

The Efficacy of the Special Criminal Court in the Fight Against Misappropriation of Public Funds in Cameroon

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ABSTRACT

The battle against the misappropriation of public funds committed by individuals, mainly public servants, for private gains, has witnessed different degrees of commitment by different countries. Rated as one of the most corrupt counties in Africa by Transparency International, the Republic of Cameroon enacted the law creating the Special Criminal Court (SCC). This comes as one of the most robust and significant legislative developments in the fight against the misappropriation of public funds. The smooth functioning of the court seems to be hindered by the vagueness of some legislations relating to the effective functioning of the court, lack of judicial independence of the court, and violation of due process rights which poses a threat to the fulfillment of the main aim of the court as a “special court” characterized by speediness. The paper thus sets out, to critically examine the effectiveness of the court in curbing the misappropriation of public funds. The study uses the qualitative research methodology, employing primary data sources from relevant statutes such as the Law of 2011 creating the SCC, the Cameroon Penal Code, the Criminal Procedure Code, and interviews. Secondary data from textbooks, journal articles, and newspapers were also used. The study is underpinned by the Natural Law Theory and the Theory of Justice. Findings reveal that even though there are adequate laws ensuring the effective functioning of the Special Criminal Court, there are contrary laws that give the executive the power to influence judicial processes in the court. The impartiality of judges and the investigation of cases under the jurisdiction of the court and the fact that only the President of the Republic or the minister in charge of justice can refer a matter to the court is also a call for concern. This study, therefore upholds that, there should be strict implementation of the laws regulating the conduct of proceedings in the court. That there should be the political will to curb the offense, for the misappropriation of public funds can only reduce if the political will to do so is made paramount.

Keywords: misappropriation of public funds, corruption, restitution, Special Criminal Court.

INTRODUCTION

The classification of Cameroon as the most corrupt nation in the world between 1998 and 1999, [1] made the government more willing than ever to fight the ill. The slogan “Corruption kills the nation” was adopted by the government in its fight against corruption. [2] The national newspaper – Cameroon Tribune had a column devoted every day to corruption. This campaign aimed to educate Cameroonians on the ills of corruption and the potential damage it could do to the nation if it persisted. On 14 December 2011, Cameroon enacted a Law that established the SCC. [3] The Court was created to try special criminals (misappropriations of public property and related offences where the value of the loss is at least fifty million francs CFA as provided for by the Penal Code and International Conventions ratified by Cameroon) in Cameroon. There is only one court for the whole Republic of Cameroon. Its seat is in Yaoundé, the political capital of Cameroon. The SCC exercises exclusive jurisdiction over a specific class of offences committed across the national territory. [4] Despite of the creation of this court to curb misappropriation of public funds, Jurisdictional problems, judicial independence, the Vagueness of some legislations of the court and judicial delay has greatly hampered the administration of justice in the SCC of Cameroon and has made the misappropriation of public funds by public servants to be unending, leading to a fall in the social, political,

and economic growth and development of the state of Cameroon. This article then sets out to access the SCC's mandate and efficacy as stated in law no 2011/28 of 14 December 2011 and other related regulations of the court. It further looks at the challenges face in curbing misappropriation of public funds in Cameroon, while suggesting solutions to the challenges

AN OVERVIEW OF THE ORGANISATION AND JURISDICTION OF THE SPECIAL CRIMINAL COURT

The special criminal court is created to try special criminals (misappropriations of public property and related offences where the value of the loss is at least fifty million francs CFA as provided for by the Penal Code and International Conventions ratified by Cameroon) in Cameroon. It is only one court for the whole Republic of Cameroon. It shall have its seat in Yaounde, the political capital of Cameroon. For a better understanding of the organization of the court, this sub-topic looks at the composition and the competence of the court.

