



**UNODC**

United Nations Office on Drugs and Crime

# **Country Review Report of Cameroon**

Review by the Republic of Angola and the former Yugoslav Republic of Macedonia of the implementation by Cameroon of articles 15 – 42 of Chapter III. “Criminalization and law enforcement” and articles 44 – 50 of Chapter IV. “International cooperation” of the United Nations Convention against Corruption for the review cycle 2010 - 2015

## I. Introduction

1. The Conference of the States Parties to the United Nations Convention against Corruption was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

## II. Process

5. The following review of the implementation by Cameroon of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Cameroon, supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Cameroon, Angola and the former Yugoslav Republic of Macedonia, by means of telephone conferences, and e-mail exchanges and involving:

### Angola

- Dr. Claudia Patricia dos Santos Silva Almeida, Head of Technical and Legal Affairs, Office of the Ministry of Justice

### The former Yugoslav Republic of Macedonia

- Ms. Aneta Stanchevska, Assistant Minister for Internal Controls and Professional Standards at the Ministry of Interior;
- Mr. Vladimir Georgiev, State Adviser for Anti-corruption policy at the State Commission for Prevention of Corruption, Ms. Elena Dimovska, Junior Associate for Coordination of Anti-corruption Activities at the Ministry of Justice

### UNODC

- Mr. Oliver Landwehr, Crime Prevention and Criminal Justice Officer, UNODC/DTA/CEB/CSS
- Ms. Tanja Santucci, Crime Prevention and Criminal Justice Officer, UNODC/DTA/CEB/CSS

6. A country visit, agreed to by Cameroon, was conducted from 1 to 3 March 2016. During the country visit, the reviewing experts met with representatives of the government of

Cameroon, specifically including the National Anti-Corruption Commission (CONAC), Ministry of External Relations (Minrex), Police (Délégation Générale à la Sûreté Nationale, DGSN), Cameroonian Employers' Association (Groupement Inter-Patronal du Cameroun, GICAM), Ministry of Defence (MINDEF/SED/GN), National Agency For Financial Investigation (ANIF), Chamber of Commerce (CCIMA), National Anti-Corruption Coalition (CNLCC), the Supreme Court, as well as Cameroonian attorneys, journalists and civil society.

### **III. Executive summary**

#### ***1. Introduction: Overview of the legal and institutional framework of Cameroon in the context of implementation of the United Nations Convention against Corruption***

*The Convention was signed on 10 October, 2003 and ratified by the President of the Republic on 6 February 2006 after adoption by the National Assembly.*

*Article 45 of the Constitution states that the generally accepted rules of international law and international conventions — when they are ratified by a law and enter into force — are an integral part of Cameroon's domestic law and take precedence over contradicting provision of domestic law. Consequently, the Convention became an integral part of Cameroon's domestic law following its ratification. However, the Convention is not above the Constitution in the hierarchy of norms, occupying a rank between ordinary laws and the Constitution.*

*Cameroon is a bilingual country and has a mixed legal system with elements of common law and civil law.*

*The Cameroonian political system is divided into three branches of government, the executive, the legislative and the judicial branches. The executive branch is represented by the President of the Republic and the Government (headed by a Prime Minister). The legislative branch is represented by the National Assembly and the Senate. Judicial power is exercised by the Supreme Court, the courts of appeals and the tribunals.*

*During the country visit, the reviewing experts met with representatives of the government of Cameroon, specifically including the National Anti-Corruption Commission (CONAC), Ministry of External Relations, Police (Délégation Générale à la Sûreté Nationale, DGSN), Cameroonian Employers' Association (Groupement Inter-Patronal du Cameroun, GICAM), Ministry of Defence, National Agency For Financial Investigation (ANIF), Chamber of Commerce (CCIMA), National Anti-Corruption Coalition (CNLCC), the Supreme Court, as well as Cameroonian attorneys, journalists and civil society.*

#### ***2. Chapter III: Criminalization and law enforcement***

*As a general observation regarding the implementation of the chapter, it is noted that the definition of public official in Section 131 of the Penal Code includes most categories of persons covered in article 2 of the Convention. However, while persons exercising public functions, whether continuously or occasionally, are covered, members of parliament, elected and other unpaid officials not employed by the State are not specifically referred to.*

##### ***2.1. Observations on the implementation of the articles under review***

*Bribery and trading in influence (arts. 15, 16, 18 and 21)*

*Sections 134 and 134-1 (Corruption) of the Penal Code (PC) are the main provisions which criminalize active and passive bribery covering in general most of the elements of article 15 of the Convention. While acts of indirect bribery are not specifically mentioned, except in cases where the act falls outside the competence of the person corrupted and was facilitated by his office (Section 134 (2)), the courts have interpreted the provision to include indirect bribery. In addition, it is noted that benefits accruing to third parties are mentioned only in section 134 and not 134-1 of the Penal Code. Moreover, there is an automatic exemption from prosecution for persons who were solicited for bribes and who report the offence to the judicial authorities without rendering assistance in the investigation (Section 134-2 PC). Case statistics on the implementation are not available.*

*Cameroon has criminalized the bribery of foreign public officials and officials of public international organizations in Sections 134 and 134-1, read together with Sections 89 and 131-1.*

*Cameroon has partially criminalized trading in influence in section 161 PC.*

*Cameroon has criminalized passive bribery in the private sector in section 312 PC, as well as false declarations and misleading of contractors by directors, managers of private entities, in section 313 PC.*

*Money-laundering, concealment (arts. 23 and 24)*

*Cameroon has criminalized money-laundering in line with the Convention (art. 1, Regulation No. 02/10). Cameroon follows an all-crimes approach to money-laundering whereby all offences under the laws and regulations of Cameroon constitute predicate offences. For prosecution of money-laundering, the predicate offence should constitute a criminal offence in the country where it was committed (art. 1). Self-laundering is punishable (art. 51, Regulation No. 02/10).*

*There is no statistical data on the number of criminal investigations, prosecutions and convictions.*

*Concealment and continued retention of property are criminalized in article 1, Regulation No. 02/10 and section 324 PC.*

*Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)*

*Cameroon has partially criminalized embezzlement and misappropriation in sections 184, 135, 318 and 319 PC. However, the sections do not cover the full range of embezzlement, misappropriation and other diversion of property or funds for the benefit of a public official or another person or entity. No case law was provided to demonstrate that private property is covered.*

*Cameroon has partially criminalized the abuse of functions in sections 140, 137 and 142 PC, regarding acts that infringe "private" rights or interests. However, the failure to perform an act, or an omission, in violation of law is not explicitly covered.*

*The criminal offence of illicit enrichment has not been established, although a draft bill on anti-corruption contains relevant provisions.*

*Cameroon has criminalized embezzlement of property in the private sector in section 318 PC. The content is limited to theft, breach of trust and fraud but not the full range of embezzlement provided for in article 22. However, section 891 of the Uniform Act on Commercial Companies and Economic Interest Groups covers the misuse of business property or funds for personal gain.*

*Obstruction of justice (art. 25)*

*Cameroon has partially criminalized obstruction in the giving of testimony or the production of evidence in proceedings in sections 164 (2) and 168 read together with 97 (Accessories) PC. However, the cited measures do not fully implement the provisions under review and a relevant provision has been included in the anti-corruption draft bill.*

*The use of violence or threats to improperly influence a public servant is criminalized in section 160 PC. It was confirmed by the authorities that obstruction of law enforcement and judicial officers is a significant concern in Cameroon and that the available protections are inadequate.*

*Liability of legal persons (art. 26)*

*Cameroon has adopted measures providing for the criminal liability of legal persons (Section 74-1 PC) and, in the framework of the fight against money-laundering, articles 46 and 51, Regulation No. 02/10. Moreover, civil and administrative liability provisions are in place.*

*Principal criminal penalties for legal persons include dissolution, temporary or permanent closure of the establishment and fines (Sections 18, 25-1, 25-2 and 25-3 PC); accessory penalties are established in Sections 19, 36 and 74-1 PC. Penalties for legal persons for money-laundering offences are in place (arts. 46, 53 and 54, Regulation No. 02/10). For other crimes, confiscation of property is provided in cases of felonies or misdemeanours (section 35, PC) and administrative penalties may also be imposed, for example the disqualification and suspension of legal persons from public tenders through the procurement process.*

*Participation and attempt (art. 27)*

*Cameroon has adopted legal measures necessary to establish as a criminal offence, in accordance with its national law, the participation in a criminal act in particular for accessories and persons who aid and abet the commission of a crime. The relevant forms of participation are covered in sections 74 and 96 to 99 of PC. The Penal Code defines the meaning of the terms regarding these persons, the manner of participation and execution of the criminal offence. Attempts are covered in section 94 PC. The preparation of an offence is not separately criminalized.*

*Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)*

*Several provisions of the PC set forth the classification of offences depending on their nature or seriousness, scaling values concerned with the offence (section 21 PC), specific range of sanctions for each offence (minimum and maximum), grounds for reduction and relief of forfeitures, aggravating factors and exceptions. There are no sentencing guidelines.*

*The scope of legal immunities and jurisdictional privileges does not appear to pose an undue impediment to the effective investigation and prosecution of cases. Article 14 (6) of the Constitution provides for the immunity of*

members of the National Assembly, which must be lifted before they can be prosecuted. Lifting of immunities is not required for investigative measures to be taken against parliamentarians. The procedure for lifting immunities is not regulated, except by parliamentary procedure when the National Assembly is in session. Article 14 of the Constitution as well as sections 629-634 Code of Criminal Procedure (CPC) provide jurisdictional privileges for senior government officials and certain members of the judiciary.

Cameroon follows the principle of discretionary prosecution. Appeals against non-prosecution decisions are possible, and there have been such cases in corruption matters. While Circulars produced by the Ministry of Justice are in place for the prosecution, there are no measures in place to ensure that there is no abuse of prosecutorial discretion.

The measures imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings (sections 218 and 222 CPC).

The conditions for granting conditional release are partly regulated. Section 693 CPC establishes the conditions for granting conditional release but does not mention the gravity of the offences concerned.

Public officers can be suspended for up to three months pending the completion of investigative measures. However, a removal from duty during the investigation is not provided for.

Disqualification from the public service, when convicted of criminal offences, is provided for in sections 30, 31 and 184 (4) PC. The cited measures on removal and exclusion from the public service also apply to companies owned wholly or partially by the State.

The reintegration of persons convicted of corruption offences into society is supported by the Cameroonian correctional authorities through various services and activities. However, a comprehensive prisoner reintegration policy or programme is not established.

Sections 90 et seq. of the Penal Code contain provisions on mitigating circumstances. Section 359 of the CPC stipulates that if the accused pleads guilty, it may be taken into consideration as a mitigating circumstance. However, there is no plea bargaining and it is not possible to grant full immunity from prosecution. Nevertheless, in practice, if CONAC investigates a corruption offence, it may not send it for prosecution if the offender cooperates.

*Protection of witnesses and reporting persons (arts. 32 and 33)*

Cameroon has not implemented the provisions on the protection of witnesses and reporting persons. However, article 3 (3) of the CONAC Decree provides for the anonymity of reporting persons and thereby affords some protection to them.

Cameroon criminal law takes into consideration the interests of the victim, in particular by providing for victims to join the public action as "partie civile", sections 157, 385 CPC.

*Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)*

Sections 35, 184 (4) PC and article 54 of Regulation No. 02/10 partially address the requirements of article 31, paragraph 1, of the Convention. Section 35 of the PC provides for discretionary confiscation for any felony or misdemeanour, thus including crimes of corruption. Confiscation under

*section 35 is limited to property “belonging to the offender” and therefore posing a limitation to the scope of confiscation. Furthermore, confiscation is provided for instrumentalities of crime without including those “destined for use” in the commission of offences.*

*Value-based confiscation is not provided except for money-laundering offences under article 54 of Regulation No. 02/10.*

*Cameroon has adopted measures that allow for the identification, tracing, freezing or seizure of property for purposes of eventual confiscation (sections 92-100 and 177-179 of the CPC, and article 43 of Regulation No. 02/10).*

*There is no comprehensive regulatory framework in place governing the administration of seized, frozen and confiscated assets, in particular moveable assets, or for their disposition. Moreover, Cameroon has not implemented paragraphs 4 to 6 of article 31.*

*Article 54 of Regulation No. 02/10 provides an evidentiary presumption in regard to the origin of the alleged proceeds derived from drug offences, organized crime, and money-laundering.*

*Apart from Section 35 PC, there are no measures to specifically provide protection for the rights of bona fide third parties.*

*No examples, or statistics were provided in order to assess the effectiveness of the domestic confiscation regime.*

*Sections 92 et seq. CPC allow the judicial police to undertake searches and seizures. Article 8 of Bank Secrecy Act, Law No. 2003/004 of April 21, 2003, stipulates that bank secrecy may not be claimed as an obstacle to criminal prosecution. CONAC has the powers to lift bank secrecy without the need for a court order under the CONAC Decree (art. 20). Article 31 of the CEMAC AML/CFT Regulation gives ANIF the powers to access bank documents. There have been no obstacles in practice to the ability of the relevant agencies to obtain such records, which are accessed routinely in the course of investigations.*

*Statute of limitations; criminal record (arts. 29 and 41)*

*In Cameroon, the limitations periods are regulated by the CPC. For corruption offences classified as misdemeanours (in accordance with section 21 PC), the period of prescription is generally three years, 10 years for felonies, calculated from the day following the day of commission of the misdemeanour (section 65 CPC). Sections 66 to 68 CPC contain provisions on interruption and suspension of the statute of limitations, which implement this requirement as established in the Convention.*

*A previous conviction abroad may be taken into account by the competent court when sentencing (section 15 PC).*

*Jurisdiction (art. 42)*

*Cameroon has established territorial jurisdiction and flag State jurisdiction (section 7 (1) PC). Cameroon applies the active personality principle (section 10 (1) PC) but has not implemented the passive personality principle. Extraterritorial jurisdiction has been established for money-laundering (section 699 (f) CPC), as well as for prosecution in lieu of extradition, section 695 (1) (a) CPC.*

*Consequences of acts of corruption; compensation for damage (arts. 34 and 35)*

*The Public Procurement Code contains provisions applying the general principle of law *fraus omnia corrumpit* (fraud negates everything) in article 109. Section 34 PC allows the courts to close down businesses that were used for the commission of an offence.*

*Sections 1382 and seq. of the Civil Code provide in general terms for compensation for damages caused by others. Section 26-1 of the Penal Code provides for reparation as a criminal penalty. Also, section 157 of the CPC establishes the possibility for any victim to claim civil damages in a penal proceeding.*

*Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)*

*Cameroon has a specialized anti-corruption agency, the National Anti-Corruption Commission (usually known by its French acronym, CONAC). It has investigation powers but no prosecutorial powers. CONAC can investigate cases *ex officio*. It is endowed with financial autonomy to safeguard its independence. CONAC submits its annual report to the President and publishes it on its website. With the support of UNDP, CONAC has developed and monitors an anti-corruption strategy. CONAC has no regional presence.*

*The Commission works with the police and gendarmerie who also have the mandate to investigate cases of corruption. The police also have a specialized unit for economic and financial crimes. To enhance cooperation, gendarmerie and police officers work within CONAC. Nevertheless, it is possible that a police case can reach the courts without knowledge of CONAC.*

*The Financial Intelligence Unit (FIU) of Cameroon was established by Decree*

*No. 2005/187 of 31 May 2005, on the organization and functioning of the National Agency of Financial Investigations (usually known by its French acronym, ANIF). According to article 2 of the Decree, ANIF is an administrative type FIU and is endowed with financial autonomy (art. 16), as well as decision-making authority in relevant matters of its competence. ANIF reports are sent directly to the prosecution, which has an obligation to act on the basis of such reports. ANIF has been a member of the Egmont Group of FIUs since 2010.*

*State authorities do not need a specific legal basis to cooperate with each other. Moreover, CONAC has memorandums of understanding with ANIF, and the Public Contracts Regulation board but not with the police and gendarmerie. Reporting obligations exist in the CPC and the AML/CFT Regulation.*

## **2.2. Successes and good practices**

- *Extension of the statute of limitations period in the case of prosecution for several related offences. The limitation period prescribed for the committed offence with the most severe punishment shall be considered.*

## **2.3. Challenges in implementation**

*It is recommended that Cameroon:*

- *Continue to strengthen data collection systems to identify and track corruption-related cases and consider publishing this information in annual reports and on the CONAC website.*

- *Specify the legislation to ensure that all persons listed in article 2 of the Convention are covered by the definition of public official, including members of parliament, and elected and other unpaid officials not employed by the State.*
- *Criminalize acts of indirect bribery and fully criminalize benefits accruing to third parties for all bribery offences (art. 15).*
- *Align the exemption from prosecution for persons who were solicited for bribes and who report the offence to the judicial authorities without rendering assistance in the investigation (Section 134-2 PC) with the requirements in article 37.*
- *Expand the offence of misappropriation in line with the Convention (art. 17).*
- *Expand legislation to address offering or giving of an undue advantage to procure influence, and specifically address the acts of indirect trading in influence, as well as benefits accruing to third parties for purposes of active trading in influence (art. 18).*
- *Consider expanding legislation to adopt an offence of abuse of functions more closely aligned with the Convention (art. 19).*
- *Consider adopting an offence of illicit enrichment and taking measures to implement an effective asset declaration system (art. 20).*
- *Consider establishing a comprehensive offence of bribery in the private sector (art. 21).*
- *Consider establishing a comprehensive offence of embezzlement in the private sector (art. 22).*
- *Amend legislation to criminalize the obstruction of or interference in the giving of testimony or the production of evidence in proceedings (art. 25 (a)).*
- *Emphasize the effective enforcement of existing protection measures on obstruction of justice or law enforcement officials (art. 25 (b)).*
- *Ensure that penalties against legal persons for offences under the Convention are effective, proportionate and dissuasive. Attention should also be given to the effective enforcement of penalties for corruption-related offences against legal persons (art. 26).*
- *Undertake legislative action to review and revise the limitations periods in line with the Convention and the observations in the full country report (art. 29).*
- *Consider adopting sentencing guidelines to encourage consistency in sentencing throughout the courts (art.30 (1)).*
- *Consider regulating in a more comprehensive manner the procedures for lifting immunities in appropriate cases (art. 30 (2)).*
- *Adopt measures to ensure that discretionary legal powers relating to the prosecution of corruption offences are exercised to maximize the effectiveness of law enforcement and with due regard to the need for deterrence (art. 30 (3)).*
- *Consider stipulating conditions for granting and revoking conditional release in a precise manner, besides the minimum eligibility period, bearing in mind the gravity of the offence (art. 30 (5)).*
- *Amend legislation with a view to eliminating the permissive nature of confiscation as an additional discretionary penalty (art. 31).*

- Amend legislation to expand the scope of property subject to confiscation to include all proceeds derived from Convention offences, as well as instrumentalities “destined for use” in the commission of offences, and provide for value-based confiscation (art. 31).
- Adopt measures to strengthen the administration and disposition of assets and consider, in particular, establishing a dedicated asset management function (art. 31 (3)).
- Align legislation with paragraphs 4 to 6, and adopt measures to protect bona fide third parties (art. 31 (4)-(6); art. 31 (9)).
- Amend data gathering systems to allow for the collection and tracking of statistics on implementation (art. 31).
- Take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses, experts and victims and consider entering into agreements or arrangements with other States for the relocation of such persons (art. 32); expand such protections to cooperating offenders (art. 37(4)).
- Consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for reporting persons (art. 33).
- Explicitly provide for the possibility to void or rescind a tender vitiated by corruption in the Procurement Code (art. 34).
- Consider recruiting staff for CONAC by public competitions (concours) rather than co-optation (art. 36).
- Take further measures to encourage offenders to cooperate with law enforcement authorities, including the possibility of granting immunity from prosecution and consider entering into relevant agreements with other States parties (art. 37).
- Consider establishing the passive personality principle (art. 42(2)(a) and establish consultation procedures in line with art. 42(5)).

#### **2.4. Technical assistance needs identified to improve implementation of the Convention**

Cameroon indicated it needed technical for the implementation of article 32.

### **3. Chapter IV: International cooperation**

#### **3.1. Observations on the implementation of the articles under review**

Cameroon does not have a general extradition act or mutual legal assistance act but relies on the extradition provisions in the CPC; on several bilateral treaties; and on multilateral agreements like the General Convention on Judicial Cooperation signed under the auspices of the former African and Malagasy Common Organization (the “Tananarive Convention”) and the Agreement on Judicial Cooperation between the Member States of the Economic and Monetary Community of Central Africa (CEMAC).

Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)

Cameroon has bilateral extradition treaties with three countries (Mali, Democratic Republic of the Congo and France) and has signed a number of multilateral agreements on this subject: the General Convention on Judicial Cooperation (OCAM); the Extradition Accord of the Economic and Monetary Community of Central Africa (CEMAC); and the London Scheme for extradition within the Commonwealth. Domestically, extradition is regulated in the CPC (sections 635-675).

Dual criminality is required and the CPC (section 642 (1) (a)) provides that a minimum sentence of not less than two years of imprisonment must be imposed to allow for extradition.

The extradition procedure is a mixed judicial-executive procedure governed by sections 646 ff. CPC. The extradition decision is made by the Council Chamber of the Court of Appeal. If the Chamber grants the extradition request, the Prosecutor General refers the case to the Minister of Justice for extradition.

Cameroon does not allow "accessory" extradition, i.e. extradition for connected offences, as laid down in article 44, paragraph 3, of the Convention. Corruption offences are deemed to be extraditable, due to the direct application of the Convention. However, the minimum penalty requirement of not less than two years is very high and few Convention offences would carry such penalty outside Cameroon.

Cameroon does not make extradition conditional on the existence of a treaty, applying the principle of reciprocity as a general rule and allowing the use of the Convention as a legal basis.

Conditions of extradition are regulated in sections 642-645 CPC. Grounds for refusal are given in section 649 CPC. Even though the procedure under these provisions is cumbersome, a simplified procedure can be applied if the person to be extradited gives his consent according to section 659 (1) CPC. The public prosecutor's office has jurisdiction to order the detention of a person sought by foreign authorities.

Cameroon applies the principle of international law to extradite or prosecute (*aut dedere aut judicare*). No Cameroonian citizen may be extradited. However, jurisdiction to prosecute citizens in lieu of extradition is based on the active personality principle. Moreover, section 2 PC provides for the primacy of international treaties. Therefore, given that Cameroon does not have mandatory prosecution, this obligation would stem directly from the Convention.

According to the Preamble to the Constitution and the CPC (sections 642 and 645), extradition is not permissible if that could be prejudicial to the rights of the defence of the accused person, or if the request was based on political, religious or racial reasons, or based on the nationality of the person concerned. In Cameroonian law, tax offences are common-law crimes and can therefore be the basis for extradition. However, some bilateral agreements signed on judicial cooperation make tax offences extraditable only under certain circumstances, which could be in conflict with Convention provisions.

While there is no express legislation regulating the provision of information to a requesting State Party in case of refusal of extradition, the provision contained in the Convention is directly applicable.

Cameroon has not yet entered into agreements on the transfer of sentenced persons or enabled any specific legislation on the transfer of criminal proceedings.

*Mutual legal assistance (art. 46)*

*The mutual legal assistance provisions of the Convention are directly applicable by virtue of Article 45 of the Constitution. In addition, Cameroon has concluded three bilateral treaties (with Mali, the Democratic Republic of the Congo and France) and four multilateral agreements. In case no agreement or treaty exists, requests for mutual legal assistance are fulfilled under the principle of reciprocity.*

*Dual criminality is generally required for rendering mutual legal assistance, even where non-coercive measures are involved. Coercive measures could be carried out in direct application of the Convention and the CPC. Cameroonian penal law recognizes the criminal liability of legal entities. Further, mutual legal assistance may be rendered for relevant offences and is expressly covered by the laws on money-laundering.*

*The whole spectrum of mutual legal assistance measures mentioned in article 46 (3) could be carried out in direct application of the Convention, domestic legislation (CPC) and under provisions of some multilateral agreements signed, like the CEMAC AML/CFT Regulation. ANIF is able to spontaneously share information with other equivalent agencies.*

*Cameroon can provide for the confidentiality of information in accordance with the principles governing international relations and in direct application of the Convention. The Bank Secrecy Act does not establish bank secrecy as a ground of refusal to render mutual legal assistance and it cannot be invoked against judicial authorities.*

*The transfer of a person being detained or serving a sentence for the purpose of testimony and safe conduct is possible in direct application of the Convention. No express domestic legislation regulates these provisions apart from the CPC (sections 641 (4) and 645). Cameroonian legislation permits the hearing of individuals to take place by videoconference.*

*The Ministry of Justice of the Republic of Cameroon serves as the central authority tasked with the responsibility and power to receive requests for mutual legal assistance and either execute them or forward them to competent authorities for execution. The Ministry of Foreign Affairs is also usually involved in receiving and sending requests for mutual legal assistance. Requests and documentation can be submitted either in English or French. By virtue of the direct application of the Convention, the form and contents of requests for mutual legal assistance are those specified in the Convention. Requests for mutual legal assistance may only be executed in accordance with positive law in force in Cameroon. However, to the extent not contrary to the domestic law, requests can be executed in accordance with the procedures specified in the request. The rule of specialty and confidentiality is observed in practice in direct application of the Convention.*

*The CEMAC AML/CFT Regulation (art. 58) provides for grounds for refusal of a request for mutual legal assistance. Outside the field of AML/CFT, in the absence of domestic legislation, the Convention would be applied directly. Fiscal matters are not listed as ground for refusal. If mutual legal assistance is not granted, the requesting State will be informed and the grounds for refusal will be indicated in direct application of the provisions of the United Nations Convention against Corruption. Assistance may be postponed on the ground that it interferes with an ongoing investigation.*

*Ordinary costs related to rendering mutual legal assistance are borne by Cameroon. Documents in the public domain and confidential documents can be provided upon request, under section 641 (2) CPC by analogy.*

*Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)*

*Cameroon considers the Convention as the basis for mutual law enforcement cooperation, on the understanding that it constitutes an integral element of its legal system.*

*CONAC has signed a Cooperation Protocol with the Central Service for the Prevention of Corruption of France, for exchanges in terms of training and information sharing. There are French liaison police officers based in Cameroon.*

*CONAC has also signed a Cooperation Protocol with the Administrative Control Authority of Egypt (ACA-Egypt) to exchange experts and training as well as share information in corruption related issues.*

*Contacts have been also established with the Congolese Anti-corruption Agency. Cameroon has been a member of the Agreement on Cooperation in Criminal Police Matters between the States of Central Africa since 2015.*

*Alongside the other ten members of the Economic Community of Central African States, Cameroon, through CONAC, set up in Libreville, Gabon, on December 11, 2015, the Network of Central African Anti-Corruption Agencies (usually known by its French name "Réseau des Institutions nationales Anti-Corruption d'Afrique centrale (RINAC)").*

*Cameroon is a member of INTERPOL and hosts the organization's Bureau for Central Africa. The INTERPOL National Central Bureau is located within the police, which has specialized liaison officers for INTERPOL. ANIF has been a full member of the Egmont Group since 2010. ANIF has signed a large number of bilateral agreements with other FIUs, but it does not even require Memoranda of Understanding to cooperate with its counterparts. Between CEMAC members, information is exchanged spontaneously. In addition, a multilateral agreement creating the "FIU Conference of Central Africa" has been negotiated with other Central African countries.*

*Cameroon has carried out joint operations on the basis of the 2015 Agreement on Cooperation in Criminal Police Matters between the States of Central Africa, specifically with Chad and the Central African Republic.*

*Section 92 (3) CPC and article 49 of the Cyber-crime Law regulate electronic surveillance but not other special investigative techniques. However, the admissibility in court of evidence derived from special investigative techniques is not limited, as section 308 CPC provides for the liberty of proof from any source. Cameroon has not concluded agreements on the use of special investigative techniques.*

### **3.2. Successes and good practices**

*Overall, the following successes and good practices in implementing chapter IV of the Convention are highlighted:*

- Cameroon does not make extradition conditional on the existence of a treaty, applies the principle of reciprocity and allows the use of the Convention as a legal basis.*

### **3.3. Challenges in implementation**

*With regard to international cooperation, it is recommended that Cameroon:*

- *Lower the minimum penalty requirement or make it refer to the upper limit of the punishment, or to expressly make all Convention offences extraditable (art. 44, para. 1).*
- *Consider establishing exceptions to the dual criminality requirement for extradition and mutual legal assistance requests (art. 44, para. 2, and art. 46, para. 1).*
- *Consider granting extradition if the request for extradition includes several separate offences, at least one of which is extraditable under the article and some of which are not extraditable by reason of their period of imprisonment, but are related to offences established in accordance with the Convention (art. 44, para. 3).*
- *Consider giving primacy to the text of the Convention to avoid conflicts with prior bilateral judicial agreements (art. 44, para. 16).*
- *Consider entering into agreements on the transfer of sentenced persons (art. 45).*
- *Consider clarifying the national legislation of rendering mutual legal assistance with regard to legal persons (art. 46, para. 2).*
- *Ensure that mutual legal assistance that does not involve coercive action can be provided even in the absence of dual criminality (art. 46, para. 9).*
- *Monitor the length for carrying out requests for mutual legal assistance and take action in case it is considered unsatisfactory (art. 46, para. 24).*
- *Consider implementing the appropriate legislation that would allow the transfer of criminal proceedings when deemed necessary (art. 47).*
- *Consider explicitly legislating on the use and admissibility in court of special investigative techniques (art. 50, para. 1).*
- *Consider the possibility of concluding agreements on the use of special investigative techniques (art. 50, paras. 2-4).*

#### **3.4. Technical assistance needs identified to improve implementation of the Convention**

*Articles 48, 49 and 50: Cameroon expressed the need for technological assistance and capacity-building.*

## **IV. Implementation of the Convention**

### **A. Ratification of the Convention**

7. The United Nations Convention against Corruption (Convention) was signed on 10 October, 2003, and ratified by the President of the Republic on 6 February, 2006 after adoption by the National Assembly.

