

The Rule of Law and Integrity: Appraising the Place and Role of Anti- Corruption Standards in the Fight against Corruption within the Central African Economic and Monetary Community

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Abstract

The Central African Economic and Monetary Community (CEMAC) is an organisation of states of the central Africa sub-region that aims to promote economic integration among member states. Notwithstanding the plausible aims and laudable objectives that gave rise to CEMAC, its member states have not been exempted from the syndrome of corruption. Corruption represents a fundamental catalyst to developmental endeavours of governments at various levels of governance. To enable the fulfilment of its primary objectives, CEMAC has adopted several anti-corruption legal instruments. Paradoxically, years after the implementation of these laws, corruption indexes have continually portrayed CEMAC nations as taking the lead in the hierarchy as the most corrupt nations in Africa and the world at large. This article examines the place and role of CEMAC as regional regulator of economic development in the fight against corruption within its member states. First, this article reviews the legal anti-corruption framework in CEMAC and other regional anti-corruption treaties in Africa. Does corruption now not make a mockery of the purpose of CEMAC as well as raising questions as to why CEMAC was conceived and has not yet delivered? The article underlines the growing number of corruption cases and reports within CEMAC to illustrate this. Second, the article analyses the existence of constraints on member countries of CEMAC in relation to corruption. Anti-corruption enforcement proceedings are reviewed as well as the legal incentives for local governance integrity. Third, the article scrutinises the value added by the CEMAC Treaty within the sub-region over the African Union anti-corruption instrument and concludes with recommendations for a sustainable link between the rule of law and fight against corruption in CEMAC member states.

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INTRODUCTION

Corruption has evolved as a major issue within the Central African Economic and Monetary Community¹ and a fundamental impediment to the economic development incentive instrument in the Central African region. Therefore, the eradication of corruption has become an unprecedented challenge as it questions the very existence of CEMAC in the economic development of the region. If the fight against corruption involves creating new instruments, the creation of new mechanisms seems fundamental. The CEMAC network appears to have failed in addressing corruption adequately and in promoting higher ethical standards among its member states.

This research was built on the following important findings:

- the evolving nature of corruption within the central African region for CEMAC to develop an anti-corruption policy for development purposes;
- restrictive powers of the CEMAC Treaty to prevent and fight corruption within its member states;
- the lack of concrete leverage through the CEMAC Treaty prevents the regional organisation from influencing the domestic anti-corruption legislation of its member states, as well as numerous corruption cases within the states' national borders;
- member states' anti-corruption actions are limited to formal compliance and broad anti-corruption standards; and
- CEMAC lacks scrutiny mechanisms to monitor the plethora of anti-corruption programmes within member states.

Furthermore, CEMAC has not integrated the fight against corruption as a priority. This contradicts its fundamental development focus, based on the negative impact of corruption on economic development.

To establish the thesis set above, the article is divided into five parts. Following the introduction, part two unveils the face of corruption within CEMAC. The anti-corruption regulatory framework is highlighted and corruption indexes are analysed. It is found that CEMAC has a plethora of legislative instruments that have been adopted although member states are among the most corrupt in the world. It concludes by questioning the reasons for this contrast between law and fact. In part three, the anti-corruption enforcement proceedings within CEMAC are examined. The section scrutinises the existing measures including sanctions, extradition, judicial cooperation and confiscation, all part of the fight against corruption within CEMAC. This part posits the fact that CEMAC lacks concrete control over the implementation process which prevents its influence from being felt at domestic level. It goes further to question the very reason for the existence of CEMAC, having considered the absence of constraints and the absence of

¹ Its French name: *Communauté Economique et Monétaire des Etats de l'Afrique Centrale* (CEMAC).

rigorous anti-corruption scrutiny within member states. Part four questions the value added over the African Union anti-corruption instrument. The African Union Convention on Preventing and Combatting Corruption was adopted on 11 July 2003, while CEMAC was founded in 1994 and became operational in 1999. It establishes that following the African Union (AU) initiative, CEMAC has sought to emulate anti-corruption mechanisms. In pursuance of this objective, leaders have made investigating and responding to corruption a central priority for their work.² It is nevertheless today hard to match the magnitude of anti-corruption instruments in CEMAC against any amelioration in ethics and integrity within the domestic systems. This part argues that the power of the AU in relation to member states' domestic legal systems raises questions of legitimacy, while the constraints exercised by CEMAC on member states' anti-corruption proceedings portray the same relativity. It concludes by criticising the 'necessity' of another anti-corruption treaty within CEMAC, coupled with an inefficient anti-corruption AU operative framework. Finally, part five concludes the article with specific policing recommendations.

THE FACE OF CORRUPTION WITHIN CEMAC

CEMAC member states experience a high level of corruption in the public sector. This section gives an overview of the regional anti-corruption instruments and the syndrome of corruption within the region.

Political corruption is the most commonly experienced and notoriously manifested form of corruption in the region among member states. These include bribery, extortion, kickbacks, public officials' corruption, abuse of office and authority, scandals and cover-ups, police corruption, money laundering, and organised crimes.³ Some countries suffer greater degrees of corruption than others.⁴ Former British colonies in West Africa are notable examples with divergences between governments and West African societies in colonial times, which had extended to post-colonial times. Governments at every level prefer to apply rules and regulations that are not in consonance with popular attitudes.⁵ Bad policies coupled with the execution of wrong programmes seems gratifying selfish whims. While nepotism and bribery work hand in hand, tribalism and religion become the available tools in the hands of those in power. It has now become a practice that those with political power, authority, or influence are entitled to a gift as a right. They forcefully demand (not merely request) and receive whatever

² David Chaikin and others, *Corruption and Money Laundering International Responses* (David Chaikin and JC Sharman 2009) 55.

³ Charles Funderburk, *Political Corruption in Comparative Perspectives: Sources, Status, and Prospects* (Ashgate 2012) 1.

⁴ M McMullan, *Corruption in the Public Sector of British Colonies and Ex-Colonies in West Africa* (Transaction Books 1961) 317.

⁵ Id 323.

kind of consideration (formerly a gift in kind but now usually in cash) for something done in the course of exercising their power or authority and in discharging the functions of their office for the benefit of the giver(s).⁶ Gift-giving in African nations has now become a normal cultural practice and reflects good manners.⁷

Another manifest form of political corruption within CEMAC is collecting wealth through bribery and extortion.

Grabbing activities distort budget allocation mechanisms. In developing states, institutions designed to counter grabbing are often weak.⁸ The extent of grabbing in a nation correlates with a government's ability and willingness to secure a framework of conditions conducive to development.⁹ Most developing states do not reap the full benefits of the wealth of their natural resources. One of the reasons for this is the resource grab that benefits domestic elites and foreign corporations, rather than local populations.¹⁰ Illegal resource exploitation, corruption, and tax evasion constitute the main sources of illicit financial flows.¹¹ A stricter implementation of anti-corruption laws is an appropriate means to prevent such grabs.¹²

Illicit financial flows are fuelled, among others, by high-level discretionary political control, personal interests, complex financial structures requiring stringent auditing, etc.¹³ For example, the bribing of mid-level resource management officials enables illegal resource exploitation outside of concession areas.¹⁴

A good example of this is the case *Titus Edzoa, Atangana Abega Michel Thierry et Njiemoun Isaac v Ministere Public, Etat du Cameroun & Mapouna* where some public officials were charged with the misappropriation of public funds, attempted embezzlement of public funds and bribery, or trade in influence.¹⁵ The private sector is not exempted from the menace of corruption. Corruption in the private sector clearly played out in the Chadian case of *Abakar Moustapha v Societe Garantie*.¹⁶ Political corruption in

⁶ Ronald Wraith and Edgar Simpkins, *Nepotism and Bribery in West Africa* (Transaction Books 1970) 333.

⁷ JP De Sardan, 'A Moral Economy of Corruption in Africa?', *The J of Modern African Studies* (1999) 39.

⁸ Tina Soreide and Alex Williams, *Corruption, Grabbing and Development – Real World Challenges* (Edward Elgar 2014) 1.

⁹ *ibid.*

¹⁰ Philippe Le Bilon, 'Resource Grab' in Soreide and Williams (n 8) 46.

¹¹ *ibid.*

¹² *ibid.*

¹³ *Id* 47.

¹⁴ *Id* 48.

¹⁵ Cour Suprême, Section spécialisée, 17 décembre 2013, 016/SSP/CS.

¹⁶ Cour Suprême du Tchad, Chambre Judiciaire, 22 août 2006, 19/CS/CJ/SS/2006. In this case, Guarantee company recruited the plaintiff as a private security and prevention officer; but due to his incessant engagement in sexual harassment on the opposite sex and corrupt practices he engaged in, using his office as a cover up, the company dismissed him.

Africa can cover a grand scale, leading to crony capitalism, with the common assumption of conflict of interests.¹⁷ What is becoming common is the enrichment of powerful government elites and their families and business associates at the expense of the masses.¹⁸ This was already noticeable between 1965 and 1997 with the case of the African despot Mobutu Sese Seko.¹⁹ Public officials have some monopoly power. Monopolists take advantage of the inequality in the bargaining power differences and their clients' inescapable willingness to pay. This is due to the absence of options from which they can pick and choose.²⁰ In her development of the theory of corruption, Jennifer Hunt notes that officials provide different types of services in return of bribes, and these vary in value.²¹ This influences the client's willingness to bribe as well as the level of payoffs.²²

Within the CEMAC legal framework, the concept of corruption is related to money laundering and allied practices. It is therefore important to understand the terms 'corruption' and 'money laundering' as defined in CEMAC before outlining the legal framework regulating corruption within the regional organisation.

The term 'corruption' originates from the Latin word *corruptio* which connotes destruction, moral decay, putridity, or rottenness.²³ Transparency International refers to corruption as the abuse of entrusted power for private gain.²⁴ A person in position of authority in the public and private sectors could commit the abuse. In addition, a political decision maker can equally manipulate policies. Corruption portrays institutional weaknesses, weak deontological norms, fake indicative standards, and insufficient investigative and enforcement will on the part of governments.

¹⁷ IDW, 'Central African Economic and Monetary Community' <<http://www.internationaldemocracywatch.org/index.php/central-african-economic-and-monetary-community>> accessed 10 June 2017.