There is the material and territorial jurisdiction of the SCC of Cameroon just like with other Courts. As concerns, the material 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 fifty million francs (50.000.000F XAF). 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.^[5] (It should be noted that the misappropriation of private property does not fall under the jurisdiction of the SCC). Also, 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.^[6]

Section 2 of the amended law on the SCC^[7] talks of the loss of a minimum amount. The focus, therefore, is on both the result (the loss) and how such a result (the loss) is caused. This thus shows that not all kinds of losses will attract the jurisdiction of the SCC. It should be recalled that for the SCC to exercise jurisdiction, such a loss caused by misappropriation must reach a minimum value of fifty million XAF (50.000.000XAF).^[8] The coming into force of the Law on the SCC gave the Court immediate and supreme jurisdiction on all misappropriation of public funds cases. Any court that is seized of offences that fall within the jurisdiction of the SCC shall immediately declare itself incompetent. In addition to the exercise of jurisdiction, the Procureur-Général of the SCC is empowered to request the same procedure by seizing his counterpart of the Court of Appeal of the court referred to in Section 8(1) of the Law to send all cases pending before that court and falling within the jurisdiction of the SCC. In this regard, several cases have over the years been transferred to the special criminal court, for example; the case of *the people of Cameroon (represented by the ministry of finance) V. Bongam Isa and Boniako Nasako Peter*^[9], *The people of Cameroon V. Tang nee N. Rebecca*^[10] sent to the Special Criminal Court since 2012 after its creation in 2011

It should be noted that in cases where the loss caused is less than fifty million francs (50.000.000F CFA), the Procureur-Général of the SCC shall transfer the case file to the competent Procureur-Général.^[11] This means that the jurisdiction exercised by the court 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.^[12] The amount of funds misappropriated therefore determine whether jurisdiction will be exercised by the SCC or by the High Court or Court of First Instance. For example, in the case of *The people of Cameroon and the state of Cameroon (MINJUSTICE) V. Tambang Victor Mbang Menj*^[13], the accused was said to have misappropriated the sum of sixty-seven million five hundred and seventy-nine thousand seven hundred and thirty-five (XAF 67,579737) of which in this case the competent court is the special criminal court. However, after a proper examination of the facts,

the court found out the money misappropriated was only XAF 31,892,532. This amount is below the amount that attracts the competence of the special criminal court and according to section 8 of the law creating the SCC, the court has to decline its jurisdiction on the matter. In this regard, the court declined jurisdiction and remitted the matter to the competent court, which in this case is the Mezam High Court.

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 and section 2 of the law creating the SCC.

On the other hand, as concerns the geographical jurisdiction, the SCC has its lone seat in the political capital of Cameroon and has the jurisdiction to try all cases of misappropriation of public property and other related offences in the Cameroon penal code committed in any part of the country. This means that whether the offence is committed in the southwest region or the west region, or any other region of the country, so long as the amount is equal to or more than fifty million, the appropriate jurisdiction is the SCC.

AN ASSESSMENT OF THE SPECIAL CRIMINAL COURT'S EFFICACY IN THE FIGHT AGAINST THE MISAPPROPRIATION OF PUBLIC FUNDS

The effectiveness of the Legal Framework on the SCC:

A good number of regulations have been put in place to regulate the functioning of the SCC. They include the Constitution; the law of 2005^[14], the law of 2011 creating the SCC,^[15] and related Decrees on the SCC of Cameroon. All decisions of the court are expected to be in conformity with these laws. These laws aim at curbing the misappropriation of public funds. As a result, this seeks to ascertain whether the laws can effectively curb the misappropriation of public funds.

The law of 2011 creating SCC lays down the organization, jurisdiction, and functioning of the court. As concerns the procedure, it is regulated by the criminal procedure code (CPC) of Cameroon as provided for by the 2011 law above^[16]. The law creating the SCC is supplemented by Decrees, which also regulate the functioning of the Court. These includes Presidential Decree No 2012/223 of 15 May 2012 on the Administrative Organization of the SCC; Decree No 2013/288 of 04 September 2013 Fixing Modalities for the Restitution of the *corpus delicti*, Presidential Decree No 2013/131 of 03 May 2013 on the Organization and Functioning of the Specialized Corps of Judicial Police Officers of the SCC.

The laws and decrees relating to the SCC have greatly been questioned in line with its fulfillment of the purpose of the creation of the SCC by legal scholars^[17]. This paper argues that Decree No 2013/288 of 04 September 2013 which provides modalities for the restitution of the *corpus delicti* is vague and thus cannot facilitate curbing the crime of misappropriation of public funds. This is because the laws or decree creating the SCC does not provide for the procedure and basis for restitution. The decree provides for the restitution of the *corpus delicti* either at the level of the police investigation, preliminary inquiry, legal department, and before the court. It goes further to state that the legal effect of restitution is the entering of a *nolle prosequi*. It provides in section 3(1) that, “*In the case of restitution of corpus delicti before the seizure of the court by a committal order of the examining magistrate or by a judgment of the Inquiry Control Chamber of the Supreme Court, the Procureur-General of the SCC may, upon a written authorization by the minister of justice, enter a nolle prosequi*”. The word may throw doubts as to whether a *nolle prosequi* will be entered or not. This has thus led to a discriminatory application of the decree; for instance, in some cases like that of *Fotso Yves Michel* who restituted but have not set free while others like *Haman Adama nee Halimatou Kangue Maonde and Co* restituted and were set free by the court, through a ministerial correspondence^[18].