### **B. Legal system of Cameroon**

8. Article 45 of the Constitution states that the generally accepted rules of international law and international conventions – when they are ratified by a law and enter in force – are an integral part of Cameroon’s domestic law and take precedence over any other contradicting provision of domestic law. Consequently, the Convention became an integral part of Cameroon’s domestic law following its ratification on 6 February, 2010, in accordance with Article 68 of the Convention.
9. The Convention holds a high rank among Cameroon’s legislative instruments, just below the Constitution but above its laws. Therefore, the provisions of the Convention take precedence over any other contradicting provision of domestic law.
10. The Cameroonian political system is divided into three branches of government, the executive, the legislative and the judicial branches. The executive branch is represented by the President of the Republic and the Government (headed by a Prime Minister). The legislative branch is represented by the National Assembly and the Senate. Judicial power is exercised by the Supreme Court, courts of appeals and the tribunals.

#### Evaluation of the effectiveness of Anti-corruption measures

11. Actions in the fight against corruption have been evaluated in Cameroon several times, although there has not been a single, exhaustive evaluation. For example:
  - Evaluation contained in the document on the National Strategy to Fight Corruption (French acronym SNLCC);
  - Evaluation of Cameroon’s efforts in the fight against money laundering conducted by the World Bank in 2008;
  - Evaluation of law enforcement units in the fight against corruption by the AGORA/CHOC Cabinet in 2009;
  - Evaluation by law enforcement units of focal points in the fight against corruption in central and decentralized structures
  - On-going evaluation of law enforcement units by the CONAC.

## C. Implementation of selected articles

### Chapter III. Criminalization and law enforcement

#### Article 15 Bribery of national public officials

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;*

*(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

12. Cameroon referred to the following provisions.

Sections 134 and 134-1 (Corruption) of the Penal Code.

The definition of public official appears in Section 131 of the Penal Code.

##### *Section 131: Definition of public Servant*

*For the purpose 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 of 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.*

##### *Section 134: Active Corruption.*

*1) Any national, foreign or international civil servant or public employee who, for himself or for a third party, solicits, accepts or receives any offer, promise, gift or present in order to perform, refrain from performing or postpone any act of his office shall be punished with imprisonment of from 5 (five) to 10 (ten) years or with fine of from CFAF 200 000 (two hundred thousand) to CFAF 2 000 000 –two million).*

*2) The penalty provided for in Subsection 1 above shall be imprisonment for from one to 5 (five) years and with fine of from CFAF 100 000 (one hundred thousand) to CFAF 1 000 000 (one million) where the act is not part of the duties of the corrupt person but has been facilitated by his position.*

*3) Any national or international public official who solicits and accepts any retribution in kind or in cash for himself or a third party, in remuneration for an act that has or has not been performed, shall be punished with the penalties provided for under Sub-section 2 above.*

*4) Penalties provided for under Subsection 1,2 and 3 shall be doubled where the offender is an Judicial or Legal Officer, a Judicial Police Officer, an employee of the institution in charge of the fight against corruption, the head of an administrative unit or any other sworn public servant or employee.*

##### *Section 134-1: Passive corruption*

*1) Whoever makes promises, offers, gifts and presents or yields to requests liable to result in corruption in order to obtain either the performance, postponement or abstention from an act or one of the favours or benefits defined in Section 134 above, shall be punished in like manner as under Section 134 (1) above, whether corruption produced its effects or not.*

*2) Whoever makes gifts or presents or yields to requests for remuneration for an act performed or deliberately not performed shall be punished with penalties provided for in Section 134 (2) above.*

### **ARTICLE 134-2.- Exemption des poursuites**

**Pour l'application des articles 134 et 134-1 ci-dessus, la personne sollicitée est exempte de poursuites si elle donne connaissance des faits de corruption aux autorités judiciaires.**

#### **Cases and statistics**

13. It was explained that statistics on implementation are not available. Cases in Cameroon are listed but not categorized according to offences established under the Convention.

#### **(b) Observations on the implementation of the article**

14. The definition of public official appears in Section 131 of the Penal Code of Cameroon. As defined, the term “public servant” in general includes most categories of persons covered in article 2 of the Convention. It was clarified during the country visit that this definition should include members of parliament, elected and other unpaid officials among the group of persons exercising a public mandate; however, there was some ambiguity as this interpretation had not been tested by the courts. While it was explained that members of parliament had been arrested and were serving prison terms at the time of review, it is nonetheless recommended that Cameroon clarify the scope of public officials subject to the offences established under the Convention to ensure that all persons listed in article 2 of the Convention are covered, including members of parliament, elected and other unpaid officials not employed by the State.

15. With respect to article 15 of the Convention, Cameroon cited Sections 134 and 134-1 of the Penal Code. The cited sections in general cover most of the elements of article 15 of the Convention. While acts of indirect bribery are not specifically mentioned, except in cases where the act falls outside the competence of the person corrupted and was facilitated by his office (Section 134 (2)), the courts have interpreted the provision to include indirect bribery. In addition, it is noted that benefits accruing to third parties are mentioned only in section 134 and not 134-1 of the Penal Code. Section 134 refers to acts of bribery “for the person himself or for a third party”. By contrast, the third party benefit is not covered in section 134-1. Section 134-1 does refer to 134, but only for the object of the bribe, which is the same as in section 134 (“favours or benefits defined in Section 134”). However, there is no reference to the recipient of the bribe (third party beneficiaries). Moreover, there is an automatic exemption from prosecution for persons who are solicited for bribes and who report the offence to the judicial authorities without rendering assistance in the investigation (Section 134-2 PC). It is recommended that Cameroon undertake concrete legislative action to specify its legislation in this regard.

16. Regarding the scope of the undue advantage, it was explained that this was not specified in the legislative texts but that there have been numerous cases applying the concept to various advantages, gifts, and benefits, whether material or immaterial, tangible or intangible, including services and other favours. See Section 134 on undue advantage.
17. With regard to the implementation of the various articles in chapter III of the Convention, it is recommended that Cameroon continue to strengthen data collection systems to identify and track corruption-related cases that are investigated, prosecuted and adjudicated across agencies, and consider publishing this information regularly in annual reports and on the CONAC website. Cameroon could also consider the identification of technical assistance needs in this context.

### **Article 16 Bribery of foreign public officials and officials of public international organizations**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.*

*2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

18. The Penal Code of Cameroon criminalizes the bribery of foreign public officials and officials of public international organizations in Sections 134 and 134-1, read together with Sections 89 and 131.

Sections 134, 134-1 and 131 of the Penal Code (quoted above)

*Section 89 of the Penal Code (Public Servants)*

*1) The status of an official, a public officer or an official in charge of a public service is an aggravating circumstance of criminal responsibility against those who, except where the law specifically regulates the penalties for crimes and the offences committed by them, were guilty of other crimes or offences which they were charged with preventing or repressing.*

*2) The penalty shall then be increased under the conditions laid down in the preceding article.*

#### **(b) Observations on the implementation of the article**

19. Cameroon has criminalized the bribery of foreign public officials and officials of public international organizations in line with the Convention.

## **Article 17 Embezzlement, misappropriation or other diversion of property by a public official**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

#### **20. Cameroon referred to the following provisions of the Penal Code.**

##### *Section 135: Interest in Grant*

- 1) *Any public servant or government employee who takes or accepts any interest, direct or indirect*
  - a) *In any grant, contract or selection of tenders subject to his opinion or which he supervised, controlled, administered or drew up; or*
  - b) *In any private concern, cooperative or corporation in which the State has shares, in any authority or concession subject to his supervision or control ; or*
  - c) *In contracts or agreements signed on behalf of the State or a local authority with a natural person or corporate body; or*
  - d) *In any business for which it is his duty to authorize payment or liquidation; shall be punished with imprisonment for from*
    - 1) *(one) to 5 (five) years and with fine of from CFAF 200 000 (two hundred thousand) to CFAF 2 000 000 (two million).*
    - 2) *The provisions of this Section shall be applicable to former public servants as defined in Section 131 of this Code who, within 5 (five) years from cessation of duties as a result of resignation, dismissal, leave, placement on reserve or retirement or for any other reason having any kind of interest in any grant, operation or concern mentioned above and previously subject to their supervision, control and administration or for whose payment or liquidation they were responsible.*

##### *Section 184: Misappropriation of Public Property*

- 1) *Whoever, by whatever means, fraudulently takes or keeps any property, movables or immovables belonging to, destined or entrusted to the State, cooperative, council or public establishment under the supervision of the State or in which the State directly or indirectly holds the majority of the shares shall be punished:*
  - a) *Where the value of the property exceeds CFAF 500 000 (five hundred thousand) francs with imprisonment for life;*
  - b) *Where the value of the property is above CFAF 100 000 (five hundred ... thousand) but below or equal to CFAF 50 000 (five hundred) thousand, with imprisonment of from 15 (fifteen) to 20 (twenty) years;*
  - c) *Where the value of the property is less than or equal to CFAF 100 000 (one hundred thousand) with imprisonment for from 5 (five) to 10 (ten) years and with fine of from CFAF 50 000 (fifty) to CFAF 500 000 (five hundred thousand).*
- 2) *The penalties provided in subsection 1 above may not be reduced by mitigating circumstances respectively below 10 (ten), 5 (five) or 2 (two) years and a suspended sentence may not be granted.*
- 3) *Where Section 87(2) of this Code is applicable, the minimum punishment may be 5 (five) years, 2 (two) years and 1 (one) year and execution may not be suspended except in case of diminished responsibility of infancy.*
- 4) *Confiscation under Section 35 of this Code shall be ordered in every case and the forfeitures described in Section 30 shall be imposed for from 5 (five) to 10 (ten) years.*
- 5) *Publication of the judgment shall be ordered.*
- 6) *This Section shall not apply to misappropriation and receiving of military property covered by the military justice codes.*

##### *Section 318: Theft, Misappropriation, False Pretences*

- 1) *Whoever causes loss to another:*
  - a) *by theft, that is by removing his property; or*

b) by misappropriation that is by destruction, waste or conversion of any property capable of being removed entrusted to him for the purpose of custody, return, accounting or any particular manner of dealing.

*Provided that this paragraph shall apply neither to money loan nor to a consumer goods loan ;*

c) false pretence, that is by influencing him deceitfully by tricks or by misrepresentation or concealment of any matter of fact; shall be punished with imprisonment for from 5 (five) to 10 (ten) years and with fine of from CFAF 100 000 (one hundred thousand) to CFAF 1 000 000 (one million).

2) The Court may in addition impose the forfeitures described in Section 30 of this Code.

#### *Section 319: Special Thefts and Misappropriation*

*The penalties provided for in Section 318 above shall apply to:*

- 1) *The unauthorized appropriation of any generated energy; and*
- 2) *The unauthorized use of any property, without the intention to deprive the owner of it; and*
- 3) *The taking of lost property; and*
- 4) *The taking or misappropriation by a debtor of his own property charged with the debt.*

#### *Section 321: Aggravated Misappropriation and False Pretences.*

*The penalties prescribed by section 318 shall be doubled for misappropriation or false pretences committed:*

- a) *By counsel or by notary, public auctioneer, bailiff, process server or business agent;*
- b) *By an employee or employer against his employer or employee;*
- c) *By an offender advertising or who has advertising or who has advertised publicly.*

### **Cases**

*Public Prosecutor, State of Cameroon (MINFOPRA) vs. Benjamin Hamboa (Case n° 078/SSP/2013 of 17 May 2013).* The defendant was convicted by the Special Criminal Court under section 184(1)(a) of the Penal Code for damages to the State in excess of CFA 500,000. He was sentenced to 15 years' imprisonment and payment of damages.

*Public Prosecutor, State of Cameroon (Minister of Health) vs. Hervé Onambele Ombga (Case n° 014/SSP/2014).* The defendant was charged with misappropriation of the sum of CFA 55,223,604.

*Public Prosecutor, Yen Eyoun Lydienne-Entitled person of Engoulou Henri, Ngwem Honore vs. State of Cameroon (MINFI) (Case n°033/SSP/2014).* The court, inter alia, convicted the accused YEN EYOUM LYDIENNE and NGWEM HONORE of embezzlement of public funds and complicity in the misappropriation of public funds, as provided in sections 74, 97 and 184 of the Penal Code. The court sentenced NGWEM HONORE to life imprisonment and YEN EYOUM LYDIENNE to twenty-five years' imprisonment.

*Public Prosecutor, State of Cameroon (MINFI) vs. Albert Pagbe Ndouga (Case n° 021/SSP/2012 of 30 November 2012).* The court, inter alia, convicted the accused Albert Pagbe Ndouga of misappropriating public funds and attempting to misappropriate public funds under sections 74, 94 and 184(1)(a) of the Penal Code as primary offender, and sentenced him to fifteen years' imprisonment. The court further applied the forfeitures under section 30 of the Penal Code and ordered the publication of the judgment in the daily national newspaper. The defendant was ordered to pay damages in the sum of CFA 456,000,000 and liquidated damages of CFA 23,259,992.

*Public Prosecutor vs. Haman Adama and 19 others (Case n° 014/CCI/SSP/CS/2013).* The defendant Haman Adama and others were charged with embezzlement of public funds in the amount of CFA 1,230,390,000 and complicity to embezzlement under sections 74, 96 and 184(1)(a) of the Penal Code.

*State of Cameroon (Minister of Finance) vs. Pascale Ntet Mireille and others (Case n° 002/RG-TCS/2016).* The defendants were charged with complicity to embezzlement of public funds.

*State of Cameroon (Minister of Finance) vs. Theodore Gilles Epopa and others (Case n°*

038/RG-TCS/2016). The defendants were charged with complicity to embezzlement of public funds.

**(b) Observations on the implementation of the article**

21. Article 17 requires the establishment of the offence of embezzlement, misappropriation or other diversion of property by a public official. The offence must cover instances where these acts are for the benefit of the public official or another person or entity. The items of value include any property, public or private funds or securities or any other thing of value. For the purposes of the Convention, “property” means “assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets” (art. 2, subparagraph(d)).
22. According to the authorities in Cameroon, the primary statute is section 184 of the Penal Code (“Misappropriation of Public property”). In addition to imprisonment, section 184 paragraph 4 imposes confiscation in every case, under section 35 of the Penal Code, and the publication of the judgment (paragraph 5). Section 184 does not apply to misappropriation and receiving of military property covered by the Military Justice Code.
23. With respect to the covered acts, section 184 of the Penal Code is limited to acts of taking or dishonestly keeping property, and does not specifically cover the embezzlement or other diversion of property. In addition, acts of misappropriation for the benefit of third parties are not mentioned.
24. Further, section 184 addresses the misappropriation of public property. While no case law was provided by the authorities to demonstrate that also private property is covered under the cited section, Cameroon referred to section 891 of the OHADA (Organisation pour l’harmonisation en Afrique de droit des affaires) Uniform Act relating to commercial companies and economic interest group coupled with section 324 of the PC (quoted under article 24 below).
25. In addition, the offences in sections 135, as well as 318 and 319 do not cover all elements of article 17 of the Convention. While theft, breach of trust and fraud address certain aspects of the article under review, they do not cover the full range of embezzlement, misappropriation and other diversion of funds for the benefit of a public official or another person or entity.
26. Cameroon is recommended to undertake concrete legislative action to expand the offence of misappropriation in the Penal Code (section 184) to include acts of embezzlement and diversion of property; to cover the misappropriation of property for the benefit of another person or entity; and to ensure unambiguously that all kinds of property listed in article 17, namely “any property, public or private funds or securities or any other thing of value entrusted to the public official” are covered.
27. No statistics or examples of implementation were provided.

**Article 18 Trading in influence**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

(a) *The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;*

(b) *The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.*

**(a) Summary of information relevant to reviewing the implementation of the article**

28. Cameroon cited the following provision of the Penal Code.

*Section 161: Procuring influence*

- 1) *Whoever by assault or threat or by gift or promise corrupts a person having any influence, real supposed, with interest to procure any advantage from any public authority, shall be punished in like manner as under Section 160.*
- 2) *Any public servant or public employee who for himself or a third party solicits, receive or accepts any offer, promise or gift to procure any advantage from any public authority or body placed under the control of the public authority, any contract, operation or other benefit arising from agreements concluded with public authority or a body placed under the control of the public authority and in this way taking undue advantage of the real or supposed influence that his status or office has conferred upon him shall be punished in like manner as under Saction 160 of this Code.*

**(b) Observations on the implementation of the article**

29. Article 18 of the Convention is non-mandatory and refers to trading in influence. The key differentiation from bribery is that, for purposes of trading in influence, the undue advantage or bribe must be linked to the official's influence over an administration or public authority of the State. However, the undue advantage does not have to be given immediately or directly to a public official of the State. It may be promised, offered or given directly or indirectly. A gift, concession or other advantage may be given to some other person, such as a relative or political organization.

30. Cameroon cited section 161 of the Penal Code, which partially covers the elements of article 18 of the Convention. While section 161 (1) covers promises and gifts to procure influence, the offer or giving of an undue advantage for this purpose are not covered. In addition, acts of indirect trading in influence are not specifically mentioned. Benefits accruing to third parties are only covered in respect of the passive version of the offence (section 161 (2)), but not for purposes of active trading in influence. It is recommended that Cameroon undertake concrete legislative action to expand its legislation to address these issues.

31. No statistics or examples of implementation were provided

**Article 19 Abuse of Functions**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance of or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.*

**(a) Summary of information relevant to reviewing the implementation of the article**

32. Cameroon cited the following provisions of the Penal Code.

*Section 140: Abuse of function*

- 1) *Any public servant or foreign public employee who takes advantage of his position to infringe any private right or interest, shall be punished with imprisonment for from 1 (one) to 3 (three) years or with fine of from CFAF 5 000 (five thousand) to CFAF 50 000 (fifty thousand) or both such imprisonment and fine.*
- 2) *Where the offence is committed with the intent to procure to the offender or to another any gain of any kind, imprisonment, shall be for from 2 (two) to 10 (ten) years and with fine of from CFAF 50 000 (fifty thousand) to CFAF 1 000 000 (one million).*

*Section 137: Indulgence against the State*

*Any public servant or public employee who grants exemption from any fee, due; duty, tax or contribution, or sells at a lesser price than that prescribed, any property of the State, of a cooperative, or of any authority or corporation either public or subject to the administrative control of the State, or in which the State holds, whether directly or not, the majority of the shares, shall be punished with imprisonment for from 2 (two) to 10 (ten) years and with fine of from CFAF 20 000 (twenty thousand) to CFAF 2 000 000 (two million).*

*Section 142: Undue Demand*

*Any public servant or public employee, notary public, public auctioneer, bailiff or process server or representative of any such, who demands any fee, due, duty or tax which is not due, or any material benefit otherwise than on payment of the proper price, shall be punished with imprisonment for from 2 (two) to 10 (ten) years and with fine of from CFAF 200 000 (two hundred thousand) to CFAF (two million).*

**Cases**

Supreme Court Ruling No. 186-p of 13 March, 1975. The court in this case stated that the offence of abuse of functions presupposes two elements: 1) that the public official acted outside the administrative framework of his or her functions, and 2) that the act of the public official caused injury.

*Cameroon Civil Aviation Authority v. Roger Ntongo Onguene* (Case No. 012/SSP/2013), in which the defendant was found guilty of the crime of misappropriation of public funds.

**(b) Observations on the implementation of the article**

33. Article 19 contains a non-mandatory requirement to criminalize public officials who abuse their functions by acting or failing to act in violation of laws to obtain an undue advantage. According to the interpretative notes, this offence may encompass various types of conduct such as improper disclosure by a public official of classified or privileged information.

34. Cameroon cited section 140 of the Penal Code, which partially covers the requirements of article 19 in that it is limited to acts of abuse of functions that infringe “private” rights or interests. Moreover, the failure to perform an act, or an omission, in violation of law by a public official, as required by article 19 of the Convention, is not explicitly covered.

35. Sections 137 and 142 of the Penal Code are also relevant to the abuse of functions by public officials.

36. Cameroon should consider expanding its legislation to adopt an offence of abuse of functions more closely aligned with article 19 of the Convention.

37. No statistics were provided.

## **Article 20 Illicit Enrichment**

*Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

38. Cameroon reported that article 20 of the Convention has not been implemented. There are no offences criminalizing illicit enrichment in Cameroon. However, the anti-corruption draft bill establishes the relevant offence and sanctions.
39. With respect to asset declarations, article 66 of the Constitution provides for the declaration of assets and property by enumerated officials. However, the provision is not operational, due to the absence of enabling regulations.

#### Article 66 of the Constitution

“The President of the Republic, the Prime Minister, Members of Government and persons ranking as such, the President and Members of the Bureau of the National Assembly, the President and Members of the bureau of the Senate, Members of Parliament, Senators, all holders of an elective office, Secretaries-General of Ministries and persons ranking as such, Directors of the Central Administration, General Managers of public and semi-public enterprises, Judicial and Legal Officers, administrative personnel in-charge of the tax base, collection and handling of public funds, all managers of public votes and property, shall declare their assets and property at the beginning and at the end of their tenure of office. The other categories of persons to whom the provisions of this article shall apply and the conditions of implementation thereof shall be determined by law.”

### **(b) Observations on the implementation of the article**

40. Cameroon has not established the criminal offence of illicit enrichment, although relevant provisions are contained in the anti-corruption draft bill.
41. It was explained by the national counterparts during the country visit that an offence of illicit enrichment and related asset disclosure systems are fundamental to detecting corruption and ill-gotten wealth, in particular given the absence of effective protections for reporting persons.
42. The reviewers recommend that Cameroon consider adopting an illicit enrichment offence and taking measures to implement an effective asset declaration system.

## Article 21 Bribery in the private sector

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

*(a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;*

*(b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.*

### (a) Summary of information relevant to reviewing the implementation of the article

43. Cameroon cited the following measures.

Section 318 of the Penal Code (quoted above)

*Section 312: Corruption of Private Sector employees*

- 1) *Whoever, either directly or indirectly, makes offers, promises, gifts, presents or procures any other advantages in order to obtain from a person, who without being a depository of any public authority or in charge of any public service duty, holds a managerial position in the professional or social domain or works for an individual or corporate body, or any other organization, the performance or non-performance of any professional act or the facilitation of the performance of such professional act through his activity or position, in violation of his legal, contractual or professional duties, shall be punished with imprisonment for from 1 (one) to 5 (five) years and with fine of from CFAF 200 000 (two hundred thousand) to CFAF 2 000 000 (two million).*
- 2) *Whoever, at any time whatsoever, without being a depository of public authority or in charge of any public service duty, but holding a managerial position in the professional or social domain or working for an individual or a corporate body, or any other organization, yields to any request, accepts offers, gifts, promises, presents or any other advantages, in order to perform or refrain from performing a professional act or facilitates the performance of such professional acts through his activity position, in violation of his legal, contractual or professional duties, shall be punished as provided for in Subsection (1) above.*

*Section 314: Forgery*

*(1) Whoever forges or alters, whether in its substance or in the signatures of the parties or witnesses or in its date, any private document having the effect of an obligation, discharge or disposition shall be punished with imprisonment for from 3 (three) to 8 (eight) thousand) to CFAF (one million).*

*(2) The penalty shall be imprisonment for from 5 (five) to 10 (ten) years and with fine of from CFAF 100 000 (one hundred thousand) to CFAF 2 000 000 (two million) where the document is:*

- a) *commercial or bank paper or;*
- b) *evidence of a right in land or;*
- c) *a power to sign any document described by subsection (a) or (b) or (;*
- d) *a will ;*

*(3) Whoever makes use of:*

- a) *any document described in this section ;or*
- b) *of an expired document of like nature representing it to be still be effectives ;or*
- c) *of a document of like nature referring to another person of whom he passes himself off-shall be punished in like manner as if he had forged the document.*

The law of July 10, 2003, on prosecution of certain offenses contained in the OHADA (Organisation pour l'harmonisation en Afrique de droit des affaires) Uniform Act.

**(b) Observations on the implementation of the article**

44. Article 21 of the Convention contains an optional requirement for criminalization of bribery in the private sector and brings out the importance of requiring integrity and honesty in economic, financial or commercial activities. The required elements of the active version of this offence are those of promising, offering or giving something to a person who directs or works for a private sector entity. The bribery must be by that person or through an intermediary, that is, directly or indirectly. An undue advantage may be something tangible or intangible, whether pecuniary or non-pecuniary.
45. Section 312 of the Penal Code does not address active bribery in the private sector but rather is limited to certain acts of passive bribery, namely the receipt of gifts or the acceptance of promises by employees.
46. In addition, section 313 of the Penal Code criminalises false declarations and misleading of contractors by directors, managers of private entities but does not criminalize bribery in the private sector.
47. Based on the discussions during the country visit, in which the national authorities confirmed that a relevant offence would be important to further the detection and prosecution of corruption offences, it is recommended that Cameroon consider establishing a comprehensive offence of bribery in the private sector, in accordance with article 21 of the Convention.
48. No statistics or examples of implementation were provided.

**Article 22 Embezzlement of property in the private sector**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position*

**(a) Summary of information relevant to reviewing the implementation of the article**

49. Cameroon cited the following measures.

Sections 318 and 312 of the Penal Code (cited under article 17 above)

Article 9, Law of July 10, 2003, on prosecution of certain offenses contained in the OHADA Uniform Acts.

*Art.9.- En application de l'article 891 de l'acte uniforme du 17 avril 1997 relatif au droit des sociétés commerciales et du groupement d'intérêt économique, sont punis d'un emprisonnement de un à cinq ans et d'une amende de 2.000.000 à 20.000.000 FCFA, le gérant de la société à responsabilité limitée, les administrateurs, le président directeur général, l'administrateur général ou l'administrateur général adjoint qui, de mauvaise foi ont fait, des biens ou des crédits de la société, un usage qu'ils savaient contraire à l'intérêt de celle-ci, à des fins personnelles, matérielles ou morales, ou pour favoriser une autre personne morale dans laquelle ils étaient intéressés, directement ou indirectement.*

*Section 891, OHADA Uniform Act Relating to Commercial Companies and Economic Interest Groups*

*Any manager of a private limited company, directors, chairman and managing director, general manager, managing director or assistant managing director who, in bad faith, use the assets or credit of the company in a way they know is against the interests of the company, for personal, material or moral ends, or in favour of another corporate body in which they have an interest directly or indirectly, shall incur a punitive sanction.*

**(b) Observations on the implementation of the article**

50. Cameroon has criminalized embezzlement of property in the private sector in section 318 PC. The content is limited to theft, breach of trust and fraud but not the full range of embezzlement provided for in article 22. However, section 891 of the Uniform Act on Commercial Companies and Economic Interest Groups covers the misuse of business property or funds for personal gain.

51. Based on the discussions during the country visit, in which the national authorities confirmed that a relevant offence would be important to further the detection and prosecution of corruption offences, it is recommended that Cameroon consider establishing a comprehensive offence of embezzlement in the private sector, in accordance with article 22 of the Convention.

52. No statistics or examples of implementation were provided.

**Article 23 Laundering of proceeds of crime**

**Paragraph 1**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*

*(a) (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*

*(b) Subject to the basic concepts of its legal system:*

*(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*

*(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

53. Cameroon cited the following measure.

Article 1, paragraphs a to c, of Regulation N° 02/10 of 2 October, 2010, amending Regulation N° 01/03/CEMAC/UMAC/CM of 4 April, 2003, on prevention and prosecution of money laundering and funding of terrorism in Central Africa.