¹⁸ Joan Salzman, 'Ethics Enforcement: The New York City Experience' in Yassing El-Ayouty, Kevin Ford and Mark Davies, *Government Ethics and Law Enforcement: Toward Global Guidelines* (Praeger 2000) 125.

¹⁹ See for example the case of *RDC v Belgium*, where a mayor was indicted and arrested in the frame of a case of corruption in Democratic Republic of the Congo. He was said to have operated with the encouragement and assistance of international institutions and foreign countries, including the resources from government treasury.

²⁰ Jennifer Hunt, 'Why are Some Public Officials More Corrupt than Others?' in Michael Johnston, *Public Sector Corruption* (Sage Library of Political Science 2010) 302.

²¹ Id 303.

²² Ibid.

²³ Julio Bacio Terracino, *The International Legal Framework against Corruption-States' Obligations to Prevent and Repress Corruption* (Intersentia 2012) 8, citing Grame C Moodie, *Political Scandals and Corruption* (no 2 Government and Opposition 15 April 1980) 209.

²⁴ 'Transparency International – What is Corruption?' <<https://www.transparency.org/what-is-corruption>> accessed 10 June 2017.

The concept of ‘money laundering’ refers to the process of taking the proceeds of criminal activity and making them appear legal.²⁵ It includes the legalisation of criminal capital of the acquired business, or financial transactions to disguise the real origin (source) of the money and other forms of capital market.²⁶ In the course of money laundering, criminals use diverse means and procedures to cover up the illegal origins of funds; either through false justifications, or transfer, dissimulation conversion of illegal funds. Money laundering related activities seem to abound in places where apathy and inefficient detection, investigative, enforcement proceedings are low or slow. Illegal funds used in money laundering are usually the product of criminal practices of all kinds including drug pushing, human trafficking, oil bunkering, diversion of public funds, stealing from the national treasury or public purse, terrorism, and the like. Corruption-related practices are the catalyst to weak human and infrastructural development and the root cause of weak economic policy in Africa, especially in the member states of CEMAC. The results of corruption are, among other things, that it dries up national funds, authors the devastation in financial exchanges, and discourages foreign investors.²⁷ The damage associated with corruption cannot be over-estimated. One could understand how dreadful the consequences of corruption in the society could be. The former Secretary-General of the United Nations made the following observation concerning corruption on 9 December 2016, when he stated:

The 2030 Sustainable Development Program is a new international instrument aiming [at] the transformation of today’s world, as well as the building of a better future for all. Nevertheless, as we prepare for the enhancement of the said project, we must face a giant obstacle: corruption.²⁸

According to the Transparency International’s Report of 2015, government institutions mostly affected by corruption in Africa include institutions such as the judiciary, utility service departments, municipalities, the education sector, and public hospitals.²⁹

Regulatory Framework

It is obvious that CEMAC member states have not remained passive as corruption destroys national economies and threatens their economic

²⁵ ‘Money Laundering’ <<https://www.thefreedictionary.com/Money-laundering>> accessed 10 June 2017.

²⁶ Vera Zelenović, Nenad Vunjak and Vera Mirović, *Money Laundering in Serbia* (No 3 Economic Development 2015) 347–366.

²⁷ Conseil Consultatif de l’Union Africaine sur la Corruption, *Plan Stratégique* (2011–2015) 6.

²⁸ ‘Welcome to the United Nations’ <http://www.un.org/en/index.html> accessed 21 May 2017.

²⁹ ‘Transparency International – The Global Anti-Corruption Coalition’ <www.transparency.org/whatwedo/tools/gateway_corruption_assessment_toolbox/0> accessed 17 May 2017.

wellbeing. Several legal instruments have been put in place to address the issue of corruption. The regional community is made up of six states which include Gabon, Cameroon, the Central African Republic (CAR), Chad, Democratic Republic of the Congo (the DRC), and Equatorial Guinea. The regional community was created from the remains of the former Customs and Economic Union of Central Africa—French name, *Union Douanière des Etats de l'Afrique Centrale* (UDEAC), preceded by the Equatorial Customs Union (UDE).³⁰ CEMAC was originally and primarily established to promote economic cooperation and encourage competitive development among its members. The CEMAC Treaty clearly stipulates the main objective of the regional community as the enhancement of the development of national economies.³¹ In line with the above, several goals were set to accompany the states in this important task, which among other things include: (i) the creation of a common market based on the free movement of people, goods, capital, and services; (ii) ensuring the stable management of the common currency; (iii) securing the environment for economic activities and business in general; (iv) and harmonising the regulations of national sectoral policies.

CEMAC's Regional Economic Programme is aimed at '*making CEMAC an emerging integrated economic area, where security, solidarity, and good governance shall prevail in the service of human development. In order to facilitate the achievement of its goals, several institutions were created, including the Central Africa Banking Commission,*' for the enhancement of member states' desires to develop their national economies on good governance and equity.³² In addition, the Action Group against Money Laundering in Central Africa (GABAC) was born of the will of CEMAC heads of states to include the sub-region in the international fight against money laundering and the financing of terrorism.³³ Conscious of the fact that corruption represents an obstacle to the achievement of its goals, several pieces of anti-corruption legislation have been adopted by the regional community to ensure that corruption is given a hot chase. These are elaborately discussed below.

The CEMAC anti-corruption instruments

Several pieces of legislation and institutions within CEMAC address the question of corruption. These include (i) Regulation 01/03-CEMAC-UMAC on the prevention and repression of money laundering and terrorism financing in Central Africa; (ii) Regulation COBAC R-2005/01 on the due

³⁰ 'Connaitre La CEMAC. Communauté Economique et Monétaire de l'Afrique Centrale' <<https://www.cemac.int/Histoire>> accessed 10 June 2017.

³¹ CEMAC Treaty art 1.

³² Convention creating the Central African Banking Commission (COBAC) 1990, Preamble.

³³ Acte Additionnel 09/00/CEMAC-086 /CCE 02. Portant création du groupe d'action contre le Blanchiment d'Argent en Afrique Centrale.

diligence of the institutions involved in the fight against money laundering and the financing of terrorism; (iii) Agreement on Judicial Cooperation between the member states; and (iv) CEMAC Extradition Agreement.

Regulation 01/03-CEMAC-UMAC

This text governs the fight against money laundering and the financing of terrorism in the Central African region.³⁴ The CEMAC regulation against money laundering drew its inspiration from other international anti-corruption legal instruments.³⁵

Extradition agreement between CEMAC member states

Through this agreement, CEMAC member states undertake to extradite according to the terms and conditions established under the agreement, all individuals against whom procedures have been instituted for an offence under the law.

The judicial cooperation agreement

This agreement regulates the terms of civil, criminal, and commercial cooperation among CEMAC member states for the establishment of security and economic development within the regional community.

The CEMAC anti-corruption institutions

The institutional anti-corruption framework is equally diverse. It includes the Central Africa Bank Commission (COBAC) and the GABAC. Beside those, several national anti-corruption institutions do operate within member states.

Regulation COBAC R-2005/01

This text regulates on the due diligence of the institutions involved in the fight against money laundering and the financing of terrorism. The regulation takes into account the financing of terrorism in the suspicious transaction report, as well as the identification of customers for wire transfers.³⁶

³⁴ Regulation 02/10 of 2 October 2010 revising Regulation No 01/03-CEMAC-UMAC-CM of 4 April 2003, on the Prevention and Suppression of Money Laundering and the Financing of Terrorism in Central Africa.

³⁵ Such as EN Convention Against Corruption Involving Officials adopted 26 May 1997 and entered into force on 28 September 2005; the Council of Europe Criminal Law Convention on Corruption, adopted 27 January 1999 and came into force in 2002; OECD Anti-Bribery Convention, adopted 17 December 1997 and entered into force on 15 February 1999; The Organization of American States (OAS) Inter-American Convention Against Corruption, adopted 29 March 1996 and entered into force on 6 March 1997, and much later, the UN Convention Against Corruption (UNCAC) adopted 13 October 2003 and entered into force on 14 December 2005.

³⁶ 'COBAC-Accueil-Lutte Anti-Blanchiment' <www.sgcbac.org/jcms/ess_5356/en/lutte-anti-blanchiment> accessed 18 May 2017.

GABAC

The group against money laundering and funding for terrorism in Central Africa, with its French name *Groupe d'Action contre le Blanchiment d'Argent en Afrique Centrale* (GABAC), was established on 14 December 2000, out of the will of the CEMAC heads of states in their resolution to include the sub-region in the international fight against money laundering and the financing of terrorism. Through this institution, Central African states affirmed their intention to coordinate and implement concerted policies to combat financial crimes and evaluate the actions undertaken within the states.

Other regional treaties in Central-West Africa

There are also other anti-corruption regional treaties applicable in the region, notable among which is the AU instrument against corruption and the Economic Community of West African States (ECOWAS) Protocol.

The African Union Convention on Preventing and Combating Corruption

CEMAC member states are an integral part of the African Union (AU). By extension, they have affirmed their determination to eradicate the plague of corruption from the continent by ratifying the dispositions of the African Union Convention on Preventing and Combating Corruption.³⁷

In the light of the ill-wind of corruption blowing around Africa, the region under the AU umbrella, undertook to formulate and pursue, with firm commitment as a matter of priority, a common penal policy aimed at protecting the society against corruption.³⁸ The convention enjoins state parties to enact legislation for the purpose of prevention, detection, prosecution, and punishment of perpetrators with a view to eradicate corruption within its frontier.³⁹

ECOWAS Protocol on the Fight against Corruption

The Economic Community of West African States (ECOWAS)⁴⁰ Protocol is a sub-regional treaty.⁴¹ It has however, not entered into force due to a lack of ratification by member states. The Protocol has as its major objective the

³⁷ Adopted in Maputo on 11 July 2003, the convention entered into force on 5 August 2006.

³⁸ African Union Convention on Preventing and Combating Corruption 2003, Preamble.

³⁹ Commission Economique pour l'Afrique et le Conseil Consultation de l'Union Africaine contre la Corruption, *Lutte contre la corruption, renforcement de la gouvernance en Afrique* 14.

⁴⁰ The Economic Community of West African States (ECOWAS) is made up of fifteen member countries: Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea, Guinea Bissau, Liberia, Mali, Niger, Nigeria, Senegal, Sierra Leone, Togo.