It is possible to say that since *Haman Adama nee Halimatou Kangue Maonde and Co* restituted and were set free, *Fotso Yves Michel* who also restituted should have been set free. The court has not clearly stated why they do accept restitution in some cases while refusing restitution in other cases. This has made some

scholars believe that the decisions of the court are politically motivated Bechem EE[19], have questioned the decree considering it to be geared towards encouraging the misappropriation of public funds. He[20] believes that the fact that you can be set free encourages offenders to perpetrate the act. They also liken the restitution of the *corpus delicti* in the SCC with regard to the misappropriation of public funds (theft of public property) with the misappropriation of private property (theft of private property)[21].

In the case of misappropriation of public funds, the offender steals billions of cash and if caught, he restitutes and is set free. This is not the same treatment that will be meted out to an individual who steals a loaf of bread that costs just a hundred XAF.

In the same light, with regard to the decree establishing the organization, and functioning of the specialised corps of judicial police officers of the SCC, specialised corps of judicial police officers are in charge of the investigation of the offence of misappropriation of public funds, but this is not the case given that most of their work is done by Anti-Corruption agencies like CONAC, and Supreme State Control, though not expressly stated by the decree. This shows that the judicial police officers, have nothing to offer in the SCC with regard to their original duties and as such, only come in only when the matter has been sent by these agencies (National Anti-Corruption Commission, and the Supreme State Control service) to the Presidency of the Republic of Cameroon. The president of the Republic of Cameroon may soumotu or through the minister of justice refers the matter to court, and the Procuruer-General (PG) requests them to investigate it, thus resulting in judicial delays.

Compliance with the Jurisdictional Prerequisite of the SCC

According to the law creating the SCC and its amendment,[22] the court is competent to hear matters where the loss amounts to at least fifty million francs (XAF 50,000,000) relating to misappropriation of public funds and other related offences provided for in the penal code and international conventions ratified by Cameroon. So, if the court is seized of a matter and the Court finds that the amount is less than XAF 50,000,000 million, the court is required to decline jurisdiction. In like manner, if the court ascertains that the amount is equal to or above fifty million FCFA, which complies with the jurisdictional requirement of the court, the Court will hear and determine the matter.

Concerning its jurisdictional requirement, the court is said to have complied with it in many instances. In the case of *The people of Cameroon and the state of Cameroon (Ministry of justice) V. Tambang Victor Mbang Menj*[23], the accused was alleged to have misappropriated the sum of sixty-seven million five hundred and seventy-nine thousand seven hundred and thirty-five (XAF 67,579,737). In this case, the competent court is the SCC. However, after a proper examination of the facts, the court found out that the money misappropriated was only XAF 31,892,532. This amount is below the amount that attracts the competence of the SCC and according to section 8 of the law creating the SCC, the court had to decline its jurisdiction on the matter. Similarly, in the case of *The Public Ministry and the state of Cameroon V. Haman Adama nee Halimatou Kangué Maonde and Co*[24], the case of *The public ministry and The state of Cameroon, The CAMAIR liquidation V. Fotso Yves Michel*[25] *the state of Cameroon and CAMPOST V. Abakar Mansale*[26] the court found that the amount misappropriated meets with the requirement for the exercise of jurisdiction by the court. Hence, the court entertained and heard the matter.

With regards to the requirement of the law creating the SCC for the transmission of cases by the trial courts to the SCC, and from SCC to the trial court, many cases have been transferred to the SCC already from trial courts. For instance, the case of *the people of Cameroon (represented by the ministry of finance) V. Bongam Isa and Boniako Nasako Peter*[27], *The people of Cameroon V. Tang nee N. Rebecca*[28], which were transferred from the Fako High Court to the special criminal court and that of *The people of Cameroon and the state of Cameroon (Ministry of justice) V. Tambang Victor Mbang Menj*[29], remitted to the Mezam High Court for trial.