### **Article 1: Definition of Money Laundering**

*For the purposes of this Regulation, money laundering shall refer to one or more of the following actions when committed intentionally:*

- a) The conversion or transfer of property, knowing that such property is the proceeds of a crime, within the meaning of the applicable rules in the Member State or of this Regulation, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions;*
- b) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property is proceeds of a crime or offence within the meaning of the applicable rules in the Member State or of this Regulation*
- c) The acquisition, possession or use of property, knowing, at the time of receipt, that such property was proceeds of a crime or offence within the meaning of the applicable rules in the Member State or of this Regulation;*
- d) Participation in, association or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

*Knowledge, intent or purpose required as an element of the offence referred to above may be inferred from objective, factual circumstances.*

*In order to serve as grounds for prosecution for money laundering under this Regulation, the predicate offence committed in another Member State or a third State should constitute a criminal offence in the country where it was committed.*

Article 8, paragraphs a to c, of Regulation N° 01/CEMAC/UMAC/CM of 11 April, 2016 on prevention and prosecution of money laundering and funding of terrorism in Central Africa.

### **Article 8: Incrimination of Money Laundering**

*For the purposes of this Regulation, one of the actions listed hereafter, committed intentionally, shall constitute money laundering:*

- a) converting, or transferring property, by any person who knows that the property originates from criminal activity or from participation in a criminal activity, with the aim of concealing or disguising the illegal origin of said property or of helping any person involved in this activity from escaping the legal consequences of these acts;*
- b) Concealing or disguising the nature, origin or location of the provision, movement or the ownership of property or the rights related thereof, by any person who knows that this property originates from criminal activity or from participation in criminal activity;*
- c) acquiring, holding or using property when the person benefiting from it knows at the moment when s/he receives it that the property originates from criminal activity or from participation in criminal activity;*
- d) participating in one of the acts referred to in points a), b and c), the fact of associating to commit the act, to help or incite someone to commit, or to advise them to this, or to facilitate the performance of such an act.*

*It is money laundering, even if the activities at the origin of the property to be laundered are carried out on the territory of another Member State or that of a third State or which have not resulted in prosecution nor a conviction in that State. The knowledge or intention of the elements of activities referred to above, may be inferred from objective factual circumstances. The proof of the legality of the origin of the property in question shall be incumbent on the person prosecuted.*

#### **(b) Observations on the implementation of the article**

54. The laundering of proceeds of criminal activities is incriminated in the laws of Cameroon. The provisions in the cited regulation are almost identical to those in the Convention. The incrimination covers both the person who conceals or disguises the illegal origin of property knowing that such property is proceeds of crime, and the support given to a person who is involved in the perpetration of the criminal offence in order to avoid the legal consequences of his/her activity. Incriminations are also foreseen when the offence

is perpetrated outside the territory. In order to serve as grounds for prosecution of money laundering, the predicate offence committed in another State or a third State should constitute a criminal offence in the country where it was committed.

55. From the sections presented it is evident that Cameroon has adopted the measures that are required in accordance with the Convention. However, there is no information from which the efficiency of the measures in the fight against money laundering can be assessed. Also no statistical data was presented on the number of criminal investigations, prosecutions and convictions of money laundering.

56. With respect to the investigation of money laundering offences, it was explained that a Memorandum of Understanding was signed in 2012 between CONAC and the financial intelligence unit (FIU), ANIF. Money-laundering cases linked to corruption are investigated by CONAC, and in the case of other predicate crimes the investigation is conducted by the police or gendarmerie. ANIF is an administrative FIU that does not have law enforcement powers.

## **Article 23 Laundering of proceeds of crime**

### **Subparagraphs 2 (a) and (b)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;*

*(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;*

### **(a) Summary of information relevant to reviewing the implementation of the article**

57. Cameroon cited the following provisions of Regulation N° 02/10 of 2 October, 2010, amending Regulation N° 01/03/CEMAC/UMAC/CM of 4 April, 2003, on prevention and prosecution of money laundering and funding of terrorism in Central Africa.

Article 1, paragraphs a to c (quoted above)

### **Article 3: Other definitions**

*For the purposes of this Regulation, the following terms shall mean as follows: ...*

*21. Predicate offence: any offence especially criminal committed even abroad as a result of which proceeds have been generated within the scope of this Regulation.*

### **(b) Observations on the implementation of the article**

58. The provisions of article 23, subparagraphs 2 (a) and 2 (b) the Convention, are incorporated in article 1 of Regulation N° 02/10. Furthermore, it was confirmed by the national authorities during the country visit that Cameroon follows an all-crimes approach to money laundering whereby all offences under the laws and regulations of Cameroon constitute predicate offences, in accordance with article 1.

59. Cameroon has legislatively implemented the provisions under review. However, no examples or statistics were provided.

## **Article 23 Laundering of proceeds of crime**

### **Subparagraph 2 (c)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

60. Cameroon cited the following measure.

Article 1, last paragraph, of Regulation N° 02/10 of 2 October, 2010, amending Regulation N° 01/03/CEMAC/UMAC/CM of 4 April, 2003, on prevention and prosecution of money laundering and funding of terrorism in Central Africa (quoted above).

#### **(b) Observations on the implementation of the article**

61. The provisions of article 23, subparagraph 2 (c) the Convention, are incorporated in article 1, last paragraph, of Regulation N° 02/10. Foreign predicate offences are covered, subject to dual criminality.

62. Cameroon has legislatively implemented the provisions under review. However, no examples or statistics were provided

## **Article 23 Laundering of proceeds of crime**

### **Subparagraph 2 (d)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

63. Cameroon furnished copies of its legislation to the secretariat during the country visit.

#### **(b) Observations on the implementation of the article**

64. The provision under review is implemented.

## **Article 23 Laundering of proceeds of crime**

### **Subparagraph 2 (e)**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

65. Cameroon referred to the following provisions.

Article 51 of Regulation N° 02/10 of 2 October, 2010, amending Regulation N° 01/03/CEMAC/UMAC/CM of April 4, 2003, on prevention and prosecution of money laundering and funding of terrorism in Central Africa.

#### **Article 51: Original offence**

*The provisions of this part shall be applicable even when the author of the original offence shall neither be prosecuted or convicted, or even when there is no condition for court action following such offence. The author of the original offence may also be prosecuted for money laundering offence.*

#### **(b) Observations on the implementation of the article**

66. As confirmed during the country visit, Cameroon has legislatively implemented the provision under review. Self-laundering is punishable under article 51 of Regulation 02/10. No examples or statistics were provided.

## **Article 24 Concealment**

*Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as maybe necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

67. Cameroon cited the following measures.

#### **Section 324 of the Penal Code: Concealment**

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

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

Article 1, paragraph b of Regulation N° 02/10 of 2 October, 2010, amending Regulation N° 01/03/CEMAC/UMAC/CM of 4 April, 2003, on prevention and prosecution of money laundering and funding of terrorism in Central Africa (quoted above).

**(b) Observations on the implementation of the article**

68. While section 324 of the Penal Code is limited to the concealment of objects, article 1 of the above-referenced regulation more broadly covers the concealment of criminal proceeds. Cameroon has legislatively implemented the provision under review. However, no examples or statistics were provided.

**Article 25 Obstruction of Justice**

**Subparagraph (a)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;*

**(a) Summary of information relevant to reviewing the implementation of the article**

69. Cameroon cited the following measures of the Penal Code, and further indicated that a relevant provision has been included in the anti-corruption draft bill.

*Section 164(2): False testimony*

*(2) Where the false witness has received any gift or accepted any promise, any penalty of limited duration and any fine shall be doubled, and any such gift shall be confiscated.*

*Section 168: Concealment and Fabrication of Evidence.*

*1) Whoever with intent to influence any judicial proceeding:*

*a) Destroys or conceals any physical evidence or obstructs the attendance of a witness; or*

*b) Fabricates or uses false physical evidence or misleads a witness;*

*shall be punished in like manner as if he had committed perjury, according to the distinctions drawn by Section 164.*

*2) Whoever obtains from any person a promise not to report a felony or misdemeanour, or not to give evidence, shall be punished in like manner. Provided that this subsection shall not apply to a promise obtained without the aid of the means described by Section 161 from the victim of a misdemeanour or his legal representative.*

Read together with *section 97 (Accessories)*

**Section 97. — Accessories.**

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

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

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

(2) Attempted abetment shall be treated as abetment.

**Section C. 97.**

The first subsection of section 97 defines abetment, which cannot exist in respect of simple offences. As in the case of co-offenders, there can be no unintentional accessory : although the classic expression

« knowingly » no longer figures in the definition, a person who facilitates an offence of which he is ignorant is not guilty by reason of section 74. It may however exist despite the fact that the direct actor may have an absolute defence. A man who prompts a child to steal, or a lunatic to kill, is accessory to theft or murder, despite the irresponsibility of the child or the lunatic [section 98 (2)]. The question is less simple however when the reason why the direct actor cannot be convicted is that he had no criminal intention : can the accessory in that case be convicted as such ? It seems not, since there is no guilty act in the direct actor to which he can be called accessory. The solution is that in such a case the apparent accessory becomes himself the principal offender, the third party being no more than his instrument. Thus if one person, knowing someone to be asleep behind a bush, tells another who does not know of it to fire his rifle into the bush and the sleeping man is killed, the one who fired has no guilty intention and can only be convicted of unintentional homicide : but the instigator will be convicted not as his accessory in that unintentional offence but of murder as principal.

All the more so if the immediate actor is not a human being at all, but for instance a monkey trained to steal : in this case it is his trainer who is the principal offender, the monkey being only the instrument. Since an accessory means a person who causes the commission by another of an offence, there can be no such thing as an accessory to an animal which is incapable of an offence.

Where an act instigated would have been an intentional felony or misdemeanour if it had been committed but it was not, there is attempted abetment, and in the same way as an attempted offence is treated as an offence committed, so is attempted abetment equivalent to abetment. It is to be observed that attempted abetment has not so far been punishable in East Cameroon.

*Section 165: False Expert Report*

*An expert referee making a false report which he may no longer alter shall be punished as provided by Section 164 (2).*

*Section 166: False Oath*

*Any party to judicial proceedings other than criminal who swears falsely to any point the truth of which has been committed to his oath shall be punished with imprisonment for from 1 (one) to 5 (five) years and with fine of from CFAF 10 000 (ten thousand) to CFAF 500 000 (five hundred thousand) of the Penal Code.*

**(b) Observations on the implementation of the article**

70. The cited measures do not fully implement the provision under review. Based on the discussion in the country visit, it is recommended that Cameroon amend its legislation to criminalize the obstruction or interference in the giving of testimony or the production of evidence in proceedings.

71. No examples or statistics were provided.

**Article 25 Obstruction of Justice**

**Subparagraph (b)**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.*

**(a) Summary of information relevant to reviewing the implementation of the article**

72. Cameroon cited the following provision of the Penal Code.

*Section 160. — Compulsion of Public Servant.*

*Whoever by interference or threat procures a public servant improperly to perform or to refrain from any act of his office, shall be punished with imprisonment for from two to ten years and with fine of from twenty thousand to one million francs.*

**(b) Observations on the implementation of the article**

73. The use of violence or threats to improperly influence a public servant is criminalized in section 160 of the Penal Code.

74. It was further confirmed by the authorities during the country visit that obstruction of law enforcement and judicial officers is a significant concern in Cameroon and that the available protections are inadequate. Based on the above, it is recommended that Cameroon give adequate attention to the effective enforcement of the existing protection measures.

75. No statistics or examples of implementation were provided.

## Article 26 Liability of legal persons

### Paragraphs 1 and 2

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

### (a) Summary of information relevant to reviewing the implementation of the article

76. Section 74-1 of the Penal Code establishes the criminal liability of legal entities.

77. In the context of the fight against money laundering, article 46 of the CEMAC AML/CFT Regulation (Regulation No 02/10 of 2 October, 2010) expressly establishes the criminal liability of legal entities. Article 51 establishes such liability independent of the responsibility of the original instigator of the crime.

78. Additional provisions on the liability of legal persons are found in the Civil Code, which provides in sections 1382 and 322-324ff. for civil actions against legal persons. Measures for administrative liability are also provided for, inter alia, in the Procurement Law (including debarment and suspension of licences).

*CEMAC Regulation No 02/10 of 2 October, 2010, amending Regulation N° 01/03/CEMAC/UMAC/CM of 4 April, 2003, on prevention and prosecution of money laundering and funding of terrorism in Central Africa*

#### **Article 46: Money laundering**

*Shall be sentenced to 5 to 10 years imprisonment and a fine that could exceed five times the amount of money laundered but not lower than CFAF 10 000 000, any person who intentionally commits one or several acts enumerated in Article 1 above relating to the definition of money laundering.*

*The attempt at carrying out a laundering activity or complicity through assistance, advice or encouragement shall be punishable as complete offence.*

*Shall be punishable with the same sentence, participation in an association or understanding in view of carrying out money laundering activities.*

*Corporate bodies other than the State, on whose behalf or to the benefit of whom money laundering activities had been carried out by one of their organs or representatives, shall be sentenced to a fine of a rate equal to five times the specific fines for natural persons, without prejudice of convicting the latter as offenders or accomplices.*

#### **Article 51: Original offence**

*The provisions of this part shall be applicable even when the author of the original offence shall neither be prosecuted or convicted, or even when there is no condition for court action following such offence. The author of the original offence may also be prosecuted for money laundering offence.*

#### **CEMAC Regulation N° 01/CEMAC/UMAC of 11 April, 2016**

#### **Article 126: Applicable penalties for legal persons**

*Any legal person on whose behalf or for whose benefit money laundering has been committed by one of their organs or representatives shall be punished by a fine of an amount five times the fines specified for natural persons, irrespective of the conviction of those individuals as perpetrators of or accomplices to the offence.*

*In addition, a legal person may also be subject to one or more of the following penalties:*

- 1) Exclusion permanently or for a period of between six (6) months and five (5) years from any public contracts;
- 2) confiscation of property that was used or was intended for committing the offence or the property that formed the proceeds or a property of equivalent value;
- 3) placement under court supervision for a maximum period of five (5) years;
- 4) a permanent or five (5) year ban from directly or indirectly exercising one or more of the social or professional activities under which the offence was committed;
- 5) permanent or five (5) year closure of the establishment or one of the establishments of the company used for the commission of the offence;
- 6) Winding up of the companies created to commit the offences.

*The sanctions stipulated in points 3, 4, 5 and 6 of paragraph 2 of this article do not apply to financial bodies under a supervisory authority with disciplinary power.*

*The competent supervisory, to which the public prosecutor may refer any proceedings instigated against a financial body, may impose appropriate sanction, in compliance with specific legislative and regulatory texts in force.*

**Penal Code, Section 74-1: Criminal responsibility of corporate bodies.**

- a) Corporate bodies shall be criminally responsible for offences committed on their behalf by their organs or representatives.
- b) The provisions of the subsection (a) above shall not apply to the State and its agencies.
- c) The criminal responsibility of natural persons who are authors of reprehensible acts may be compounded with that of corporate bodies of the Penal Code.

**Civil Code**

**Section 1382**

*Tout fait quelconque de l'homme, qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé à le réparer*

**Section 1383**

*Chacun est responsable du dommage qu'il a causé non seulement par son fait, mais encore par sa négligence ou par son imprudence.*

**Section 322**

*L'action peut être exercée par les héritiers d'une personne décédée avant l'expiration du délai qui était imparti à celle-ci pour agir. Les héritiers peuvent également poursuivre l'action déjà engagée, à moins qu'il n'y ait eu désistement ou péremption d'instance.*

**Section 323**

*Les actions relatives à la filiation ne peuvent faire l'objet de renonciation.*

**Section 324**

*Les jugements rendus en matière de filiation sont opposables aux personnes qui n'y ont point été parties. Celles-ci ont le droit d'y former tierce opposition dans le délai mentionné à l'article 321 si l'action leur était ouverte. Les juges peuvent d'office ordonner que soient mis en cause tous les intéressés auxquels ils estiment que le jugement doit être rendu commun.*

**(b) Observations on the implementation of the article**

79. Cameroon has adopted measures providing for the criminal liability of legal persons (Section 74-1 PC) and, in the framework of the fight against money laundering, articles 46 and 51, Regulation N° 02/10. Moreover, civil and administrative liability provisions are in place.

80. In the framework of the fight against money laundering, Cameroon explicitly determines the criminal liability of legal entities. The attempt at carrying out a laundering activity or complicity through assistance, advice or encouragement constitute complete offences. Also, a subject of penalties is the participation in an association or understanding in view of carrying out money laundering activities. Corporate bodies other than the State, on whose behalf or for the benefit of which money laundering activities have been carried out by one of its organs or representatives, shall be sentenced, without prejudice of convicting the latter as offenders or accomplices.

81. In the context of the fight against money laundering, the criminal liability of legal entities is explicitly determined, irrespective of whether the natural persons are convicted as violators or accomplices (see article 51 of the CEMAC Regulation N° 02/10).

82. No examples or statistical data were presented.

## **Article 26 Liability of legal persons**

### **Paragraph 4**

*4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

83. Cameroon referred to the following provisions.

*CEMAC Regulation No 02/10 of 2 October, 2010, amending Regulation N° 01/03/CEMAC/UMAC/CM of 4 April, 2003, on prevention and prosecution of money laundering and funding of terrorism in Central Africa*

#### **Article 46 (last paragraph): Money laundering**

*Corporate bodies other than the State, on whose behalf or to the benefit of whom money laundering activities had been carried out by one of their organs or representatives, shall be sentenced to a fine of a rate equal to five times the specific fines for natural persons, without prejudice of convicting the latter as offenders or accomplices.*

#### **Article 53: Complementary sanctions applicable on corporate bodies**

*Corporate bodies convicted for offences provided for by this Regulation shall be subject to the following complementary sentences:*

- a) outright prohibition or prohibition for at least five years from performing directly or indirectly certain professional activities;*
- b) outright closure or closure for at least five years of their establishments that had been used to commit the offence;*
- c) dissolution, where they had been set up to commit the offence complained of;*
- d) dissemination of the decision through written media or through any other audio-visual media.*

#### **Article 54: Confiscation**

*In the case of conviction for one of the offences stipulated above, the competent court may order the confiscation of:*

- property subject of the offence, including the income and other benefits that had been received, unless their owner proves that he acquired them by effectively paying the fair price or exchanged services corresponding to their value or to any other legitimate security, and that he was unaware of their illicit origin;*
- property belonging, directly or indirectly, to a person convicted for an act of money laundering or terrorist financing or to his next of kin (spouse, concubines, children, etc), unless the persons concerned establish the legitimate origin or the absence of any link between this property and the offence.*

*In case of an offence confirmed by the court, where the offender(s) cannot be convicted, the court may, nevertheless, order the confiscation of property on which the offence was established.*

*The decision ordering a confiscation shall name the property in question and provide details necessary for their identification and location.*

*The competent court may order the confiscation of property seized or frozen at the request of Public Prosecution stating:*

*- that these property constitute the proceeds of a crime or an offence as defined in this Regulation;*

*- that the authors of the acts having generated the proceeds cannot be prosecuted either because they are not known, or because there is a legal impossibility to the prosecution of the leader of these acts.*

Article 126 of the CEMAC Regulation N° 01/CEMAC/UMAC of 11 April, 2016 (quoted above).

### **Section 35 of the Penal Code**

*Section 35: Confiscation of "corpus delicti"*

*a) On conviction for any felony or misdemeanour, the competent court may order confiscation of any property, moveable or immovable, belonging to the offender and attached, which was used as an instrument of its commission, or is the proceeds of the offence.*

*b) Such confiscation may not be ordered on conviction for a simple offence unless specially authorized by law.*

#### **(b) Observations on the implementation of the article**

84. Principal criminal penalties for legal persons include dissolution, temporary or permanent closure of the establishment and fines (Sections 18, 25-1, 25-2 and 25-3 PC); accessory penalties are established in Sections 19, 36 and 74-1 PC. Cameroon has also adopted penalties for legal persons for money laundering offences, in the CEMAC regulations. Several types of sanctions are foreseen. Confiscation of property is foreseen, which is a subject of the criminal offence, including the proceeds and other benefits which were received, along with extended confiscation (a spouse, children, etc.). Even in cases where the offenders cannot be convicted, the court may, nevertheless, order the confiscation of property on which the offence was established.

85. Confiscation is also foreseen in the Penal Code. Confiscation of property is provided in cases of felonies or misdemeanours, including for proceeds and instrumentalities of crime. A conviction is required for confiscation, which is always discretionary unless otherwise provided by law.

86. Reference is also made to the administrative penalties described under article 34 of the Convention below.

87. It was explained by the national authorities that there have been no money laundering convictions against legal persons. Furthermore, while legal persons are regularly disqualified and suspended from public tenders through the procurement process, there have been no civil or criminal cases for corruption or cases where legal persons were held administratively liable for corruption offences.

88. Cameroon has not presented any information or data from which the efficiency of the measures can be assessed. No examples of implementation or statistical data on the number of investigations, prosecution and convictions of legal persons were presented. Based on the discussion in the country visit, it is recommended that Cameroon ensure that the penalties against legal persons for offences under the Conventioneer effective,

proportionate and dissuasive. Attention should also be given to the effective enforcement of penalties for corruption-related offences against legal persons.

## Article 27 Participation and attempt

### Paragraph 1

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.*

#### (a) Summary of information relevant to reviewing the implementation of the article

89. Cameroon cited the following measures.

Sections 74, 96 to 99 of the Penal Code

#### **Section 74: Punishment and Responsibility**

- 1) *No penalty may be imposed except upon a person criminally responsible.*
- 2) *Criminal responsibility shall lie on him who intentionally commits each of the ingredient acts or omissions of an offence with the intention of causing the result which completes it.*
- 3) *Save as otherwise provided by law, no criminal responsibility shall arise from the result, though intended, of an omission.*
- 4) *Save as otherwise provided by law, there shall be no criminal responsibility unless subsection (2) of this Section has been satisfied.*

*Provided that responsibility for a simple offence shall not require any intention to act or to omit or to cause the result.*

#### **Section 96. — Co-offenders.**

**A co-offender shall mean a person who, in agreement with another, takes part with him in the commission of an offence.**

#### **Section C. 96.**

The point of defining a co-offender is first to distinguish him from an accessory (defined by the next section), and secondly to introduce the detailed provisions of sections 98 and 99. Both participation and agreement are necessary, even if the agreement precedes only momentarily the execution of the offence: there can be no co-offenders in a purely unintentional offence. For the responsibility of a co-offender when the result goes beyond the agreement, see section 99 below.

### Section 97. — Accessories.

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

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

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

(2) Attempted abetment shall be treated as abetment.

### Section C. 97.

The first subsection of section 97 defines abetment, which cannot exist in respect of simple offences. As in the case of co-offenders, there can be no unintentional accessory : although the classic expression

« knowingly » no longer figures in the definition, a person who facilitates an offence of which he is ignorant is not guilty by reason of section 74. It may however exist despite the fact that the direct actor may have an absolute defence. A man who prompts a child to steal, or a lunatic to kill, is accessory to theft or murder, despite the irresponsibility of the child or the lunatic [section 98 (2)]. The question is less simple however when the reason why the direct actor cannot be convicted is that he had no criminal intention : can the accessory in that case be convicted as such ? It seems not, since there is no guilty act in the direct actor to which he can be called accessory. The solution is that in such a case the apparent accessory becomes himself the principal offender, the third party being no more than his instrument. Thus if one person, knowing someone to be asleep behind a bush, tells another who does not know of it to fire his rifle into the bush and the sleeping man is killed, the one who fired has no guilty intention and can only be convicted of unintentional homicide : but the instigator will be convicted not as his accessory in that unintentional offence but of murder as principal.

All the more so if the immediate actor is not a human being at all, but for instance a monkey trained to steal : in this case it is his trainer, who is the principal offender, the monkey being only the instrument. Since an accessory means a person who causes the commission by another of an offence, there can be no such thing as an accessory to an animal which is incapable of an offence.

Where an act instigated would have been an intentional felony or misdemeanour if it had been committed but it was not, there is attempted abetment, and in the same way as an attempted offence is treated as an offence committed, so is attempted abetment equivalent to abetment. It is to be observed that attempted abetment has not so far been punishable in East Cameroon.

### Section 98: Penalties

(1) *Punishment of Co-offenders and Accessories.*

1) *Subject to any special provision of law, a co-offender and an accessory shall be punishable in like manner as a sole or principal offender.*

- 2) *Circumstances resulting in the irresponsibility of any person, or in his exemption from punishment or reduction or increase of his punishment, shall, where personal, affect only the person concerned.*
- 3) *Circumstances other than personal shall affect any co-offender or accessory who could have foreseen them.*

### **Section 99: Foreseeable Consequences**

- (1) *Any co-offender or accessory to the commission or attempted commission of a felony or misdemeanour shall also be responsible in respect of any other offence committed or attempted as a foreseeable consequence of the agreement or abetment.*
- (2) *any person habitually furnishing places of refuge or assembly to malefactors of whose felonious conduct he is aware shall also be liable to punishment as their accessory..*

### **(b) Observations on the implementation of the article**

90. Cameroon has adopted legal measures necessary to establish as a criminal offence, in accordance with its national law, the participation in a criminal act in particular for accessories and persons who aid and abet the commission of a crime. The relevant forms of participation are covered in sections 74 and 96 to 99 of the Penal Code. The Penal Code defines the meaning of the terms regarding these persons, the manner of participation and execution of the criminal offence.
91. It is evident from the cited provisions that Cameroon has legislatively implemented the provision under review.

## **Article 27 Participation and attempt**

### **Paragraph 2**

*2. Each State Party may adopt such legislative and other measures as maybe necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

92. Cameroon cited the following measure.

Article 94, paragraphs 1 and 2, of the Penal Code

#### **Section 94. — Attempt.**

**(1) An attempt to commit a felony or misdemeanour shall mean the performance of any act towards its commission unambiguously indicating an irrevocable intention to commit it, and shall be treated, where execution has been arrested or has failed solely by reason of circumstances independent of the offender's will, as the commission of the felony or misdemeanour attempted.**

**(2) An attempt shall be punishable notwithstanding that complete execution was impossible by reason of a circumstance of fact unknown to the offender.**

**(3) Mere preparation shall not constitute an offence.**

Section C. 94.

Four ingredients go to constitute an attempt [subsection (1)] :

(a) Existence of all the intentional ingredients of the completed offence — there can be no attempt at an unintentional offence ;

(b) That the intention should be irrevocable — in one sense no intention is irrevocable until executed, but there is a certain stage at which the offender's attitude shows beyond a shadow of doubt his fixed resolution ;

(c) Commission of at least one act towards the execution of the intention, which serves not only as an ingredient of the attempt but also as evidence of his intention from the moment when it is no longer ambiguous ;

(d) Interruption of execution by some cause other than the free will of the offender : if he desists from his undertaking before it is complete he is not punishable at all unless his activities have already completed a different offence.

Although an attempt is punishable in the same way as the completed offence, it may be that if its failure resulted from the offender's lack of enthusiasm or resolution the court would find that a mitigating circumstance.

Attempt is punishable notwithstanding that completion of the intended offence is impossible, provided that the impossibility is due to a circumstance of fact unknown to the accused [subsection (2)]. Examples are the thief who puts his hand into an empty pocket or the murderer who pulls the trigger of a revolver which unknown to him is not loaded.

It is nevertheless true that there exist impossible offences in respect of which an attempt could hardly be punishable, such as an « attempt » to kill with a « revolver » known to be only a child's toy.

The third subsection serves to emphasise that there must be an act « towards » the execution of the intended offence — a commencement of execution rather than mere preparation. The distinction is not always easy to draw in practice ; but it may be said that execution has commenced, and an attempt committed, as soon as the act leaves no further doubt on the aim and intention of the offender.

The words « an offence » at the end of subsection (3) refer to the offence of attempt created by this section : where preparation consists of a concert between several persons it constitutes the separate offence of conspiracy, dealt with in the following section.

A conspirator retiring without presenting execution of the offence by the others is both guilty and punishable, but his punishment is reduced [subsection (4) and section 87] ; if he gives information to the authorities before any attempt at execution, even if he is not the first to betray the conspiracy, he is entitled to an absolute discharge (subsection (5)) ; and a delayed betrayal can be no more than a mitigating circumstance, if that.

**(b) Observations on the implementation of the article**

93. Cameroon has adopted legal measures necessary for establishing attempt as a criminal offence. In accordance with the Penal Code the attempt for committing a criminal offence is equally punishable as the completed act. The attempt is punitive, notwithstanding that complete execution was impossible by reason of a circumstance of fact unknown to the offender.

94. The provision is legislatively implemented.

**Article 27 Participation and attempt**

**Paragraph 3**

*3. Each State Party may adopt such legislative and other measures as maybe necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

95. Cameroon indicates that its legislation is not in line with the provisions of article 27, paragraph 3. Indeed, preparation for an offence does not constitute an offence under article 94, paragraph 1 of the Penal Code.

**(b) Observations on the implementation of the article**

96. Cameroon has not implemented this non-mandatory provision of the Convention. The preparation for an offence is not criminalized.