⁴¹ Adopted on 21 December 2001 to reinforce the fight against corruption in West Africa.

strengthening of effective mechanisms for the prevention, suppression, and eradication of corruption in each of the state parties.⁴²

Corruption in facts

There is a sharp contrast between the plethora of laws and institutions established to fight corruption by CEMAC and the crucial reality of corruption within its member states. Put differently, it is not the paucity of anti-corruption laws that haunts the sub-region, but the inability of the different states to enforce the requisite moral values for implementing a practical approach against corruption and allied practices. The sub-region under CEMAC lacks the implementation and enforcement will and political force to match the corrupt practices within the area of influence.

Corruption indexes within CEMAC

As highlighted above, the CEMAC regional treaty is aimed mainly at encouraging development through an increased trade relationship and exchange of economic values among member states. Unfortunately, corruption has proven to be the biggest threat to any development endeavour and from a number of indexes, member states of CEMAC are among the most corrupt countries in Africa.⁴³ The World Bank's Governance Indicators rank CEMAC countries below their peers in terms of accountability, control and corruption, government effectiveness, and regulatory quality. Similarly, the Economic Intelligence Unit Democracy Index places the region below other countries in terms of political stability and democracy.⁴⁴

Country case studies

Due to the scarcity of corruption case reports in CEMAC, this discussion will be mostly limited to Cameroon and Chad, which are the home countries of the authors of this article.

Cameroon

In Cameroon, there are several reports of widespread bribery incidents among the police officers as they are often seen publicly demanding and collecting money and other goods at checkpoints in exchange for granting unlawful freedom to detainees and lawbreakers.⁴⁵ Reports equally reveal a high frequency of bribes by companies in exchange for favourable judgments,

⁴² UNODC, *Compendium on International Legal Instruments on Corruption* (2 edn, UN 2005) 13.

⁴³ For instance, Transparency International Corruption indexes 2016 revealed that Cameroon in 2016 ranked and is positioned as 145/176, with Chad as 159/176, and Congo 159/176 in the world corruption list. UNODC (n 42) 13.

⁴⁴ IMF Country Report No 13/322, CEMAC November 2013.

⁴⁵ 'Cameroon Corruption Report' <<https://www.business-anti-corruption.com/country-profiles/cameroon/>> accessed 26 May 2017.

as well as a lack of independence of the judiciary.⁴⁶ The corruption in Cameroon is exacerbated by a non-transparent revenue collection system and opaque licensing processes for extractive industries.⁴⁷

- Corruption in projects

Extensive research and surveys on governance and corruption in the primary education sector in Cameroon reveals transparency and integrity deficits in the primary education sector.⁴⁸ Several cases of illegal use of funds to the tune of billions of francs in Cameroon are known, such as funds which have been corruptly diverted for personal use while state projects suffer.⁴⁹

- Illegal detention of whistle-blowers

The illegal detention of a whistle-blower in Cameroon underscores the alarming rate of corruption in the sub-region. An illustrative example is the case of *Paul-Eric Kingue*.⁵⁰ The UN Working Group on Arbitrary Detention published an opinion stating that a number of procedural guarantees were not complied with in Kingue's trial. This further questions the independence of the judiciary. It also obliged the government to ensure the release and compensation of Kingue.⁵¹ Finally, the Supreme Court of Cameroon, as the highest court of the country has decided as the last resort to release him after about seven years of incarceration.⁵²

Chad

Among other CEMAC nations, Chad has always distinguished itself particularly with its judicial institutions. The Executive heavily influences the affairs of the judiciary and judges who try to uphold its incorruptible independence in the face of harassment, humiliation, or even dismissal.

⁴⁶ *ibid.*

⁴⁷ *ibid.*

⁴⁸ Transparency International, 'Methodological Note For SDG Shadow Reporting Questionnaire' <www.transparency.org/whatwedo/publication/methodological_note_for_sdg_shadow_reporting_questionnaire> accessed 19 May 2017.

⁴⁹ 'GIACC – Why Corruption Occurs – Global Infrastructure Anti-Corruption Centre' <http://www.giacentre.org/what_is_corruption.php> accessed 23 May 2017. According to the Global Infrastructure Anti-Corruption Centre, the absence of any project anti-corruption system is one of the factors that facilitate corruption in a project.

⁵⁰ FIDH, 'Cameroun: La FIDH Apelle à Mettre Un Terme Au Harcèlement Judiciaire Visant Paul-Eric Kingue Depuis Plus de quatre ans' <www.fidh.org/fr/regions/afrique/cameroun/cameroun-la-fidh-appelle-a-mettre-12346> accessed 10 June 2017. In that case, Mr Kingue, a mayor in the Littoral province dismantled a corruption network set up by his predecessor in favour of the *Banana Plantations du Haut Penja* (PHP), and denounced the ill-treatment suffered by the employees of these companies. He was arrested and sentenced to life imprisonment.

⁵¹ United Nations Working Group, *Opinion No 38/2014* (29 August 2014).

⁵² Editorial Staff, 'Le Portail Du Cameroun' (Yaoundé, *Cameroun-Info.Net*) <<http://www.cameroun-info.net/>> accessed 19 May 2017.

Meanwhile, government officials or other corrupt high profiles in the country are left to go with unaccounted impunity.

Without a well-functioning justice system, corruption cannot be effectively addressed. Siri Gloppen reports that in countries as diverse as Afghanistan, Bolivia, Bulgaria, Cambodia, Croatia, Ethiopia, Georgia, the Former Yugoslav Republic of Moldova, Morocco, Peru, and Ukraine, the judiciary was seen as the most corrupt of public institutions.⁵³ Corruption in the judiciary harms the broader accountability function that the judiciary is entrusted with within democratic systems.⁵⁴ Therefore law enforcement cannot prevail in corrupt judicial systems, as courts would have lost their impartiality in enforcing the law.

Undue political influence such as in the case of Chad steers away from the ways in which relations between the judiciary and the executive are organised, or reflect a legal culture where judges are expected to defer to political authorities.⁵⁵ Corrupt judicial systems are commonly seen around the globe. Often, reports indicate several cases of direct pressure experienced by judges from superiors in the trials of high officials accused of the misappropriation of public goods. 'Wrong' decisions incompatible with political authorities' wills could have negative career consequences.⁵⁶ The International Commission of Jurists (ICJ) denounces, in this sense, the persistent flaws and weaknesses in the justice system.⁵⁷ The ICJ therefore believes that

while the establishment of specialised instruments and mechanisms could contribute to ensuring accountability and justice in the context of the transition in Tunisia, they must complement, and not be a substitute for, the ordinary justice system.⁵⁸

The irregular disciplining and dismissal of judges seems to be a corruption tool in the political power-game. Gloppen reports that 'criticism was raised when Baltasae Garzon, a Spanish judge who called for the extradition of the Chilean dictator Pinochet, had criminal proceedings initiated against him for corruption and malfeasance as he was investigating the crimes committed by representatives of the Franco regime.'⁵⁹ Justice Garzon was disbarred for

⁵³ Siri Gloppen, 'Courts, Corruption and Judicial Independence' in Soreide and Williams (n 8) 68.

⁵⁴ *ibid.*

⁵⁵ *Id* 71.

⁵⁶ *Id* 72.

⁵⁷ *Id* 73.

⁵⁸ International Commission of Jurists, 'Tunisia: Procedures of the Specialized Criminal Chambers in Light of International Standard' (July 2017) 4 <www.icj.org/wp-content/uploads/2017/07/Tunisia-Memo-on-SCC-Procedures-Advocacy-Analysis-Brief-2017-ENG-1.pdf> accessed 16 May 2018.

⁵⁹ Gloppen (n 53) 73. Citing ICJ (International Commission for Jurists) (10 February 2012).

eleven years. ICJ President Pedro Nikken said in a statement: ‘One might wonder to what extent this sentence is just a way to silence Garzon.’⁶⁰

In Chad, corruption is also mentioned with respect to customs activities with illegal post controls on the road connecting the capital city to the port of Douala in Cameroon from where the country receives its imports.⁶¹

Other CEMAC states

Political instability and widespread violence have exacerbated corruption in the CAR. Violence significantly undermines the rule of law. Bribery and perversion are pervasive throughout the country.⁶² Despite the fact that the CAR has ratified the UN Convention against Corruption, sanctions are almost non-existent in case of violations. The efforts of political authorities to curtail corruption are also minimal.⁶³ Meanwhile, the judiciary functions inefficiently and suffers from executive influence.

In Equatorial Guinea, corruption and a burdensome, inefficient bureaucracy undermine the general investment climate. International watchdog organisations give one of the world’s lowest rankings in various global indices including corruption, transparency and ease of doing business.⁶⁴ Reports show that corruption is the pivot point throughout the government including the judiciary, the customs authority, and in fact every public institution is plagued by corruption.⁶⁵ The United States Department of State reports that there is no ‘watch dog’ organisation operating in Equatorial Guinea that monitors corruption.⁶⁶ As with most CEMAC member countries, Equatorial Guinea has strict laws against corruption. Unfortunately, they only exist on paper without any form of implementation or enforcement.

CEMAC ANTI-CORRUPTION CONSTRAINTS ON MEMBER STATES

The extensive legislative background in CEMAC contrasts with a wide range of scandalous reports on corruption and money laundering among its member states. It therefore becomes crucial to examine the constraining force of CEMAC anti-corruption treaties within its member states.

⁶⁰ Reuters, ‘Update 2-Spain’s Crusading Judge Garzon Disbarred for 11 Years’ (9 February 2012) <www.reuters.com/article/spain-garzon/update-2-spains-crusading-judge-garzon-disbarred-for-11-years-idUSL5E8D97IV20120209> accessed 16 May 2018.

⁶¹ GAN, ‘Chad Corruption Report’ <<https://www.business-anti-corruption.com/country-profiles/chad/>> accessed 19 May 2017.

⁶² GAN Business Anti-Corruption, ‘Compliance Resources | Business Anti-Corruption Portal’ <www.business-anti-corruption.com/compliance-quick-guides> accessed 31 May 2017.

⁶³ *ibid.*

⁶⁴ ‘US Department of State, Investment Climate Statement’ (June 2015) <www.state.gov/documents/organization> accessed 16 May 2018.

⁶⁵ *ibid.*

⁶⁶ *Id* 10.