Adherence of the Special Criminal Court to the Requirement of the Respect for Due Process

The law creating the Special Criminal Court, as concerns the legal procedure is to the effect that the legal procedure before the Court shall be the same in the criminal procedure code (CPC). Since the Special Criminal Court is a court unlike any trial court, certain procedures are not in the CPC. For instance, the procedure for the restitution of *corpus delicti* in the Special Criminal Court is not stated in the CPC. Several cases have been brought before the Special Criminal Court, some of which involve high profile state official such as: 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 Finance); Etogo Mbezele Luc Evariste (the Chief Inspector of the National Treasury); Ambassa Zang Dieudonné Téléphore (the former Minister and former Deputy at the National Assembly); Iya Mohammed (the former General Manager, SODECOTON); Haman Adama née Halimatou Kangue 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); Olanguena Awono Urbain (the former Minister of Public Health); and Metouck Charles (the former General Manager, SONARA). In some of the forgoing cases, the respect of the law and due process is said to have been respected, while in other cases certain opinions hold that the respect of this norm has been violated. This is most especially with the laid down procedure for the restitution of the corpus delicti. The Law on the restitution of the corpus delicti requires the restitution of the corpus delicti and the discontinuance of legal proceedings. This law is considered by many to be discriminately applied by the Court over the years. This is because some offenders restituted the misappropriated funds and the Court discontinued the legal proceedings against them. This has made many scholars question the credibility of the decisions of the Special Criminal Court, by stating that the court is only out to prosecute persons the court thinks are against government policies.

The respect of the law and legal procedure in the Special Criminal Court has not only been criticized by the Cameroonian people. The international community has not been silent concerning the Special Criminal Court and respect for the rule of law. In this light, the African Commission on human and people's rights have shown their discontentment with the decisions of the court. For instance, in the case of *The People of Cameroon V. Jean-Marie Atangana Mebara* (the former Secretary-General at the Presidency and the former Minister of Higher Education), the commission condemned the decision of the court to detain Jean-Marie Atangana Mebara, considering it as unlawful. The commission even went ahead to recommend his immediate release from prison and the payment of the sum of four hundred million francs CFA as damages for what is considered as illegal detention.[\[30\]](#)

Given that one of the reasons for the creation of the court is to enhance speedy judicial process, the SCC has in several cases not respected this requirement. The court still delays the hearing of many cases brought before it while the accused persons is left to languish in jail. In the case of *Fotso Yves Michel*[\[31\]](#), due to too many adjournments of his case, applied to the court so he could stop attending court sessions. This, therefore, shows that though the court at times fulfils its responsibilities, in some cases, it has failed to meet its expectations.

This has made opinion leaders question the credibility of the decisions of the court concerning the respect of the law and due process.

The Special Criminal Court and the Requirement of Judicial Independence

The Constitution of Cameroon in its article 37 provides for the separation of power between the three arms of government (the executive, judiciary, and the legislation). The Special Criminal Court being an institution under the judiciary has to carry out its functions without any influence from the other arms of government. This means that neither the executive nor the legislative has to influence the decisions of the

SCC. With the creation of the court in 2011, although, not accompanied by the institution of new crimes^[32] nor a new procedure^[33], some supplementary decrees have been put in place to regulate proceedings in the SCC. Some of these decrees such as the decree on the Administrative Organization of the SCC^[34], and the Decree setting up the organization and functioning of the specialized corps of judicial police officers^[35] and their method of enforcement has greatly been debated upon by opinion leaders over the years. The Decree of September 2013 which fixed modalities for the restitution of *corpus delicti* is a glaring example. This decree is to the effect that where an offender is found guilty and he/she reimburses the funds misappropriated, the charge, or proceedings against him/her may be terminated. The decree on restitution demonstrates the influence of the other arms of government (executive) on the court. According to the decree on restitution, it is the minister of justice that has the mandate to authorize and approve the restitution of the *corpus delicti* by the party concerned. This is written in section 3 (1) of the decree on restitution which provides that “In the case of restitution of *corpus delicti* before the seizure of the Court by a committal order of the examining magistrate or the by a judgment of the Inquiry Control Chamber of the Supreme Court, the Procureur-General of the SCC may, upon a written authorization by the Minister of justice, enter a *nolle prosequi*”. The implication is that restitution is done only through the authorization of the Minister who is part of the (executive) arm of government and this is violation of the notion of separation of powers within the Constitution.

