AN APPRAISAL OF THE LEGAL FRAMEWORK FOR THE RESTITUTION AND DISCONTINUANCE OF PROCEEDINGS BEFORE THE SPECIAL CRIMINAL COURT

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ABSTRACT

After having been crowned as world champion of corruption by Transparency International in 1998 and 1999, a cornucopia of national instruments and institutional mechanisms were put in place to fight against corruption in Cameroon in mid-2000. This saw the arrest of top-ranking functionaries and managers of public enterprises and establishments charged with the management of public property. This anti-graft campaign was baptized by the press as 'operation sparrow hawk' which was brutally jettisoned by many as a means by the President of the Republic to silent all his allies who could be his contenders at the helm of the State. In order to intensify the fight against the Misappropriation of public property and discard all speculations that it was politically motivated, the Special Criminal Court was created by Law no. 2011/028 of 14 December 2011 as amended with a provision allowing for the discontinuance of proceedings in case of restitution of the misappropriated property. Decree no. 2013/010 of 4 September 2013 lays down the modalities for the restitution of corpus delicti which can be in cash or kind. Unfortunately, this Court has recovered very little since its 8 years of its existence because restitution does not automatically entitle the offender to benefit from discontinuance of proceedings thereby serving as incentive against non-restitution. This article holds that the discretionary powers of the Minister of Justice in deciding who benefits from discontinuance after restitution defeats the purpose of restitution and proposes that the

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powers of the Ministers should be well defined. Moreover, the penalties provided for the sanction of the misappropriation of public property should be reviewed and plea bargaining adopted in the prosecution of the offence. Where there is no restitution, confiscation can be ordered in case of availability of asserts. We further suggest that the legal framework for assert recovery should be put in place and an organ in charge of recovery and management of stolen asserts created.

Keywords: Special Criminal Court, Corruption, Restitution, Discontinuance, misappropriation of public property, stolen asserts, corpus delicti, confiscation.

INTRODUCTION

The recovery of assets is very vital in the fight against corruption and related offences. It aims depriving delinquents of their illicit benefits and to ensure that their crimes do not pay[i]. Unfortunately, tracing and recovering asserts is a daunting task pushing countries to device incentives to cajole looters to restitute public property that has been stolen in exchange of liberty. Cameroon is one of the most corrupt countries in the world and in 1998 and 1999 it was ranked as world champion of corruption by Transparency International and since then it has continued to be ranked among the most corrupt countries in the world[ii]. Corruption is manifested through bribery, influence peddling, nepotism, favouritism, abuse of authority, corruption in public procurement and misappropriation of public property (MPP) which is the common form that has been drawing repression.

As such, the on-going anti-graft program best known by its code name, 'Opération Epérvier' under which, several high-ranking personalities, a Former Prime Minister, several cabinet Ministers, Board chairs and managers of public enterprises and establishments have been arrested, charged and tried in court since 2006 is an attempt to cleanse the civil service of looters. It is apposite to note that the appellation 'Opération Epérvier' that has become a household name in Cameroon has not been attributed any official recognition, but one can insinuate that the current anti-graft campaign is often referred to as the fight against corruption and the misappropriation of public property. The operation has become horrendous for those who manage State funds, especially when they feel guilty of dodgy practices in their

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management operations. Unfortunately, it is not dissuading those managing public property as public agents are arrested on a daily basis.

A cursory reading of Cameroon's media suggests that 'Epérvier' has been met with mixed reactions. These include concerns that the anti-graft crusade has enabled the side-lining of political contenders in particular, by curbing the political aspirations of a cadre of technocrats who served in cabinet between 2000 and 2007 and has also triggered the settling of scores through corruption charges[iii]. There are even some Cameroonians who have been complaining of the intrusion of politics in the judiciary and this can be buttressed by the way the repression of MPP is being carried out, especially as it is selective[iv]. However, for others, it is a normal, logical and coherent cleansing of public morals[v]. Accordingly, the operation is merely a trajectory long and constant fight against the misappropriation of public property[vi].

It must be noted that such allegations are not unique to Cameroon's anti-graft efforts. In its early years, the Economic and Financial Crimes Commission of Nigeria (EFCC), which remains a key feature of Nigeria's public integrity system was frequently jettisoned for targeting State Governors, a group that was often at variance and keen to succeed President Olusegun Obasanjo[vii]. Titus Edzoa, former Minister of Public Health and long-time close aide to President Paul Biya (as Secretary General at the presidency) and Michel Thiery Atangana, Edzoa's campaign manager were arrested in 1997, 3 months after Edzoa resigned from government and declared his candidacy for the Presidency. They were both convicted on charges of embezzling public funds and sentenced to 15 years each[viii]. These convicts have widely been considered by human rights and civil society organizations to be political prisoners. No wonder, at the end of 2009, the prosecutor of the Mfoundi High Court brought new embezzlement charges against both men, who were just at the verge of the end of their imprisonment terms. They were both slammed 20 years each in prison by the Mfoundi High Court[ix] and confirmed by the Supreme Court. It is worth noting that after international pressure, they benefited from a remission of sentences by Decree no. 2014/058 of 18 February 2014 to commute and remit sentences. This was first of its kind for those convicted for misappropriating public property to benefit from remission of sentences in Cameroon.

Whether the ongoing anti-graft campaign is politically motivated depends on the judgment of each and everyone who is conversant with the facts of each case.

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To jettison public opinion that the anti-graft campaign is politically enthused, is the creation of a Special Criminal Court (SCC) by Law no 2011/028 of 14 December 2011 amended by Law no. 2012/011 of 16 July 2012 to punish looters and with a provision, which gives the possibility for criminal action to be discontinued on condition that the corpus delicti is restituted. The discontinuance of proceedings too has been discriminatory since it is completely at the absolute discretion of the Minister of Justice. The SCC has handled over 200 files involving the sum of CFAF 3000 billion swindled out of public coffers but only a meager sum of over CFAF 9 billion has been recovered. This means that the identification, freezing and confiscation of stolen assets is not an easy task and the problem becomes even more appalling when the assets are in a foreign country thereby, necessitating international cooperation to enable repatriation. Furthermore, as a result of the infinite means available for disguising the proceeds of economic crimes, it is extraordinarily difficult to trace and directly link them to their original source; criminals who, through criminal activities, dispose of huge amounts of money, need to give this money a legitimate appearance by laundering it. This helps in covering its tracks making it immensely difficult for law enforcement agencies to link it to criminal origins[x]. This is further compounded when the theft of public asserts become predicate offences necessitating the assistance of a foreign State to cooperate in tracking down the offenders. **The case of Ministère Public c/ Marafa Hamidou Yaya and Others** presents a glaring example where over 29 million US dollars was swindled and after investigation and all the mutual legal assistance accorded by foreign countries, the funds could not be traced.