Implementation of CEMAC Anti-corruption Instruments at Domestic Level

This section highlights the strengths and weaknesses of the CEMAC anti-corruption legal instruments within member states. The primary purpose of asserting corruption in domestic laws is measured against the normative elements that constitute the offence of corruption. This enables the determination of specific acts that constitute the offence of corruption when committed.⁶⁷ The law is the normative element in identifying corruption, and as such, it plays a paramount role in determining whether and when the offence of corruption is committed. Some states' definitions are too restrictive and leave out many practices that are corrupt from the definition of corruption.⁶⁸ Julio Bacio Terracino underlines some shortfalls of legal definitions of corruption when he states, first, that many corrupt actions committed in politics fall outside the law; and second, powerful groups can influence law-making⁶⁹ and are likely to do so to legalise the practices to accommodate their criminal interests.⁷⁰

The primary aim of the community law is the logical result of the cardinal principle of super-nationality, which underlies and guarantees all the dynamics of legal integration and distinguishes it from mere cooperation.⁷¹ It is generally accepted that community law has a 'neutralising' effect on the incompatible internal criminal norm. This approach invites national judges to disregard national standards found to be incompatible with the rule of law. In the same vein, legislative and executive authorities shall refrain from adopting any new norms contrary to community law in line with the indefatigable principle of the rule of law as the basis on which democracy is built. It is obviously based on the above that Article 21 of the CEMAC Treaty stipulates that 'additional acts are binding on the institutions of the community and on the authorities of the Member States.'

Nevertheless, is it the case in the practice? Why then do we still see such high records of corruption in the face of copious and strong anti-corruption legal frameworks established under CEMAC?

The principle of the super-nationality obliges judges to exclude conflicting provisions of national legislation in favour of community law. Unfortunately, in CEMAC, the constraining force of the domestic law is not constitutional in view of the position granted to the CEMAC Treaty in the member states' legislative frameworks. This is contrary to some other African organisations such as the West African Economic and Monetary

⁶⁷ Terracino (n 23) 14.

⁶⁸ Id 15.

⁶⁹ Terracino (n 23) citing Larry Berg, Harlan Hahn and John Schmidhauser, *Corruption in the American Political System* (General Learning Press 1976) 5.

⁷⁰ Id 14.

⁷¹ Samba Diouf, 'Legal Integration in Africa: The Example of UEMOA and OHADA' (MA dissertation, Cheik Anta Diop of Dakar University 2005).

Union (WAEMU) and the Organisation for the Harmonisation for Business Law in Africa—from its French name *Organisation pour l'harmonisation du Droit des Affaires and Afrique* (OHADA), which aims to facilitate the application of community standards in the internal order of states. In this respect, the legal bases of the principle are laid down in the institutional texts of these two institutions.⁷² The applicability of the CEMAC Treaty is suspended by its integration into the national legislative system through an act of the parliament. A ratified treaty is supposed to become an integral part of the states' national legislative systems. To this effect, some countries give priority to treaties over the national law. However, this is not the case in the CEMAC member states.

For example, in Cameroon, duly approved or ratified treaties and international agreements shall, following their publication, override national laws, provided the other party implements the said treaty or agreement.⁷³ Nevertheless, where the Constitutional Council finds a provision of a treaty or of an international agreement unconstitutional, the ratification of the said treaty or agreement shall be deferred until the Constitution is amended.⁷⁴ A similar situation seems to prevail in Chad, where treaties or other international agreements regularly ratified have on their publication, an authority superior to that of the national laws only.⁷⁵

Jurisdictional orders are not operating in the box. They interfere with the national legal system in terms of complementarity or being contradictory.⁷⁶ Under the pressure of community primacy, or even by a mere personal interpretation of the treaties, the national court may authorise itself, for example, to discriminate what the legislator has incriminated. Thus M Jacques Bore has been able to affirm that by

the effect of the penetration and progressive expansion of Community law and because the economy affects almost all areas of human activity, [Internal rules] of incrimination are promised to imminent subversion.

CEMAC Constraining Force and Member States' Constitutions

The challenge of states' sovereignty

Without the right political will to fight against corruption, systems and institutions put in place tend to be a facade.⁷⁷

⁷² OHADA 1993, art 10; UEMOA 1994, art 6.

⁷³ Law No 96-06 of 18 January 1996 to amend the Constitution of 2 June 1972, art 45.

⁷⁴ Id art 44.

⁷⁵ Constitution of the Republic of Chad 1996, art 222.

⁷⁶ Jean Combacau and Serge Sur, 'Application of International Legal Norms in the in States National Legislative Systems. Case of French Speaking Countries in Africa' (Ouagadougou Colloquium 24-26 June 2003 AOA-HJF).

⁷⁷ Emmanuel Yeboah-Assiamah and Samuel Alesu-Dordzi, 'The Calculus of Corruption: A Paradox of "Strong" Corruption Amidst "Strong" Systems and Institutions in Developing Administrative Systems' (2016) 16(2) Public Affairs 203–216.

Despite the numerous mechanisms set in place in CEMAC to check corruption, several machinations have been organised in the territories of member states to ignore the standards and deceive the securities set in place. Jávör and Jancsics⁷⁸ note that ‘corrupt actors create resources by squeezing the organization’s formal operational structure, for example by lowering the quality standards or “milking” other organizational assets.’ The force of the international anti-corruption standards cannot be undermined. International anti-corruption conventions play a key role in the global fight for integrity by:

- bringing the fight against corruption to the political forefront;
- setting legally binding standards and principles by which signatory states can be held to account for impunities; and
- fostering both the domestic action and international cooperation needed to tackle the many facets of corruption.⁷⁹

In order to justify the creation of GABAC, the CEMAC anti-corruption task force, in the preamble of the Regulation recognises that ‘the credibility and full effectiveness of the fight against money laundering and the financing of terrorism in Central Africa require the introduction in the Member States of a legal Framework based on Standards.’ Nevertheless, this objective appears unrealistic in practice as CEMAC is not fully integrated. In fact, the member states still hold on to a significant level of sovereignty.

Apathy in the ratification process

A certain level of passivity is noticeable in CEMAC regarding the ratification process and the adoption of community texts and international conventions. In addition, the implementation of treaties and international conventions duly ratified constitute a real obstacle in the region to the efficient operation and implementation of the CEMAC Treaty and other anti-corruption laws.

Treaty implementation

The extent of grabbing in a nation correlates with government’s ability and willingness to secure framework conditions conducive to development.⁸⁰ Treaties and international conventions duly ratified are not always directly applicable in all member states.

In Cameroon, for instance, generally accepted rules of international law and international conventions—when they are ratified by a law and enter into force—form an integral part of the country’s domestic legal system,

⁷⁸ István Jávör and David Jancsics, ‘The Role of Power in Organizational Corruption: An Empirical Study’ (2016) 48(5) *Administration & Society* 527–558.

⁷⁹ OECD, ‘International Conventions – OECD’ <<http://www.oecd.org/corruption/oecdanti-briberyconvention.htm>> accessed 10 June 2017.

⁸⁰ Soreide and Williams (n 8) 1.

and prevail over the provisions of any domestic law.⁸¹ Consequently, the *the United Nations Convention against Corruption* (UNAC), for example, has become an integral part of Cameroon's domestic law following its ratification. However, as noted by the United Nations Office of Drugs and Crime,⁸² the Convention is not above the Constitution in the hierarchy of norms and occupies a rank between ordinary laws and the Constitution.⁸³

In Chad, from the control exercised by the Constitutional Council on the legality and conformity of national and international standards, the principle laid down by the Constitution is that of the superiority of international standards over all the texts of the Republic as soon as they are ratified and incorporated into the domestic legal corpus.⁸⁴ The Constitutional Council in Chad is the institution responsible for ensuring the conformity and legality of applicable texts. It is a special jurisdiction in charge of monitoring the conformity of laws with the Constitution. At the same time that it carries out this constitutional control of laws, it also controls the conformity of national texts, including the Constitution, with international treaties and other regulations. The example of this control appears in the decision *002/CC/S/2013 relative to the constitutional law revising the Constitution*, deliberated and adopted by the National Assembly. The judges of the Constitutional Council in their reasons stated the following:

Considering the new Article 129 of the Constitution in its paragraph 8 ... the CEMAC Directive No. 01/11-UEAC-190-CM-22 relating to finance laws in Article 53(5) does not specify the use of the authorization of the National Assembly for the provisional twelfths; that it is necessary to harmonize paragraph 8 of Article 129 of the Constitution with the relevant provisions of the regional directive.

Indeed, the judges considered that this provision was contrary to the CEMAC directive on the laws of finance, and should consequently be harmonised. It is clear that, through this judgment, the Constitutional Council highlighted the primacy of international texts above national laws in Chad.

This case corroborates the fact that in anti-corruption proceedings, political will is vital at this stage to make use of legal avenues set to enforce justice.

CEMAC anti-corruption initiatives are part of the regional arrangement created after the adoption of the UNAC to assist in the fight against

⁸¹ Constitution of the Republic of Cameroon 1996, art 45.

⁸² UNODC, Implementation Review Group Seventh Session 'Review of Implementation of the United Nations Convention against Corruption' (Vienna 14–16 November 2016) CAC/COSP/IRG/2016/CRP.22.

⁸³ Constitution of the Republic of Cameroon, s 45. See also T Atangana, *Le Cameroun et le droit international* (A Pedone 2014) 303.

⁸⁴ Constitution of the Republic of Chad, art 221.

crime. Nevertheless, the international prohibition regime does have as a necessary counterpart at least a tacit allowance from governments. States' sovereignties could endanger the international cooperation in the case of non-cooperation. This is based on the sovereignty of nations over their territory and inviolability of the nations' sovereignty. UNAC stipulates in this sense:

States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.⁸⁵

Unfortunately, the implementation of UNAC's dispositions is hampered by states parties' 'willingness to collect, exchange, and analyse information on corruption within their territory.'⁸⁶ Entrusting states with the duty to initiate anti-corruption initiatives weakens the implementation process of UNAC. Political and social realities give cause to fear that UNAC 'runs the risk of remaining in a vacuum.'⁸⁷

Treaty ratification

Beyond states' willingness as an obstacle in the fight against corruption, another issue is that of treaty ratification prior to implementation in a particular jurisdiction. It is the general rule of international law that a treaty not ratified by a state does not have binding force on that state. So, even where a treaty enjoys precedence and prevailing superiority over domestic laws upon ratification, its operation and prevailing powers can only be activated by ratification. Therefore, where a particular state refuses to ratify, such treaty is not worth the paper upon which it is written with regard to the relevant state. In other words, the state must take the initiative to ratify the anti-corruption treaty before its operational force can be activated. Cameroon and the CAR, for example, have not ratified the African Convention against Corruption.⁸⁸ In the same vein, Chad and Equatorial Guinea are not parties to UNAC.⁸⁹ If ratification defines the international act whereby a state

⁸⁵ Article 4 UNAC 2003.