Restitution of the *corpus delicti* does not automatically translate to the termination of a 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. With the influence of the Minister of justice (who is part of the executive arm of government) in the restitution of the *corpus delicti* in the SCC, opinion leaders have referred to the SCC as an extension of the executive arm of government functioning as a judicial institution.

Effective Implementation of the Notion of Restitution

According to the Decree on restitution^[36], the approval of the restitution of the *corpus delicti* and the entering of a *nolle prosequi* is done by the Procureur-General upon the authorization of the Minister of justice. This means that the restitution of the *corpus delicti* and the entering of a *nolle prosequi* are determined by the Minister of justice and not the judge who is meant to do it. The law creating the SCC prescribes that the rule of procedure shall be that of the Criminal Procedure Code.^[37] According to the Criminal Procedure Code, judges of each Court in Cameroon are to administer justice following the law and their conscience. But with the nature of the functioning of the SCC, one could say that the Minister of Justice and not the judge administers justice in the SCC.

In some cases, the offenders restituted the *corpus delicti* and were set free like in the case of *The Public Ministry and the state of Cameroon V. Haman Adama nee Halimatou Kangue Maonde and Co.*^[38] while others like in the case of *The Public Ministry and The State of Cameroon, The CAMAIR liquidation V. Fotso Yves Michel* who has restituted but the defendant is still languishing in jail. These decisions of the SCC have been the subject of many debates, with opinion leaders (Lawyers like Barrister Ngenko and Justice Njucy Lucy) questioning the nature of the application of the law and the credibility of the decisions of the SCC. Given that law or Decree has not put in place any bases for the Minister to order the discontinuance of legal proceedings in a particular case, after the restitution of the *corpus delicti*. The SCC has also in some cases even refused the request for the restitution of the *corpus delicti*, which is not provided for by the decree. While in some cases, it has complied with the decree in a manner considered by many scholars to be discriminatory. The discriminatory application of the law in these cases by the Court is a clear indication of the biased nature of the Court.

The Imposition of Sanctions on Guilty Offenders in the Special Criminal Court

The punishment of individuals in the Special Criminal Court is in accordance with the provision of the

Cameroon Penal Code. In this light, the sanction of individuals in the court is as per section 184 of the Penal Code and other relevant provisions of the code. Section 184 Of the Penal Code is entitled “misappropriation of public funds” and it provides as follows:

Whoever by any means takes or keeps dishonestly any property, movable or immovable, belonging to, in transmission to or entrusted to the state, or 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:

- Where the value of the property is more than half a million francs with imprisonment for life; and
- 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;
- Where the said value is one hundred thousand or less with imprisonment for from five to ten years and with fine of from fifty thousand to five hundred thousand francs”.

In the application of the laws and provisions regulating the imposition of sanctions on persons charged with the misappropriation of public funds, based on the number of cases heard and determined by the court, the decisions of the court with regards to the imposition of sanctions are said not to comply with the legal requirement. For instance, in the *Abakar Mansale Case*[\[39\]](#), the court found the offender guilty of misappropriating state funds amounting to XAF 137698105 million and thus sentenced him to life imprisonment. While in the *Alioum Bappa Issa Case*[\[40\]](#) and *Satock Elizabeth And Co Case*[\[41\]](#), the SCC found Alioum Bappa Issa guilty of misappropriating the sum of XAF 62576478million and Satock Elizabeth And Co of misappropriating the sum of XAF181383000 million. In these two cases, the offenders were sentenced to ten (10) years and fifteen (15) years imprisonment respectively. Based on the provision of section 184 of the Penal Code, in reasoning analogically, and in accordance with the principle of binding precedent, the offenders in these cases were all supposed to be sentenced to life imprisonment though this was not the case. The discriminatory application of the law in this instant cases by the court throws doubt on the credibility of the decision of the court. This makes one question if the mission of the court can be achieved with this kind of decision taken by the court which are considered bias and unfounded.