**Article 29 Statute of limitations**

*Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.*

**(a) Summary of information relevant to reviewing the implementation of the article**

97. In Cameroonian criminal law, offences and crimes are defined in section 21 of the Penal Code. Corruption offences are classified as misdemeanors, not felonies, and accordingly subject to a 3-year prescription period.

98. Sections 66 to 68 of the Code of Criminal Procedure contain provisions on interruption and suspension of the statute of limitations. See in particular section 68, paragraph 3. It is proposed to extend the period to ten (10) years, cf. section 184 of the Penal Code.

## **Section 65 Code of Criminal Procedure**

- (1) Prescription shall be barring of prosecution following the failure to commence action within the prescribed limitation period.
- (2) In the case of a felony, criminal proceedings shall be time-barred after ten years have elapsed from the day following the day of commission of the felony, if within the interval no step is taken within the meaning of section 66.
- (3) Where a step has been taken within that interval, prosecution can only time-barred after ten years have elapsed from the day following the date of such step.
- (4) In the case of a misdemeanour except where there are special provisions in relation to certain offences, the period of prescription shall be three years. It shall be calculated according to the circumstances specified in sub-sections (2) and (3).
- (5) In the case of a simple offence period of prescription shall be one year shall be calculated according to the circumstances specified in sub-sections 1 and (3).
- (6) In the case of prosecution for several related offences, the delay for prescription to be taken into consideration shall be that of the offence with the most severe punishment.

**Section 66:** Time shall start to run afresh if one or more of the following acts should occur: the lodging of a complaint, written orders issued by the Legal Department instituting measures of investigations, processes served by bailiffs, reports of police investigations, court processes, hearing of the parties and witnesses during preliminary inquiry or in court, interlocutory rulings and declarations of appeal.

**Section 67:** Acts which set the time prescribed for prosecution to run afresh shall have an effect even as regards persons who are not implicated or named in such acts.

**Section 68:** (1) The time-limit shall be suspended by any de jure or de facto bars which may prevent the commencement of criminal action.

(2) It shall be considered as de jure bars where:

- (a) there is an interlocutory plea against the judgement being given;
- (b) there is parliamentary immunity;
- (c) a fiat to prosecute is being awaited;
- (d) an appeal to the Supreme Court has been lodged;
- (e) there is a conflict of jurisdiction.

(3) De facto bars shall in particular include the following:

- (a) invasion of the territory by enemy forces;
- (b) insanity of the suspect, the defendant or the accused after the commission of the offence;
- (c) the escape of the suspect, defendant or accused;
- (d) the enlisting of the case for hearing;
- (e) adjournment of the case entered in the record-book;
- (f) the fact that a court by failing to perform an act within its jurisdiction, has prevented a party from exercising his legal rights to take action or to defend himself.

**Section 21. — Classification of Offences.**

(1) Offences shall be classified as felonies, misdemeanours and simple offences according to the principal penalties provided for them, as follows :

(a) A felony shall mean an offence punishable with death or with loss of liberty for a maximum of more than ten years ;

(b) A misdemeanour shall mean an offence punishable with loss of liberty or with fine, where the loss of liberty may be for more than ten days but not for more than ten years, and the fine more than twenty-five thousand francs ;

(c) A simple offence shall mean an offence punishable with imprisonment for up to ten days or with fine of up to twenty-five thousand francs.

(2) The nature of the offence shall not be affected by :

(a) Modification of the penalty imposed by reason of an excuse or of mitigating circumstances ;

(b) Aggravation of the penalty imposed under sections 88 or 89 of this Code.

**Section C. 21 (1).**

Section 21 defines by its content the term « offence », each particular offence however being defined with its penalty either in Book I of this Code or in other laws. The classification of each such particular offence as a felony, misdemeanour or simple offence depends on the maximum penalty prescribed for it, the minimum being irrelevant.

The practical consequences of the distinctions between felonies and misdemeanours on the one hand and simple offences on the other are numerous : almost a quarter of Book I has no application to simple offences. As between felonies and misdemeanours the practical differences are also important but are less extensive. Apart from the question of offences committed abroad by nationals and foreign citizens [section 10 (2) above], convictions for felony and misdemeanour have different consequences in respect of forfeitures [section 31], previous convictions and preventive confinement [sections 38 and 39], post penal measures [section 40 (2)], prescription [sections 67 and 71], and the reduction of the penalty incurred by an excuse or by mitigating circumstances [sections 87, 91 and 92].

**(b) Observations on the implementation of the article**

99. In Cameroon, the limitations periods are regulated by the Code of Criminal Procedure.

100. According to the Cameroonian law, in the case of a misdemeanour, except where there are special provisions in relation to certain offences, the period of prescription shall be three years. The period shall be calculated from the day following the day of commission of the misdemeanour.

101. As in the case of a felony, for misdemeanours the time shall start to run afresh if one or more acts of those prescribed in section 66 occur (interruption of the statute of limitations).
102. In addition, in both cases of a felony and a misdemeanour, acts which set the time prescribed for prosecution to run afresh shall have an effect even as regards persons who are not implicated or named in such acts (section 67).
103. It is important to note that the statute of limitations effectively starts from the day following the date when a step prescribed in section 66 has been taken, that is prescription period of 3 years, which shall start to run afresh if one or more of the aforementioned acts should occur (interruption of the statute of limitations period). This approach provides certain advantages, but at the same time certain weaknesses are revealed, which are elaborated below. Taking a step prescribed in section 66 is the starting point for calculating the limitation period for felonies, misdemeanours and simple offences. This formula is usual for calculating the period of limitations periods for civil law offences, which usually run from the day the offence is discovered. The positive aspect of this approach in criminal matters is that of extending the period for prosecution of crimes that are much later discovered, by fully covering the phase of investigation and prosecution of an offence; and by determining steps which are taken in the preliminary phase as a starting point for calculation of the limitation period and its interruption (“to run afresh”).
104. In respect of the implementation of the mandatory requirement of the Convention, which has as its main purpose to discourage delays on the part of the prosecuting authorities, taking into account the rights of defendants and preservation of the public interest in closure and prompt justice, it is important to consider mechanisms that account for time delays due to late discovery of corruption and corruption-related offences. However, the length of the statute of limitations period in a case where a step prescribed in section 66 is not taken is not defined. In addition, because no absolute limitation period is set forth, in theory the limitation period can be interrupted or suspended indefinitely if needed. It should be seriously taken into account that long delays caused by possible continuous extension of the prescribed period may often entail loss of evidence, memory lapses and changes of law and social context, all of which may contribute to injustice. The rationale behind prescribing a statute of limitations is to encourage effective prosecution and administration of justice, which is consistent with article 7 paragraph 1 of the African Charter on Human and Peoples' Rights.
105. Taking into account that Cameroon’s statute of limitations period is not defined in a case where a step prescribed in section 66 is not taken, and that the length of the period after such step has been taken is 3 years for misdemeanours, the general impression is that the statutes of limitation prescribed in the Cameroonian law are insufficient to ensure effective prosecution compared internationally. Even though there are mechanisms for suspension, short limitation periods cannot guarantee effective prosecution. For limitation periods to be sufficiently long, it is critical that corruption-related offences be adequately weighed. Furthermore, it is an issue of concern that there are no exemptions determined where the statute of limitations does not apply, considering the gravity of crimes which may be left unpunished after the expiration of the statute of limitations period. The statute of limitations period of 3 years is disproportionately short for crimes for which 10 days to 10 or more years of imprisonment are imposed.

106. Extension of the statute of limitations period is prescribed in the case of prosecution for several related offences. When calculating the extension, in compliance with section 65 paragraph 6 of the Code of Criminal Procedure, the limitation period prescribed for the committed offence with the most severe punishment shall be considered. Another example of good practice is prescribing a ground for suspension in a case where a new offence is committed based on the same wrongful attitude, which provides that the limitation period for the earlier offence cannot prescribe before the limitation period of the offence committed later has expired. Undoubtedly, this ground for suspension contributes to fewer prescribed cases.

107. With regard to the grounds of suspension of the statute of limitations due to “parliamentary immunity” (section 68(2)(b)), this aspect seems limited, taking into account that the Constitution of the Republic of Cameroon prescribes in article 51 (5) that:

*“The conditions for the election of members of the National Assembly and of the Senate, as well as the immunities, ineligibilities, incompatibilities, allowances and privileges of the members of Parliament shall be determined by law” [Article 14 (6)]; and*  
*“The duties of member of the Constitutional Council shall be incompatible with those of member of Government, of member of Parliament or of the Supreme Court. Other incompatibilities and matters relating to the status of members, namely obligations, immunities and privileges shall be laid down by law.”*

108. Further relevant information on how immunities and privileges are determined and regulated is not provided. In order to prevent evasion of the administration of justice, regulating all forms of immunities, where appropriate, with regard to grounds for suspension of statute of limitations is of crucial importance.

109. Article 29 of the Convention requires States parties to establish longer statutes of limitation periods where the suspect or accused persons have evaded the administration of justice, thus giving the option of suspending the statute of limitations in the case of those evading the administration of justice. It is noted that Cameroon has implemented this requirement. The subject ground is prescribed in section 68(3)(c). In addition, steps which are usually taken in practice to prevent evading administration of justice are prescribed in section 66 of the Code of Criminal Procedure regarding interruption of the limitation period.

110. In summary, the Cameroonian approach of prescribing limitations periods could be fully effective in practice if relatively long periods and comprehensive grounds for suspension and interruption were established. Large-scale corruption cases are built on administrative, disciplinary, civil and criminal complexity. Existing possibilities to extend the limiting period indefinitely, which may discourage effective prosecution, accompanied by short limitation periods, interruption of which depends on steps being taken by the prosecution, may present loopholes in practice.

111. An upgrade of the legislation is recommended. The limitations periods are short and insufficient for effective prosecution. On the other hand, possibilities exist for long delays caused by possible continuous extension of the prescribed period, which may entail loss of evidence, memory lapses and changes of law and social context, all of which may lead to impunity. Specifics of the Cameroonian judicial system should be taken into account. Prescribing of a request for mutual legal assistance and immunities in general as grounds

for suspension and interruption of the statute of limitations is strongly recommended. Additional efforts should be undertaken to (self-)evaluate the implementation of the article under review.

112. No examples of implementation or statistics were provided.

## Article 30 Prosecution, adjudication and sanctions

### Paragraph 1

*1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.*

#### (a) Summary of information relevant to reviewing the implementation of the article

113. Cameroon cited the following measures.

Section 21 of the Penal Code (quoted under article 29 of the Convention above)

Section 74 and 74-1 of the Penal Code (quoted under articles 26 and 27 of the Convention above)

Section 10 of the Penal Code (quoted below).

114. Cameroon provided the following table of penalties for corruption offences

Penal Code Sections	Offences	Penalties	
		Imprisonment	Fine
134(1)	Corruption	5-10 years	200,000 - 2,000,000 F CFA
134(2)	Corruption	1-5 years	100,000-1,000,000 F CFA
134(a)(1)	Corruption	1-5 years	200, 000 - 2,000,000 F CFA
134(a)(2)	Corruption	5-10 years	100,000-1,000,000 F CFA
161(1) and (2)	Procuring influence	2-5 years	20,000-1,000,000 F CFA
312	Corruption of <i>Private Sector Employees</i>	1-3 years	50,000-500,000 F CFA
184(1)	Misappropriation of public property, value exceeding 500,000	Life	50,000-500,000 F CFA
184(1)	Misappropriation of public property, value from 100,000-500,000	15-20 years	50,000-500,000 F CFA
184(1)	Misappropriation of public property, value below 100,000	5-10 years	50,000-500,000 F CFA
137	Concussion	2-10 years	200,000-2,000,000 F

NB: in the case of misappropriation of public property:

- a- the penalties prescribed above may not be reduced, whatever the mitigating circumstances, below 10, 5 or 2 years respectively, and in no case may execution be suspended.
- b- in the case of admission of attenuating circumstances (section 187(2)), the minimum penalty may not be reduced below 5 years, 2 years or 1 year respectively, and execution may not be suspended, except in case of diminished responsibility due to infancy.

## Section 10 of the Penal Code

### Section 10. — *Offence Abroad by Citizen or Resident.*

(1) The criminal law of the Republic shall apply to any act or omission abroad by a citizen or resident which is punishable by the law of the place of commission and is defined as a felony or as a misdemeanour by the law of the Republic :

Provided that the sentence passed may not be more severe than that provided by the foreign law.

(2) No citizen or resident may be tried for a misdemeanour against a private party to which the law of the Republic applies solely by virtue of this section except at the instance of the authority controlling prosecution after private complaint or after official request to the Government of the Republic by the Government of the place of commission.

### (b) Observations on the implementation of the article

115. States parties are required when stipulating sanctions for corruption offences to take into account the gravity of the offence. Criteria for determining of the gravity of offences should be considered, such as the value, for example, of an undue advantage, the sphere in which the offences occur, the level of competence and authority attached to the function of the public official and other aggravating factors.
116. The Convention does not specify the severity of sanctions, respecting diverging national traditions and policies. However, sanctions have to mirror the gravity of the offence and its potential to aggravate in order to prevent and discourage the offences. In this aspect the requirement is mandatory.
117. Regarding the application of the criminal legislation, section 10 of the Penal Code provides that Cameroonian criminal law applies to any act or omission committed abroad by a citizen or a resident which is punishable by the law of the place of commission and is classified as a felony or as a misdemeanour under the laws of Cameroon: provided that the sentence passed may not be more severe than the one provided by the foreign law. It is stipulated that no citizen or resident may be tried for a misdemeanour against a private party to which the law of Cameroon applies except at the instance of the authority controlling prosecution after private complaint or after official request by the Government of the place of commission.

118. In Cameroon sentencing is left to the courts with a certain level of discretion, within the range of prescribed sanctions. The Penal Code sets forth the classification of offences, depending on nature or seriousness, scaling values which are concerned with the offence (section 21 of the penal Code), specific range of sanctions for each offence (minimum and maximum), grounds for reduction and relieve of forfeitures, aggravating factors and exceptions.

119. Notably, the Penal Code (section 132(2)) in an unambiguous manner stipulates heavier punishment where the offences are committed by a public servant. Examples are:

- copying Government paper (section 189),
- licences, etc. (section 206),
- official certificates (section 207),
- false arrest (section 291 (1)),
- forced labour (section 292),
- invasion of residence (section 299),
- tampering with correspondence (section 300),
- professional confidence (section 310),
- forged certificate (section 315).

Thus, the Cameroonian law provides for aggravating factors where the offence involves a public servant, which the courts are bound by when determining the gravity of sanctions. The sanction should be doubled in accordance with the law.

120. Misappropriation of public *property* (section 184) is stipulated in two forms: the serious form, sanctioned as a felony, where the value of the property is more than half a million francs *CFA*, is punishable with imprisonment for life; and where the said value is half a million francs or less, but over one hundred thousand francs with imprisonment from fifteen to twenty years. Where the value of the property is one hundred thousand francs or less, the misappropriation is sanctioned as a misdemeanour with imprisonment for from five to ten years and with a fine from fifty thousand to five hundred thousand francs. The punishment for both forms of the crime misappropriation of public funds (section 184) may not be reduced, whatever the mitigating circumstances, below ten, five or two years as the case may be nor may its execution be suspended. Where section 87(2) of the Code is applicable the punishment may not be reduced below five years, two years or one year, as the case may be, and execution may not be suspended except in case of diminished responsibility for infancy.

121. A cumulative sanction of imprisonment for from five to ten years and a fine of from two hundred thousand to two million francs is stipulated for bribery of public servants or government employees (section 134).

122. The law imposes sanctions of imprisonment from three months to one year, or a fine from five thousand to fifty thousand francs, or both, for the offence prescribed in section 140(1) (Taking advantage of public servant's position to infringe any private right or interest). A heavier punishment - imprisonment for from five to ten years and a fine from two hundred thousand to two million francs - is stipulated where the additional aggravating factor, intent to procure for the offender or for another any gain of any kind, is present.

123. The law imposes cumulative sanction of imprisonment for from two to ten years and fine of from twenty thousand to one million francs for interference or threat by which a

public servant is procured improperly to perform or to refrain from any act of his office (section 160). The offence of procuring influence (section 161) is punishable in the same manner.

124. Demanding any fee, claim, duty or tax which is not due, or any material benefit otherwise than on payment of the proper price made by public servant, notary, public auctioneer, bailiff or process-server or representative of any such, is incriminated as well (section 142), prescribing a cumulative sanction of imprisonment from two to ten years with a fine from twenty thousand to two million francs.
125. Taking or accepting any interest, direct or indirect, is incriminated in section 135, punishable by imprisonment from one to five years and a fine of 200 thousand to 2 million francs.
126. Corruption of private sector employees (section 312 of the Penal Code, receipt of any form of emolument without the permission of an employer, receipt of any gift or acceptance of any promise for doing or omitting any act of employment) is sanctioned with imprisonment for from one to three years or with a fine from fifty thousand to five hundred thousand francs or both.

*Section 312: Corruption of Private Sector Employees*

- 1) *Whoever, either directly or indirectly, makes offers, promises, gifts, presents or procures any other advantages in order to obtain from a person, who without being a depository of any public authority or in charge of any public service duty, holds a managerial position in the professional or social domain or works for an individual or corporate body, or any other organization, the performance or non-performance of any professional act or the facilitation of the performance of such professional act through his activity or position, in violation of his legal, contractual or professional duties, shall be punished with imprisonment for from 1 (one) to 5 (five) years and with fine of from CFAF 200 000 (two hundred thousand) to CFAF 2 000 000 (two million).*
- 2) *Whoever, at any time whatsoever, without being a depository of public authority or in charge of any public service duty, but holding a managerial position in the professional or social domain or working for an individual or a corporate body, or any other organization, yields to any requests, accepts offers, gifts, promises, presents or any other advantages, in order to perform or refrain from performing a professional act or facilitates the performance of such professional acts through his activity position, in violation of his legal, contractual or professional duties, shall be punished as provided for in Subsection (1) above.*

127. When deciding on forfeiture, the court may in any case of sentenced felony where a life sentence is not imposed, for reasons to be recorded in the judgment, provide relief from one or more of the forfeitures stipulated in section 30, or reduce their duration to not less than two years. To a sentence of misdemeanour, and where so authorised by law, the court may add, for not more than five years, one or more of the forfeitures prescribed by the article. As noted above, with regard to misappropriation of public property, the stipulated punishment may not be reduced below the stated threshold.
128. Considering the aforementioned, it may be concluded that the discretion of the courts to decide on imposing sanctions, in accordance with the law, are limited by the range of the stipulated sanctions and their limits of minimum and maximum penalties, while they must consider the existence of aggravating factors and the qualification of serious forms of the offence where appropriately incriminated and defined by the elements of the offence.

129. Sentencing guidelines may assist significantly in this area. The purpose of sentencing guidelines should be to encourage consistency in sentencing throughout the courts. For example, in the United Kingdom, sentencing guidelines for judges and sentencing magistrates<sup>1</sup> are set by two closely related independent bodies: the Sentencing Advisory Panel and the Sentencing Guidelines Council. In the United States of America, the parameters of sentencing are set forth in the Federal Sentencing Guidelines, as rules setting out uniform sentencing policy for individuals and organizations convicted of felonies and serious misdemeanours in the federal court system.<sup>2</sup> Cameroon could look into the possibility of adopting similar sentencing guidelines.

130. No examples of implementation or statistics were provided, on the basis of which the effectiveness of the prescribed sanctions and their sufficiency to achieve the goal of deterring offenders could be determined.

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 2**

*2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

131. Cameroon provided the following information.

Article 53 of the Constitution does not grant immunity, but rather a jurisdictional privilege, to the President of the Republic, the Prime Minister, other Government officials and public servants, and high-ranking members of the administration to whom powers have been delegated.

Article 14(6) of the Constitution provides for the immunity of members of the National Assembly, which must be lifted before they can be prosecuted. Lifting of immunities is not required for investigative measures to be taken against parliamentarians.

Sections 629 through 634 of the Code of Criminal Procedure grant jurisdictional privileges in matters concerning regional magistrates and governors and prefects. Such persons are not granted immunities.

## **Constitution**

### ***Legislative Power***

#### ***Article 14***

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<sup>1</sup>See [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk).

<sup>2</sup>See [www.ussc.gov/Guidelines/](http://www.ussc.gov/Guidelines/)

(6) The conditions for the election of members of the National Assembly and of the Senate, as well as the immunities, ineligibilities, incompatibilities, allowances and privileges of the members of Parliament shall be determined by law.

### ***The Court of Impeachment***

#### **Article 53**

(1) The Court of Impeachment shall have jurisdiction, in respect of acts committed in the exercise of their functions, to try the President of the Republic for high treason and the Prime Minister, members of Government and persons ranking as such and senior government officials to whom powers have been delegated in pursuance of Articles 10 and 12 above, for conspiracy against the security of the State.

(2) The organization, composition and the conditions under which matters shall be referred to it as well as the procedure applicable before the Court of Impeachment shall be laid down by law.

### **Code of Criminal Procedure**

## **PART X : PRIVILEGED PROCEEDINGS**

**SECTION 629 :** (1) Where a judicial or legal officer is likely to be charged with committing an offence, the competent Procureur General shall request the President of the Supreme Court to appoint an investigating magistrate as well as three other magistrates of a grade at least equal to that of the magistrate incriminated and they shall, if necessary, hear and determine the matter at first instance.

(2) The President of the Supreme Court shall, in addition, indicate the town wherein the case shall be heard.

**SECTION 630 :** The provisions of section 629 shall also apply where the aggrieved party files a complaint embodying a civil claim before the President of the Supreme Court against a magistrate.

**SECTION 631 :** The magistrate appointed shall personally conduct the preliminary inquiry and his jurisdiction shall extend throughout the national territory.

**SECTION 632 :** In the event of an appeal, the matter shall be heard by the Judges of the Supreme Court appointed by the President of the said court and sitting as a collegiate bench.

**SECTION 633 :** When the magistrate prosecuted is the most senior in the highest grade, his case shall be heard by a joint session of the Benches of the Supreme Court.

**SECTION 634:** (1) Where a Governor of a province has committed a felony or a misdemeanour, within or outside the performance of his duties, the Procureur General at the competent Court of Appeal shall address a report to the President of the Supreme Court who shall transfer the matter to a competent court in accordance with the provisions of sub-sections (2) and (3) of this section.

(2) Where a senior Divisional Officer or any other head of administrative unit or a judicial police officer has committed a felony or a misdemeanour even if unconnected with the exercise of his duties, the State Counsel shall transmit the case-file to the competent Procureur General who shall seized the President of the competent Court of Appeal. The latter shall in turn designate both the Legal Department in charge of instituting prosecution and the competent trial court to hear and determine the matter.

(3) In the cases referred to in the preceding sub-sections, prosecution, investigation and trial shall be assigned to jurisdictions other than those of the province, division, sub-division, or district where the accused performs his duties.

#### **Cases**

*Etonde Ekoto vs. State of Cameroon and Autonomous Port of Douala.* The defendant was ultimately acquitted.

*Botoo A Ngon vs. State of Cameroon and Credit Foncier.* The case involved a member of parliament, who was sentenced to imprisonment.

*Ambassa Zang vs. State of Cameroon and Ministry of Public Works.* The case involved a member of parliament, who was sentenced to imprisonment.

#### **(b) Observations on the implementation of the article**

132. The objective of article 30, paragraph 2, is to eliminate or prevent cases where corrupt public officials are able to shield themselves from accountability and investigation or prosecution for corruption related offences

133. It is reported that the necessary measures for implementation of this provision of the Convention are covered by articles 53 and 14 of the Constitution and articles 629-634 of the Code of Criminal Procedure.

134. Article 53 of the Constitution stipulates jurisdiction of the Court of Impeachment to try the President of the Republic for higher treason and the Prime Minister, member of government and persons ranking as such and senior government officials to whom powers have been delegated, in respect of acts committed in the exercise of their functions, for conspiracy against security of the State. This article stipulates jurisdiction of a specialised court which is competent in respect of acts of higher treason and conspiracy against security of the State.
135. Article 14(6) of the Constitution provides for the immunity of members of the National Assembly.
136. Articles 629-634 of the Code of Criminal Procedure regulate the procedure in cases where a judicial or legal officer is likely to be charged with committing an offence.
137. It is found that parliamentary immunity is prescribed as a ground for suspension of the limitations period as stipulated in the Code of Criminal Procedure (See section 68 (2) (b) Code of Criminal Procedure).
138. The procedure for lifting immunities is not regulated, except by parliamentary procedure when the National Assembly is in session. It was explained that, in practice, a committee of parliament determines whether to lift the immunities of parliamentarians.
139. Based on the discussion in the country visit, and relevant cases, the review team concluded that the scope of legal immunities and jurisdictional privileges does not appear to pose an undue impediment to the effective investigation and prosecution of cases. However, consideration should be given to regulating in a more comprehensive manner the procedure for lifting immunities in appropriate cases.

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 3**

*3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

140. Cameroon provided the following information.

Section 60 of the Code of Criminal Procedure stipulates that public prosecution is commenced and exercised by the Public Prosecutor. The principle of timeliness of prosecution applies, except in cases of laundering proceeds of crime, where by virtue of the above-cited CEMAC Regulations, the prosecutor no longer has discretionary power.

Article 34 of the above-cited CEMAC Regulations further lays out the principle of prosecution in money laundering cases.

*Section 60, Code of Criminal Procedure*

*Criminal proceedings shall be instituted and prosecuted by the Legal Department. They may also be instituted by any government department or by the injured person under the conditions laid down by law.*

*CEMAC Regulation N° 02/10 of October 2, 2010, amending Regulation N° 01/03/CEMAC/UMAC/CM of April 4, 2003, on prevention and prosecution of money laundering and funding of terrorism in Central Africa*

**Article 34: Reply to Suspicion Reports**

*Immediately information gathered bring out facts that are likely to stem from drug trafficking, criminal organization activities, money laundering or any other offence provided for by this Regulation, NAFI shall inform the State Counsel of the competent court to whom it shall forward a report on the facts coupled with his opinion.*

*The report mentioned in the paragraph above shall include all useful documents, excluding the said suspicion reports. The identity of the author shall not feature in the report.*

**(b) Observations on the implementation of the article**

141. Article 30, paragraph 3 mandates that States parties endeavour to ensure that any discretionary legal powers under their domestic law relating to the prosecution of persons for offences established in accordance with the Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.
142. Regarding the aforesaid, policymaking authorities and authorities involved in drafting of legislation could apply this requirement if they would advise their law enforcement authorities that the investigation and prosecution of corruption offences are the norm, while the dismissal of proceedings are an exception to be justified, or if limited resources are a concern, the authorities may wish to focus on major cases, for example those with involving high-level public officials.
143. An example of good practice is the practice exercised in the USA, where in some circumstances, the prosecutor may determine that it is in the public interest not to charge an individual but to instead grant him/her immunity from prosecution in exchange for his/her cooperation against other participants in the criminal activity whose culpability is greater. The prosecutors' discretionary powers for the purpose of maximizing the effectiveness of law enforcement measures is enabled by numerous criteria set by the Principles of Federal Prosecution. Having such discretionary legal powers, the prosecutor should take into account all principles and facts and weigh all relevant considerations.
144. It was confirmed by the national authorities that Cameroon follows the principle of discretionary prosecution. Circulars produced by the Ministry of Justice are in place for the prosecution, but copies were unavailable during the review.
145. Appeals against non-prosecution decisions are possible, and there have been such cases in corruption matters.
146. It was explained by the authorities that in practice, there are no measures in place to ensure that there is no abuse of prosecutorial discretion.
147. Based on the above and the discussions during the country visit, it is recommended that Cameroon adopt measures to ensure that its discretionary legal powers relating to the prosecution of corruption offences are exercised to maximize the effectiveness of law enforcement and with due regard to the need for deterrence.

## Article 30 Prosecution, adjudication and sanctions

### Paragraph 4

*4. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant subsequent criminal proceedings.*

#### (a) Summary of information relevant to reviewing the implementation of the article

148. Cameroon cited the following measures.

Sections 218 and 222 of the Code of Criminal Procedure

**SECTION 218: (1) Remand in custody shall be an exceptional measure which shall not be ordered, except in case of a misdemeanour or a**

felony. It shall be necessary for the preservation of evidence, the maintenance of public order, protection of life and property, or to ensure the appearance of an accused before the Examining Magistrate or the Court.

Provided that a person with a known place of abode shall not be remanded in custody except in the case of a felony.

(2) The Examining Magistrate, may, at any time after charging the defendant but before the committal order, issue a remand warrant against him, provided that the offence is punishable with loss of liberty. He shall then make a reasoned ruling committing the defendant in custody; the ruling shall be notified to the State Counsel and to the defendant.

**SECTION 222 :** (1) The Examining Magistrate may, at any time before the close of the preliminary inquiry, and of his own motion, withdraw the remand warrant and grant bail.