⁸⁶ Article 62 UNAC 2003.

⁸⁷ Michael Kubiciel and Anna Rink, 'The United Nations Convention against Corruption and its Criminal Law Provisions' in Pierre Hauck and Sven Peterke (eds), *International Law and Transnational Crime* (Oxford 2016) 237.

⁸⁸ See Status List <https://au.int/sites/default/files/treaties/7786-sl-african_union_convention_on_preventing_and_combating_corruption_4.pdf> accessed 1 April 2017.

⁸⁹ UNODC, 'Ratifying Parties, United Nations Convention against Corruption Signature and Ratification' <www.unodc.org/unodc/en/treaties/CAC/signatories.html> accessed 12 December 2016.

indicates its consent to be bound to a treaty,⁹⁰ the opposite stands true: the lack of ratification implies the refusal of a state to be bound by a particular treaty.

Infantile administrative systems

Infantile administrations serve as fertilizer to the spread of corruption in developing societies such as CEMAC member states.⁹¹ In Cameroon for instance, one could notice a lack of effective regulations, insufficient law enforcement and significant delays in courts. Cameroon's Penal Code criminalises corruption, bribery, extortion, and bribery of foreign public officials. In addition, corruption is punishable upon conviction by a prison term of five years to life imprisonment, a fine up to USD 4 000 and/or asset seizure. Facilitation payments and gifts are also addressed in Cameroon's legislation, yet insufficient implementation of anti-corruption legislation coupled with impunity among public officials has exacerbated the levels of corruption in the country.⁹²

In the CAR, political instability and widespread violence have undermined the rule of law and have increased the level of impunity in public institutions. Petty corruption prevents poor peoples' access to justice and therefore strengthens exclusionary patterns based on caste.⁹³

In Chad, the control of the judiciary by the executive branch represents a real obstacle in the enforcement of the rule of law in corruption cases. Law enforcement cannot prevail in a corrupt judicial system, as courts have lost the capacity to impartially enforce the rules.

Anti-corruption mechanisms should combat the government appointment of deferential judges or friends to the bench, as it damages trust in the judiciary. Corruption within judicial institutions equally transpires via the judicial hierarchy.⁹⁴

How could corruption in judicial systems be undermined? It could be done through the following:

- systemic responses with accountability of judges to the rules;
- depending on the particular society, the mechanisms that political power-holders and judicial hierarchy can use to influence judges' rulings;
- normative changes in attitude towards petty corruption in the judicial system;

⁹⁰ Dag Hammarskjöld Library, 'What Is The Difference Between Signing, Ratification and Accession of UN Treaties? – Ask DAG!' <<http://ask.un.org/faq/14594>> accessed 22 May 2017.

⁹¹ Yeboah-Assiamah and Alesu-Dordzi (n 77) 203–216.

⁹² GAN Business Anti-Corruption, 'Cameroon Corruption Report' <www.business-anti-corruption.com/country-profiles/cameroon/> accessed 19 May 2017.

⁹³ *ibid.*

⁹⁴ Gloppen (n 53) 71.

- increased transparency around different types of transactions as preventive procedural measures; and
- complaints mechanisms for members of the public to report any knowledge or suspicion of corruption.⁹⁵

Insufficient criminal legal instruments

As foremost mechanism of social control, criminal laws are supposed to define actions and conducts that are deemed to be harmful to societal values as well as proscribe punishment against them.⁹⁶

In Cameroon, after being ranked the world's most corrupt country in 1998 and 1999 by Transparency International, the government has set out to implement national governance programmes by which every public official is required to file a written statement of his or her assets and liabilities.⁹⁷ It also adopted a new Penal Code, with the aim to strengthen the rule of law in the battle against corruption.⁹⁸ The Penal Code document has witnessed several innovations. Indecent or illegal practices in any public or private enterprise now leads by example to complete disintegration, permanent or temporary closure of the enterprise depending on the weight of sleaze committed.⁹⁹ In addition, the illegal sale of drugs in the country is now a crime.¹⁰⁰ The Cameroonian Penal Code includes most categories of persons covered in Article 2 of UNAC.¹⁰¹ However, members of parliament elected and other unpaid officials not employed by the state are not specifically referred to due to the immunity granted to them. This issue of immunity and proceedings was part of the main point of contention in the Penal Code Bill submitted to the parliament. The text reads as follows:

Any judicial, legal or investigating police officer who in violation of any law conferring immunity, by prosecution, arrests or tries a member of

⁹⁵ Id 74.

⁹⁶ David Ormerod, John Cyril Smith and Brian Hogan, *Smith and Hogan's Criminal Law* (Oxford 2011) 16.

⁹⁷ Constitution of Cameroon Republic 1996 as amended in 1996.

⁹⁸ Cameroon Penal Code 2016.

⁹⁹ *ibid.*

¹⁰⁰ *ibid.*

¹⁰¹ Cameroon Penal Code 2016 s 127 By Judicial or Particular Immunities. See also s 131. Definition of Public Official: 'For the purposes of any criminal law, a public servant shall include, any judicial or legal officer, any law official, any employee or official of the State or any other body corporate governed by public law, or of a corporation or semi-public corporation, of a law official, any Armed Forces or Gendarmerie serviceman, any employee of the National Security or Prison Administration and any person charged, whether continuously or occasionally with any public duty, mission or task, while acting in the discharge of his office or in relation to the said office.' Available at <<http://fakoamerica.typepad.com/files/law-relating-to-the-penal-code.pdf>> accessed 25 September 2018.

Government or of Parliament, shall be punished with imprisonment from one to five years.¹⁰²

This provision was found by critics to be against good governance in the country.¹⁰³ According to the amended text which is now in the new Penal Code it reads as follows:

Any judicial, legal or investigating police officer who prosecutes, arrests or tries **anyone** in violation of any law conferring immunity shall be punished with imprisonment from one to five years.¹⁰⁴

Meanwhile, the Constitution¹⁰⁵ and the Criminal Procedure Code¹⁰⁶ provide for jurisdictional privileges for senior government officials and certain members of the judiciary. In parallel, the Constitution provides for the immunity of members of the National Assembly, which must be lifted before they can be prosecuted.¹⁰⁷ While the procedure for lifting immunities is not regulated, the doctrine of immunity of these people has continued to clog the wheel of criminal justice delivery as well as to fan the embers of corruption.

In the area of establishing criminal offences as required by the United Nations Convention against Transnational Organised Crime, domestic legislation is currently being reconstructed to conform to the above-mentioned convention.¹⁰⁸ Cameroon, the CAR and Chad have introduced criminal liability for legal persons, with fines most frequently reported as criminal sanctions, while the CAR and the DRC retain civil or administrative sanctions against corporate legal persons.

Cameroon has partially criminalised the abuse of functions regarding the acts that infringe on 'private' rights or interests.¹⁰⁹ However, the failure to perform an act or an omission in violation of law is not explicitly covered, which creates a big vacuum in the law.

¹⁰² Cameroon Penal Code 2016.

¹⁰³ Dibussi Tande, 'An Overview and Full Text (English) of The New Cameroon Penal Code' (Scribbles from the Den, 17 July 2016) <www.dibussi.com/2016/07/cameroon-penal-code.html> accessed 19 May 2017.

¹⁰⁴ Cameroon Penal Code 2016 art 127 on judicial or particular immunities [emphasis in original].

¹⁰⁵ Cameroon Constitution 2016 art 14.

¹⁰⁶ Cameroon Criminal Procedure Code 2005 ss 629–634.

¹⁰⁷ Cameroon Constitution 2016 art 14(6).

¹⁰⁸ In Cameroon, the Central African Republic, Congo and Gabon. See UNODC, 'Implementation of the United Nations Convention against Transnational Organized Crime' (Fourth session) consolidated information received from states for the first reporting cycle (Vienna 8–17 October 2008) CTOC/COP/2005/2/Rev.2.

¹⁰⁹ Cameroon Penal Code 2016 ss 137–142.

The implementation of the United Nations Convention against Corruption

UNAC¹¹⁰ is not above the Constitution in the hierarchy of norms.¹¹¹ It therefore occupies a place lower in rank between ordinary laws and the Constitution. The Penal Code is the main legislation that deals with corruption as an offence. There are two forms of corruption:

- **Active corruption**, which consists of proposing money, service(s) or presents to someone who holds power in exchange of an advantage (the corrupter).
- **Passive corruption**, which consists in a state employee, due to his/her rank, to accept from a third party an offer or incite the latter to offer in exchange for an undue advantage (the corrupt).¹¹²

The Penal Code punishes both the giver and the receiver of a bribe,¹¹³ meaning a public servant, government employee or anyone who for himself or a third party solicits, accepts or receives a bribe either for himself or for a third party and includes any person(s) who gives the bribe or yields to it.¹¹⁴

One of the lacunae in the definition of bribery under the Cameroonian Penal Code is that it does not punish indirect bribery. The code provides that criminal proceedings in the case of bribery shall not be brought against the person approached, provided he has reported the acts of corruption to the judicial authorities.¹¹⁵ Another example is the partial criminalisation of trading in influence.¹¹⁶

The implementation of UNAC within CEMAC suffers several limitations. The changing potential of UNAC has been hamstrung by the lack of an adequate framework against corruption within member states.

In Cameroon, there are several limitations in respect of UNAC implementation. The sections of the Penal Code in Cameroon, for example, do not cover the full range of embezzlement, misappropriation and other diversions of property or funds for the benefit of a public official or another person or entity.¹¹⁷ In addition, the benefits accruing to third parties are mentioned only in the case of bribery.¹¹⁸ Cameroon has partially criminalised

¹¹⁰ Signed on 10 October 2003 and ratified by the Cameroonian President on 6 February 2006 after adoption by the National Assembly.

¹¹¹ Cameroon Constitution 2016 art 45.