Addressing the issue of the theft of public property which became endemic in Cameroon, Law no. 2011/028 of 14 December 2011 on the creation of a Special Criminal Court as amended by Law no. 2012/011 of 16 July 2012 was adopted with the aim of ensuring speedy trials and motivating offenders to restitute stolen property against the discontinuance of proceedings. Apart from Decree no. 2013/010 of 4 September 2013 laying down the modalities for the restitution of corpus delicti, the only legislation that treats the seizure and confiscation of property is the Penal Code (PC) and the Criminal Procedure Code (CPC) as far as criminal law is concerned.

Each country has its system of recovery of assets and seeks assistance when an external element necessitating the intervention of a foreign country is required[xi]. Some recovery mechanisms include the following: domestic criminal prosecution and confiscation followed by a Mutual

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Legal Assistance (MLA) request to enforce orders in foreign jurisdictions; Non-Conviction Based confiscation or asset forfeiture (NCB); private civil actions, including formal insolvency process; criminal prosecution and confiscation and administrative confiscation[xii]. Accordingly, this paper which adopts a qualitative research methodology by analysing primary and secondary sources seeks to examine the efficiency of the application of Decree no. 2013/010 of 4 September 2013 laying down the modalities for the restitution of corpus delicti and discontinuance of proceedings before the SCC.

SYNOPSIS OF THE SPECIAL CRIMINAL COURT

The SCC was set up by Law no. 2011/028 of 14 December 2011 as amended by Law no. 2012/011 of 16 July 2012. It is worth reiterating here that the creation of this court is not a novelty in Cameroon. Thus, it is the provisions of Ordinance no. 72-4 of 26 August 1972 on judicial organization that implicitly abrogated the provisions of Laws no. 61/6 of 4th April 1961 to set up a Special Criminal Court and no. 62/10 of 9 November 1962 on the repression of the misappropriation of public property[xiii]. The setting up of a SCC is usually to dissuade a particular form of offence that is so recurrent. It is therefore, a current practice in most countries when they are faced with very complex criminal matters like was the case with the "Cour National' of Spain in Madrid. It was created by the organic law of the judicial organization of Spain in its Art 65 to tackle counterfeiting, fraud and the manipulations made to alter the prices of goods[xiv]. Also, in order to curtail criminality during the World Cup, the South African government created 56 Special Tribunals to handle crimes related to the World Cup[xv]. Thus, it is a normal practice to create a special court in many countries whenever they are faced with complex criminal matters.

Reasons for setting up the SCC

Some reasons have been advanced for setting up the SSC. According to the explanatory note of the law, "misappropriation of public property and corruption are multi-scourges plaguing every aspect of national life, despite the various means deployed by government in terms of ratification of international conventions, awareness raising and establishment of bodies and structures to combat it… There is a need at the judicial level to put in place a more effective and expeditious mechanism to give more visibility to public policy in the fight against corruption.''[xvi].

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It was hoped that the Court, which would specialize in checking MPP and similar offences, would have to face the complexity of the procedures pertaining to corruption and the embezzlement of public funds, reduce the congestion in our prisons of persons awaiting trial, treat expeditiously and effectively procedures relating to corruption and embezzlement of public funds at all levels of the chain of justice and align with international legal instruments for the fight against corruption[xvii]. The headquarters of this Court is located in Yaounde and it has a nationwide jurisdiction.

Jurisdiction and composition of the Court

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 MPP by the Court of First Instance (in cases of misdemeanours) or High Court (in cases of felonies)[xviii]. As per section 2 (new) of Law no. 2011/028 of 14 December 2011, the Court has as competence to hear and determine matters, where the loss amounts to more than 50.000.000 (approximately 100 000 USD) CFAF relating to the MPP and other related offences as provided for by the Penal Code and international Conventions ratified by Cameroon. This court does not entertain only the offence of the MPP and any other offence can only come in if it was committed in connection to the MPP. It does specialize in the repression of corruption as indicated in the explanatory note on the law creating the Court.

The Court is composed of: at the bench, a President, one or more vice Presidents, one or more Judges, one or more Examining Magistrates (EM); at the Legal Department (LD), one Procureur General (PG), one or more Advocates General, one or more Deputy Procureur General; and at the registry, one registrar-in-chief, one or more section heads, one or more registrars and registrars working with the EMs[xix]. At the Supreme Court there is a Specialized Section composed of two magistrates each appointed from the 3 benches and 3 magistrates for the Inquiry Control Chamber of the Specialized Section[xx]. It is worth noting that appeals from this Court, the High Court and Court of First Instance sitting on matters of MPP, go directly to the Supreme Court and the time within which to file appeal is 48 hours as opposed to 10 days in the ordinary courts[xxi]. This strives to ensure rapidity and celerity by preventing the parties to the case to develop dilatory tactics by wasting time before the Court of Appeal and the Supreme Court before judgment becomes final[xxii]. Appeals by the LD are based on points of law and facts

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while that of other parties is based only on the points of law. This discrimination violates the universal principle of equality before the law. Putting an adverse party on the position of advantage undermines the right to a fair and equitable trial and it is necessary that all parties be given the same chance to present their case[xxiii]. A Specialized Corps of Judicial Police Officers attached to the SSC and responsible for investigations was created by Decree no. 2013/131 of 3rd May 2013.

The SCC is overwhelmed with work and it will be good in future to create a SCC at the headquarters of each Region and with extensive jurisdiction to fight against corruption. The example of Ivory Coast wherein before each court, magistrates of the bench and the LD are appointed to specifically entertain matters relating corruption is worth copying[xxiv]. Furthermore, the LD and the bench of this court should be given total independence to fight against corruption which is a serious problem affecting the court. The judges of this court should be appointed for a fixed mandate during which they cannot be transferred to the LD or to another court. In a recent compilation of the judgments of the Court, it is indicated that over 9 billion FCFA has been recovered while 225 decisions have been rendered with damages and fines amounting to over 2000 billion FCFA[xxv].

NON-CONVICTION BASED CONFISCATION AS PRACTICED UNDER THE SCC

During the investigation process, proceeds and instrumentalities subject to seizure must be secured to avoid dissipation or destruction. In certain civil law jurisdictions, the power to order the restraint or seizure of assets subject to confiscation may be granted to prosecutors, investigating magistrates, or law enforcement agencies. In other civil law jurisdictions, judicial authorization is required, while in common law jurisdictions; an order to restrain or seize assets generally requires judicial authorization, with some exceptions in seizure cases[xxvi].

