereof shall be determined by law."

corruption in all forms and at all levels, so that this invisible enemy of the Cameroonian people may be defeated. This will pave the way for socio-economic development.

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