¹¹² Cameroon Ministry of the Public Service and Administrative Reform, 'A Handbook to Fight Corruption in MINFORA' <www.minfopra.gov.cm/images/pdf/a-pamphlet-to-fight-corruption-in-minfopra.pdf> accessed 24 May 2017.

¹¹³ See Justice Mbah Acha Rose Fomundam, 'Corruption under Cameroon Law' <http://fakoamerica.typepad.com/files/corruption-under-cameroon-law_jutice-mbah-acha.pdf> accessed 24 May 2017.

¹¹⁴ Cameroon Penal Code 2016 s 134(1). According to that section, the bribery can take the form of an offer, a promise, gift, or present.

¹¹⁵ Cameroon Penal Code 2016 s 134(2).

¹¹⁶ Id s 161.

¹¹⁷ Cameroon Penal Code 2016.

¹¹⁸ Id s 134 and 134(1).

obstruction in the giving of testimony or the production of evidence in proceedings.¹¹⁹ Meanwhile, the country does not have a whistle-blower Act. Civil servants and private-sector employees are not legally protected from recrimination or other negative consequences when they report cases of corruption. Cameroon's National Anti-Corruption Agency reported in 2016 that eleven ministries and agencies refused to supply them with information,¹²⁰ thus casting doubt on the veracity of the agency's ability and commitment to fight corruption.¹²¹

In Chad, on the suppression of the misappropriation of public funds, corruption, concession, influence, peddling and related offenses¹²² there is a text incorporated into the Criminal Code. It criminalises the accomplishment, deferment or forbearance of any act by a public official in exchange of a favour, benefit, promises, gifts or presents, where no remuneration has been legally recognised.¹²³ The Chadian anti-corruption law is a key legislation, which criminalises active and passive bribery and stipulates harsh penalties. However, the enforcement is poor and prosecutions usually target political opponents of the government. To make matters worse, Chad has not ratified UNAC.¹²⁴

The identified disharmonies in the fight against corruption within member states highlight the lack of leverage power of CEMAC as a regional anti-corruption force. This questions the place and role played by the institution in respect of its regional economic development goal. The weakness of CEMAC's anti-corruption transformative power within its member states sharply contrasts with the enormous leverage within the accession in the European Union (EU), for example. The EU made it a condition to its membership for the candidate countries' governments to institute corruption control measures that could be communicated to the EU. These included important domestic sources of reform.¹²⁵

ANTI-CORRUPTION ENFORCEMENT PROCEEDINGS WITHIN CEMAC

This part of the article examines the existing anti-corruption enforcement proceedings in CEMAC against the organisation's primary purposes. The question is, whether we can argue in favour of a sustainable link between the rule of law and fight against corruption within CEMAC member states. In other words, can we withstand legal incentives and sanctions at domestic

¹¹⁹ Penal Code (Accessories) s 97; Penal Code s 164(2) and s 168.

¹²⁰ *Cameroon Intelligence Report*, December 2016.

¹²¹ GAN Business Anti-Corruption (n 92).

¹²² Law No 004 / PR / 2000.

¹²³ Article 192 Chad Law No 001/PR/2017 of 8 May 2017 organising the Penal Code.

¹²⁴ GAN Business Anti-Corruption, 'Chad Corruption Report' <www.business-anti-corruption.com/country-profiles/chad/> accessed 19 May 2017.

¹²⁵ Agnes Batory, 'Post-Accession Malaise? EU Conditionality, Domestic Politics and Anti-Corruption Policy in Hungary' in Diana Schmidt-Pfister and Holger Moroff (eds), *Fighting Corruption in Eastern Europe. A Multi-level Perspective* (Routledge 2012) 57.

level strengthening the anti-corruption legal agenda? This presumes traditional enforcement practices, and legal incentives for local governance integrity.

CEMAC binding instruments in the member states' anti-corruption fields tend to raise contrasting problems of correctness. To represent the dynamic nature of law, it is trite that precise treaties must be capable of changing as corruption evolves to contribute to the relative effectiveness of anti-corruption norms.¹²⁶ Nevertheless, the rigid structure of CEMAC denotes a fundamental inflexibility with the evolving nature of corruption uncertainties, changing technology or other evolving circumstances. This makes its anti-corruption agenda more difficult to achieve.

Appraising Anti-Corruption Proceedings in CEMAC

Tsappi Joseph Lavoisier purposely declared that:

Contrary to industrialised nations where a little suspicion of corruption can lead to legal investigations and sometimes to the spontaneous resignation of the suspect when he is in [a] position of authority, the situation is different in Sub Saharan nations. Even when there are sustainable evidences, prosecutions are hardly initiated against the suspect.¹²⁷

Worse, in CEMAC member states, prosecution constitutes a stepping-stone for the promotion of corruption. In this vein, we will analyse how CEMAC countries lead anti-corruption proceedings at domestic level. For this reason, we will focus on the enhancement of the battle through legislation and judicial proceedings.

Sanctions

Sentencing in corruption cases plays an important role as it serves as a deterrent to others who may develop an interest in corruption-related adventures. The meting out of condign punishment is a stringent measure to be adopted within the boundary of law in the fight against corruption.¹²⁸ It is therefore important for legislative bodies to meet corruption cases with a strong indication of deterrence. However, that seems not to be the case. CEMAC regulatory legislation on sanction in corruption cases stipulates, 'the quantum of penalties shall be determined in accordance with national

¹²⁶ Cecily Rose, 'International Anti-Corruption Norms: Their Creation and Influence on Domestic Legal Systems' (Oxford Scholarship Online October 2015) DOI: 10.1093/acprof:oso/9780198737216.001.0001.

¹²⁷ Editorial, *Magazine de l'Ecologie du Développement Durable* (ECOVox, 39 janvier – juin 2008) <www.cipcre.org/ecovox/eco37> accessed 18 May 2017.

¹²⁸ Aloke Kumar Chakraborty and Rathin Bandyopadhyay, *Legal Control of Corruption in India* (Abebooks 1996) 128.

laws.’¹²⁹ Leaving sanction of corruption-related infractions to states’ discretionary powers could lead to uncertainty and impeachment on the rule of law. The statement of Théophile Ngapa on this point is supportive.¹³⁰ He argues that because of the flexibility of their legislations, certain states can become penal paradises in CEMAC.

Nevertheless, some efforts have been made in the harmonisation of criminal penalties when it comes to the sanction of money laundering and terrorism.¹³¹ In Chad for example, there are several sanctions under the national law applicable in cases of corruption.¹³²

Generating solutions that will curb transnational bribery corporations is definitively confronted by the issue of an effective liability regime for legal persons that national legal systems should grapple with.¹³³ However, the disparity between the regulatory regimes in various states is a source of additional challenge to the regulation of transnational bribery within CEMAC.¹³⁴ There are serious disparities between states in their domestic regulatory capacity and their ability to enforce the regulatory regime prohibiting transnational bribery.¹³⁵ The regulation of criminal conduct shall require the development of domestic regulatory capacity as a precursor to the effective regulation of transnational bribery laws as is crucial¹³⁶ to this effect. The administrative and institutional capacity to enforce laws is essential for the successful enhancement of the fight against bribery.

Extradition on fiscal/tax related matters

In respect of the claims of states sovereignties, CEMAC refuses the extradition of the subjects of taxes, customs and exchanges.¹³⁷ Meanwhile, such offences are closely related to money laundering and corruption. In Georgia, for example, in the course of an anti-corruption campaign,¹³⁸ a list

¹²⁹ Regulation No 1/ 99 / EUAC-CN-639 (25 June 1999) art 27.

¹³⁰ Théophile Ngapa, ‘La coopération judiciaire dans la zone CEMAC’ (Université de Dschang – Cameroun – DEA en Droit Communautaire et Comparé Cemar 2005).

¹³¹ Regulation No 01/03-CEMAC-UMAC on the Prevention and Punishment of Money Laundering and the Financing of Terrorism in Central Africa, Title V.

¹³² Chad Penal Code art 10. This punishment covers cases of persons who made donations, presented or yielded to solicitations designed to compensate an act or a past abstention of corruption. See also Chad Penal Code art 11: ‘is punished by imprisonment of two (2) to ten (10) years and a fine of two hundred thousand (200,000) to five million (5 000 000) francs all officials, their clerks, proposed or public officials who knowingly and for their own account, grant exemptions from duties, taxes, fees, taxes or contributions, issue to a price below that required the state’s products, community or institution subject to state care or financial interest of the State.’

¹³³ Simeon Obidairo, *Transnational Corruption and Corporations* (Ashgate 2013) 1.

¹³⁴ Id 4.

¹³⁵ *ibid.*

¹³⁶ *ibid.*

¹³⁷ Extradition Agreement between CEMAC member states 2004 art 4(4).

¹³⁸ Led by the President in 2004.

of higher officials and political figures were prosecuted for corruption or tax evasion.¹³⁹

In extradition proceedings and provisional arrest, the applicable law is the criminal law of the requested party.¹⁴⁰ Unfortunately, the domestic legal framework makes it difficult to extradite nationals.¹⁴¹ In Cameroon, the Criminal Procedure Code determines the rules of extradition.¹⁴² The memo containing the application for extradition shall, after the documents have been checked by the Minister in charge of External Relations, be forwarded to the Minister in charge of Justice who, after ascertaining that the procedure is in order, shall further seize the Legal Department of the foreigner's place of residence for enforcement.¹⁴³ As soon as the file is received, the State Attorney shall, after having ascertained that the formalities provided have been fulfilled, forward it together with his submissions to the President of the Court of Appeal who shall list the case for hearing and notify the foreigner and, where necessary, his counsel. The court shall examine the application for extradition in chambers.¹⁴⁴ The vagueness is remarkable. First, no specification of the chamber competent to hear extradition requests was made. The Court of Appeal is a secondary court with several chambers. The law is not clear about which of these chambers in the Court of Appeal will be competent to hear extradition requests. Second, contrary to the procedure for criminal matters, the Court of Appeal hearings in criminal matters are not public. This could encourage arbitrariness in the proceedings. In addition, no deadlines are mentioned in accordance with the right to fair hearing; and no remedies are mentioned to the offender to address the extradition decision.