The restitution of the corpus delicti as provided for by law, the issuing of orders for restitution of the funds misappropriated are spelt out in the relevant judgments and the imposition of fines and penalties for offences(s) committed speak eloquently of a country whose resources are drained by public servants who ought to protect them[xxvii]. There seems to be the

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institutionalization of a political philosophy that public service is a means of accumulation of private wealth at the expense of the Cameroonian people[xxviii]. The introduction of the mechanism for restitution was received with mixed feelings wherein some people vigorously jettisoned it by intimating that it was a premium to misappropriation in the sense that voteholders could freely misappropriate public property knowing that in case of an eventual prosecution, they could reimburse what is imputed on them[xxix]. According to Professor Spener, the system of restitution refers to an incitement to consummate the offence, especially as an analysis of the regime of attempt is more rigorous than that of the offence consummated. The author of attempt cannot restitute anything and cannot benefit from the discontinuance of proceedings, while on the inverse the author of a consummated offence who restitutes can benefit from discontinuance of proceedings[xxx].

On other hand, others welcomed the reform by indicating that what was important to Cameroonians was not imprisonment but the restitution of the money misappropriated for the needs of national development[xxxi]. This reform can be saluted on the premise that due to the difficulties in tracing and recovering stolen assets, it can serve the hassle of going through sentencing and recovery of assets.

The mechanism that provides for the restitution without the need for a criminal conviction is what has been provided by the 2011 law on the SCC. Non-Conviction Based (NCB) forfeiture, called "civil forfeiture" in some countries, is an action not against an individual, but against the property itself. Because it is against the property, an NCB forfeiture action is not dependent on a criminal conviction and may be pursued even if the corrupt official is dead, a fugitive, has been acquitted of a related criminal offence, is immune from criminal prosecution, or enjoys residual political influence making criminal prosecution not possible[xxxii]. This is not really the situation in Cameroon as death of the accused may lead to the discontinuance of proceedings. As such, the NCB is not regulated in Cameroon but the system of restitution of corpus delicti under the SCC can be akin to this procedure. NCB is very suitable for cases where offenders have absconded or are dead and assets looted by them can be traced.

The discontinuance of proceedings which is laid down by S 18 (new) of the 2011 Law, appears to be a settlement that sends us to the procedure of nolle prosequi borrowed from the Anglo-Saxon system and today extended without delimitation of its domain by the Criminal Procedure

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Code (CPC)[xxxiii]. Nolle prosequi is a Latin expression meaning: 'we shall no longer prosecute'; it is not subject to judicial review[xxxiv]. In this regard Agaba James Atta, Esq said:

> *as things stand in Nigeria, the Attorney-General remains a law unto himself, and to date, remains the only public officer whose actions, though likely to injure a lot of citizens, is not subject to review as far as his prosecutorial powers are concerned; he is not answerable to any person, not to the court, unfortunately not because the Constitution places him above the court but because the Supreme Court has held that he is not subject to the court's jurisdiction as far as his exercise of his powers of public prosecution is concerned. It does not as if he is responsible to parliament either. Only his appointor and adverse public opinion!...*[xxxv].

As per S 18 (new) (1) of the 2011 Law, the Procureur General (Prosecutor) of the SCC can on the written authorization of the Minister of Justice in case of restitution of corpus delicti, discontinue proceedings engaged before the seizure of the trial court. However, if restitution is done after the seizure of the trial court, proceedings may be discontinued before any decision on the merit and the court can pronounce the forfeitures in S 30 of the Penal Code (PC). Proceedings are discontinued by the competent territorial PG where the loss caused is less than CFAF 50 million in the same circumstances as stated above[xxxvi].

The Conditions for the Discontinuance of Proceedings

The power to discontinue proceedings rests in the Minister of Justice and this power is absolute. A reading of S 18 (new) of the 2012 Law as stated above shows that there are two conditions to be respected for proceedings to be discontinued: the restitution of the corpus delicti and the authorization of the Minister of Justice.

The Restitution of the Corpus Delicti

The conditions for restitution provided for by S 18 (new) of the 2011 Law are set out in Decree no. 2013/288 of 4 September 2013 laying down the modalities for the restitution of corpus delicti. The restitution of stolen property can only be possible when criminal proceedings have been engaged and the offender or his legal representative must make an offer to restitute either before the Judicial Police Officer (JPO), the Examining Magistrate (EM) or the trial court[xxxvii]. As per the law, restitution can be in cash or in kind[xxxviii]. Restitution in cash occurs where the

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accused restitutes the totality of the sum of money he is accused of having misappropriated or restores the monetary value of the misappropriated property. Accordingly, any promise or partial restitution will not be tenable under the 2013 Decree since the offer to be forwarded to the Minister of Justice must be accompanied with supporting documents that the total amount has been paid. Since payment does not entail that the Minister of Justice will order discontinuance, it is our opinion that the purpose of the law is not achieved since an offender who doubts whether restitution may lead to discontinuance will obviously prefer not to restitute. It is therefore, very pertinent for the law to be revisited to avoid discrimination in the discontinuance of proceedings. Moreover, the law does not say whether partial restitution should be accepted or rejected by the PG concern, especially as this may not alter the nature of the offence. Art 5 of the 2013 Decree stipulates that restitution in cash is done by deposit at the public treasury against the issuance of a receipt evidencing the payment of the whole amount imputed on the offender. This receipt is handed to the authority before which the proof for restitution in cash is made[xxxix]. The law talks of deposit in the public treasury but it is obvious that other means of payment like bank transfer to the public treasury can equally be admitted since what suffices is the receipt of deposit evidencing restitution.

On the other hand, restitution in kind refers to where the offender restitutes property whose value corresponds to the sum for which he is accused of having misappropriated[xl]. The 2013 Decree does not indicate the mode of evaluation and how disputes relating to evaluation may be settled[xli]. However, Art 11 of this Decree provides that the application for restitution in kind must be made exclusively before the PG of the SCC who shall make a report mentioning expressly the request for the discontinuance of proceedings by the applicant. The issue here is whether with cases where the amount is below 50 million, is it still the PG of the SCC that has exclusive competence to receive the offer for restitution? Dr Edouard Kitio opines that the answer can only be in the negative since the PG of the SCC only acts within the framework of matters falling within his competence. As such, he cannot go out of this scope to handle matters that do not fall within his competence. Therefore, where the value is less than 50 million, the exclusive competence to receive an offer in kind is that of the PG who is territorially competent[xlii].