The law creating the SCC does not provide for any mitigating circumstances. But rather, according to the Penal Code, the fact of being a public servant is an aggravating circumstance. In this regard, the Penal Code in its section 89, clearly provides that “(1) *Subject to any special penalties provided for felonies or misdemeanours committed by , national, foreign or international public servant, national, foreign or international public officers or national, foreign or international officials, the fact of being a public servant established or otherwise shall aggravate the responsibility of any such person guilty of any other felony or misdemeanour against which it is his duty to guard or take action. (2) In case of aggravating circumstances, the maximum penalty provided for shall be doubled.*” Given that all offenders of the Special Criminal Court by this provision and per section 90 of the Penal Code[\[42\]](#) are excluded from benefiting from the mitigating circumstances that may avoid the imposition of the maximum punishment requires a life imprisonment sentence, given that the amount is above the maximum stated by the Penal Code. Opinion of nationals/stakeholders on the SCC

Several individuals across the nation 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 on those it finds guilty. Some stakeholders/legal practitioners’ speculation have been that the SCC was devised by the President as an instrument to identify and permanently curtail individuals who pose a threat to his regime [\[43\]](#), by stating that “the Special Criminal Court has political considerations”. To them, this is based on some cases[\[44\]](#) to which they think are politically motivated. Others, like AA Agbor[\[45\]](#) who argue that there is very little evidence to substantiate such a point of view. For AA Agbor, 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 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. He finally contends that; looking at things through a political lens does not contribute 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.

On this note, the influence of the government on the Court should be restricted to ensure that the court carry out its functions without any drawbacks.

CHALLENGES TO FIGHTING THE MISAPPROPRIATION OF PUBLIC FUNDS IN CAMEROON

Lack of Political Will by state officials: There has been a crucial lack of political will to fight against corruption in the Cameroonian administration. Political will can be defined as “the demonstrated credible intent of political leaders (elected or appointed leaders, civil society watchdogs, stakeholder groups, etc.) to attack the perceived causes of effects of corruption at a systemic level”. Political will is crucial in the fight against corruption as it sets the tone, creates the mood, and exudes the degree of seriousness that is needed to engage everyone. Political will is equally important in order to punish corruption committed by top government officials who are from the ruling party and it will equally promote the rule of law and due process. In addition, the fight against corruption is not affected by the availability of economic resources or lack thereof. Therefore, it is safe to say that the lack of political will demonstrated by Biya’s regime is not due to a lack of funds, but rather the will to do so. The lack of political will greatly manifested in the action against Garga Haman in the 1990s. In the early 1990s, Garga Haman Adjithe then Minister in charge of Supreme State Audit and Public Service waged a war against embezzlers of state funds. He went as far as submitting names of corrupt officials to the Presidency, requesting that they be punished. Between 1990 and 1992, the sum of funds misappropriated totaled to about three hundred and fifty-seven million (XAF 357,000,000). The response he got was rather discouraging. His Ministerial portfolio was modified, limiting his competence to civil service and administrative reforms^[46]. He thus lost his authority over the Supreme State Audit. He resigned from the government believing that the modification was due to his hardline stance against corruption. So therefore, if the political will to curb corruption was there, the appropriate actions would have been taken to bring the perpetrators identified by Garga Haman Adji to book.

Lack of Accountability and Transparency: Government officials who seek to use their public position for private gain violate public trust as well as anticorruption law. Preventing public officials from accepting bribes or otherwise misusing their positions is a key challenge for anticorruption initiatives. One of the aspects encouraging the continuous commission of the offence of corruption is the non-respect of article 66 of the Constitution of Cameroon^[47], which compels State officials to declare their assets before and after taking up posts of responsibility within the government. President Biya himself, in a bid to respect this provision of the law, after about 4 decades in power has never fulfilled article 66 of the constitution of 1996 by declaring all his property and sources of income. Article 66 demands all government officials to declare their assets and sources of income before assuming a position in government so that it will be possible to measure what they have gained (or lost) during their tenancy. This is a credible means to fight against embezzlement, but Paul Biya has never declared any of his assets, under the helpless gaze of Cameroonians. This thus makes it impossible for checks and balances and accountability in the management of state funds.

CONCLUSION AND RECOMMENDATION

In the final analysis, it can be said that the creation of the SCC in 2011 was intended therefore to curb the negative consequences of the misappropriation of public funds in Cameroonian communities. There is thus no doubt that the SCC has over the years done a magnificent job by bringing the perpetrators of the offence of misappropriation of public funds to justice, given that most of the persons tried are high-profile government officials, including the former prime minister, ministers, cabinet members, and managers of state-owned enterprises. The Court, therefore, is meant to facilitate the prosecution of persons suspected of misappropriating public funds. The procedure is thus considered to be fast based on the number of cases heard by the court so far and to help in the recovery of misappropriated funds. In the same light, he who misappropriates hundreds of millions and later restitutes goes scot-free and those who steal just a few coins perish in jail and are not even given the chance to retribute and be set free.