In the terms of the Criminal Procedure Code, the State Attorney is the only person with the authority to challenge the decision of the court; if not favourable, the accused is immediately set free and where it is favourable, the decision of the court is transmitted and the procedure for extradition continues.¹⁴⁵

Cameroon operates some restrictive practices to extradition. Some parallel extradition agreements preclude the State of Cameroon from extraditing a national citizen to be judged in a foreign nation. It was the substance of the case of *Lengbe Christian*¹⁴⁶ where the national judge recalled the

¹³⁹ Jorge Martinez-Vasquez, Javier Arze Del Granado and Jameson Boex, *Fighting Corruption in the Public Sector* (Elsevier 2007) 115.

¹⁴⁰ Extradition Agreement between CEMAC member states 2004 art 11.

¹⁴¹ In countries like Cameroon, the Central African Republic, Chad and Congo, over corruption related cases.

¹⁴² Cameroon Law 2005 of 27 July 2005 of the Cameroon Code of Criminal Procedure, art 673–675 and 642, regulating the conditions for extradition.

¹⁴³ Id s 651.

¹⁴⁴ Id ss 651 and 654–656.

¹⁴⁵ Cameroon Criminal Procedure Code 2005 art 660.

¹⁴⁶ Cour d'Appel de Douala, arrêt 96/P du 06 mars 1998.

principle of non-extradition of Cameroonian citizens.¹⁴⁷ The court clearly stated in this case regarding the accused that: '[h]e is a Cameroonian and cannot therefore be extradited by his country Cameroon.'¹⁴⁸ This decision is supported by the Criminal Procedure Code, which conditions the extradition of a Cameroonian to a legal enactment.¹⁴⁹

Under CEMAC, each of the member states has the right to refuse to extradite his nationals.¹⁵⁰ Extradition proceedings in CEMAC therefore become hectic when it refers to states' internal laws to envisage the possibility of extradition. The discordance in the provisions of the law raises several problems and shortfalls to rights of the defence.¹⁵¹

Other CEMAC member countries have equally taken up extradition measures in their national legislative systems according to the CEMAC extradition agreement. This is the case in the DRC, which has passed a national law implementing the dispositions of the Extradition Agreement between CEMAC member states.¹⁵²

Compared to regional legal and judiciary cooperation, the international action of police seems more efficient in tackling transitional corruption. To this effect, Kubiciel and Rink qualify the development of international criminal police cooperation as 'a worrying lack of governance accountability'.¹⁵³ Sisters' initiatives include Interpol, Europol, etc.¹⁵⁴ For instance, the Commonwealth Network of Contact Persons enhances cooperation between Commonwealth member states in the fight against crime. The scope of cooperation includes mutual legal assistance, extradition, legal information networking, etc.¹⁵⁵ It is perceivable that international law-enforcement agencies with an international reach equally act through the police authority of the jurisdiction in which they wish action to be taken.¹⁵⁶ Police being sovereign over their specified jurisdiction, have a willingness to cooperate and it resurfaces as a *sine qua non* condition to international cooperation against corruption.

¹⁴⁷ Cooperation agreement between France and Cameroon 1974; Tananarive Convention art 5.

¹⁴⁸ Cour d'Appel (n 146).

¹⁴⁹ Cameroonian Criminal Procedure Code 2005 art 644: 'Except where otherwise provided by law, no Cameroonian citizen may be extradited.'

¹⁵⁰ CEMAC Extradition Agreement 2004 art 5(1).

¹⁵¹ Philippe Keubou, 'Cameroon Criminal Law and International Criminality' (PhD thesis, Poitiers University France 2012) 249.

¹⁵² Congolese Law 16-2009 implementing the Extradition Agreement between CEMAC member states.

¹⁵³ Kubiciel and Rink (n 87) 237.

¹⁵⁴ Frank Madsen, 'The Historical Evolution of the International Cooperation against Transnational Organised Crime' in Hauck and Peterke (n 87) 15.

¹⁵⁵ *ibid.*

¹⁵⁶ Frank Madsen, 'Policing Transnational Organised Crime – The International Perspective' in Hauck and Peterke (n 87) 495.

It is therefore purposely that Cornelia Rink underlined that ‘legal norms must grow alongside social moral standards’¹⁵⁷ in the fight against corruption. Legal accountability and real consciousness of the moral disastrous impact of corruption will prompt national authorities to cooperate towards its eradication.

Confiscation and disposal of confiscated proceeds of crime or property

If a public official amasses wealth at the cost of the public, then the state is justified in seizing such assets.¹⁵⁸

Restoration of national value is important in the fight against corruption and national economic growth. The major source of agony in corruption is the accumulation of wealth possessed by public servants, which has been acquired by corrupt and illegal acts.¹⁵⁹ Black money and private properties are increasing, while the national economy maintains a steady nosedive. Fortunately in CEMAC, the legal provisions allow for the possibility of additional penalties in the area of confiscation.¹⁶⁰ However, the mechanisms for freezing, seizure and confiscation under community law are derived from national law, which again could give room to lack of enforcement when left at the discretion of states’ autonomies.

In Cameroon, the Penal Code envisages the case of misappropriation of public funds as:

whoever (not only civil servants) by any means takes or keeps dishonestly any property moveable or immoveable, belonging to, in transmission to, or entrusted to the state, or to any authority or corporation either public or subject to the administrative control of the state or in which the state holds directly or indirectly the majority of the shares.¹⁶¹

As one of the penalties prescribed, the code provides that ‘the court may order any form of confiscation of any property, moveable or immoveable, belonging to the offender, and attached, which is the proceeds of the offence.’¹⁶²

Justice Mbah Acha notes that ‘where the court convicts under S.134, (a) and S.161 of the Penal Code of Cameroon, the court must order forfeitures and confiscation.’¹⁶³

¹⁵⁷ Cornelia Rink, *Leges sine moribus vanae* (2016) 17 German LJ 19.

¹⁵⁸ Chief Justice of India, Mr KG Balakrishnan in Aloke Kumar Chakraborty and Rathin Bandyopadhyay, *Legal Control of Corruption in India* (Raj Publications 2012) 99.

¹⁵⁹ Id 109.

¹⁶⁰ CEMAC Regulation 01/03.

¹⁶¹ Cameroon Penal Code 2016 s 184.

¹⁶² Id s 184(4).

¹⁶³ Justice Fomundam (n 113).

The question is whether confiscation was also available for proceeds derived from offences established under the Protocols. In CEMAC member countries, rules on confiscation are general rules applicable with respect to the proceeds of any criminal offence, especially in Cameroon, Chad and the DRC.¹⁶⁴ Regarding the question of foreign confiscation requests, Cameroon uses the indirect method referred to under the United Nations Convention against Transnational Organised Crime. The submission of the order of confiscation issued by a court of the requesting state to the competent domestic authorities for enforcement is binding.¹⁶⁵ Nevertheless, this method presents a danger that, after an order of confiscation has been obtained in the requesting state and before the requested state goes through the process of obtaining a domestic order, a considerable delay may occur, thus allowing the proceeds to be placed out of the reach of confiscation.¹⁶⁶ The Supreme Court of India delivered a judgment confirming this principle in the case *Delhi Development Authority v Skipper Construction (P) Ltd.*¹⁶⁷

Limits to judicial cooperation

Enhancing regional cooperation in CEMAC for purposes of fighting corruption is primordial. Particularly, the complex nature of corruption makes cooperation and coordination even more critical to the successful implementation of strategies to fight against this plague and improve integrity in governance.¹⁶⁸ Transnational cooperation is an inseparable part of the development of international criminal cooperation.¹⁶⁹ National legislation has proved to be insufficient in eradicating the phenomenon of corruption which blights societies. The extent of transnational corruption constitutes the moral decay for the economies of the poorly developed CEMAC nations. UNAC aims to criminalise corrupt acts and enforce the law,¹⁷⁰ with its emphasis on international cooperation, asset recovery, technical support and information networking between member states. States' decision to cooperate between them to institute a solution to the problem of trans-border criminality and preventing it from becoming very serious, collides with the status claims of sovereignty, as the penal law and the penal procedure rules have always been considered as the fundamental elements of the sovereignty of states.

¹⁶⁴ Id 13.

¹⁶⁵ United Nations Convention against Transnational Organized Crime, art 13 para 1(b).

¹⁶⁶ Justice Fomundam (n 113) 25.

¹⁶⁷ AIR 1996 SC2005. The Supreme Court stated: 'Once it is proved that the holder of such office (public sector) has indulged in corrupt acts, all such properties should be attached forthwith. The law should place the burden of proving that the attached properties were not acquired with the aid of monies/properties received in the course of corrupt deals.'

¹⁶⁸ UNDP, 'Corruption & Integrity Improvement Initiatives in Developing Countries' (OECD Development Centre) 3.

¹⁶⁹ Madsen (n 154) 3.

¹⁷⁰ Kubiciel and Rink (n 87) 221.

The draftsmen of the CEMAC Treaty tried to harmonise the community norms touching on the judicial cooperation to create instruments that would facilitate cooperation among member states, and therefore a possible evolution to high efficiency of the international repressive cooperation.¹⁷¹ Unfortunately, some states were reluctant to ratify said convention.¹⁷²

Judicial cooperation, as governed by the CEMAC convention, covers administrative, civil, and criminal matters. States' professional, political, or administrative cooperation is therefore '*the solution*' for practically all actors fighting against corruption.¹⁷³ Criminal law and criminal procedure are two areas which are resistant to external interference because they are stamped with the sovereignty of states.¹⁷⁴

Bernard Bertossa pointed out in the European context:

If we want to have some chance of fighting organized crime, it is imperative that the European (Community) institutions set up competent judicial authorities to the perpetrators of the offense of which those institutions may also be victims.¹⁷⁵

This was observed in the case of *Sissako Diawoye*.¹⁷⁶ In CEMAC, things are not so advanced because of the struggle for the preservation of states' sovereignties. State parties poorly allow the creation of supranational bodies responsible for coordinating the fight against the most serious forms of crime although significant progress has been made in the fight against money laundering.¹⁷⁷ It is foreseeable that the infringements of community law will have consequences for the internal criminal law. It is clear evidence that logistics expansion and transport networks, regional transport networks coupled with the expansion of internet and communication have fostered the growth of regional crime.¹⁷⁸

To address corruption growth and the rise of transnational connected crimes within CEMAC, such as money laundering, drugs, organised crimes and extra-territorial regulation of transnational corruption, care needs to

¹⁷¹ Ngapa (n 130).