(2) Where bail is not granted as of right, or by the Examining Magistrate of his own motion, it may be granted on the application of the defendant or his counsel and after the submission of the State Counsel, when the defendant enters into a recognizance to appear before the Examining Magistrate whenever convened and undertakes to inform the latter of his movements.

**(b) Observations on the implementation of the article**

149. It is found that the provisions of the Code of Criminal Procedure cover the elements of the provision under review.

150. Section 218 stipulates that remand of custody shall be ordered in a case of a misdemeanour or a felony, when necessary for the preservation of evidence, the maintenance of public order, protection of life and property, or to ensure the appearance of an accused before the Examining Magistrate or the Court. A person with known place of abode shall not be remanded in custody except in the case of a felony. Taking into account that most of established crimes of corruption are classified as misdemeanours, remanding in custody for this kind of crimes is not an exceptional measure. Furthermore, the Examining Magistrate, may, at any time after charging the defendant but before the committal order, issue a remand warrant against him, provided that the offence is punishable with loss of liberty. He shall then make a reasoned ruling committing the defendant in custody; the ruling shall be notified to the State Counsel and to the defendant.

- Granting bail:

151. In section 222 it is stipulated that the Examining Magistrate may, at any time before the close of the preliminary inquiry, and of his own motion, withdraw the remand warrant and grant bail. In accordance to the law, where bail is not granted as of right, or by the Examining magistrate of his own motion, it may be granted on the application of the defendant or his counsel and after the submission of the State Counsel when the defendant enters into a recognizance to appear before the Examining magistrate whenever convened and undertakes to inform the latter of his movements.

152. The measures imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings, in satisfaction of the requirements of the provision under review. No examples of implementation were provided.

**Article 30 Prosecution, adjudication and sanctions**

**Paragraph 5**

*5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.*

**(a) Summary of information relevant to reviewing the implementation of the article**

153. Cameroon cited the following measures.

Section 693 of the Code of Criminal Procedure establishes the conditions for granting conditional release but does not mention the gravity of the offences concerned.

**SECTION 693 :** (1) Release on licence from a principal penalty may not be granted before service of half of the sentence, or of the aggregate of consecutive sentences, regard being to remissions, if any. Where there are previous convictions, the convict may not be released before service of two thirds of the sentence or sentences.

(2) Release on licence from preventive confinement may not be granted before service of five (5) years of the sentence.

**(b) Observations on the implementation of the article**

154. Article 30, paragraph 5, requires States parties to take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of offences established in accordance with the Convention.

155. It should be considered that the Convention urges those States parties which provide for early release or parole to establish a framework for support of a strict post-conviction regime.

156. It is found that section 693 of the Code of Criminal Procedure does not mention the gravity of the offences concerned and that the conditions for granting conditional release are partly regulated, which is insufficient for the requirement of the Convention. Revoking conditional release is not stipulated.

157. It is of great concern that this provision provides extensive opportunity for judges to discretionally decide on conditional release where no grounds or conditions are specifically prescribed. This may also promote doubt as to the dissuasiveness and effectiveness of sentences which are reduced.

158. Further regulation on this issue is highly recommended, by stipulating conditions for granting and revoking conditional release in a precise manner, besides the minimum eligibility period, bearing in mind the gravity of the offence. This may be achieved through consideration of any aggravating and extenuating circumstances in the law (i.e., gravity of the offences, the intent and motives of the convict for the committed offence and the behaviour of the convict when serving of the sanction).

159. The conditional release is of facultative nature, however, the legislative authority must bear in mind that it requires strictly stipulated conditions for granting and revoking and for procedures which are consequential (e.g. supervision). All grounds for granting and revoking of the conditional release should be interpreted *strictu sensu* in their application. This is very important for promoting the dissuasiveness and effectiveness of sentences for the purposes of a consistent penal policy.

160. It was explained that there have been no corruption related cases where early release or parole was applied.

161. Further regulation on this issue is highly recommended by stipulating conditions for granting and revoking conditional release.

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 6**

*6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

162. Cameroon referred to the following measures.

Statut général de la fonction publique

Conseil de discipline budgétaire et financière

Conseil de discipline (sanctions pour infractions sans implications financières)

Decision 008/CM/OHADA/2016. Dr. Felix Ako Etoundi was removed from office for mismanagement and misappropriation of funds of the OHADA Regional School of Magistracy.

#### **(b) Observations on the implementation of the article**

163. It was explained by the national authorities that, in accordance with the cited measures, suspension pending the completion of investigative measures is possible for up to three months. However, a removal from duty during the investigation is not provided for.

164. It was further explained that as regards police officers and magistrates, there have been numerous disciplinary administrative decisions. However, no statistics or specific examples of cases were provided.

## Article 30 Prosecution, adjudication and sanctions

### Paragraph 7

7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:

(a) Holding public office; and

(b) Holding office in an enterprise owned in whole or in part by the State.

### (a) Summary of information relevant to reviewing the implementation of the article

165. Cameroon referred to the following measures.

Sections 30, 31 and 184, paragraph 4, of the Penal Code

#### **Section 30. — Definition.**

The forfeitures applicable under this Code shall be the following :

(1) Removal and exclusion from any public service, employment or office ;

(2) Incapacity to be a juror, assessor, expert referee or sworn expert ;

(3) Incapacity to be guardian, curator, deputy guardian or committee, save of the offender's own children, or member of a family council ;

(4) Prohibition on wearing any decoration ;

(5) Prohibition on serving in the armed forces ;

(6) Prohibition on keeping a school, on teaching in any educational establishment, and in general on holding any post connected with the education or care of children.

#### Section C. 30.

Section 30 gives the list of forfeitures, while section 31 prescribes the circumstances in which they may be imposed. Reference may be made to the comment on section 2 (2) of the law introducing the Penal Code : any reference in the Eastern Penal Code, or in any other law anterior to the new Penal Code and still in force, to civic degradation (section 34 of the old Code) is to be construed as a reference to the new section 30.

#### Section C. 30 (1).

Section 30 (1) does not include service in the armed forces, since this is provided for separately in subsection (5).

Section C. 30 (3).

Section 30 (3) refers to civil and family rights : since these branches of the law are not yet unified the application of this subsection must necessarily differ in the various regions of the Republic.

Section C. 30 (4).

The word « all » implies the inclusion even of foreign decorations. The prohibition is only up the wearing of decorations : staking of the Order itself, or deprivation of the decoration, is for the Council of the Order or whatever other authority is competent.

Section 184. — *Misappropriation of Public Funds.*

(1) Whoever by any means takes or keeps dishonestly any property, moveable or immoveable, belonging to, in transmission to or entrusted to the United State, or to any authority 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, shall be punished :

(a) Where the value of the property is more than half a million francs with imprisonment for life ; and

(b) Where the said value is half a million francs or less, but over one hundred thousand francs with imprisonment for from fifteen to twenty years ;

(c) Where the said value is one hundred thousand francs or less with imprisonment for from five to ten years and with fine of from fifty thousand to five hundred thousand francs.

(2) The foregoing punishment may not be reduced, whatever the mitigating circumstances, below ten, five or two years as the case may be nor may its execution be suspended.

(3) Where section 87 (2) of this Code is applicable the punishment may not be reduced below five years, two years or one year, as the case may be, and execution may not be suspended except in case of diminished responsibility for infancy.

(4) Confiscation under section 35 of this Code shall be ordered in every case, and the forfeitures described in section 30 shall be imposed for from five to ten years.

(5) Publication of the judgment shall be ordered.

(6) This section shall not apply to misappropriation and receiving of military property covered by the Military Justice Codes.

**Section 31. — *Where applicable.***

(1) A life sentence shall carry with it for life the forfeitures prescribed by the last preceding section.

(2) Any other sentence for felony shall carry with it the same forfeitures for the duration of the sentence and for the ten years following its expiry or release on licence unrevoked.

(3) The court may in any case covered by the last preceding subsection, for reasons to be recorded in the judgment, relieve from one or more of the said forfeitures, or reduce their duration to not less than two years.

(4) To a sentence for misdemeanour, and where so authorized by law the court may, for reasons to be recorded in the judgment, add, for not more than five years, one or more of the forfeitures prescribed by the last preceding section.

**(b) Observations on the implementation of the article**

166. According to the provisions under review, States parties are required to consider establishing procedures for the disqualification of persons convicted of an offence established in accordance with the Convention from holding public office or office in an enterprise owned in whole or in part by the State, which should be regulated by taking into account the gravity of the offence and the fundamental principles of their legal system. It should be considered that establishing such procedures may effectively deter corrupt behaviour and prevent corruption in the future by sending a clear signal of determination in fighting corruption to other public officials and to the public.
167. Corresponding provisions are found stipulated in the Penal Code, sections 30, 31 and 184 (4).
168. Under section 30 the removal and exclusion from any public service, employment or office; the incapacity to be a juror, assessor, expert referee or sworn expert; the prohibition on serving in the armed forces; the prohibition on keeping a school, on teaching in any educational establishment, and in general on holding any post connected with the education or care of children, are prescribed as forfeitures which may be imposed.
169. It was confirmed that the cited measures on removal and exclusion from the public service also apply to companies owned wholly or partially by the State.
170. The circumstances under which these forfeitures may be imposed are prescribed in section 31 of the Penal Code. In compliance with this section, any other sentence for a felony except life imprisonment shall carry with it the same forfeitures for the duration of the sentence and for ten years following its expiry or release on licence unrevoked; and for a sentence of misdemeanour and where authorised by law the court may, for reasons to be recorded in the judgment, add, for not more than five years, one or more of the forfeitures prescribed in article 30.
171. The effectiveness of these provisions to deter corrupt behaviour could not be reviewed in practice.

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 8**

*8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

172. Cameroon referred to the measures cited under paragraph 6 of the article.

#### **(b) Observations on the implementation of the article**

173. The administrative framework governing the disciplinary process is laid out in the general statute on the public service, as well as the disciplinary council rules.

174. The effectiveness of these provisions could not be reviewed in practice.

## **Article 30 Prosecution, adjudication and sanctions**

### **Paragraph 10**

*10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

175. Cameroon considers itself partially in compliance with this provision.

176. Measures for the reintegration of persons convicted of offences are part of Cameroon's general criminal policy. There are no specific measures with regard to persons convicted of acts of corruption. The correctional authorities implement numerous measures to promote the reintegration of all convicted persons.

#### **(b) Observations on the implementation of the article**

177. The Convention promotes the need for reintegration of convicted persons into the society as an important goal of criminal justice systems. Consequently, States parties should endeavour to promote reintegration, in favour of striking an appropriate balance between punishment and rehabilitation.

178. Based on the discussion during the country visit, it appears that the Cameroonian correctional authorities support the reintegration of prisoners through various services and activities in particular cases; however, a comprehensive prisoner reintegration policy or program is not established.

## Article 31 Freezing, seizure and confiscation

### Paragraph 1

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;*

*(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.*

### (a) Summary of information relevant to reviewing the implementation of the article

179. Cameroon cited the following measures.

Sections 35, 184, paragraph 4, of the Penal Code

Article 54, CEMAC Regulation N° 02/10 of October 2, 2010, amending Regulation N° 01/03/CEMAC/UMAC/CM of April 4, 2003, on prevention and prosecution of money laundering and funding of terrorism in Central Africa

#### **Section. 35. — Confiscation**

**(1) On conviction for any felony or misdemeanour, the court may order confiscation of any property, moveable or immovable, belonging to the offender and attached, which was used as an instrument of its commission, or is the proceeds of the offence.**

**(2) Such confiscation may not be ordered on conviction for a simple offence unless specially authorized by law.**

#### **Section C. 35.**

Section 35 is applicable to any conviction for felony or misdemeanour, without any special mention in the definition of the offence ; but does not apply in the case of simple offences without such mention.

Confiscation under section 35 is always discretionary except in the special cases where the law makes it compulsory.

This confiscation is applicable only to property :

- (a) belonging to the offender (a matter of civil law) ; and
- (b) attached (no confiscation of other property in the hope of finding it later) ; and-
- (c) which served as an instrument in the commission of the offence (for example a warehouse used to conceal smuggled goods) or which represents the proceeds of it (for instance a dwelling-house bought by the offender with the proceeds of this corruption).

It is to be observed in connection with condition (a) above, that if the offence was committed with the help of a vehicle not belonging to the offender, the vehicle may still be confiscated if its owner was accessory to the offence and convicted as such, the accessory being punishable in like manner as the offender himself [section 98 (1) below].

This confiscation as a penalty must not be confused with confiscation under section 45 below as a measure.

#### **CEMAC Regulation N° 02/10**

##### **Article 54: Confiscation**

*In the case of conviction for one of the offences stipulated above, the competent court may order the confiscation of:*

- *property subject of the offence, including the income and other benefits that had been received, unless their owner proves that he acquired them by effectively paying the fair price or exchanged services corresponding to their value or to any other legitimate security, and that he was unaware of their illicit origin;*
- *property belonging, directly or indirectly, to a person convicted for an act of money laundering or terrorist financing or to his next of kin (spouse, concubines, children, etc.), unless the persons concerned establish the legitimate origin or the absence of any link between this property and the offence.*

*In case of an offence confirmed by the court, where the offender(s) cannot be convicted, the court may, nevertheless, order the confiscation of property on which the offence was established.*

*The decision ordering a confiscation shall name the property in question and provide details necessary for their identification and location.*

*The competent court may order the confiscation of property seized or frozen at the request of Public Prosecution stating:*

- *that these property constitute the proceeds of a crime or an offence as defined in this Regulation;*
- *that the authors of the acts having generated the proceeds cannot be prosecuted either because they are not known, or because there is a legal impossibility to the prosecution of the leader of these acts.*

#### **(b) Observations on the implementation of the article**

180. With respect to the cited legislation, Section 35 of the Cameroonian Penal Code prescribes application of confiscation for any felony or misdemeanour, thus including crimes of corruption; however it is found that confiscation under section 35 is always discretionary except in the special cases where the law makes it compulsory. A list of offences where the confiscation is compulsory is not provided. It is noted that section 35 stipulates that on conviction for any felony or misdemeanour; the court may order confiscation of any property, moveable or immovable, belonging to the offender and attached, which was used as an instrument for commission of the offence or was destined therefore, or is proceeds of the offence.

181. It was confirmed by the national authorities that, except in respect of money laundering offences under article 54 of the CEMAC Regulation 02/10, Cameroon's Penal Code applies the principle of object-based confiscation; thus, the confiscation of property the value of which corresponds to that of criminal proceeds is not established.
182. A further limitation is that, in accordance with section 35, confiscation is limited to property "belonging to the offender (a matter of civil law)". This limitation poses an undue limitation to the scope of property that may be subject to confiscation by the domestic authorities.
183. It is further noted that, under section 35 confiscation is provided for instrumentalities of crime; however, the confiscation of instrumentalities "destined for use" in the commission of offences is not covered.
184. No examples, or statistics of confiscated assets, were provided. Thus, the effectiveness of the domestic confiscation regime could not be assessed in practice.
185. In light of the above, and the discussions during the country visit, it is recommended that Cameroon amend its legislation to expand the scope of property subject to confiscation to include all proceeds of crime derived from Convention offences, as well as instrumentalities "destined for use" in the commission of offences, and to provide for value-based confiscation, in accordance with the article under review. The permissive nature of the confiscation as an additional discretionary penalty should also be reviewed, with a view to its amendment in line with the article under review. It is further recommended that Cameroon amend its data gathering systems to allow for the collection and tracking of statistics on the implementation of the article.

## **Article 31 Freezing, seizure and confiscation**

### **Paragraph 2**

*2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

186. Cameroon provided the following information.

Freezing and seizure are covered under sections 92-100 and 177-179 of the Code of Criminal Procedure, and article 43 of the above-cited CEMAC Regulations.

*Code of Criminal Procedure*  
**CHAPTER II**  
**POLICE INVESTIGATIONS**

**SUB-CHAPTER I**  
**GENERAL PROVISIONS**

*Section 92:*

*(1) (a) A judicial police officer may, in the course of an investigation, question any person whose statement is likely to lead to the discovery of the truth.*

*(b) The person summoned for questioning shall appear and answer any question and if he fails to appear, the judicial police officer shall inform the State Counsel who may issue a writ of *capias* against him. Such person shall be brought before the said State Counsel*

*(2) A judicial police officer may:*

*- conduct the search of a house, or premises and make seizures in accordance with the provisions of sections 93 to 100;*

*- remand persons in police custody, pursuant to sections 119 and following;*

*- request the assistance of any expert or of any person capable of assisting him in any given phase of the investigation; make a request in writing for transportation with immediate effect, in any public or private road, railway, water or air transport vehicle. The original of the written request shall be left with the carrier.*

*(3) In cases of felonies and misdemeanours punishable with at least two years imprisonments, the judicial police officer may, on the written authorization of the State Counsel, and under the control of the latter, in accordance with the conditions laid down in section 245, in the course of the investigations:*

*- intercept, record or transcribe all correspondences sent by means of telecommunication;*

*- take any photographs at private premises.*

*(4) Any one heard as a witness or as a person vicariously liable, may not, in any circumstance, be subject to remand in police custody.*

*Section 93:*

*(1) Searches and seizures shall be carried out by judicial police officers who possess search warrants.*

*However, he may act without a search warrant in cases of a felony or a misdemeanour committed *flagrante delicto*.*

*(2) Any search or seizure shall be carried out in the presence of the occupant of the place and the person in possession of the objects to be seized, or in case of their absence, their representatives, as well as two witnesses chosen from among the persons or neighbours present.*

*(3) The occupant of the place and the person in possession of the objects to be seized, or in case of their absence, their representatives shall have the right to search the judicial police officer before the latter commences his search. He shall be informed of the said right and mention of it shall be made in the report of the fulfilment of this formality.*

*(4) In the absence of the occupant or of the person in possession of the objects or of their representatives, and in case of urgency, the State Counsel may, in writing, authorize the judicial police officer to conduct the search or seizure in the presence of the witnesses described in sub-section (2) above and one other judicial police officer or two judicial police agents.*

*(5) Where the judicial police officer cannot get in touch with the Legal Department, he shall proceed with the search and as the case may be, seizure in accordance with the provisions of sub-section (4) above and shall mention the action he has taken in his report.*

*Section 94:*

*(1) In the absence of a search warrant, searches, and seizures of exhibits may be carried out only with the consent of the occupant or of the person in possession of the objects to be seized.*

*(2) The consent shall be a written declaration signed by the person concerned, and if he cannot sign he shall make a thumb-print at the bottom of the declaration.*

*(3) The consent of the person concerned shall be valid only if he had been informed beforehand by the judicial police officer of his right to object to the search.*

*Section 95: Any judicial police officer conducting a search in connection with a specific offence may carry out a seizure in connection with another offence only if the latter attracts an imprisonment sentence.*

*Section 96:*

*(1) All articles seized shall be shown to the suspect or if he is not present, to his representative or to the person in possession of them so that he may identify them and initial them if necessary. Where he refuses to do so, mention of this fact shall be made in the report.*

*(2) Subject to the provisions of section 97, all articles seized shall in all cases be shown to the witnesses in order that they may identify and initial them if necessary.*

*(3)*

*(a) An inventory of the articles seized shall be made on the spot, described in full detail and kept under seal.*

*(b) If it is not convenient to make an inventory on the spot, the articles shall be provisionally put away under seal until an inventory is made and they are finally sealed. This shall be done in the presence of the persons mentioned in section 93 (2).*

(c) If the sizes of the articles seized or of the conditions for their preservation so require, they may be put under seal without using a bag or envelope.

*Section 97: When a judicial police officer conducts a search, he alone shall have the right to examine the contents of the documents found in the place before they are seized. He shall be bound by professional secrecy.*

*Section 98:*

*(1) The report on the search and seizure shall be drawn up in accordance with the provisions of section 90. It shall be signed by the occupant of the place and the person in possession of the articles or in case of their absence, their representative, as well as the witnesses and any other person who took part in the search.*

*(2) The report shall state the full name, status, names of parents, date and places of birth as well as the permanent addresses of the signatories.*

*Section 99:*

*(1) No search may be conducted on a private house and premises between six (6) p.m. and six (6) a.m.*

*(2) However, a search already begun may continue after six (6) p.m. on the authorization of the State Counsel.*

*(3) In case of impossibility of getting in touch with the State Counsel, the judicial police officer may exceptionally continue with the search after 6 p.m. and shall, without delay, keep the State Counsel informed.*

*Section 100: Failure to comply with the provisions of sections 93 to 99 shall render the search and seizure null and void.*

*However, where the search has been declared null and void, the articles seized in the course thereof may be admitted as exhibits if they are not contested.*

## **SUB-CHAPTER II**

### **VISIT TO THE LOCUS IN QUO, SEARCHES AND SEIZURES**

*Section 177:*

*(1) The Examining Magistrate may visit any area within his jurisdiction to carry out all measures of investigation necessary for the discovery of the truth, and in particular conduct searches and seizures.*

*(2) He may also visit area outside his jurisdiction after having notified the State Counsel of the area concerned.*

*Section 178:*

*(1) Searches of or visits to residential premises shall be made wherever they are likely to yield relevant evidence.*

*(2) Any error as to the place, justification or appropriateness of the search shall not be ground for any claim for damages.*

*Section 179:*

*(1) When the search is conducted in the house of the defendant, the Examining Magistrate shall observe the provisions of sections 92 to 99 of this code.*

*(2) When a search is conducted on premises other than other of the defendant, the occupant of the premises shall be asked to be present. If he is not present or refuses to be at the search, the search shall take place in the presence of two members of his family or in-laws or two witnesses.*

*(3) The Examining Magistrate takes cognisance of letters and other documents found on the premises and decides on which articles and documents to seize.*

*(b) The provisions of sections 92 and 93 of this code shall be observed.*

*(4) The owners or persons in possession of documents seized may, at their request and expense obtain copies thereof. However the Examining Magistrate may, by a reasoned ruling, refuse their request.*

*(5) Any other person claiming a right to the objects and document seized may claim restitution to the Examining Magistrate who, after requisitions of the State Counsel, decides on it by ruling not subject to appeal and served on the parties.*

### **CEMAC Regulation N° 02/10 of October 2, 2010, amending Regulation N° 01/03/CEMAC/UMAC/CM of April 4, 2003, on prevention and prosecution of money laundering and funding of terrorism in Central Africa** **Article 43: Seizures and other provisional measures**

*Within the framework of detection and suppression of offences relating to money laundering and financing of terrorism, the competent judicial authority may, automatically or at the request of the Public Prosecution or competent administration:*

*- seize the property that have a link with the offence being investigated on, as well as all elements that may help identify them;*

- order, at the expense of the State, measures, including the freezing of capital and financial transactions on property, whatever their nature, likely to be seized.

The lifting of these measures may be ordered at any time at the request of the Public Prosecution or, following the opinion of the latter, at the request of the competent administration or owner.

**(b) Observations on the implementation of the article**

187. Cameroon has adopted measures that allow for the identification, tracing, freezing or seizure of property for purposes of eventual confiscation. No examples of implementation were provided.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 3**

*3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

188. Cameroon considers itself partially in compliance with provisions of article 31 paragraph 3.

189. There are no provisions regulating the administration of seized or frozen assets. Confiscated property becomes the property of the State, which administers and disposes of it in accordance with its own rules.

**(b) Observations on the implementation of the article**

190. With regard to the administration of seized, frozen and confiscated assets, it was explained by the national authorities that mobile property is generally sold in auctions by the relevant enforcement authority that conducted the seizure, while immobile property is administered by the Ministry of State Property, Cadastre and Land Affairs (MINDCAF). While MINDCAF operates subject to certain regulations governing the seizure and disposition of property, it was confirmed by the authorities that there is no comprehensive regulatory framework in place governing the administration of seized, frozen and confiscated assets, in particular moveable assets, or for their disposition. It is recommended that Cameroon adopt measures to strengthen the administration and disposition of assets and consider, in particular, establishing a dedicated asset management function.

191. With regard to implementation of this provision of the Convention, it should be considered that the system should ensure that professionals skilled according to the type of property might be appointed for management and administrative purposes; and that the system must prevent the abuse of frozen assets through appropriate checks and balances and oversight, as well as by means of dissuasive and proportionate sanctions in order to avoid even greater costs to the State. Furthermore, Cameroon may wish to consider under what circumstances, if any, the owner of the frozen or seized property might be eligible for compensation or damages, if the property ultimately is not confiscated.

## Article 31 Freezing, seizure and confiscation

### Paragraphs 4 to 6

4. *If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.*

5. *If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.*

6. *Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.*

### (a) Summary of information relevant to reviewing the implementation of the article

192. Cameroon indicated that these points are implicitly regulated by section 35 of the Penal Code.

#### **Section. 35. — Confiscation**

**(1) On conviction for any felony or misdemeanour, the court may order confiscation of any property, moveable or immovable, belonging to the offender and attached, which was used as an instrument of its commission, or is the proceeds of the offence.**

**(2) Such confiscation may not be ordered on conviction for a simple offence unless specially authorized by law.**

#### **Section C. 35.**

Section 35 is applicable to any conviction for felony or misdemeanour, without any special mention in the definition of the offence ; but does not apply in the case of simple offences without such mention.

Confiscation under section 35 is always discretionary except in the special cases where the law makes it compulsory.

This confiscation is applicable only to property :

- (a) belonging to the offender (a matter of civil law) ; and
- (b) attached (no confiscation of other property in the hope of finding it later) ; and-
- (c) which served as an instrument in the commission of the offence (for example a warehouse used to conceal smuggled goods) or which represents the proceeds of it (for instance a dwelling-house bought by the offender with the proceeds of this corruption).

It is to be observed in connection with condition (a) above, that if the offence was committed with the help of a vehicle not belonging to the offender, the vehicle may still be confiscated if its owner was accessory to the offence and convicted as such, the accessory being punishable in like manner as the offender himself [section 98 (1) below].

This confiscation as a penalty must not be confused with confiscation under section 45 below as a measure.

**(b) Observations on the implementation of the article**

193. UNCAC article 31(4) requires States parties to subject to confiscation property that has been transformed or converted, instead of the direct proceeds. This provision covers situations in which the sources of proceeds or instrumentalities may not be immediately apparent, because the offenders have made their detection more difficult by mingling them with legitimate proceeds or by converting them into different forms.
194. UNCAC article 31(5) requires States parties to subject to confiscation property that has been intermingled with property acquired from legitimate sources, without prejudice to any powers relating to freezing or seizure. This provision is intended as a minimum threshold and States parties would be free to go beyond it in their domestic legislation.
195. UNCAC article 31(6) requires States parties to subject to confiscation not only primary but also secondary proceeds of crime. Primary proceeds are those assets directly obtained through the commission of the offence, while the secondary proceeds refer to benefits derived from the original proceeds. In this regard, the Convention requires States parties to provide mandatory confiscation for both the primary and secondary proceeds.
196. Section 35 (c) of the Penal Code prescribes confiscation for any felony or misdemeanour, thus including crimes of corruption. However, it is found that confiscation is applicable only to property belonging to the offender or attached to him. Moreover, as noted under article 31(1) above, the Cameroonian legislation does not allow for value-based confiscation, as the forfeiture is object-based.
197. Accordingly, the reviewers conclude that Cameroon has not implemented the provisions and is recommended to align its legislation with the provisions under review.