Consequently, the smooth functioning of the court has been plagued by many inefficiencies and challenges. These include the vague nature of some regulations of the court (especially the decree on restitution), the poor definition of the jurisdiction of the court, the influence of the executive on the court, non-respect of due process by the court, the lack of political will and accountability.

The discontentment of scholars as discussed in this paper shows that the purpose of the court, which is to bring to an end the offence of misappropriation of public funds is still far from being a reality. So, one can therefore say that the effective prosecution of the offence of misappropriation of public funds by state officials can only be done provided the political will to do so is made paramount.

Where indicted persons are found guilty, they should be prosecuted. 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.

Recommendations

To put an end to or reduce the misappropriation of public funds in Cameroon, there should be strict implementation of section 184 alongside Sections 142 and 89 of the penal code. This is to ensure that the offenders are given maximum punishment and deter individuals from committing the offence.

In this light, the provision on the entering of a *nolle prosequi* needs to be repealed given that it encourages the commission of the offence rather than deterring offenders from committing the offence. This is because the offenders are aware of the fact that if they misappropriate public funds, and are caught, they will retribute and be set free.

Besides, Article 37(3) of the 1996 Cameroonian Constitution emphasized the separation of power between the three arms of government (executive, judiciary, and legislature). However, the decree on restitution has given the executive a discretionary right of intervention in judicial matters. This is because it has placed the power to authorize the restitution of the corpus delicti solely on the executive arm of government (on the Minister of justice). This is in gross violation of the constitution. There is, therefore, the need for law reforms, if the Constitution is to be adhered to and if the SCC desires to curb the misappropriation of public funds.

Furthermore, the National Anti-Corruption Commission (NACC) and the Supreme State Audit (CONSUPE) as the main investigative bodies in Cameroon need to have the competences to sue offenders in the SCC other than the president. There is a need for these institutions to work closely with the media, and civil society to ensure a pathway to a corrupt-free state.

Moreover, the jurisdiction of the court should be redefined to make the prosecution of the offence of misappropriation of public funds solely on the SCC, which has the main mandate to handle the offence.

In like manner, in order for the fight against misappropriation of public funds by the Special Criminal Court and other related agencies to succeed and sustain, the Cameroon government should consider increasing the salary of the civil servants and their working conditions. Poor pay in all countries create an atmosphere conducive to corruption, and will as well facilitate brain drain as the more qualified leave the country for a better pay elsewhere.

FOOT NOTES

[1] Transparency international

[2] Bechem EE (2018) Corruption in Cameroon: Public Perception of the Role and Effectiveness of the Different Anti-Corruption Agencies. *Review Pub Administration Manag* 6: 235. doi:10.4172/2315-7844.1000235

[3] Law No 2011/028 of 14 December 2011, as amended by Law No 2012/011 of 16 July 2012 setting up the Special Criminal Court

[4] See Law No 2011/028 of 14 December 2011 which provides as follows, section 2 of “The Court shall be competent to hear and determine matters, where the loss amounts to at least 50, 000, 000 XAF relating to misappropriation of public funds and other related offences provided for in the Penal Code and International Conventions ratified by Cameroon.

[5] Law No 2012/011 of 16 July 2012, Section 2

[6] *Ibid*

[7] *opisit* note 3

[8] *Ibid.*

[9] HCF/114c/05/2006 in the trial court list and suit No CASWR/41c/2010 for the appeal court

[10] Suit No HCK/94C/2005 for the trial court and suit No CASWR/3c/2008

[11] See Law No 2011/28 of 14 December 2011, section 7(6)

[12] This line of reasoning flows from 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.