After the offer, a copy of the report and proof evidencing the material existence of property is forwarded to the Minister of Justice within a maximum period of 72 hours, who will be charged

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with the duty of seizing the competent administration to evaluate the moveable or immoveable property offered for restitution within a deadline fixed by him. The 2013 Decree further provides that the evaluation is done at the expense of the offender and restitution is ascertained by a report drawn by the competent administration in the presence of the offender and a magistrate of the LD. The report and any other important documents are forwarded to the PG of the SCC. After evaluation, the Minister of Justice transmits to the PG documents relating to the evaluation to be notified to the offender and the PG transmits a copy of the report of evaluation accompanied with his opinion to the Minister of Justice within a period of 72 hours. The procedure is very complex and the role of the Minister of Justice in the evaluation process is not essential as it only creates room for unnecessary bottlenecks. The PG can seize the competent administration and only forward the evaluation report and the report of restitution to the Minister for his authorization to discontinue proceedings.

Even though the jurisdiction of the SCC is limited to cases of misappropriation of public property of at least CFAF 50 million, the High Court and the Court of First Instance that are seized of this offence apply the same rules for restitution[xliii]. It should be noted that the misappropriation of military effects or items whose value is less than CFAF 50 million will witness the same procedure but with the difference that the decision to discontinue proceedings is taken by the Minister of Defense, who is the minister in charge of military justice. This is a derogation to the practice of the procedure of nolle prosequi in Anglo-Saxon countries whereby the prerogative to discontinue proceedings is the sole preserve of the Attorney General who is the Minister of Justice.

The Authorization of the Minister of Justice

The second condition for discontinuance of proceedings is that it must be authorized by the Minister of Justice as provided by S 18 (new) of the 2011 Law and which must come before judgment on the merit. When the Minister is seized or where the evidence of restitution with the accompanying documents are transmitted to the Minister of Justice, the law does not impose on him any particular step to follow. however, he can adopt one of these three options: he can authorize the discontinuance of proceedings, refuse the discontinuance of proceedings or remain silent[xliv].

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The discretion of the Minster in this circumstance is absolute and the decision to discontinue depends on him because no obligation weighs on him when restitution has been made[xlv]. This type of liberty may be subject to abuse, especially as the law does not indicate whether silence entails acceptance or refusal owing to the fact that time frames have been laid down by law as far the prosecution of the MPP is concerned. It should be noted that discontinuance here is difference from nolle prosequi in its real sense wherein the discontinuance of proceedings is aimed at ensuring public peace or social interest. The discontinuance under S 18 of the 2011 Law is justified by the restitution of corpus delicti[xlvi]. Consequently, the authorization of the Minister of Justice is a conditio sine qua non for proceedings to be discontinued. If the offer is made at the level of investigation or to the PG, discontinuance will be decided by way of submissions of the LD, at the level of preliminary inquiry, it will be by a no case ruling of the EM and by judgment before the trial court and the Inquiry Control Chamber of the Specialized Section of the Supreme Court.

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 or proceedings[xlvii]. The SCC in the case of **The People of Cameroon and SONARA Vs Metouck Charles and 4 ors**[xlviii] stated that the discontinuance of proceedings is discretional and must not be motivated, and that it is obviously subjective and personal. In this case, one of the accused persons restituted the sum of over CFAF 108 million and benefited from discontinuance while the other co-accused persons were convicted since the order of discontinuance did not favour them despite total restitution. The decision to discontinue proceedings in this context can be seen to be very biased, especially against the former GM of SONARA Metouck Charles who was convicted on the premise that he abandoned the procedure to recover a debt that was owed SONARA by one of its customers; even when total restitution was made, he did not benefit from an order of discontinuance.

The decision authorizing discontinuance of proceedings may be decided in favour of an individual that is a co-accused in a matter on the premise that what is imputed on him is restituted as was the case in **Ministère Public & Etat du Cameroun Vs Iya Mohammed**[xlix]. In this context, we can say that discontinuance was partial and it can be total where all offenders or accused persons benefit from the authorization to discontinue proceedings as was the case

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in **Ministère Public & Etat du Cameroun (Ministere de l'Education de Base) Vs Haman Adama nee Halimatou Kangue Maonde (former Minister of Basic Education) & Ors**[l] where all accused persons benefited from discontinuance of proceedings.

The worst application of this procedure is that of attempt under S 94 of the PC which is punishable as a consummated offence and this law has not made this provision flexible because the author of an attempt cannot benefit from an agreement to restitute[li]. While the law gives every authority that receives an offer for restitution to transmit to the competent PG within 72 hours and who has the same time frame to forward the application to the Minister of Justice[lii], the law does not give him any time limit within which to reply to an application for discontinuance. Also, when the Minister remains silent after restitution has been made the issue becomes more complex since deadlines are supposed to be respected during proceedings.

The question that comes up is whether should the judge suspend or continue proceedings while waiting for the Minister to react when it is obvious that the decision to discontinue is optional. Moreover, if the judge suspends proceedings, the consequences of his decision will be enormous since it will be necessary to decide on the outcome of remand warrants that are still valid. Furthermore, what will be the length of time that the procedure will be suspended because the procedure is constricted within determined timeframes whether it is during preliminary investigation, preliminary inquiry or trial? In this context, the attitude to adopt is to continue with the proceedings because the discontinuance of proceedings does not bind the Minister of Justice immediately proof of restitution is transmitted and more so, criminal action can only be discontinued by causes set forth by the law which is not the same scenario here[liii]. It should be noted that the EM has a maximum period of 180 days i.e. 6 months to complete preliminary inquiry, the trial court has 6 months which can be extended by ruling to a maximum of 3 months, the Inquiry control Chambers of the Specialized Section of the Supreme Court has 15 days and the Specialized Section has 6 months to dispose of appeals against the rulings of the EM and judgments of the SCC respectively[liv]. The sanctions for the non-respect of these deadlines or the impact of their non-respect is not provided by law rather than disciplinary proceedings that may be engaged against the magistrate involved but it should be noted that the Supreme Court has on certain occasions not respected the 6 months deadline. It is therefore pertinent to note that non-respect of deadlines does not relief the offender of his crime.