## **Article 31 Freezing, seizure and confiscation**

### **Paragraph 7**

*7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

198. Cameroon referred to the following measures.

The Code of Criminal Procedure grants broad investigative powers to the Judicial Police (sections 92 and subsequent, 104)

Article 20 of CONAC Regulation establishes broad investigative powers of the Commission (Presidential Decree No. 2006/088 of 11 March 2006 relating to the setting up, organization and functioning of the National Anti-Corruption Commission)

Other relevant measures are contained in the above-referenced CEMAC regulation and in the Cameroon's Bank Secrecy Law N° 2003/004 of 21 April 2003

#### **CONAC Regulation**

##### **Article 20:**

*Commissioners shall be vested with the relevant powers to monitor, assess and investigate in the performance of their duties.*

*To that end, Commissioners on assignment:*

*- shall have a right to access all government, semi-public and private services as well as all documents and information needed for the discharged of their duties;*

*Shall be authorised to request information from any public servant, whether an official or not as well as from any natural person or corporate body awarded a public contract.*

#### **Code of Criminal Procedure**

##### **Section 92:**

*(1) (a) A judicial police officer may, in the course of an investigation, question any person whose statement is likely to lead to the discovery of the truth.*

*(b) The person summoned for questioning shall appear and answer any question and if he fails to appear, the judicial police officer shall inform the State Counsel who may issue a writ of *habeas corpus* against him. Such person shall be brought before the said State Counsel*

*(2) A judicial police officer may:*

*- conduct the search of a house, or premises and make seizures in accordance with the provisions of sections 93 to 100;*

*- remand persons in police custody, pursuant to sections 119 and following;*

*- request the assistance of any expert or of any person capable of assisting him in any given phase of the investigation; make a request in writing for transportation with immediate effect, in any public or private road, railway, water or air transport vehicle. The original of the written request shall be left with the carrier.*

*(3) In cases of felonies and misdemeanours punishable with at least two years imprisonments, the judicial police officer may, on the written authorization of the State Counsel, and under the control of the latter, in accordance with the conditions laid down in section 245, in the course of the investigations:*

*- intercept, record or transcribe all correspondences sent by means of telecommunication;*

*- take any photographs at private premises.*

*(4) Any one heard as a witness or as a person vicariously liable, may not, in any circumstance, be subject to remand in police custody.*

##### **Section 93:**

*(1) Searches and seizures shall be carried out by judicial police officers who possess search warrants.*

*However, he may act without a search warrant in cases of a felony or a misdemeanour committed flagrante delicto.*

*(2) Any search or seizure shall be carried out in the presence of the occupant of the place and the person in possession of the objects to be seized, or in case of their absence, their representatives, as well as two witnesses chosen from among the persons or neighbours present.*

*(3) The occupant of the place and the person in possession of the objects to be seized, or in case of their absence, their representatives shall have the right to search the judicial police officer before the latter commences his search. He shall be informed of the said right and mention of it shall be made in the report of the fulfilment of this formality.*

*(4) In the absence of the occupant or of the person in possession of the objects or of their representatives, and in case of urgency, the State Counsel may, in writing, authorize the judicial police officer to conduct the search or seizure in the presence of the witnesses described in sub-section (2) above and one other judicial police officer or two judicial police agents.*

*(5) Where the judicial police officer cannot get in touch with the Legal Department, he shall proceed with the search and as the case may be, seizure in accordance with the provisions of sub-section (4) above and shall mention the action he has taken in his report.*

**Section 94:**

*(1) In the absence of a search warrant, searches, and seizures of exhibits may be carried out only with the consent of the occupant or of the person in possession of the objects to be seized.*

*(2) The consent shall be a written declaration signed by the person concerned, and if he cannot sign he shall make a thumb-print at the bottom of the declaration.*

*(3) The consent of the person concerned shall be valid only if he had been informed beforehand by the judicial police officer of his right to object to the search.*

**Section 95:**

*Any judicial police officer conducting a search in connection with a specific offence may carry out a seizure in connection with another offence only if the latter attracts an imprisonment sentence.*

**Section 96:**

*(1) All articles seized shall be shown to the suspect or if he is not present, to his representative or to the person in possession of them so that he may identify them and initial them if necessary. Where he refuses to do so, mention of this fact shall be made in the report.*

*(2) Subject to the provisions of section 97, all articles seized shall in all cases be shown to the witnesses in order that they may identify and initial them if necessary.*

*(3)*

*(a) An inventory of the articles seized shall be made on the spot, described in full detail and kept under seal.*

*(b) If it is not convenient to make an inventory on the spot, the articles shall be provisionally put away under seal until an inventory is made and they are finally sealed. This shall be done in the presence of the persons mentioned in section 93 (2).*

*(c) If the sizes of the articles seized or of the conditions for their preservation so require, they may be put under seal without using a bag or envelope.*

**Section 97:**

*When a judicial police officer conducts a search, he alone shall have the right to examine the contents of the documents found in the place before they are seized. He shall be bound by professional secrecy.*

**Section 98:**

*(1) The report on the search and seizure shall be drawn up in accordance with the provisions of section 90. It shall be signed by the occupant of the place and the person in possession of the articles or in case of their absence, their representative, as well as the witnesses and any other person who took part in the search.*

*(2) The report shall state the full name, status, names of parents, date and places of birth as well as the permanent addresses of the signatories.*

**Section 99:**

*(1) No search may be conducted on a private house and premises between six (6) p.m. and six (6) a.m.*

*(2) However, a search already begun may continue after six (6) p.m. on the authorization of the State Counsel.*

*(3) In case of impossibility of getting in touch with the State Counsel, the judicial police officer may exceptionally continue with the search after 6 p.m. and shall, without delay, keep the State Counsel informed.*

**Section 100:** Failure to comply with the provisions of sections 93 to 99 shall render the search and seizure null and void.

However, where the search has been declared null and void, the articles seized in the course thereof may be admitted as exhibits if they are not contested.

**Section 101:**

(1) A judicial police officer may, in the course of an investigation, assign part thereof to any other judicial police officer under his authority.

(2) Any judicial police officer to whom any part of the investigation has been assigned shall in his report specifically mention the fact of such delegation.

**Section 102:**

(1) The entire judicial police investigation process shall be secret. However, the secrecy of the investigation shall not apply to the Legal Department.

(2) Any person who assist in these investigations shall be bound by professional secrecy subject to the penalties laid down in section 310 of the Penal Code.

(3) Notwithstanding the provisions of sub-section (1), judicial police officers may with the approval of the State Counsel, publish press releases and documents relating to certain matters which have been the subject of the investigation.

(4) Press releases and documents published by the judicial police shall be disseminated without comments by the press. Any violation of this provision shall be punished under sections 169 and 170 of the Penal Code.

**Section 104:**

(1)

(a) A judicial police officer informed of a felony committed flagrante delicto shall immediately inform the State Counsel of it.

(b) Any notice whether given by telephone or other oral communication shall be confirmed in writing. Within forty eight hours of the oral message.

(c) Mention of these measures shall be made in the report.

(2) The judicial police officer shall without delay visit the place where the felony was committed and shall take all necessary steps particularly:

(a) to prevent any person likely to supply useful information from leaving the place without his permission, subject to the punishment provided in the Penal Code for defaulting witness. He may not, under pain of prosecution for false arrest detain such person for more than 12 hours;

(b) to, where necessary, remand in police custody any suspected person;

(c) to ensure the preservation of evidence that may be used for the discovery of the truth;

(d) to seize any articles or documents used in committing, or which appear to be the product of the felony;

(e) to, in case of urgency, carry out his duties outside his territorial jurisdiction in accordance with section 88

(2);

(f) to conduct searches in the houses of persons suspected of either keeping documents or articles relating to the particulars of the offence or of having participated in the commission of the felony.

**Article 31 of CEMAC Regulation N° 02/10 of October 2, 2010, amending Regulation N° 01/03/CEMAC/UMAC/CM of April 4, 2003, on prevention and prosecution of money laundering and funding of terrorism in Central Africa.**

**Article 31: Right to Communication and Confidentiality**

The National Agency for Financial Investigation may, at its request, require any public authority, persons liable under Article 5 or any natural person or corporate body, to transmit information and documents, on the basis of investigations it is carrying out following a suspicion report.

The National Agency for Financial Investigation shall be bound by professional secrecy.

NAFI members and correspondents shall take the oath, as soon as they are appointed and before assuming their duties, to perform their duties with loyalty and with strict respect for the Regulation and provisions enacted for its implementation.

NAFI members and correspondents shall be bound by professional secrecy for information they obtain in the performance of their duties or assignments, even after the cessation of such duties.

**Law N° 2003/004 of 21 April 2003 relating to Banking secrecy**

**Article 8**

(1) Banking secrecy cannot be opposed to the judicial authority acting in criminal proceedings and to judicial police officers acting on rogatory commission of the Public Prosecutor.

(2) *Banking secrecy may only be lifted in civil, commercial or social matters in the cases provided for by law.*

**(b) Observations on the implementation of the article**

199. UNCAC article 31(7) sets forth procedural law requirements to facilitate the operation of the other provisions of article 31 and of article 55 (International cooperation for purposes of confiscation). The same paragraph establishes the principle that bank secrecy cannot be raised by States as grounds for not implementing that paragraph. The Convention applies the same rule with respect to mutual legal assistance matters.

200. In accordance with this provision, article 8 of the Bank Secrecy Act - Law no. 2003/004 of April 21, 2003 stipulates that bank secrecy cannot be opposed to the judicial authority acting in the course of criminal proceedings or to the judicial police officers acting in execution of a rogatory commission of the prosecutor, and that bank secrecy can be lifted in civil, commercial or social matters as provided for by law.

201. Regarding making bank, financial or commercial records available or seized, article 31 of the above cited CEMAC Regulations prescribes the relevant competencies of the National Agency for Financial Investigation (NAFI).

202. It was further confirmed by the national authorities that CONAC does not require a court order to obtain bank, financial or commercial records for investigative purposes but can do so administratively, by letter from the Commissioner. Likewise, ANIF may obtain relevant records administratively, in accordance with article 31 of the CEMAC Regulations. There have been no obstacles in practice to the ability of the relevant agencies to obtain such records, which are accessed routinely in the course of investigations.

**Article 31 Freezing, seizure and confiscation**

**Paragraph 8**

*8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.*

**(a) Summary of information relevant to reviewing the implementation of the article**

203. Cameroon considers its legislation partially in line with the provisions of article 31, paragraph 8 of the Convention.

Such a provision is contained in article 54 of the above cited CEMAC Regulations with regard to the laundering proceeds of crime

*Regulation N° 02/10 of October 2, 2010, amending Regulation N° 01/03/CEMAC/UMAC/CM of April 4, 2003, on prevention and prosecution of money laundering and funding of terrorism in Central Africa*  
**Article 54: Confiscation**

*In the case of conviction for one of the offences stipulated above, the competent court may order the confiscation of:*

- property subject of the offence, including the income and other benefits that had been received, unless their owner proves that he acquired them by effectively paying the fair price or exchanged services corresponding to their value or to any other legitimate security, and that he was unaware of their illicit origin;

- property belonging, directly or indirectly, to a person convicted for an act of money laundering or terrorist financing or to his next of kin (spouse, concubines, children, etc.), unless the persons concerned establish the legitimate origin or the absence of any link between this property and the offence.

In case of an offence confirmed by the court, where the offender(s) cannot be convicted, the court may, nevertheless, order the confiscation of property on which the offence was established.

The decision ordering a confiscation shall name the property in question and provide details necessary for their identification and location.

The competent court may order the confiscation of property seized or frozen at the request of Public Prosecution stating:

- that these property constitute the proceeds of a crime or an offence as defined in this Regulation;
- that the authors of the acts having generated the proceeds cannot be prosecuted either because they are not known, or because there is a legal impossibility to the prosecution of the leader of these acts.

## **(b) Observations on the implementation of the article**

204. UNCAC article 31(8) provides that States parties may consider establishing an evidentiary presumption in regard to the origin of the alleged proceeds of crime. States parties are only required to consider implementing this measure to the extent that it is consistent with the fundamental principles of their law. The above cited Cameroonian regulation provides such an evidentiary presumption in regard to the origin of the alleged proceeds of crimes of money laundering or terrorist financing.

205. Considering the aforementioned, the reported legislation provides the grounds for implementation of this provision of the Convention in respect of money laundering offences. It may be noted that Cameroon's legislation does not establish the relevant presumption with respect to other offences under the Convention, but only for proceeds derived from drug offences, organized crime, and money-laundering.

206. No examples of implementation were provided.

## **Article 31 Freezing, seizure and confiscation**

### **Paragraph 9**

*9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.*

## **(a) Summary of information relevant to reviewing the implementation of the article**

207. Cameroon provided the following information.

The rights of bona fide third parties are protected on the basis of the general principles of law, which may be taken from an interpretation of section 74 of the Penal Code.

**Section 74. — *Punishment and Responsibility.***

(1) No penalty may be imposed except upon a person criminally responsible.

(2) Criminal responsibility shall lie on him who intentionally commits each of the ingredient acts or omissions of an offence with the intention of causing the result which completes it.

(3) Except as otherwise provided by law, no criminal responsibility shall arise from the result, though intended, of an omission.

(4) Except as otherwise provided by law, there shall be no criminal responsibility unless subsection (2) of this section has been satisfied.

Provided that responsibility for a simple offence shall not require any intention to act or to omit or to cause the result.

**Section C 74.**

Section 74 is of prime importance, constituting as it does the basic principle not only of the Penal Code but of the whole of criminal law.

Attention must also be paid to the practical considerations of the last phrase : it is useless for instance to send a boy to the approved school at Betamba if it is full, or to order the confinement of a drunkard in a special health establishment if it does not exist.

There is another special point. It may well happen, particularly in economic and financial offences, that the offender has committed the offence after deliberately discounting the risks he runs. If he considers that the profit which he has derived from the offence outweighs the disadvantages of the punishment which he foresaw, and which is then inflicted, he will find the game worth the candle and be ready to start again. The courts will not of course be blind to this psychological consideration.

**(b) Observations on the implementation of the article**

208. UNCAC Article 31, paragraph 9, requires that the seizure and forfeiture requirements not be interpreted as to prejudice the rights of bona fide third parties, which would at a minimum exclude those with no knowledge of the offence or connection with the offender(s). The Convention does not specify to what extent third parties should be provided with effective legal remedies in order to preserve their rights; however, the provision stipulates an obligation for the States parties to adopt the aforesaid procedural requirements.

209. Section 74 of the Penal Code provides the elements of criminal responsibility, but does not specifically provide protection for the rights of bona fide third parties.

210. No examples of implementation were provided.

211. It is recommended that Cameroon adopt measures to protect bona fide third parties in accordance with the provision under review. In this respect, Cameroon may wish to take into account that some jurisdictions have opted to establish a specific procedure for third parties claiming ownership over seized property. In this procedure, the prosecution evaluates whether the claimant(s) have acted with the purpose of concealing the predicate

offence, or are implicated in any of the ancillary offences; have legal interest in the property; acted diligently according to the law and commercial practice; if the property requires a public registration of the transaction or any administrative procedure, such information has conducted; if the transaction was onerous, whether it followed real market values.

## **Article 32 Protection of witnesses, experts and victims**

### **Paragraphs 1 and 2**

*1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.*

*2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

*(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;*

*(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

212. Cameroon indicated that it has not adopted and implemented the provisions of Article 32 (1) and (2). There is a draft bill on prevention and prosecution of offences related to corruption and similar offences, which contains provisions on the protection of witnesses, experts, and their relatives and other persons close to them, but it has not been promulgated yet.

213. However, Article 3(3) of the CONAC Decree provides for the anonymity of reporting persons and thereby affords some protection to them.

#### ***Art. 3 of Decree No. 2006/088***

*(3) The Commission shall be bound to protect its sources of information. Provided that where the malicious intent of the informer is established, the Commission shall disclose the source concerned at the behest of the court.*

#### **(b) Observations on the implementation of the article**

214. The reviewers drew attention to the explanations in the Technical Guide to the UNCAC and pointed out that the policymaking authorities with regard to implementation of this article should consider the following resolutions on standards and norms:

- Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (General Assembly Resolution 40/34)
- Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime (ECOSOC resolution 2005/20)
- Implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (ECOSOC resolution 1989/57)
- Plan of action for the implementation of the Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (ECOSOC resolution 1998/21)

215. During the country visit it was confirmed that the draft law containing provisions on the protection of witnesses, experts, and their relatives and other persons has not been adopted yet. Due to the need for financial and human resources, in practice, the protection of witnesses was often the responsibility of private security firms.

216. It was recommended that Cameroon should take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts.

### **Article 32 Protection of witnesses, experts and victims Paragraph 3**

*3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

217. Cameroon indicated that it has not adopted and implemented the provisions of Article 32 (3).

#### **(b) Observations on the implementation of the article**

218. Cameroon was encouraged to consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

### **Article 32 Protection of witnesses, experts and victims Paragraph 4**

*4. The provisions of this article shall also apply to victims insofar as they are witnesses.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

219. Cameroon indicated that it has not adopted and implemented the provisions of Article 32 (4).

#### **(b) Observations on the implementation of the article**

220. It was recommended that Cameroon should take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for victims insofar as they are witnesses.

## **Article 32 Protection of witnesses, experts and victims**

### **Paragraph 5**

*5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

221. Cameroon stated that its criminal law takes into consideration the interests of the victim, in particular by providing for victims to claim civil damages in criminal proceedings, Section 71 CPC. Moreover, a victim can join the public action as *partie civile*, Sections 157, 385 CPC to claim damages.

222. The views of the victim are also taken into account insofar as the victim can cross-examine the witnesses, Section 332.

#### **Section 71 CPC**

*(1) A civil claim based on an offence may be made by any natural or legal person who has suffered injury, loss or damage.*

#### **Section 157:**

*(1) Any person who alleges that he has suffered injury resulting from a felony, or misdemeanour may when lodging a complaint with the competent Examining Magistrate, file a claim for damages.*

*(2) The complaint in which a victim claims damages shall set the criminal action in motion.*

*(3) The provisions of sub section (1) shall not be applicable either to simple offences or to offences, the prosecution of which is solely reserved for the Legal Department.*

**Section 332—** *(1) Every witness shall first undergo examination-in-chief, then, if the other party so desires, cross-examination and lastly, if the party who called him so desires, re-examination.*

#### **Section 385 —**

*(1) Anyone who alleges that he suffered injury as result of the commission of an offence may make an oral or written application for damages in court..*

*(2) The civil party shall indicate the damages which he is claiming.*

*(3) Where the victim of an offence has not made an application for damages, the Presiding Magistrate shall ask him if he intends to do so.*

*(4) The application for damages by a civil party shall be made before the end of the proceeding otherwise it shall be inadmissible..*

*(5) When a person has applied for damages as a civil party mention of this fact shall be made in the judgment.*

*(6) Where the victim of an offence summoned as a civil party does not appear to indicate his claim for damages, the court shall decide on the criminal action only.*

*In this case, the victim shall retain his right to bring a civil action..*

#### **(b) Observations on the implementation of the article**

223. It was concluded that Cameroon is in compliance with this provision of the Convention.

**(c) Technical assistance needs**

224. Cameroon requested technical assistance for the implementation of article 32.

**Article 33 Protection of reporting persons**

*Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

225. Cameroon initially indicated that it has not adopted and implemented the provisions of Article 33.

226. However, Art. 3(3) of the CONAC Decree provides for the anonymity of reporting persons and thereby affords some protection to them.

***Art. 3 of Decree No. 2006/088***

*(3) The Commission shall be bound to protect its sources of information. Provided that where the malicious intent of the informer is established, the Commission shall disclose the source concerned at the behest of the court.*

227. Art. 22 of the CEMAC AML/CFT Regulation (Regulation N° 01/CEMAC/UMAC/CM of 11 April, 2016 on prevention and prosecution of money laundering and funding of terrorism in Central Africa) addresses some aspects of the protection of reporting persons in that it excludes liability of managers and officials of the financial body or any other person liable under Article 5 that acted in good faith and reported suspicious transactions.

***Article 22: Exemptions from liability***

*For amounts or transactions that have been reported and for which the procedures prescribed by this Regulation have been followed, no prosecution can be brought against managers and officials of the financial body or any other person liable under Article 5 that acted in good faith.*

*No civil liability action may be brought, nor any professional sanction imposed for violation of banking or professional secrecy or in any other capacity against a financial body, its officials or employees that in good faith reported and carried out other procedures prescribed by this Regulation or blocked a transaction within the framework of this Regulation, notwithstanding that the investigations led neither to prosecution nor to conviction.*

*Where the transaction reported was executed in accordance with Article 18 paragraph 3 above save in case of fraudulent collusion with the owner of amount or the author of the transaction, the financial body or any other person liable under Article 5 shall be relieved of*

*any responsibility, and no legal proceedings may be instituted against its officials or its employees for offences covered by this Regulation or by the non-contrary provisions in force on money laundering and terrorist financing.*

**(b) Observations on the implementation of the article**

228. During the country visit it was added that while there is no dedicated whistleblower hotline, CONAC's numbers are public and they receive many calls from reporting persons. They accept anonymous reports and such reports have led to investigations in the past.

229. It was recommended that Cameroon consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

**Article 34 Consequences of acts of corruption**

*With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.*

**(a) Summary of information relevant to reviewing the implementation of the article**

230. Cameroon reported that the Public Procurement Code contains provisions applying the general principle of law *fraus omnia corrumpit* (fraud negates everything) and referred to Art. 109 of the Procurement Code.

**Art. 109.-** (1) Any natural or legal person governed by public or private law responsible for monitoring the performance of government contracts, convicted of malfeasance or failure in the exercise of that control, is liable to the penalties provided by the laws and regulations, without prejudice to compensation for damage suffered by the Client or the Client's Representative.

(2) The person may be subject to a prohibition to control the execution of procurement before a period of three (3) years from the date of declaration of failure.

231. Cameroon also referred to section 34 PC, which allows the courts to close down businesses that were used for the commission of an offence.

**Section 34. — Closure of Establishment.**

**Where the court may order closure of a business or industrial establishment, or of any premises devoted to gainful activity, which was used for the commission of an offence, such closure shall imply a ban on the exercise of the same business or industry or activity in the same premises, whether by the offender or by any other to whom he may sell, transfer or let the establishment or premises.**

232. Finally, Section 1151 of the Civil Code provides for the payment of damages in cases of fraud.

**Section 1151**

In the case where the non-performance of the agreement results from the fraud of the debtor, the damages must include, in respect of the loss suffered by the creditor and the gain from which he was deprived, that which is an immediate continuation and a direct violation of the agreement.

**(b) Observations on the implementation of the article**

233. During the country visit, Cameroon also referred to sections 5, 56, and 100 of the Procurement Code. However, these articles do not contain any possibility to rescind a contract on the grounds of corruption, nor do they refer to a general principle of law. Therefore, it was recommended that the possibility to void or rescind a tender vitiated by corruption should be explicitly foreseen in the Procurement Code.

**Article 35 Compensation for damage**

*Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.*

**(a) Summary of information relevant to reviewing the implementation of the article**

234. Cameroon stated that Sections 1382 and subsequent of the Civil Code provide in general terms for compensation for damages caused by others. Also, Section 157 of the Code of Criminal Procedure establishes the possibility for any victim to claim civil damages in a penal proceeding. Section 26-1 of the Penal Code provides for reparation as a criminal penalty.

***Section 1382 Civil Code***

Tout fait quelconque de l'homme, qui cause à autrui un dommage, oblige celui par la faute duquel il est arrivé à le réparer.

***Section 1383 Civil Code***

Chacun est responsable du dommage qu'il a causé non seulement par son fait, mais encore par sa négligence ou par son imprudence.

***Section 157 Code of Criminal Procedure***

(1) Any person who alleges that he has suffered injury resulting from a felony, or misdemeanour may when lodging a complaint with the competent Examining Magistrate, file a claim for damages.

(2) The complaint in which a victim claims damages shall set the criminal action in motion.

(3) The provisions of sub section (1) shall not be applicable either to simple offences or to offences, the prosecution of which is solely reserved for the Legal Department.

**Section 26-1 Penal Code**

## **ARTICLE 26-1.- Sanction-réparation**

(1) La sanction-réparation est une peine applicable aux délits passibles d'un emprisonnement inférieur à deux (02) ans ou d'une peine d'amende.

Elle consiste dans l'obligation, pour le condamné, de procéder à la réparation matérielle du préjudice subi par la victime dans le délai et selon les modalités fixées par la juridiction compétente.

(2) La peine prévue à l'alinéa 1 ci-dessus est prononcée par la juridiction de jugement à la place de l'emprisonnement ou de l'amende, après la déclaration de culpabilité, et le sursis ne peut être accordé.

(3) La décision du juge prévoit la durée de l'emprisonnement encouru en cas d'inexécution de la peine de sanction-réparation ; cette peine d'emprisonnement ne peut être assortie de sursis.

### **(b) Observations on the implementation of the article**

235. It was concluded that Cameroon is in compliance with this provision of the Convention.

## **Article 36 Specialized authorities**

*Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

236. Cameroon has a specialized anti-corruption agency, the National Anti-Corruption Commission (NACC, but usually known by its French acronym, CONAC). CONAC was created by Decree N° 2006/088 of 11 March 2006. Article 2 of the Decree stipulates that the "Commission is an independent public entity charged with contributing to the fight against corruption". As such, it has investigation powers but no prosecutorial powers. CONAC can investigate cases *ex officio*. It is endowed with financial autonomy to manage its affairs. CONAC submits its annual report to the President and publishes it on its website. With the support of UNDP, CONAC has developed and monitors an anti-corruption strategy.

237. The members of CONAC are former high ranking officials and former university lecturers. They cannot exercise any other functions. They are appointed for a term of 3 years (Art. 8).

238. CONAC has approx. 60 staff. The General Civil Service Statute does not apply to them. Articles 33 (refers to occasional collaborators or expert witnesses) and 34 (State

functionaries or agents made available or used for administration and recruitment of their own personnel) of the CONAC Decree deal with the selection and training of staff. Staff are recruited by co-optation.

239. CONAC has no regional presence. The Commission works with the police and gendarmerie who also have the mandate to investigate cases of corruption. The police also has a specialized unit for economic and financial crimes. To enhance cooperation, gendarmerie and police officers work within CONAC. Likewise, in order to facilitate cooperation with the prosecution service, there are magistrates working for CONAC. Nevertheless, it is possible that a police case can reach the courts without knowledge of CONAC. CONAC has an MoU with the FIU but not with the police and gendarmerie.
240. The Financial Intelligence Unit (FIU) of Cameroon was established by Decree N° 2005/187 of 31 May 2005, on the organization and functioning of the National Agency of Financial Investigations (NAFI, but usually known by its French acronym, ANIF). Further information is given under Art. 39 below.
241. Law N° 2011/028 of 14 December 2011 created the Special Criminal Tribunal. Under Article 2, the Court had jurisdiction, where the damage is at least equal to 50.000.000 million CFA francs, over offences of embezzlement of public funds and related offences provided for by the Penal Code and the international conventions ratified by Cameroon. Article 7, paragraph 3, of that law provided for a specialized corps of judicial police officials charged with conducting enquiries in such matters and executing letters rogatory. However, the Tribunal is no longer operational.
242. Decree N° 2013/287 of 4 September 2013 on the Organisation of the State Audit Service (Contrôle supérieur de l'Etat, CONSUPE) created a body that is responsible for the control of public finances.
243. There are also anti-corruption units within departments of the administration and Ministries. However, they are not autonomous because they are subordinate to the department heads. Also, such units propose sanctions to the Minister, who is free to apply them or not. However, a text on the reconfiguration of such units is in the process of finalization. According to this text, the units would report to CONAC.

*CONAC Decree N° 2006/088 of 11 March 2006*

*Art. 2: (1) The Commission shall be an independent public body charged with contributing to the fight against corruption.*

*(2) In that capacity, it shall notably be responsible for:*

- monitoring and evaluating the effective implementation of the governmental anti-corruption plan;*
- gathering, centralising and analysing denunciations and information forwarded to it in respect of corrupt practices, deeds and facts and similar offences;*
- conducting all studies and investigations and opposing any measures aimed and forestalling or curbing corruption;*
- carrying out, where necessary, on-the-spot controls of the execution of projects, as well as the evaluation of conditions of public contract awards;*
- disseminating and popularising anti-corruption instruments; identifying the causes of corruption and proposing to the relevant authorities measures likely to lead to its eradication from all public or semi-public services;*
- performing any other duties assigned it by the President of the Republic.*

*Art. 8: (1) The Chairperson, Vice-Chairperson of the Commission and members of the Coordination Committee shall be appointed by decree of the President of the Republic for a term of 3 (three) years, renewable once where necessary.*

- (2) *The above provision notwithstanding in case of gross misconduct, the term of office of the Commission Chairperson or of members of the Coordination Committee may terminate at any moment.*
- (3) *In the event of legal proceeding or manifest conflict of interest, the appointing authority shall suspend the Commissioner concerned from duty.*

**Chapter VI – Provisions Relating to Human Resources**

*Art. 33: The Commission may call on short term staff or sworn experts.*

*Art. 34: (1) The staff of the Commission shall be made up of civil servants or state employees seconded or posted by the administration.*

*(2) However, the Commission may recruit its own personnel, if need be.*

**(b) Observations on the implementation of the article**

244. It was concluded that Cameroon is largely in compliance with the obligations under Art. 36 of the Convention. However, it was recommended that CONAC recruit its staff by public competitions (*concours*) rather than co-optation.

**Article 37 Cooperation with law enforcement authorities**

**Paragraph 1**

*1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.*

**(a) Summary of information relevant to reviewing the implementation of the article**

245. Sections 90 et seq. of the Penal Code (quoted under paragraph 2 below) contain provisions on mitigating circumstances. However, there is no plea bargaining and it is not possible to grant full immunity from prosecution.

**(b) Observations on the implementation of the article**

246. During the country visit it was added that in practice, if CONAC investigates a corruption offence, it may not send it for prosecution if the offender cooperates.

247. It was recommended that Cameroon should take further measures to encourage offenders to cooperate with law enforcement authorities.

**Paragraph 2**

*2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

248. Sections 90 et seq. of the Penal Code contain provisions on mitigating circumstances. However, there is no plea bargaining and it is not possible to grant full immunity from prosecution.