[13] [13] Charge No 012/RG-TCS/2014 AND Judgment No 13/TCS/2014

[14] See law no 2005/007 of 27 July 2005 to institute the criminal procedure code

[15] See law no 2011/28 of 14 December 2011 creating the Special Criminal Court

[16] See section 6 of law no 2011/28 of 14 December 2011

[15] Avitus A. Agbor, 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/10.17159/17273781/2017/v20n0a770>

[16] Ministerial Correspondence 214/CR/CAB/MINETAT/MJ/GDS of 18 September 2013,

[17] Bechem EE (2018) Corruption in Cameroon: Public Perception of the Role and Effectiveness of the Different Anti-Corruption Agencies. *Review Pub Administration Manag* 6: 235. doi:10.4172/2315-7844.1000235

[18] Ibid

[21] Ibid

[22] Law No. 2012/011 of 16 July 2012 to amend and supplement certain provisions of law N0. 2011/28 of 14 December 2011 to set up the Special Criminal Court

[23][23]Charge No 012/RG-TCS/2014 AND Judgment No 13/TCS/2014

[24] *The Public Ministry and the State of Cameroon v. Haman Adama Nee Halimatou Kangué Maonde Baoro Born Azo'o Nkoulou Christine, Malonga Isoa Nee Nnougou Annick Joelle, Willayi Richard, Zega Stanislas, Mvondo Nyina Barthélemy, Mbeng Boniface Blaise, Besong John Besong, Ntsama Zoa Pierre, Ngo Um Deborah Angele, Fouda Francois, Matat Joseph, Mekougou Onoa Joseph, and Lebongo Blaise*

(Suit No. 026/Crim/Tcs Of September 2013)

[25] ARRET No 011/CRIM/TCS DU 29 Avril 2016

[26] *Affaire Ministère Public Et La Cameroon Postal Services(Campost) V. Abakar Mansale (Arret No 011/Crim/Tcs Du 02 Avril 2014*

[27] HCF/114c/05/2006 in the trial court list and suit No CASWR/41c/2010 for the appeal court

[28] Suit No HCK/94C/2005 for the trial court and suit No CASWR/3c/2008

[29]Charge No 012/RG-TCS/2014 AND Judgment No 13/TCS/2014

[30] The African Commission on human and people's rights in its 18th extraordinary session on from July 29th to August 07, 2015, in communication 416/12-*Jean Marie Atangana V. Cameroon*, held the state of Cameroon of violating articles: 6,7 (1b), 7 (1c)

[31] ARRET No 011/CRIM/TCS DU 29 Avril 2016

[32] Section 2 of law No. 2011/28 of 14 December 2011, and section 184 of the penal code of Cameroon (on misappropriation of public funds or property).

[33]Section 6 of law No. 2011/28 of 14 December 2011

[34]Decree No. 2012/223 of 15 May 2012

[35] section 5 of Decree No2013/131 of 03 May 2013

[36] Decree, No 2013/288 of September 2013 fixing modalities for the restitution of corpus delicti

[37] Section 6 Of law No

[35] *The Public Ministry and the state of Cameroon V. Haman Adama Nee Halimatou Kangué Maonde Baoro Born Azo'o Nkoulou Christine, Malonga Isoa Nee Nnougou Annick Joelle, Willayi Richard, Zega Stanislas, Mvondo Nyina Barthélemy, Mbeng Boniface Blaise, Besong John Besong, Ntsama Zoa Pierre, Ngo Um Deborah Angele, Fouda Francois, Matat Joseph, Mekougou Onoa Joseph, and Lebongo Blaise*(Suit No. 026/Crim/Tcs Of September 2013)

[36] *Affaire Ministère Public Et La Cameroon Postal Service(CAMPOST) v. Abakar Mansale, Arret No 011/CRIM/TCS DU 02 April 2014*

[37] *The State Of Cameroon v. Alioum Bappa Issa, Arret No 028/CRIM/TCS Du 28 October 2014*

[38] *Affaire Ministere Public Et Etat Du Cameroon (Ministere Des Finance) v. Satock Elizabeth And Likund Yves Francois Thierry, Arret No 023/CRIM/TCS Du 08 October 2014*

[39] Concerning circumstance that mitigates offences, see sections 91 and 92 of the Penal Code

[40] In an exclusive interview with Barrister Ngenko, member of the Cameroon bar association and Justice Lucy, former judge with various courts of appeal in Cameroon in November 2020

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.

[41] 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/10.17159/17273781/2017/v20n0a770>

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[42] https://www.bing.com/search?q=https://en.wikipedia.org/wiki/Garga_Haman_Adji&PC=MENEPB
accessed on the 25/08/2020

[43] Law No. 96-6 of 18 January 1996 to amend the Constitution of 2 June, 1972