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Some judges have granted bail at the level of preliminary inquiry after restitution while waiting for the decision to discontinue. This was the situation in case of the **People of Cameroon vs the Divisional Treasurer of Ndian**. After waiting for long the Examining Magistrate committed the defendant and for years now, the matter has been pending before the court while the accountant was already transferred to a different jurisdiction. Another worse scenario is where the offender pays and with the hope to benefit from discontinuance which ends up without coming and he is forced to plead not guilty. The law is silent as to what will happen with the property if the person who restituted ends up being acquitted or should the courts consider restitution as proof that the accused person committed the offence? The answer will be in the negative since it will be a travesty of justice to convict someone in this context if evidence is clear that he didn't commit the offence though he restituted the corpus delicti. It is our humble opinion that where the judgment is already final, the person acquitted should take it to the public treasury for his money to be restituted. The court must make orders when delivering its judgment enjoining the public treasury to refund the money to the person acquitted. The discrimination in the discontinuance of proceedings has discouraged those charged with the MPP to restitute since restitution is not a guarantee to benefit from discontinuance. Worth mentioning is the fact that the difficulty in recovering stolen assets is not only common to Cameroon.

For example, Nigeria faces the same problem to the extent that a bill titled "a bill for an Act to establish a scheme to harness untaxed money for investment purposes and to assure any declarant regarding inquiries and proceedings under Nigerian laws and other matters connected therewith" was tabled in Parliament by the Peoples Democratic Party (PDP) in 2017. It canvassed for full and complete amnesty for suspected looters of public treasury and shield them from any probe, inquiry, prosecution with such individuals not being compelled to disclose the source of their looted funds as long as they invest their 'wealth' in the Nigerian economy[lv]. This bill intended to allow all Nigerians and residents who have any money or assets outside the system or have acquired such money or assets illegally to come forward, within a timeframe to declare same, pay tax or surcharge and compulsorily invest the funds in any sector of the Nigerian economy and in return be granted full amnesty from inquiry and prosecution[lvi]. It further proposes that 25 % of the looted money should be paid as tax and 30 % invested in agriculture, and the rest can be invested in any chosen sector of the economy[lvii]. This bill seems to be interesting and may help boast the Nigerian economy if looters pay back

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stolen wealth. However, the public may be tempted to avenge on those who invest because it will be known to the public that their wealth comes from the MPP except payment into the public treasury will not be made public. Nigeria is highly noted as a country where the looting of public property is alarming. Under the former military regime in Nigeria, the abuse of public office for private gain was widespread and one of the country's most severe problems. Among those who held high public office and subsequently found themselves in possession of great wealth was the late dictator General Sani Abacha[lviii]. It is estimated he and his collaborators embezzled public funds worth over 5 million US dollars; this amount is alleged to have been derived from the systematic misappropriation of funds from the Central Bank of Nigeria, bribes received from foreign companies and kickbacks on inflated contracts from Nigerian companies under the control of the Abacha family. Assets were paid into personal bank accounts or accounts held mainly by Nigerian or offshore shell companies with access available to Mr Abacha, his family members or close associates[lix]. A perusal of the National Anti-corruption Commission's report of 2016 and the activities of the SCC suggest that the scenario of looting and keeping in safe havens is taking place in Cameroon.

THE LEGAL IMPLICATIONS OF DISCONTINUANCE OF PROCEEDINGS

The discontinuance of proceedings produces two different types of effects with the most beneficial arising from discontinuation of proceedings at the level of preliminary investigation and preliminary inquiry. In case of restitution, the Prosecutor can on the authorization of the Minister of Justice, discontinue proceedings if the offer is made before the committal order of the EM or judgment of the Inquiry Control Chamber of the Specialized Section of the Supreme Court. If the offer comes after the seizure of the trial court, the PG can on the authorization of the Minister of Justice, discontinue proceedings and the court will pronounce the forfeitures in S 30 of the PC with insertion in the criminal record[lx]. The restitution made before the seizure of the trial court that results in discontinuance benefits the offender in that it does not affect his criminal record and no forfeiture is issued against him. The forfeitures under S 30 of the PC are aimed at preventing future swindling of public property by imposing accessory penalties though the accused has not been convicted[lxi]. The law does not say whether proceedings may be recommenced but common sense holds that this is not possible as the objective sought by

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this law will be defeated. Also, the discontinuance is not the same as the one under S 64 of the CPC. The law however, provides that discontinuance does not have any incident on eventual disciplinary proceedings[lxii]. Where there is no restitution and at the end a verdict of guilt is entered, any available asserts considered to have been acquired with proceeds from the misappropriated funds will be confiscated.

CONFISCATION IN CASE OF FAILURE TO RESTITUTE

An asset confiscation regime is a prerequisite for any jurisdiction that wishes to provide the full panoply of methods for recovering the proceeds of corruption and money laundering. Confiscation involves the permanent deprivation of assets by order of a court or other competent authority[lxiii]. Title is acquired by the state or government without compensation to the asset holder[lxiv]. Fighting corruption without measures to deprive the use of asset gained from corruption can be considered as a pure waste of resources and time. At the Global Forum IV, Doha, November 2009 on fighting corruption and safeguarding integrity, the U.S. Attorney General Eric Holder, had this to say,

"*We must work together to ensure that corrupt officials do not retain the illicit proceeds of their corruption. There is no gentle way to say it: When kleptocrats loot their nations' treasuries, steal natural resources, and embezzle development aid, they condemn their nations' children to starvation and disease. In the face of this manifest injustice, asset recovery is a global imperative*[lxv]."

In Cameroon, confiscation can only be possible after a successful trial that leads to a conviction. This means that there must be a nexus between the property and the offence, failing which there can be no confiscation. In England, a confiscation order can only be made by the trial court if the offender is convicted[lxvi]. Confiscation which is the seizure of property for public treasury has not been defined the Penal Code. Culling from international instruments, it can be defined as the permanent deprivation of property by order of a court or other competent authority[lxvii]. It is equally defined as any penalty or measure resulting from a final deprivation of property, proceeds or instrumentalities ordered by a court of law following proceedings in relation to criminal offence or offences connected with or related corruption[lxviii]. International instruments highlight the import of confiscation systems by requiring, at a minimum, that State

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Parties have criminal confiscation systems in place as a means to combat and deter corruption, money laundering, illicit enrichment and other serious offenses[lxix].

The PC provides that upon conviction for a felony or misdemeanor, the competent court may order confiscation of any property, moveable or immovable belonging to the offender and attached same which was used as an instrument for its commission or is the proceeds of the offence. It further provides that such conviction may not be ordered on conviction for a simple offence unless specially provided by law[lxx]. Therefore, it is a well-established principle that confiscation can only take place in Cameroon after a criminal trial that result in a conviction[lxxi]. The PC uses the word may, indicating that confiscation is optional except the section of the law creating the offence expressly provide for confiscation as is the case under S 184 incriminating the MPP. It is obvious that the PC does not provide for confiscation when it comes to most offences, but it will be wrong for the court not to confiscate the proceeds of corruption on the flimsy excuse that it is optional. Where the proceeds are related to the offence, confiscation must be ordered and the confiscated assets could be deposited to benefit the state or government. There is no specialized organ in Cameroon responsible for the management and safe keeping of confiscated asserts.