**Section 90: Mitigation**

*The benefit of mitigation circumstances may be given, for reasons to be recorded in the judgment, save where they are by law expressly excluded.*

**Section 91: Mitigation in Case of Felony**

*(1) Upon a finding of mitigating circumstances in favour of any person convicted of felony, the sentence may be reduced to not less than 10 (ten) years loss of liberty if the offence be punishable with death, to not, less than 5 (five) years if it be punishable with loss of liberty for life, and to not less than 1 (one) year in any other case..*

*(2) Where the penalty is reduced under the last subsection to 10 (ten) years or less the court may add a fine of up to CFAF 2 000 000 (two million).*

**Section 92: Effects in case of misdemeanour or infraction**

*(1) Upon a finding of mitigating circumstances after conviction of misdemeanour or of a simple offence, the court may reduce to 5 (five) days any sentence of loss of liberty, and any sentence of fine to CFAF 1 (one), and may pass sentence of one such penalty only.*

*(2) Where the offence is by law punishable with loss of liberty only, the court may substitute a fine of up to CFAF 1 000 000 (one million) for misdemeanour or up to CFAF 25 000 (twenty-five thousand) for a simple offence.*

249. Also, Section 359 of the Code of Criminal Procedure stipulates that if the accused pleads guilty, it may be taken into consideration as a mitigating circumstance.

**SECTION 359 :** (1) At the commencement of the trial, the Presiding Magistrate shall, after having complied with the provisions of section 338, cause the charge to be read out to the accused and shall ask him whether he pleads guilty or not guilty.

(2) An accused who pleads guilty may, where the court finds him guilty, benefit from the provisions of sections 90 and 91 of the Penal Code.

**(b) Observations on the implementation of the article**

250. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Paragraph 3**

*3. Each State Party shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

251. Sections 90 et seq. of the Penal Code contain provisions on mitigating circumstances. However, there is no plea bargaining and it is not possible to grant full immunity from prosecution. Moreover, as noted under article 15 above, there is an exemption from prosecution for persons who are solicited for bribes who report the offence to the judicial authorities (Section 134-2 PC).

**(b) Observations on the implementation of the article**

252. It was recommended that Cameroon consider providing for the possibility of granting immunity from prosecution to cooperating offenders.

253. It was also recommended to align the exemption from prosecution for persons who are solicited for bribes who report the offence to the judicial authorities without rendering assistance in the investigation (Section 134-2 PC) with the requirements in art. 37.

**Paragraph 4**

*4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

254. Cameroon indicated that its legislation does not comply with the provisions of Article 37 paragraph 4.

**(b) Observations on the implementation of the article**

255. It was recommended that Cameroon should take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for cooperating offenders.

**Paragraph 5**

*5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

256. Cameroon indicates that it has not considered entering into relevant agreements or arrangements.

**(b) Observations on the implementation of the article**

257. Cameroon may consider entering into agreements with other States parties concerning the potential provision by the other State party of the treatment set forth in paragraphs 2 and 3 of this article.

### **Article 38 Cooperation between national authorities**

*Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:*

*(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or*

*(b) Providing, upon request, to the latter authorities all necessary information.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

258. Cameroon considers itself being in compliance with Article 38 due to the principle of the unity of State institutions, which implies that State authorities do not need a specific legal basis to cooperate with each other. Moreover, CONAC has MoUs with ANIF, CONSUPE and the Public Contracts Regulation Board.

259. The CONAC Decree provides:

#### **CONAC Decree N° 2006/088 of 11 March 2006**

**Art. 21:** (1) Any refusal to collaborate with or support a Commissioner discharging his duties may lead to disciplinary or administrative sanction.

(2) Where such refusal is by a member of Government or manager of a public enterprise, the matter shall be reported immediately to the President of the Republic.

**Art. 22:** (1) Findings of the investigations conducted by the Commission shall lead to disciplinary or legal proceedings.

(2) Where deeds and facts likely to be considered as corruption or any related offence is established, the Commission shall gather evidence and forward the file to the President of the Republic for appropriate decisions.

(3) However, in order to establish a case of *flagrante delicto* following denunciation, the Commission shall request the competent state services. The Commission Chairperson may directly contact the Minister in charge of Justice, and inform the employer of the accused person(s) thereof.

260. The Criminal Procedure Code also contains provisions on the sharing of information

#### **Section 135: (1) ...**

(2) Any person who has knowledge of an offence classified as a felony or misdemeanour shall directly and immediately inform either the Public Prosecutor or any judicial police officer or in their absence, any administrative authority of the locality.

(3) Any administrative authority so informed shall be bound to bring such information to the knowledge of the nearest State Counsel or judicial police officer.

(4) ...

(5) Any public servant as defined under section 131 of the Penal Code, who in the exercise of his duties has knowledge of a felony or a misdemeanour, shall be bound to inform the State Counsel and shall forward to him any document relating thereof.

*Section 136:* Failure to comply with the provisions of subsections 2, 3, 4, and 5 of the preceding section shall be publishable under section 171 of the Penal Code.

**(b) Observations on the implementation of the article**

261. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Article 39 Cooperation between national authorities and the private sector**

**Paragraph 1**

*1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

262. The Financial Intelligence Unit (FIU) of Cameroon was established by Decree N° 2005/187 of 31 May 2005, on the organization and functioning of the National Agency of Financial Investigations (NAFI, but usually known by its French acronym, ANIF). ANIF is an administrative type of FIU.

263. Despite its name, the Decree is actually a law. According to Article 2 of the Decree, ANIF is a public financial intelligence service. It is endowed with financial autonomy (Art. 16), as well as decision-making authority in relevant matters of its competence. ANIF reports are sent directly to prosecution, which has an obligation to act on basis of such reports (a departure from the principle of discretionary prosecution). ANIF has been a member of the Egmont Group of FIUs since 2010.

264. ANIF signed a Memorandum of Understanding (MoU) with CONAC in 2012.

265. The Bank Secrecy Act also refers to cooperation between financial institutions and the authorities responsible for investigation and prosecution (article 27). Additional provisions are found in *Regulation N° 02/10 of October 2, 2010, amending Regulation N° 01/03/CEMAC/UMAC/CM of April 4, 2003, on prevention and prosecution of money laundering and funding of terrorism in Central Africa.*

***Decree N° 2005/187 of 31 May 2005, on the organization and functioning of the National Agency of Financial Investigations***

2. (1) NAFI shall be a public body overseeing financial intelligence. It shall have financial autonomy and decision-making power on matters within the scope of its activities.

(2) NAFI shall be under the Ministry in charge of finance.

16. The report may concern transactions already carried out, where it was impossible to stay their execution or where it was discovered after the execution of the transactions that the amounts may have been derived from drug trafficking or from a money laundering operation.

***Regulation N° 02/10 of October 2, 2010, amending Regulation N° 01/03/CEMAC/UMAC/CM of April 4, 2003, on prevention and prosecution of money laundering and funding of terrorism in Central Africa.***

***Article 5: Persons liable***

The provisions of Parts II, III and IV of this Regulation shall apply to any individual or legal person that, as part of practice, carries out, controls, or advises on transactions involving deposits, exchange, investments, conversions or all other capital movements, in particular:

- The Treasuries of Member States;
- BEAC;
- Financial institutions;
- Manual money changers;
- Managers, directors and owners of casinos and gaming establishments;
- Notaries public and other independent legal practitioners who provide counsel or assist clients or act for or on behalf of their clients for the purchase and sale of goods, undertakings or businesses, the manipulation of assets, securities or other assets, the opening of bank accounts, the constitution or management of companies, trusts or similar structures, or any other financial transactions;
- Real estate agents;
- Companies that transport and transfer funds;
- Travel agencies;
- Auditors, chartered accountants and external auditors, tax consultants;
- Dealers in valuable articles such as works of art, metals and precious stones, automobiles.

***Article 6: Financial institutions***

For the purpose of this article, financial institutions shall refer to credit institutions (banks and financial institutions), including branches as set forth under Article 16 of the Annex to the Convention of 17 January 1992 on the harmonization of Banking regulations in Central African states, a credit institution having its headquarters abroad; banking intermediaries, financial services of the Post Office, micro finance institutions, insurance companies and reinsurance brokers and reinsurance companies, stock exchanges and organizations playing the role of central depository or settlement bank, trading companies; trading intermediaries, and estate management companies; companies providing investment services, mutual funds and mutual funds management companies.

***Law N° 2003/004 of 21 April 2003 relating to Banking secrecy***

Art. 27 - A person who participates in the management of a credit institution or who is employed by a credit institution is liable to imprisonment of one to five years and a fine of 1,000,000 to 20,000,000 FCFA who does not declare to the public prosecutor or the monetary authority any transactions involving sums of money which they know or presume to arise from the trafficking of narcotic drugs, criminal organizations or money laundering.

**(b) Observations on the implementation of the article**

266. During the country visit, it was added that there are 13 banks in Cameroon. Between 2006-2014, ANIF received 1718 Suspicious Transaction Reports (STRs). The FIU regularly organizes trainings for relevant actors in the private sector. It received itself

training from the World Bank, the Task Force on Money Laundering in Central Africa (Groupe d'Action contre le blanchiment d'Argent en Afrique Centrale (GABAC)) and the Egmont Group.

267. CONAC participates in monthly trainings with the private sector, e.g. the Business Coalition. CONAC also concluded an MoU with the Business Coalition.

268. It was concluded that Cameroon is in compliance with this provision of the Convention.

## Paragraph 2

*2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.*

### (a) Summary of information relevant to reviewing the implementation of the article

269. Reporting obligations exist in the Criminal Procedure Code and the AML/CFT Regulation (*Regulation N° 02/10 of October 2, 2010, amending Regulation N° 01/03/CEMAC/UMAC/CM of April 4, 2003, on prevention and prosecution of money laundering and funding of terrorism in Central Africa*).

#### ***Criminal Procedure Code***

##### ***Section 135: (1) ...***

(2) Any person who has knowledge of an offence classified as a felony or misdemeanour shall directly and immediately inform either the Public Prosecutor or any judicial police officer or in their absence, any administrative authority of the locality.

(3) Any administrative authority so informed shall be bound to bring such information to the knowledge of the nearest State Counsel or judicial police officer.

(4) ...

(5) Any public servant as defined under section 131 of the Penal Code, who in the exercise of his duties has knowledge of a felony or a misdemeanour, shall be bound to inform the State Counsel and shall forward to him any document relating thereof.

***Section 136:*** Failure to comply with the provisions of subsections 2, 3, 4, and 5 of the preceding section shall be punishable under section 171 of the Penal Code.

#### ***CEMAC AML/CFT Regulation***

##### ***Article 8: Reporting to the State Counsel***

Persons other than those specifically covered under Article 5 above are required to report to the State counsel about operations to which they are privy and which relate to funds which they know are likely to be proceeds of a crime or offence or part of money laundering or terrorist financing.

The State Counsel shall inform thereabout the National Agency for Financial Investigation, which shall provide all relevant information.

Where such a report is made in good faith, these persons shall have the advantage of the provisions of Articles 22 and 23 below. They shall be bound by the requirement of

confidentiality of such statements and shall be liable for the criminal penalties relating thereto provided for in this Regulation.

270. The CONAC Decree of March 11, 2006 provides a guarantee of anonymity for persons who make complaints or report criminal activities, with the aim of encouraging them to do so.

Art. 3: (1) The Commission may initiate proceedings for any corrupt practices, deeds and facts and similar offences with which it is acquainted.

(2) Any natural person or corporate body may also lodge with the Commission, any complaint or denunciation in respect of corrupt deeds and facts.

(3) The Commission shall be bound to protect its sources of information. Provided that where the malicious intent of the informer is established, the Commission shall disclose the source concerned at the behest of the court.

**(b) Observations on the implementation of the article**

271. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Article 40 Bank secrecy**

*Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.*

**(a) Summary of information relevant to reviewing the implementation of the article**

272. In general terms, Sections 92 et seq. of the Criminal Procedure Code allow the judicial police to undertake searches and seizures.

273. Article 8 of the Bank Secrecy Act, Law No. 2003/004 of 21 April 2003, stipulates that bank secrecy may not be claimed as an obstacle to criminal prosecution.

*Art. 8* — (1) Le secret bancaire ne peut être opposé à l'autorité judiciaire agissant dans le cadre d'une procédure pénale et aux officiers de police judiciaire agissant sur commission rogatoire du procureur de la République.

(2) Le secret bancaire ne peut être levé en matière civile, commerciale ou sociale que dans les cas prévus par la loi.

274. CONAC has the powers to lift bank secrecy without the need for a court order under the CONAC Decree:

*Art. 20:* Commissioners shall be vested with the relevant powers to monitor, assess and investigate in the performance of their duties.

To that end, Commissioners on assignment:

- shall have a right to access all government, semi-public and private services as well as all documents and information needed for the discharged of their duties;

Shall be authorised to request information from any public servant, whether an official or not as well as from any natural person or corporate body awarded a public contract.

275. Article 31 of the CEMAC AML/CFT Regulation gives ANIF the powers to access bank documents.

***Article 31: Right to Communication and Confidentiality***

The National Agency for Financial Investigation may, at its request, require any public authority, persons liable under Article 5 or any natural person or corporate body, to transmit information and documents, on the basis of investigations it is carrying out following a suspicion report.

The National Agency for Financial Investigation shall be bound by professional secrecy.

NAFI members and correspondents shall take the oath, as soon as they are appointed and before assuming their duties, to perform their duties with loyalty and with strict respect for the Regulation and provisions enacted for its implementation.

NAFI members and correspondents shall be bound by professional secrecy for information they obtain in the performance of their duties or assignments, even after the cessation of such duties.

***Criminal Procedure Code***

**SUB-CHAPTER I**

**GENERAL PROVISIONS**

**Section 92:**

(1) (a) A judicial police officer may, in the course of an investigation, question any person whose statement is likely to lead to the discovery of the truth.

(b) The person summoned for questioning shall appear and answer any question and if he fails to appear, the judicial police officer shall inform the State Counsel who may issue a writ of *habeas corpus* against him. Such person shall be brought before the said State Counsel

(2) A judicial police officer may:

- conduct the search of a house, or premises and make seizures in accordance with the provisions of sections 93 to 100;

- remand persons in police custody, pursuant to sections 119 and following;

- request the assistance of any expert or of any person capable of assisting him in any given phase of the investigation; make a request in writing for transportation with immediate effect, in any public or private road, railway, water or air transport vehicle. The original of the written request shall be left with the carrier.

(3) In cases of felonies and misdemeanours punishable with at least two years imprisonments, the judicial police officer may, on the written authorization of the State Counsel, and under the control of the latter, in accordance with the conditions laid down in section 245, in the course of the investigations:

- intercept, record or transcribe all correspondences sent by means of telecommunication;

- take any photographs at private premises.

(4) Any one heard as a witness or as a person vicariously liable, may not, in any circumstance, be subject to remand in police custody.

**Section 93:**

(1) Searches and seizures shall be carried out by judicial police officers who possess search warrants. However, he may act without a search warrant in cases of a felony or a misdemeanour committed *flagrante delicto*.

(2) Any search or seizure shall be carried out in the presence of the occupant of the place and the person in possession of the objects to be seized, or in case of their absence, their representatives, as well as two witnesses chosen from among the persons or neighbours present.

(3) The occupant of the place and the person in possession of the objects to be seized, or in case of their absence, their representatives shall have the right to search the judicial police officer before the latter commences his search. He shall be informed of the said right and mention of it shall be made in the report of the fulfilment of this formality.

(4) In the absence of the occupant or of the person in possession of the objects or of their representatives, and in case of urgency, the State Counsel may, in writing, authorize the judicial police

officer to conduct the search or seizure in the presence of the witnesses described in sub-section (2) above and one other judicial police officer or two judicial police agents.

(5) Where the judicial police officer cannot get in touch with the Legal Department, he shall proceed with the search and as the case may be, seizure in accordance with the provisions of sub-section (4) above and shall mention the action he has taken in his report.

Section 94:

(1) In the absence of a search warrant, searches, and seizures of exhibits may be carried out only with the consent of the occupant or of the person in possession of the objects to be seized.

(2) The consent shall be a written declaration signed by the person concerned, and if he cannot sign he shall make a thumb-print at the bottom of the declaration.

(3) The consent of the person concerned shall be valid only if he had been informed beforehand by the judicial police officer of his right to object to the search.

Section 95: Any judicial police officer conducting a search in connection with a specific offence may carry out a seizure in connection with another offence only if the latter attracts an imprisonment sentence.

Section 96:

(1) All articles seized shall be shown to the suspect or if he is not present, to his representative or to the person in possession of them so that he may identify them and initial them if necessary. Where he refuses to do so, mention of this fact shall be made in the report.

(2) Subject to the provisions of section 97, all articles seized shall in all cases be shown to the witnesses in order that they may identify and initial them if necessary.

(3)

(a) An inventory of the articles seized shall be made on the spot, described in full detail and kept under seal.

(b) If it is not convenient to make an inventory on the spot, the articles shall be provisionally put away under seal until an inventory is made and they are finally sealed. This shall be done in the presence of the persons mentioned in section 93 (2).

(c) If the sizes of the articles seized or of the conditions for their preservation so require, they may be put under seal without using a bag or envelope.

Section 97: When a judicial police officer conducts a search, he alone shall have the right to examine the contents of the documents found in the place before they are seized. He shall be bound by professional secrecy.

Section 98:

(1) The report on the search and seizure shall be drawn up in accordance with the provisions of section 90. It shall be signed by the occupant of the place and the person in possession of the articles or in case of their absence, their representative, as well as the witnesses and any other person who took part in the search.

(2) The report shall state the full name, status, names of parents, date and places of birth as well as the permanent addresses of the signatories.

Section 99:

(1) No search may be conducted on a private house and premises between six (6) p.m. and six (6) a.m.

(2) However, a search already begun may continue after six (6) p.m. on the authorization of the State Counsel.

(3) In case of impossibility of getting in touch with the State Counsel, the judicial police officer may exceptionally continue with the search after 6 p.m. and shall, without delay, keep the State Counsel informed.

Section 100: Failure to comply with the provisions of sections 93 to 99 shall render the search and seizure null and void.

However, where the search has been declared null and void, the articles seized in the course thereof may be admitted as exhibits if they are not contested.

Section 101:

- (1) A judicial police officer may, in the course of an investigation, assign part thereof to any other judicial police officer under his authority.
- (2) Any judicial police officer to whom any part of the investigation has been assigned shall in his report specifically mention the fact of the such delegation.

Section 102:

- (1) The entire judicial police investigation process shall be secret. However, the secrecy of the investigation shall not apply to the Legal Department.
- (2) Any person who assist in these investigations shall be bound by professional secrecy subject to the penalties laid down in section 310 of the Penal Code.
- (3) Notwithstanding the provisions of sub-section (1), judicial police officers may with the approval of the State Counsel, publish press releases and documents relating to certain matters which have been the subject of the investigation.
- (4) Press releases and documents published by the judicial police shall be disseminated without comments by the press. Any violation of this provision shall be punished under sections 169 and 170 of the Penal Code.

**(b) Observations on the implementation of the article**

276. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Article 41 Criminal record**

*Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

277. Cameroon referred to Section 15 of the Penal Code.

***Section 15: Effect of Foreign Criminal Judgment***

*Such judgment shall :*

- a) be taken into consideration as a previous conviction for the purposes of aggravation of sentence, of preventive confinement, of suspension of sentence or revocation of such suspension, of revocation of release on licence, of rehabilitation, and of amnesty ;*
- b) found a good plea in the courts of the Republic convict or acquit, provided that in the case of conviction the accused shall have served his sentence or satisfied it by prescription or pardon.*

**(b) Observations on the implementation of the article and good practice**

278. It was concluded that Cameroon is in compliance with this provision of the Convention.

279. The possibility to take into account foreign sentences was considered a good practice.

**Article 42 Jurisdiction**

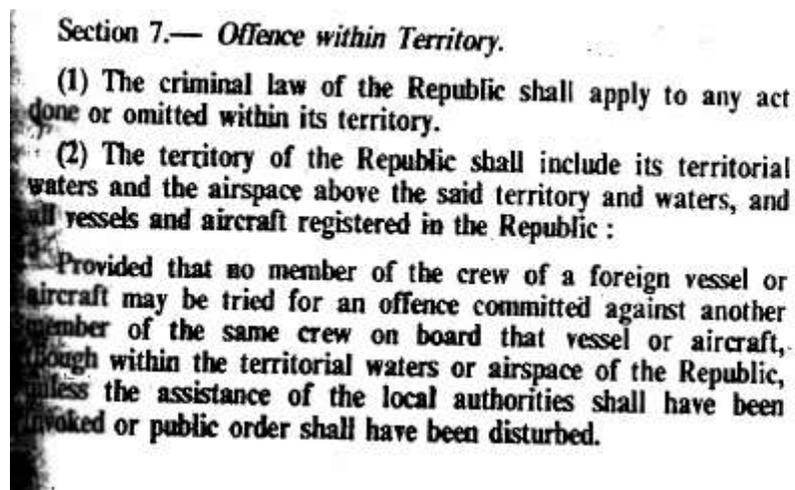
**Subparagraph 1 (a)**

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

*(a) The offence is committed in the territory of that State Party; or*

**(a) Summary of information relevant to reviewing the implementation of the article**

280. Cameroon considers itself in compliance with Article 42 subparagraph 1 (a) and referred to Section 7(1) of the Penal Code.



**(b) Observations on the implementation of the article**

281. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Subparagraph 1 (b)**

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

*(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.*

**(a) Summary of information relevant to reviewing the implementation of the article**

282. Cameroon considers itself in compliance with Article 42 subparagraph 1 (b) and referred to Section 7(1) of the Penal Code (see above).

**(b) Observations on the implementation of the article**

283. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Subparagraph 2 (a)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:\*

*(a) The offence is committed against a national of that State Party; or*

**(a) Summary of information relevant to reviewing the implementation of the article**

284. Cameroon has not implemented the passive personality principle as contemplated in Article 42 subparagraph 2 (a).

**(b) Observations on the implementation of the article**

285. Cameroon may wish to establish the passive personality principle.

**Subparagraph 2 (b)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or*

**(a) Summary of information relevant to reviewing the implementation of the article**

286. Cameroon considers itself in compliance with Article 42 subparagraph 2 (b) and referred to Section 10(1) PC and Section 695 CPC:

**Section 10. — Offence Abroad by Citizen or Resident.**

**(1) The criminal law of the Republic shall apply to any act or omission abroad by a citizen or resident which is punishable by the law of the place of commission and is defined as a felony or as a misdemeanour by the law of the Republic :**

**Provided that the sentence passed may not be more severe than that provided by the foreign law.**

**(2) No citizen or resident may be tried for a misdemeanour against a private party to which the law of the Republic applies solely by virtue of this section except at the instance of the authority controlling prosecution after private complaint or after official request to the Government of the Republic by the Government of the place of commission.**

**SECTION 695** : (1) (a) Cameroonian courts shall have jurisdiction to try any Cameroonian national or any resident who either as a principal or accessory, has committed abroad any offence considered to be a felony or misdemeanour, by the laws of Cameroon on condition that it is punishable by the law of the place of commission.

(b) However, criminal proceedings shall be instituted only by the Legal Department and only after a complaint by the victim or an official request to the Government of the Republic of Cameroon by the Government of the place of commission of the offence.

(2) This section shall apply to persons of Cameroon nationality who acquired their citizenship after the alleged offence.

**(b) Observations on the implementation of the article**

287. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Subparagraph 2 (c)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory; or*

**(a) Summary of information relevant to reviewing the implementation of the article**

288. Cameroon considers itself in compliance with Article 42 subparagraph 2 (c) and referred to Sections 8(a) and 9 PC and Section 699(f) Criminal Procedure Code.

***Penal Code***

***Section 8: Offence Partly or Wholly Abroad***

The criminal law of the Republic shall apply:

- (a) To any offence of which any ingredient has taken place within its territory;
- (b) To any offence against the security of the State or of counterfeiting the Great Seal or the current money of the State wherever committed;

***Section 9: Abetment, Conspiracy, Attempt***

The criminal law of the Republic shall apply:

- (a) To any act or omission within its territory constituting abetment, conspiracy or attempt with a view to an offence without that territory;  
Provided that said offence be also punishable by the law of the place of commission;
- (b) to any such act or omission without its territory with a view to an offence within that territory.

***Criminal Procedure Code***

***Section 699: An offence shall be considered as having been committed in Cameroon:***

- a) *Where one of the ingredients of the offence was committed in the Republic of Cameroon;*
- b) *Where it is an offence of fraudulently changing the seal of the Republic of Cameroon or any counterfeiting of currency being legal tender in Cameroon;*
- c) *Where it is an offence against the law relating to narcotic drugs, psychotropic substances and precursors;*
- d) *where it is an offence against the law relating to toxic wastes;*
- e) *Where it is an offence against the law relating to terrorism;*
- f) *Where it is an offence against the law relating to money laundering.*

**(b) Observations on the implementation of the article**

289. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Subparagraph 2 (d)**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(d) The offence is committed against the State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

290. Cameroon considers itself in compliance with Article 42 subparagraph 2 (d) and referred to Section 8(b) and Section 640(c) CPC.

***Section 8: Offence Partly or Wholly Abroad***

The criminal law of the Republic shall apply:

- (a) To any offence of which any ingredient has taken place within its territory;
- (b) To any offence against the security of the State or of counterfeiting the Great Seal or the current money of the State wherever committed;

**(b) Observations on the implementation of the article**

291. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Paragraph 3**

*3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.*

**(a) Summary of information relevant to reviewing the implementation of the article**

292. Cameroon does not extradite its own citizens, Section 644 CPC.

**Section 644 —**

Except where otherwise provided by law, no Cameroonian citizen may be extradited.

293. The jurisdiction to prosecute citizens in lieu of extradition is based on the passive personality principle, Section 10 PC and Section 695(1)(a) CPC (see subpara. 2(b) above). An obligation to prosecute stems from Section 2 PC, which provides for the primacy of international treaties.

**Penal Code**

**Section 2: General special application**

(1) This Code and every provision of criminal law shall be subject to the rules of international law and to all treaties duly promulgated and published.

**(b) Observations on the implementation of the article**

294. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Paragraph 4**

*4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.*

**(a) Summary of information relevant to reviewing the implementation of the article**

295. Section 10(1) PC and Section 695 CPC (passive personality principle) apply not only to citizens but also to residents.

**(b) Observations on the implementation of the article**

296. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Paragraph 5**

*5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.*

**(a) Summary of information relevant to reviewing the implementation of the article**

297. Cameroon indicated that it is not in compliance with the provisions of Article 42 paragraph 5.

**(b) Observations on the implementation of the article**

298. It was recommended that Cameroon establish consultation procedures in line with Art. 42(5).

UNODC

## Chapter IV. International cooperation

299. According to Art. 45 of the Constitution, duly approved or ratified treaties and international agreements shall, following their publication, override national laws. This Convention is considered as such a treaty. Therefore, the direct application of the Convention is possible and its provisions will override inconsistent provisions of national law. However, the Convention is not above the Constitution, it occupies a rank between ordinary laws and the Constitution.

### ***Constitution***

#### *Article 45*

*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.*

### **Article 44 Extradition**

300. Extradition is carried out on the following legal bases:

- the extradition provisions in the Code of Criminal Procedure ('the **CPC**') (section 635-675);
- three bilateral treaties (with Mali; the Democratic Republic of the Congo and France);
- the General Convention on Judicial Cooperation, signed at Antananarivo on 12 September 1961 under the auspices of the former African and Malagasy Common Organization (OCAM)(the 'Tanananarive Convention'), Art. 41 et seq.;
- the Extradition Accord of the Economic and Monetary Community of Central Africa (CEMAC);
- the London Scheme for extradition within the Commonwealth;
- the principle of reciprocity.

301. The use of this Convention as a legal basis for extradition is discussed below under article 44, paragraph 5.

302. The extradition procedure is governed by Sections 646 ff. CPC. It is a mixed judicial-executive procedure. The extradition decision is made by the Council Chamber of the Court of Appeal (Section 660 CPC). If the Chamber grants the extradition request, the Prosecutor General refers the case to the Minister of Justice for extradition (Section 664 CPC).

303. Cameroon has not yet handled any extraditions related to a corruption offence. However, two active requests were sent by Cameroon for persons sought for embezzlement. Over the last years, all extradition requests were granted except in one case concerning the International Criminal Tribunal for Rwanda, and in cases where the person sought by another country had Cameroonian citizenship.

304. It is positively noted that Cameroon does not make extradition conditional on the existence of a treaty, applies the principle of reciprocity and allows the use of the Convention as a legal basis.

### **Paragraph 1**

*1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extraditions present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

305. Cameroon referred to Sections 635 and subsequent of the CPC and Sections 7 through 12 of the Penal Code, the provisions of which have been duplicated in the Code of Criminal Procedure. Extradition is possible only when there is dual criminality and the offence for which it is sought carries a minimum sentence of at least 2 years' imprisonment (Section 642(1)(a) CPC).

**SECTION 635** : Extradition shall be an act whereby a requested state hands over a foreigner found in its territory to a requesting State in order that he be prosecuted for one or more specified offences of ordinary law or to subject him to a term of imprisonment passed against him after a criminal trial for an offence of ordinary law.