¹⁷² According to Recommendation CEMAC Council of Ministers (25th Ordinary session), Report of the Ad Hoc Committee of CEMAC Ministers in charge of security and immigration.

¹⁷³ Ngapa (n 130).

¹⁷⁴ Philippe Keubou, 'Extradition de Sissoko Diawoye' (Case Law Commentary) 2000 (43) *Juridis Périodique* (August–September) 53.

¹⁷⁵ Ngapa (n 130).

¹⁷⁶ Cour d'Appel du Centre No 1101/cor du 23 Septembre 1994. In this case, the Cameroonian criminal judge ordered the extradition of the person accused of falsification of records in Gabon, a CEMAC member country. The Gabon state attorney issued the request of extradition.

¹⁷⁷ Ngapa (n 130).

¹⁷⁸ Arndt Sinn, 'Transnational Organized Crime: Concepts and Critics' in Hauck and Peterke (n 87) 33.

be exercised with respect to notions of the overall benefits to society.¹⁷⁹ However, when laws are imposed across borders within a region like CEMAC, transnational value consensus is important.¹⁸⁰ The willingness of national legislators is therefore highly relevant to prevent and deter illegal conduct through regional cooperation.¹⁸¹ This is based on the territoriality ties of the conduct and of the commission of the offence within CEMAC¹⁸² would need adequate laws governing CEMAC jurisdiction and political will. Law enforcement and judicial cooperation beyond the states' territorial boundaries intertwines with international relations and criminal law.¹⁸³

Factors determining the extent of transnational organized crime include quality of institutions responsible for rule of law, such as competent police services and independent courts complying with the standards of professional integrity, which is lacking in the region. The danger of weak States' institutions is the rise of illicit organizations superseding states in its most important prerogatives including provision of protection, legal services, and services to facilitate exchange and contracts.¹⁸⁴

The result is what Feltes and Hofman qualify as 'criminal conglomerates, destabilizing factors for states and a threat to global security.'¹⁸⁵

Questioning the Reason of CEMAC

CEMAC was established to enhance economic growth and trade between its member states. Yet, as has been stated, the indexes of corruption in these nations are very high, with the record of the world's most corrupt nation still acknowledged among CEMAC member states.¹⁸⁶ CEMAC's rule of law does not appear constraining enough to challenge the above.

Fighting corruption in an efficient and durable manner requires looking at its fundamental causes, to be found in the underlying institutional factors.¹⁸⁷ CEMAC has set the stage for a regional anti-corruption drive but this must be linked to the implementation of concrete sustainable strategies. As has already been analysed, there seems to be a failure of appropriate measures

¹⁷⁹ Simeon Obidairo, *Transnational Corruption and Corporations* (Ashgate 2013) 37.

¹⁸⁰ *ibid.*

¹⁸¹ Thomas Feltes and Robin Hofmann, 'Transnational Organised Crime and Its Impact on States and Societies' in Hauck and Peterke (n 87) 47.

¹⁸² *ibid.*

¹⁸³ Peter Andreas and Ethan Nadelmann, *Policing the Globe: Criminalisation and Crime Control in International Relations* (Oxford University Press 2006) viii.

¹⁸⁴ *Id* 49.

¹⁸⁵ *ibid.*

¹⁸⁶ See Transparency International – The Global Anti-Corruption Coalition, 'World Corruption Report 1998/1999' <www.transparency.org> accessed 10 May 2017.

¹⁸⁷ Daniel Kaufmann, 'Revisiting Anti-Corruption Strategies: Tilt Towards Incentive-Driven Approaches' in UNDP, *Corruption & Integrity Improvement Initiatives in Developing Countries* (OECD Development Centre) 63.

designed to tackle corruption within the member states of CEMAC; first, upstream, regarding the legal and enforcement measures designed to improve the detection of corruption; second, downstream, the measures designed to enforce and prosecute already committed corrupt acts.

As recalled by Kaufmann:

[T]his does not mean that there are no instances of serious efforts against corruption underway in the countries. But in the bandwagon of making pronouncements, passing decrees and creating special governmental anti-corruption units, there are many whose commitment to really address the problem is seriously in doubt.¹⁸⁸

The engagement in the rhetoric of CEMAC in fighting against corruption must be coupled with the preparedness and commitment of the authorities of member countries to first tackle the fundamental causes of corruption within the region. Second, it must be to ensure that anti-corruption strategies incorporate the appropriate elements needed to give effect to the resolution to engage in the anti-corruption war.¹⁸⁹

Hampering the struggle to control corruption is the emergence and existence of many misconceptions, biases and ambiguities regarding what constitute the fundamental pillars in an anti-corruption strategy.¹⁹⁰ It is therefore important to take a pragmatic anti-corruption approach to achieve concrete results in line with the economic development agenda. Otherwise, the very existence of CEMAC as a regional institution for economic development should be questioned. In accordance with its regional development goals, CEMAC as an institution must organise practical and real anti-corruption actions aimed at strengthening transparency and rule of law within the member states. This should be coupled with constraining forces inside each country's national borders. The EU constitutes an illustrative example on this point with its 'Octopus Programme', which

¹⁸⁸ *ibid.*

¹⁸⁹ Stéphane Ballong, 'CEMAC : Comment sortir de la Crise?' (*Jeuneafrique.com*, 2 October 2017) <<https://www.jeuneafrique.com/mag/476395/economie/cemac-comment-sortir-de-la-crise/>> accessed 23 March 2018. The following case constitutes an example. The president of the CEMAC commission was prevented from entering Bangui, the capital city where CEMAC has its headquarters. This action was on the ground of (i) the evidence of illegal withdrawals from the CEMAC account between 12 December 2011 and 29 February 2012 of a global amount of 821 million FCFA (1,25 million euros); (ii) the fact that he manages the organisation from Cameroon; (iii) use of private jets rented for about 322 million FCFA (around half million euros). He was not subject to anti-corruption proceeding, despite the plethora of laws making corruption an offence within the commission. The only initiative reported was a mediation by the Congolese President between the Central African Republic and the President of Cameroon from where the suspect originates.

¹⁹⁰ Daniel Kaufmann (n 187) 64.

instituted the adoption of binding anti-corruption standards applicable within the sixteen states.¹⁹¹

Value-Added Above the AU Instrument?

CEMAC became operational in 1999, following the AU initiative,¹⁹² and has sought to emulate AU's anti-corruption mechanisms. In pursuance of this objective, leaders have investigated and have finally concluded that corruption is a central priority at the centre of their struggle for economic freedom.¹⁹³ It is nevertheless hard today to match the plethora of anti-corruption instruments in CEMAC against any amelioration in ethics and integrity within the domestic systems of CEMAC member states. The power of CEMAC in relation to member states' domestic legal systems thus raises questions of legitimacy: first, because of its relatively high degree of influence at the domestic level,¹⁹⁴ and second, as discussed above, because of the non-mandatory criminalisation provisions.¹⁹⁵

The question before such contradictory anti-corruption agenda/results is to know whether CEMAC was necessary, and if yes, then what value it has added to the AU instrument on corruption.

Regional, continental, national conventions, etc, the list grows long with the multitude of legal instruments adopted by states as part of the fight against corruption. Unfortunately, the speed in action has not followed the speed of adoption. The time for 'talking shop' seems to be over. Nations crawling under the yokes of poverty wait for concrete actions such as the fact that the state party shall give priority to its efforts to combat corruption.¹⁹⁶ Binding treaties with non-mandatory, vague and imprecise norms are relatively incapable of keeping pace with evolving patterns of corruption.¹⁹⁷

CONCLUSION AND RECOMMENDATIONS

Conclusion

From the discussion above it is obvious that the problem of CEMAC lies not in the paucity of law and regulatory instruments in the fight against corruption and kindred practices that obstruct development and strong

¹⁹¹ D Flore, *L'Incrimination de la Corruption* (Les dossiers de la Revue de Droit Pénal et de Criminologie, La Charte) 125.

¹⁹² The African Union Convention on Preventing and Combatting Corruption was adopted before the birth of CEMAC on 11 July 2003.

¹⁹³ David Chaikin and Jason Sharman, *Corruption and Money Laundering: A Symbiotic Relationship* (Palgrave 2009) 55. DOI 10.1057/9780230622456.

¹⁹⁴ Rose (n 126) 3.

¹⁹⁵ Chaikin and Sharman (n 193) 31. Chaikin describes the situation created by such powerful anti-corruption legislators with relative transformative power as: 'The depressing verdict that all the conventions, treaties, action plans, and so on are little more than ineffectual window dressing, the plenaries, conferences, and seminars just irrelevant talk shops.'

¹⁹⁶ Martine Boersma, *Corruption, A Violation of Human Rights and a Crime under International Law?* (Cambridge, Intersentia 2012) 111.

¹⁹⁷ Rose (n 126) 4.

economic standing in the sub-region. On the contrary, there is a plethora of legislative instruments, bilateral and multilateral treaties and agreements that proscribe corruption in its entirety. The aims of establishing CEMAC included the encouragement of competitiveness in development among member states, the promotion of economic cooperation and ensuring that corruption and allied practices are hotly pursued. Unfortunately, in the face of the sustainable anti-corruption framework, corruption still spreads with speed and frequency among the member states of CEMAC. What then is the missing link? There is no doubt that the high rate of corruption in Africa in general and among the state parties to CEMAC in particular is the absence of a political will and commitment to see corruption as the biggest enemy to economic independence and stability. A successful fight against corruption involves the strict implementation of anti-corruption laws already in existence. It also requires that member states to CEMAC must embrace the habit of patriotism in the discharge of their duties as public servants.

Recommendations

Corruption is a global policy problem that can no longer be addressed purely through domestic means.¹⁹⁸ A truly regional response involving major policy players is vital to the success of the fight against corruption. It is the opinion of the writers that soft law in terms of mutually agreed, non-legal binding policy recommendations can be adopted to supplement what seems to be 'unreachable' treaty law. In parallel, the additional recommendations below could be suggested:

- political will against corruption;
- radical integration of tax offences into the area of extradition;
- CEMAC constrains anti-corruption efforts through implementation of incentives for its member states; and
- Ethics enforcement in anti-corruption programmes.

¹⁹⁸ Patrycja Szarech-Mason, *The European Union's Fight Against Corruption – The Evolving Policy Towards Member States and Candidate Countries* (Cambridge 2010) 5.