It is worth noting that conservatory measures are usually taken by investigating organs like the National Agency for Financial Investigation (ANIF)[lxxii], the JPOs and the EMs and these measures are converted into a confiscation order when a conviction is secured. Moreover, the property seized must be the proceeds of the offence and property belonging to a 3rd party cannot be subject to confiscation if it is not connected to the offence. For example, in the case **of Ministère Public & CNIC Vs Zacchaeus Mungwe Forjindam & Ors**[lxxiii], the Supreme Court set aside the confiscation of 2 and 3 landed properties situate in Douala and Mezam respectively and two vehicles belonging to the wife of the accused Zacchaeus Mungwe Forjindam. Consequently, where the property or proceeds of the offence are available, the court must confiscate as was the case in **Ministère Public**, **Yen Eyoum Lydienne & 1 Or Vs Etat du Cameroun & Abah Abah Polycarpe**[lxxiv], where the money misappropriated was blocked in a bank account and consficated at the end of trial. Where there is no conviction, there can't be any confiscation as was the case in **Ministère Public, Yen Eyoum Lydienne & 1 Or Vs Etat du Cameroun & Abah Abah Polycarpe supra**, wherein the Supreme Court set aside the confiscation and damages awarded against one of the accused persons one Engoulou Henri,

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who died during the trial and proceedings were discontinued against him. The administrator of his estate appealed against the measures of the SSC to the Supreme Court which decided that such measures could only be taken after declaring the accused guilty. If the NCB confiscation procedure was available in Cameroon, the State would have immediately engaged proceeding to recover the stolen assets from the estate of the deceased.

It should be noted that as per the position of the SCC and some practitioners, confiscation can be ordered in case of death of the accused in application of section 63 of the CPC which provides that the occurrence of one of the events provided for in section 62 (1) for the discontinuance of proceedings shall not bar the continuation of civil action. I don't share this view because confiscation is an accessory penalty which should be ordered only after a successful trial that establishes a conviction and should not be confused with a civil award which is a grant made by a court in a civil claim.

Where there are no proceeds of corruption or stolen property, the court will only award damages in favour of the victim or State as was the case in **Ministère Public & Etat du Cameroun Vs Marafa Hamidou Yaya, Fotso Yves Michel & Ors**, where the accused persons were convicted for having misappropriated over the sum of 21.3 billion CFAF. Confiscation was not ordered because there was no property since all the traces were masked through offshore accounts making identification impossible.

It should be noted that confiscated property is destined to the State Treasury and that in the case of a victim other than the State, the property will be restituted to the victim in the form of damages. The award of damages in criminal matters is predicated upon the provisions of the CPC which provides that a civil claim may be made alongside a criminal action before the same court so long as they arise from the offence[lxxv]. Section 62 of the CPC enumerates conditions under which criminal proceedings may be discontinued and it is clear that where any of these circumstances arises, criminal action will automatically collapse and the stolen assets will no longer be recovered by way of confiscation. In this context, an authority seeking to recover stolen assets have the option of initiating proceedings in domestic or foreign civil courts to secure and recover the assets and to seek damages based on torts, breach of contract, or illicit enrichment through a civil action[lxxvi]. It is clear under the CPC that criminal action collapses with civil action but this does not deprive the civil party of his right to seek redress before the civil courts. It can therefore, be concluded here that both civil and criminal actions

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can be filed separately to recover stolen funds. However, for the moment it seems the State of Cameroon has never filed a separate civil action in court to recovery stolen assets since the crusade against the MPP started. A case like that of the deceased former Minister of Secondary Education Louis Bapes Bapes would have been a forum for the State to recover its assets through a purely civil action. This is because he died when he was an accused in a matter pending before the SSC though at the end the Court may make a civil award based on S 63 of the CPC.

It is clear that civil damages awarded by the trial court can be recovered by using the enforcement measures provided by the Uniform Act on simplified recovery procedure and measures of execution. The attachment of real property is a very complex procedure and it is very necessary for a special law to set out special measures in attaching real property in criminal matters resulting from corruption[lxxvii].The LD is in charge of executing court judgments and for the moment it is difficult to establish if any civil award in matters of MPP have been recovered by the LD through these procedures. Consequently, it is compelling for a legal framework for the recovery of stolen assets to be put in place. The NCB asset forfeiture will be very necessary to enable the recovery of stolen assets without necessarily passing through a criminal action when property is available and prosecution is impossible. However, where the offence is not established in a criminal trial, the court is bound to acquit the accused and declare its self-incompetent to proceed with the civil action; and where the facts proved does not implicate the accused there will be no conviction and civil claim[lxxviii]. It would be interesting in future for the law to make it possible for criminal proceedings to be continued against the estates of offenders where criminal proceedings have been discontinued against them as a result of death.

CONCLUSION

The modalities of restitution under the SCC are very clear but complex when it comes to restitution in kind. Furthermore, the discontinuance of proceedings has been applied selectively especially as the law does not impose any obligation on the Minister of Justice to order discontinuance in favour of everyone that has restituted. These absolute powers of the Minister of Justice in deciding who benefits from discontinuance after restitution has discouraged

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potential looters from restituting and not benefiting from discontinuance. This justifies why since over 8 years of existence only a merger sum of 9 billion CFAF has been recovered. It has not been possible to recover over the 2000 billion CFAF awarded as damages in favour of the State. This is further compounded by the fact that the legal framework for asset recovery in Cameroon is completely lacking and needs an urgent reform, especially by reviewing measures to ensure the identification, seizure, confiscation and management of confiscated assets. This is because stolen property is laundered through corporate structures, held in cash, or invested in financial products. It is equally managed by major global financial players in private and offshore banking centres around the world making things extremely complex to locate and return assets: freezing is usually slow; seizure is difficult, cross-jurisdictional investigations are complex and expensive[lxxix]. It is estimated that 99 per cent of illicit funds remain undetected and there is a seizure rate of just 0.2 per cent of all funds uncovered, especially as looters can use a number of safe havens for their stolen assets and will unlikely ever be found out[lxxx].

This is a serious issue which calls for a legal framework for asset recovery. Accordingly, inspiration can be drawn from the English Proceed of Crime Act of 2002 and the French law of 10 July 2010 relating to the facilitation of seizure and confiscation in criminal matters. Furthermore, there is an urgent need to create an agency in charge of identification, seizure, confiscation and management of stolen assets or proceeds of corruption. Many countries practice this system[lxxxi] and it is encouraged by international instruments in the fight against corruption[lxxxii].

A national financial card index, which carries information on all bank accounts, identities of its owners, creation and modification of bank accounts in Cameroon, should be created and lodged by National Agency for Financial Investigation (ANIF). The CEMAC member countries can take advantage of this information centralized at the level of BEAC. Such a national financial card index exists in France since 1982[lxxxiii]. Moreover, the creation of bank accounts abroad by public agents should be subject to authorization by ANIF. A national card index of all land owners should equally be created and lodged under the Ministry of Land Tenure and the Ministry of Justice. These measures can complement the recovery of assets and international cooperation in the fight against corruption. The sanctions for the MPP should be reviewed and there should be the introduction of plea bargaining in the sanction of this offence. The powers of the Minister of Justice to discontinue proceedings should be defined and the

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conditions under which discontinuance can be rejected after restitution has made clearly defined.

ENDNOTES

[i] Ministère de la Justice Française (2011), Guide sur le recouvrement des avoirs criminels en France, G8-Partenariat de Deauville, p. 2, available at https://star.worldbank.org/sites/star/files/Guide-sur-le-recouvrement-des-avoirs-en-France.pdf, visited 18/07/2018.

[ii] Kwei Haliday Nyingchia (2020), Institutional approach to fight corruption: The case of the National Anti-corruption Commission of Cameroon, Jurnal Habungan International, Vol. 8, No. 2/ October 2019-March 2020, pp. 142-152.

[iii]Cameroon update (2009), Perspectives on social justice and development, special issue: Public Integrity and Anti-corruption, no. 006. Available at http://xa.yimg.com/kq/groups/14482668/1884631674/name/cameroon+anti+corruption+law.pdf, p .1, (Last visited 05/02/2012).

[iv] Enoh Meyomesse (2011), L'entrée en injustice de la justice Camerounaise, in l'Opération Epérvier au Cameruon, un devoir d'injustice, Montréal KiyiKaat Editions, pp. 27-35.

[v] Jeune Afrique Economie-été 2012- no 388, p. 10.

[vi] Ibid.

[vii] Cameroon update (2009), Perspectives on social justice and development Special issue: Public Integrity and Anti-corruption, no 006, op. cit., p. 1.

[viii] Ibid.

[ix] United States Department of State, Bureau of Democracy, Human rights and Labour (2013), Country report s on Human rights practices for 2012, p.12.

[x] Ndiva Kofele-Kale (2012), Combatting economic crimes, balancing competing rights and interests in prosecuting the crime of illicit enrichment, London and New York, Routledge, p. 2.

[xi] The UNCAC in its chapter IV and V treats international cooperation and asset recovery respectively.

[xii]Jean-Pierre Brun, Larissa Gray, Clive Scott, Kevin M. Stephenson (2011), Asset recovery handbook, a guide for practitioners, StAR (Stolen Asset Recovery Initiative), The World Bank-UNODC, Washington DC, USA, The World Bank, p. 9.

[xiii] Jérémie Yikam (2015), <<*La lute contre le détournement de biens publics ά la lumière de la loi no. 2011/028 du 14 Décembre 2011 portant creation d'un trinunal criminal special modifiée par la loi no. 2012/011 of 16 Juillet 2012 et ses décrets d'application>>, Juridis Périodique, no. 101, pp. 77-94.*

[xiv] Spener Yawaga (2012), <<*Avancées et reculades dans la repression des infranctions de détournement des deniers publics au Cameroun: Regard critique sur la loi no. 2012/028 portant création d'un Tribunal Criminel Spécial>>, Juridis Périodique no. 90, pp. 41-64.*

[xv] Ibid.

[xvi] Ewang Sone (2012), <<A *Speedy Proceedings under the Special Criminal Court>>, Juridis Périodique no. 92, pp.92-98*

[xvii] Ibid.

[xviii] Agbor AA (2017), <<*Prosecuting the offence of misappropriation of public funds: An insight into Cameroon's Special Criminal Court>>, PER/PELJ2017(20)-DOIhttp://dx.org/10.17159/1727-3781/2017/v20noa770, pp. 1-31 (P.E.R, pioneer in peer reviewed, open access online law publications* available at http://www.scielo.org.za/pdf/pelj/v20n1/25.pdf, visited 20/07/2018).

[xix] Section 4 of the 2011 law on the creation of the SCC.

[xx] Section 13 (new) ibid.

[xxi]Section 12 (10) of the 2006 law on judicial organization.

[xxii] Moneboulou Minkada Herve Maggloire (2013), <<*Le Tribunal Criminel Spécial au Camerounet les grands principles de la justice criminelle: etude comparative des lois de 1961 et 2011>>, Juridis Périodique, no. 93, pp. 49-62.*

[xxiii] Ibid.

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[xxiv]Article 27 of Ordinance no. 2013-660 of 20 September 2013 of the Republic of Ivory Coast relating to the prevention and fight against corruption and related offences.
[xxv] https://www.cameroun-tribune.cm/article.html/33965/en.html/special-criminal-court-some-225-decisions-rendered visited 23/11/2020.
[xxvi] Jean-Pierre Brun, Larissa Gray, Clive Scott, Kevin M. Stephenson (2011), op. cit., p. 6.
[xxvii] Agbor AA (2017), op. cit., pp. 1-31 (p3).
[xxviii]Ibid.
[xxix] Edouard Kitio (2016), *Les delais en procedure peénale Camerounaise: entre célérité et droit á un procès eéquitable*, Yaounde, Editions Recherche Scientifique Universelle (RSU), P. 253.
[xxx]Spener Yawaga (2012), op. cit., pp. 41-64.
[xxxi] Edouard Kitio (2016), op. cit., p. 253.
[xxxii]Linda M. Samuel (2011), <<*Recovering proceeds of corruption*>>, pp. 1-17, available at https://www.unafei.or.jp>pdf>Third_GGSeminar... Visited 17/09/2018.
[xxxiii] Spener Yawaga (2012), op. cit., pp. 41-64.
[xxxiv] Agaba James Atta (2017), op. cit., p.352.
[xxxv] Ibid.
[xxxvi] Section 18 (new) (2) of the 2012 Law on the creation of a SSC.
[xxxvii] See articles 2 and 3 of the 2013 Decree on the restitution of corpus delicti.
[xxxviii] Article 4 (1) of the 2013 Decree on the restitution of corpus delicti.
[xxxix] Article 6 of the 2013 Decree provides that the proof of restitution can be done during preliminary investigation, preliminary inquiry, at the parquet general of the SSC, before the president of the SCC or in any court session of the said court.
[xl] Article 4 (2) and (3) ibid.
[xli] Jérémie Yikam (2015), op. cit., pp. 77-94.
[xlii] Edouard Kitio (2016), op. cit., 256.
[xliii] Article 12 of the 2013 Decree on the restitution of corpus delicti.
[xliv] Edouard Kitio (2016), op. cit., p. 260.
[xlv] Ibid, p. 261.
[xlvi] Spener Yawaga (2012), op. cit., pp. 41-64.
[xlvii] Agbor AA (2017), op. cit., pp. 1-31 (p23).
[xlviii] *Judgment no. 037/CRIM/TCS/2015 of 21 October 2015*.

[xlix] Judgment no. 012/SSP/CS of 21 June 2016
[l] Arrêt no. 026/CRIM/TCS du 19 Septembre 2013.
[li] Spener Yawaga (2012), op. cit., pp. 41-64.
[lii] Articles 7, 8, 9 and 10 of the 2013 decree on the restitution of corpus delicti.
[liii] Edouard Kitio (2016), op. cit., p. 265.
[liv] See sections 9, 10 and 13 (new) of the 2011 Law.
[lv] Addulkareem Azeez (2017), <<*Robin hood approach to solving the menace of corruption: the Nigerian version*>>, *Kampala International University Law Journal (KIULJ), vol. 1, Issue 2, pp. 167-176.*
[lvi] Ibid.
[lvii] Ibid.
[lviii] Bola Ige (2002), <<*Abacha and the Bankers: cracking the conspiracy*>>, *Forum on Crime and Society, vol. 2, no. 1, pp. 112-117.*
[lix] Ibid. most of the assets were channelled abroad through simple bank transfers in cheques or in cash. It was suspected that these funds were stocked in Austria, the Bahamas, Brazil, Canada, Dubai, France, Germany, the Hong Kong Special Administrative Region of China, Italy, Kenyan, Lebanon, Liechtenstein, Saudi Arabia, Singapore, Sweden, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America.
[lx] Article 3 of the 2013 Decree ibid.
[lxi]Section 30 of the PC provides that the forfeitures applicable under this Code shall be the following: (1) Removal and exclusion from any public service, employment or office; (2) Incapacity to be a juror, assessor, expert or sworn expert; (3) Incapacity to be guardian, curator, deputy guardian or committee, save of the offender's own children, or member of a family council; (4) Prohibition on wearing any decoration; (5) Prohibition on serving in the armed forces and (6) Prohibition on keeping a school, on teaching in any educational establishment, and in general on holding any post connected with the education or care of children.
[lxii] Section 18 (2) of the 2011 law on the Special Criminal Court.
[lxiii] Jean-Pierre Brun, Larissa Gray, Clive Scott, Kevin M. Stephenson (2011), op. cit., p. 103.
[lxiv] Ibid.

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[lxv] Available at http://www.state.gov/documents/organization/190690.pdf visited 15/03/1014.
[lxvi] Section 6 (2) (b) of the Proceeds of Crime Act of 2002 of UK.
[lxvii] Article 2 (g) of the UNCAC. Article 2 (g) of the UN Convention against Transnational Organized Crime (UNTOC) has the same definition as under UNCAC and it was ratified by Cameroon on 6 February 2006. Same definition is contained in article 1 (f) of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.
[lxviii] Article 1 paragraph 2 of the AUCPCC.
[lxix] Articles 2, 31, 54 and 55 of UNCAC, articles 1 and 16 of AUCPCC, articles 2, 6, 12 and 13 of UNTOC and article 1 (f) and 5 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.
[lxx] Section 35 of the PC.
[lxxi] Meaning that the conduct underlying the request for assistance is criminalized in both jurisdictions
[lxxii] In suit no. HCMB/31C/14 of 2nd September 2014 in The People vs Asabafor Emmanuel, (though not related to the misappropriation of public property) the accounts of the accused were blocked by ANIF during investigation and right up to the moment the matter went to court.
[lxxiii] Arret no. 44/Crim/CA/L du 18 Juillet 2012.
[lxxiv] Judgment no 033/SSP/2014 of 9 June 2014
[lxxv] Section 61 of CPC.
[lxxvi] Jean-Pierre Brun, Larissa Gray, Clive Scott, Kevin M. Stephenson (2011), op. cit., p. 12.
[lxxvii] The French law of 2010 on the facilitation of seizure and confiscation in criminal matters in its article 3 regulates the attachment of moveable and immoveable property in criminal matters. It should be noted that most of the provisions of this law amends and refers certain provision of the criminal procedure code.
[lxxviii] Section 395 of the CPC.
[lxxix] Transparency International (2014), Asset recovery, G20 position paper 2014, p. 1, available at https://www.transparency.org/files/content/activity/2014_TI_G20PositionPaper_AssetRecovery_EN.pdf visited 18/07/2018.
[lxxx]Ibid.
[lxxxi] As per article 4 of French law of 2010, the Agency for the Management and Recovery of Seized and Confiscated Assets (L'AGRASC (Agence pour la Gestion et le Recouvrement des Avoirs Saisis et Confisqués) is a public establishment of an administrative status placed under the supervisory control of the Minister of Justice and Minister in charge of budget with the main duty to manage all property attached or confiscated in France, in criminal matters. It equally advises the courts on any issue relating to the confiscation of assets. This organ does not have investigating powers as is the case in other jurisdictions. La PIAC, 'plate-forme d'identification des avoirs criminels' is a police unit in France created in 2005 in charge of identifying criminal assets which has the power to carry out patrimonial and financial investigation under the supervision of the judiciary. It centralizes every information in connection the detection of illegal assets within the French territory and abroad. See Ministère de la Justice Française (2011),op. cit., p.3.
Section 1 of the English recovery of Proceeds of Crime Act of 2002 creates an Asset Recovery Agency and the Agency has powers to carryout investigation aimed at reducing crime.
[lxxxii] Article 16 of the AUCPCC provides that State Parties shall adopt such legislative measures as maybe necessary to enable: its competent authority to search, identify, trace, administer and freeze or seize the instrumentalities and proceeds of corruption pending a final judgment. Article 52 of UNCAC talks of prevention and detection of transfers of proceeds of crime.
[lxxxiii] Ministère de la Justice Française (2011), op. cit., p.4.

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