**SECTION 636** : Whoever is found in the national territory to be an accomplice to a felony or misdemeanour committed abroad may be tried in Cameroon according to the foreign law and Cameroonian law, on condition that the principal act has been established by a final decision emanating from a competent foreign court.

**SECTION 637** : Cameroonian courts shall also have jurisdiction to try anyone who, while abroad, is an accomplice to a felony or misdemeanour committed in Cameroon.

**SECTION 638** : Any proceedings brought under sections 636 and 637 shall be null and void to all intents and purposes if :

- (a) prosecution is commenced by any person other than the Legal Department which, in cases of misdemeanour under Cameroonian law, can only act if a complaint is brought to it by the injured party or if it receives an official information from the competent authority of the place of commission of the principal act;
- (b) The defendant shows that he has been tried abroad for the same acts and final judgement passed, and that if sentenced, he has either served his sentence or has been absolved of it by prescription or by pardon;
- (c) the prosecution is barred by amnesty or by any other cause, according to the law of the state where the acts were committed, or would be so barred according to the laws of Cameroon if the acts had been committed in Cameroon.

**SECTION 639** Prosecution may be commenced against the accused either before the court of the place of residence of the accused, or of the place where he was arrested or of his last known place of abode in Cameroon.

However, the Supreme Court may, on application of the Procureur General at the said court and in the interest of justice, order the transfer of the case to another court.

**SECTION 640** : For the purposes of this law, an offence shall be deemed to have been committed in Cameroon if:

- (a) an ingredient of the offence was perpetrated in Cameroon ;
- (b) it consists of counterfeiting or of altering the official seal of the Republic of Cameroon or the currency being legal tender in its territory ;
- (c) it is against the security of the Republic of Cameroon. However this paragraph shall not apply to a foreigner unless he has been arrested in Cameroon or extradited to Cameroon.

**SECTION 642 :** (1) Any act serving as a ground for extradition shall:

- (a) by the laws of the requesting State and of Cameroon, either constitute an offence punishable with a minimum sentence of loss of liberty of not less than two (2) years, for which prosecution is not barred by prescription, amnesty or otherwise; or consist of a term of loss of liberty which is still legally enforceable within six (6) months at least, notwithstanding imprisonment in default of payment ;
- (b) by Cameroon law, constitute an ordinary law offence ;
- (c) from the circumstance, show that extradition is not requested for political, religious or racial reasons, or based on the nationality of the person concerned.

(2) (a) Felonies and misdemeanours which are not directed against any kind of government shall be considered as common law offences and may justify extradition.

(b) Offences of universal jurisdiction provided by international conventions and ratified by Cameroon shall be considered as ordinary law offences.

**(b) Observations on the implementation of the article**

306. Cameroon has specific legislation on extradition and on dual criminality. The dual criminality requirement is enshrined in Section 642(1)(a) CPC. It was noted that the minimum penalty requirement is exceptionally high, namely requiring a *minimum sentence* (not a minimum relating to the upper limit of the punishment, as is customary in most States) of not less than two years.

307. It was recommended to lower the minimum penalty requirement or to make it refer to the upper limit of the punishment.

**Article 44**

**Paragraph 2**

*2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.*

**(a) Summary of information relevant to reviewing the implementation of the article**

308. Cameroon stated that it has not implemented this provision of the Convention and explained that dual criminality is a condition for extradition.

**(b) Observations on the implementation of the article**

309. It was noted that there is no exception to the requirement of dual criminality. It is recommended that Cameroon consider establishing exceptions to the dual criminality requirement for extradition.

#### **Article 44 Extradition Paragraph 3**

*3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

310. Cameroon stated that it has not implemented this non-mandatory provision of the Convention.

##### **(b) Observations on the implementation of the article**

311. It was noted that Cameroon has not implemented Art. 44(3). It is recommended that Cameroon consider granting extradition if the request for extradition includes several separate offences, at least one of which is extraditable under the article and some of which are not extraditable by reason of their period of imprisonment, but are related to offences established in accordance with the Convention.

#### **Article 44 Extradition Paragraph 4**

*4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

312. Cameroon referred to Sections 642(1)(c), (2)(a) and 643(1)(a) CPC and explained that the relevant principle of Cameroonian law is that no political offence may be the basis for extradition. Since corruption is not a political offence, but a common law offence, it may be the basis for extradition.

**SECTION 642 :** (1) Any act serving as a ground for extradition shall:

- (a) by the laws of the requesting State and of Cameroon, either constitute an offence punishable with a minimum sentence of loss of liberty of not less than two (2) years, for which prosecution is not barred by prescription, amnesty or otherwise; or consist of a term of loss of liberty which is still legally enforceable within six (6) months at least, notwithstanding imprisonment in default of payment ;
- (b) by Cameroon law, constitute an ordinary law offence ;
- (c) from the circumstance, show that extradition is not requested for political, religious or racial reasons, or based on the nationality of the person concerned.

(2) (a) Felonies and misdemeanours which are not directed against any kind of government shall be considered as common law offences and may justify extradition.

(b) Offences of universal jurisdiction provided by international conventions and ratified by Cameroon shall be considered as ordinary law offences.

**(b) Observations on the implementation of the article**

313. During the country visit it was added that Convention offences are deemed to be included as an extraditable offence in existing extradition treaties due to the direct application of the Convention.

314. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Article 44 Extradition  
Paragraph 5**

*5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.*

**(a) Summary of information relevant to reviewing the implementation of the article**

315. Cameroon stated that it does not make extradition conditional on the existence of a treaty but applies the principle of reciprocity. Moreover, Cameroon can use the Convention as the basis for extradition.

**(b) Observations on the implementation of the article**

316. During the country visit it was added that the Convention has been used to actively request the extradition in one case; however, the extradition was not granted in the end.

317. It was concluded that Cameroon is in compliance with this provision of the Convention.

#### **Article 44 Extradition Paragraph 6**

*6. A State Party that makes extradition conditional on the existence of a treaty shall:*

*(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and*

*(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

318. Cameroon stated that it does not make extradition conditional on the existence of a treaty.

#### **(b) Observations on the implementation of the article**

319. Since Cameroon does not make extradition conditional on the existence of a treaty, this paragraph is not relevant.

#### **Article 44 Extradition Paragraph 7**

*7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

320. Cameroon stated that offences established in accordance with the Convention may provide the basis for extradition, provided the general conditions are fulfilled. In that respect it was noted that the minimum penalty requirement is exceptionally high, namely requiring a *minimum sentence* (not a minimum relating to the upper limit of the punishment, as is customary in most States) of not less than two years. Few Convention offences would carry such a penalty outside Cameroon.

#### **(b) Observations on the implementation of the article**

321. During the country visit it was said that para. 7 could be implemented by direct application of the Convention.

322. However, for the sake of legal clarity and certainty, given the express minimum penalty requirement in Section 642(1)(a) CPC, it was recommended to substantially lower

the minimum penalty requirement or to make it refer to the upper limit of the punishment, or to expressly make all Convention offences extraditable offences.

## **Article 44 Extradition**

### **Paragraph 8**

*8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

323. Cameroon referred to Sections 642-645 CPC (“conditions of extradition”). Grounds for refusal are given in Section 649 CPC. Extradition is possible only when there is dual criminality and the offence for which it is sought carries a minimum sentence of at least 2 years’ imprisonment (Section 642(1)(a) CPC).

**SECTION 642 :** (1) Any act serving as a ground for extradition shall:

- (a) by the laws of the requesting State and of Cameroon, either constitute an offence punishable with a minimum sentence of loss of liberty of not less than two (2) years, for which prosecution is not barred by prescription, amnesty or otherwise; or consist of a term of loss of liberty which is still legally enforceable within six (6) months at least, notwithstanding imprisonment in default of payment ;
- (b) by Cameroon law, constitute an ordinary law offence ;
- (c) from the circumstance, show that extradition is not requested for political, religious or racial reasons, or based on the nationality of the person concerned.

(2) (a) Felonies and misdemeanours which are not directed against any kind of government shall be considered as common law offences and may justify extradition.

(b) Offences of universal jurisdiction provided by international conventions and ratified by Cameroon shall be considered as ordinary law offences.

324. The rule of specialty is enshrined in Art. 21 of the CEMAC Extradition Agreement.

#### **(b) Observations on the implementation of the article**

325. With regard to the minimum penalty requirement, cf. above Art. 44(1) and (7).

326. It was recommended to lower the minimum penalty requirement or to make it refer to the upper limit of the punishment.

#### **Article 44 Extradition Paragraph 9**

*9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

327. Cameroon explained that the extradition procedure is cumbersome sections 646 and subsequent of the CPC. Eliminating the stage of assignment of jurisdiction and having the process handled by the Court of Appeals would help solve this problem and ensure the implementation of the provision under review.

328. However, there is a simplified procedure if the person to be extradited gives his consent, Section 659(1) CPC.

*Section 659 — (1) Where the foreigner renounces the right to benefit from Cameroonian legislation on extradition and formally accepts to be handed over to the requesting State, the court shall rule accordingly.*

##### **(b) Observations on the implementation of the article**

329. It was concluded that Cameroon is in compliance with this provision of the Convention.

#### **Article 44 Extradition Paragraph 10**

*10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

330. Cameroon referred to Section 652 and subsequent of the CPC which gives the public prosecutor's office jurisdiction to order the detention of a person sought by foreign authorities.

**SECTION 652 :** In case of emergency, notwithstanding the provisions of sections 641 and 642 above, the Legal Department shall have the power to order the arrest of a foreigner, on the direct application from the foreign judicial authorities and on simple notice with written proof of the existence of any one of the documents mentioned in section 641.

The request of the foreign authorities shall, without delay, be regularized in accordance with the provisions of section 641 above.

**(b) Observations on the implementation of the article**

331. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Article 44 Extradition  
Paragraph 11**

*11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

332. Cameroon stated that it applies the principle of international law to extradite or prosecute (*aut dedere aut judicare*).

333. According to Section 644 CPC, no Cameroonian citizen may be extradited. However, Cameroon applies the active personality principle to exercise jurisdiction over acts committed abroad by Cameroonian citizens (Section 10 PC, Section 695 CPC).

**Section 644 —**

Except where otherwise provided by law, no Cameroonian citizen may be extradited.

**(b) Observations on the implementation of the article**

334. During the country visit it was discussed if Cameroon not only has the jurisdiction but also the obligation to prosecute Convention offences committed abroad by Cameroonian citizens.

335. While the jurisdiction to prosecute citizens in lieu of extradition is based on the active personality principle (Section 10 PC, Section 695(1)(a) CPC), an obligation to prosecute stems from Section 2 PC, which provides for the primacy of international treaties. Therefore, given that Cameroon does not have mandatory prosecution, this obligation would stem directly from the Convention.

**Section 2: General and special application**

(1) *This Code and every provision of criminal law shall be subject to the rules of international law and to all treaties duly promulgated and published ..*

336. It was concluded that Cameroon is in compliance with this provision of the Convention.

#### **Article 44 Extradition Paragraph 12**

*12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

337. According to section 644 CPC, no Cameroonian citizen may be extradited.

**SECTION 644** : Except where otherwise provided by law, no Cameroonian citizen may be extradited.

#### **(b) Observations on the implementation of the article**

338. Since Cameroon does not extradite its citizens, this provision is not applicable.

#### **Article 44 Extradition Paragraph 13**

*13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

339. Cameroon referred to Section 16 PC (“Execution of foreign sentences”).

#### ***Section 16: Execution of Foreign Judgment***

*(1) Any such judgment as is contemplated by Section 14 and has been ascertained to conform to that Section, if passed against a citizen or against a resident, and not enforced elsewhere, shall be capable of enforcement within the territory of the Republic, unless enforcement shall have been barred by release on licence, pardon, amnesty or prescription.*

*(2) Enforcement shall require the order of the court contemplated by Section 14, which may also, in a fit case, impose the preventive measures attracted according to the law of the Republic by the offence in question..*

**(b) Observations on the implementation of the article**

340. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Article 44 Extradition  
Paragraph 14**

*14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.*

**(a) Summary of information relevant to reviewing the implementation of the article**

341. Cameroon referred to the Preamble to the Cameroonian Constitution of 18 January 1996 and to the CPC, Sections 3 through 5; and Section 645(d).

**Section 3:**

(1) The sanction against the infringement of any rule of criminal procedure shall be an absolute nullity when it is:

- (a) Prejudicial to the rights of the defence as defined by legal provisions in force;
- (b) Contrary to public policy.

(2) Nullity as referred to subsection (1) of this section shall not be overlooked. It may be raised at any stage of the criminal proceedings by any of the parties and shall be raised by the trial court of its own motion.

**Section 4:**

(1) The cases of infringement other than those provided for in section 3 shall result in relative nullity.

(2) Cases of relative nullity shall be raised by the parties in limine litis before the trial court. It shall not be considered after this stage of the proceedings.

**Section 5:**

Any document rejected by a decision of the court shall be withdrawn from the case file and med in the registry.

It shall be forbidden to obtain information from the document withdrawn for use against the person concerned under pain of a civil action in damages.

**Section 645:** Extradition shall not be applicable:

...

*d) Where there are reasons for the country requested to believe that the person concerned shall be subjected to torture and other punishment or treatment which is cruel, inhuman and humiliating, in the requesting country.*

342. Cameroon gave the example of a Rwandan citizen who was not extradited to Rwanda but to the Arusha Tribunal because of fears concerning his fair trial in Rwanda.

**(b) Observations on the implementation of the article**

343. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Article 44 Extradition  
Paragraph 15**

*15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.*

**(a) Summary of information relevant to reviewing the implementation of the article**

344. Cameroon referred to Section 642 (1)(c) CPC and Section 645(d) CPC.

**SECTION 642 :** (1) Any act serving as a ground for extradition shall:

- (a) by the laws of the requesting State and of Cameroon, either constitute an offence punishable with a minimum sentence of loss of liberty of not less than two (2) years, for which prosecution is not barred by prescription, amnesty or otherwise; or consist of a term of loss of liberty which is still legally enforceable within six (6) months at least, notwithstanding imprisonment in default of payment ;
- (b) by Cameroon law, constitute an ordinary law offence ;
- (c) from the circumstance, show that extradition is not requested for political, religious or racial reasons, or based on the nationality of the person concerned.

(2) (a) Felonies and misdemeanours which are not directed against any kind of government shall be considered as common law offences and may justify extradition.

(b) Offences of universal jurisdiction provided by international conventions and ratified by Cameroon shall be considered as ordinary law offences.

**Section 645** — Extradition shall not be applicable :

...

*d) Where there are reasons for the country requested to believe that the person concerned shall be subjected to torture and other punishment or treatment which is cruel, inhuman and humiliating, in the requesting country .*

**(b) Observations on the implementation of the article**

345. During the country visit, it was added that a refusal to extradite where the request is related to other prohibited criteria (i.e., sex and ethnic origin) would be based on the direct application of the Convention.

346. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Article 44 Extradition  
Paragraph 16**

*16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.*

**(a) Summary of information relevant to reviewing the implementation of the article**

347. Cameroon referred to Sections 635, 642, 645 and 649 of the CPC (quoted above), where fiscal offences are not excluded, and explained that in Cameroonian law, tax offences are common-law crimes. As such, they can be the basis for extradition.

348. However, Art. 48 of the bilateral judicial cooperation agreement with France makes tax offences extraditable only under certain circumstances and requires an exchange of letters for each category of offences.

**(b) Observations on the implementation of the article**

349. It was concluded that Cameroon is generally in compliance with this provision of the Convention. However, to the extent that the bilateral judicial cooperation agreement with France seems to be in conflict with the Convention, Cameroon was encouraged to give primacy to the text of the Convention, which is later in time (*lex posterior*) and has been ratified by both countries.

**Article 44 Extradition  
Paragraph 17**

*17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.*

**(a) Summary of information relevant to reviewing the implementation of the article**

350. Cameroon stated that while there was no express legislation on this point, this provision of the Convention would be directly applicable.

**(b) Observations on the implementation of the article**

351. It was concluded that Cameroon is in compliance with this provision of the Convention.

## **Article 44 Extradition**

### **Paragraph 18**

*18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

352. Cameroon cited:

- the Tananarive Convention of 1962;
- the General convention on cooperation in matters of law enforcement between Cameroon and Mali (6May 1964);
- the Legal cooperation agreement between Zaire (nowadays: Democratic Republic of the Congo) and Cameroon (11March 1977);
- the Cooperation Accord on Justice Matters between France and Cameroon (21 February 1974).

353. In addition, Cameroon has ad hoc reciprocal agreement with certain bordering states to expedite extradition in certain cases. Cameroon explained that there are new agreements among the Governors of regions bordering on other states (Nigeria, Chad and Central African Republic) to expedite detention and transfer of persons sought for transnational crimes (thieves, highway robbers).

354. It was concluded that Cameroon is in compliance with this provision of the Convention.

#### **(b) Observations on the implementation of the article**

355. It was concluded that Cameroon is in compliance with this provision of the Convention.

## **Article 45 Transfer of sentenced persons**

*States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

356. Cameroon has not entered into agreements on the transfer of sentenced persons.

#### **(b) Observations on the implementation of the article**

357. It was noted that Cameroon has not yet entered into agreements on the transfer of sentenced persons. It was recommended that Cameroon consider doing so.

#### **Article 46 Mutual legal assistance**

358. Cameroon does not have domestic legislation on international cooperation or mutual legal assistance (MLA). However, by virtue of Article 45 of the Constitution (see above before Art. 44), to the extent that they are self-executing, the MLA provisions of the Convention are directly applicable. Nevertheless, for the sake of legal clarity and certainty, it was recommended that Cameroon consider adopting legislation to comprehensively regulate international cooperation and mutual legal assistance.

359. In addition to this Convention, MLA is rendered on the following legal bases:

- three bilateral treaties (with Mali; the Democratic Republic of the Congo and France);
- the General Convention on Judicial Cooperation, signed at Antananarivo on 12 September 1961 under the auspices of the former African and Malagasy Common Organization (OCAM) (the ‘Tananarive Convention’);
- the Agreement on Judicial Cooperation between the Member States of the Economic and Monetary Community of Central Africa (CEMAC);
- Regulation N° 02/10 of 2 October 2010, amending Regulation N°01/03/CEMAC/UMAC/CM of 4 April 2003 Relating to the Prevention and Suppression of Money Laundering and Financing of Terrorism In Central Africa (the ‘CEMAC AML/CFT Regulation’), Art. 56 et seq.;
- the Harare Scheme Relating to Mutual Legal Assistance in Criminal Matters within the Commonwealth;
- the principle of reciprocity.

360. In practice, Cameroon usually requires dual criminality for rendering MLA, even where non-coercive measures are involved.

361. The Central Authority for MLA is the Ministry of Justice, which could handle MLA requests directly from Central Authority to Central Authority. However, in practice, the Ministry of Foreign Affairs is usually involved in receiving and sending MLA requests.

362. In 2015, 6 MLA requests were sent to other States by Cameroon.

#### **Paragraph 1**

*1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

363. Cameroon referred to the Tananarive Convention of 1962, and a number of bilateral conventions, such as the Convention between Cameroon and Mali of 1964 and the

Convention between Cameroon and Zaire of 1977, as well as Articles 35 and 57 through 62 of the above cited CEMAC AML/CFT Regulation.

364. Cameroon also cited the United Nations Convention against Transnational Organized Crime (UNTOC).

#### ***CEMAC AML/CFT Regulation***

##### ***Article 57: Mutual judicial assistance***

The judicial authorities of States shall cooperate with those of other States for the purposes of providing mutual judicial assistance, exchange of information, investigation and proceedings, aimed at preventing and repressing offences outlined in this Regulation and in particular provisional measures and confiscation of instruments and proceeds from such offences.

The mutual assistance may, in particular, be in the form of: collection of evidences or depositions, the provision of assistance so as to put at the disposal of the judicial authorities of the requesting State persons detained or other persons for the purpose of getting evidence or assistance in conducting investigation, presenting judicial documents, searches and seizures, examination of objects and places, the provision of information and exhibits, presentation of originals or certified true copies of relevant files and documents including bank statements, accounting documents, records showing the functioning of companies or its commercial and financial activities.

##### ***Article 58: Cases where mutual judicial assistance can be refused***

The request for mutual assistance may only be refused:

- a) if it does not emanate from a competent authority in accordance with the legislation of the requesting State, or if it was not transmitted legitimately;
- b) if granting the request is likely to be prejudicial to law and order, sovereignty, security or the fundamental principles of the law of the requested member State;
- c) if the facts on which it is based are subject to criminal prosecution or had already been subjected to a final decision in the territory of the requested member State;
- d) if the offence mentioned in the request is not provided for in this Regulation or the non-contrary provisions in force in the requested member State or if it does not have common characteristics with the offence provided for in this Regulation or the non-contrary provisions in force in the requested member State.

##### ***Article 59: Request for investigation and trial measures***

Investigation and trial measures emanating from an authority of a member State or third-party State shall be executed in accordance with this Regulation and non-contrary provisions in force in the requested State.

A legal or judicial officer or civil servant delegated by the competent authority of a member State or third-party State from whom the request emanates may assist in executing the measures depending on whether they were drawn up by a legal or judicial officer or civil servant.

##### ***Article 60: Request for provisional measures***

The court that has been seized of by a competent authority of a member State or third-party State for the purposes of prescribing provisional measures shall order such requested measures in accordance with this Regulation and non-contrary provisions in force in the requested State. The court may take any other appropriate measure in line with its effects on the requested measures provided for in this Regulation and non-contrary provisions in force.

The court to which a request has been submitted concerning the execution of provisional measures prescribed in another State may replace these measures with those provided for in this Regulation and non-contrary provisions in force having the same effects.

**(b) Observations on the implementation of the article**

365. During the country visit it was added that there was little practical experience with the Harare Scheme. MLA was usually rendered on the basis of the bilateral and multilateral treaties and the principle of reciprocity.

366. It was concluded that Cameroon is in compliance with this provision of the Convention. However, it is recommended that Cameroon consider establishing exceptions to the dual criminality requirement for mutual legal assistance requests (art. 46, para. 1).

**Article 46 Mutual legal assistance  
Paragraph 2**

*2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

367. Concerning MLA, in cases where the criminal liability of legal entities is claimed, mutual legal assistance may be rendered for the relevant offences. Moreover, the criminal liability of legal entities is expressly covered by the laws on money laundering (Art. 5 CEMAC AML/CFT Regulation).

**(b) Observations on the implementation of the article**

368. It was concluded that Cameroon is in compliance with this provision of the Convention. Nevertheless, it was recommended that Cameroon could expressly implement Art. 46(2) in its legislation to clarify the possibility of rendering MLA with regard to legal persons.

**Article 46 Mutual legal assistance  
Paragraph 3**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

- (a) Taking evidence or statements from persons;*
- (b) Effecting service of judicial documents;*
- (c) Executing searches and seizures, and freezing;*
- (d) Examining objects and sites;*
- (e) Providing information, evidentiary items and expert evaluations;*
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;*
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*

(j) *Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;*

(k) *The recovery of assets, in accordance with the provisions of chapter V of this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

369. Cameroon stated that most or all of the above-mentioned measures could be carried out in direct application of the Convention and domestic legislation (CPC). Article 57 of the CEMAC AML/CFT Regulation also covers this point.

***Article 57: Mutual judicial assistance***

The judicial authorities of States shall cooperate with those of other States for the purposes of providing mutual judicial assistance, exchange of information, investigation and proceedings, aimed at preventing and repressing offences outlined in this Regulation and in particular provisional measures and confiscation of instruments and proceeds from such offences.

The mutual assistance may, in particular, be in the form of: collection of evidences or depositions, the provision of assistance so as to put at the disposal of the judicial authorities of the requesting State persons detained or other persons for the purpose of getting evidence or assistance in conducting investigation, presenting judicial documents, searches and seizures, examination of objects and places, the provision of information and exhibits, presentation of originals or certified true copies of relevant files and documents including bank statements, accounting documents, records showing the functioning of companies or its commercial and financial activities.

**(b) Observations on the implementation of the article**

370. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Article 46 Mutual legal assistance  
Paragraph 4**

*4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

371. Cameroon stated that in practice it would be possible to transmit information as described above in direct application of the Convention.

372. In particular, the Cameroonian FIU, the National Agency for Financial Investigations (NAFI or ANIF) could spontaneously share information with other FIUs.

**(b) Observations on the implementation of the article**

373. It was concluded that Cameroon is in compliance with this provision of the Convention.

## **Article 46 Mutual legal assistance Paragraph 5**

*5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

374. Cameroon stated that in accordance with the principles governing international relations and in direct application of the Convention, confidentiality will be respected in such cases.

### **(b) Observations on the implementation of the article**

375. It was concluded that Cameroon is in compliance with this provision of the Convention.

## **Article 46 Mutual legal assistance Paragraph 8**

*8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

376. Cameroon referred to the Bank Secrecy Act Law N° 2003/004 of 21 April 2003, which does not establish bank secrecy as a ground of refusal to render MLA. Bank secrecy may not be invoked against judicial authorities.

*Art. 8 — (1) Le secret bancaire ne peut être opposé à l'autorité judiciaire agissant dans le cadre d'une procédure pénale et aux officiers de police judiciaire agissant sur commission rogatoire du procureur de la République.*

*(2) Le secret bancaire ne peut être levé en matière civile, commerciale ou sociale que dans les cas prévus par la loi.*

### **(b) Observations on the implementation of the article**

377. It was concluded that Cameroon is in compliance with this provision of the Convention.

*Paragraph 46'6) and 46(7) not commented.*

## **Article 46 Mutual legal assistance**

## Paragraph 9

9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;

(b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a *de minimis* nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;

9. (c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.

### (a) Summary of information relevant to reviewing the implementation of the article

378. Cameroon explained that in matters of money laundering, the CEMAC AML/CFT Regulation stipulates that a request may be denied if the condition of dual criminality is not fulfilled (Art. 58).

***Article 58: Cases where mutual judicial assistance can be refused***

The request for mutual assistance may only be refused:

...

d) if the offence mentioned in the request is not provided for in this Regulation or the non-contrary provisions in force in the requested member State or if it does not have common characteristics with the offence provided for in this Regulation or the non-contrary provisions in force in the requested member State.

379. In practice, Cameroon usually requires dual criminality is for rendering MLA, even where non-coercive measures are involved.

### (b) Observations on the implementation of the article

380. It was noted that according to Art. 46(9)(b), a requested State Party *shall*, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Since Cameroon has not invoked any basic concepts of its legal system to the contrary, it was recommended that Cameroon should implement this mandatory provision of the Convention and in the future render assistance that does not involve coercive action.

## Article 46 Mutual legal assistance

### Paragraph 10

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

*(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.*

**(a) Summary of information relevant to reviewing the implementation of the article**

381. Cameroon referred to Sections 641(4) and 645 CPC.

***Section 641***

...

*(4) No request for appearance as a witness in a foreign court of a person in detention may be granted, even if he is serving a term of imprisonment in default of payment except on the express condition of his return without delay to Cameroon and of all expenses being borne by the requesting State.*

***Section 645*** — Extradition shall be applicable:

*a) to the temporary transfer of detainees for the purpose of hearing or questioning them;*

*b) in respect of simple summonses by virtue of which, on the basis of an international convention, certain individuals detained may be brought for trial in Cameroon ;*

**(b) Observations on the implementation of the article**

382. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Article 46 Mutual legal assistance  
Paragraph 11**

*11. For the purposes of paragraph 10 of this article:*

*(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;*

*(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;*

*(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;*

*(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.*

**(a) Summary of information relevant to reviewing the implementation of the article**

383. Cameroon stated that there was no express legislation on this point apart from Sections 641(4) and 645 CPC. However, the fulfilment of the obligations under this article followed from the direct application of the Convention.

**(b) Observations on the implementation of the article**

384. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Article 46 Mutual legal assistance  
Paragraph 12**

*12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.*

**(a) Summary of information relevant to reviewing the implementation of the article**

385. Cameroon stated that there was no express legislation on this point apart from Sections 641(4) and 645 CPC. However, the fulfilment of the obligations under this article followed from the direct application of the Convention.

**(b) Observations on the implementation of the article**

386. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Article 46 Mutual legal assistance  
Paragraph 13**

*13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.*

**(a) Summary of information relevant to reviewing the implementation of the article**

387. Cameroon stated that it had informed the UN Secretary-General on 25 November 2008 that the Ministry of Justice of the Republic of Cameroon is the central authority vested with the responsibility and the power to receive requests for mutual legal assistance and either execute them or forward them to competent authorities for execution.

388. The Ministry of Justice can handle MLA requests directly from Central Authority to Central Authority. However, in practice, the Ministry of Foreign Affairs is usually involved in receiving and sending MLA requests.

**(b) Observations on the implementation of the article**

389. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Article 46 Mutual legal assistance**

**Paragraph 14**

*14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.*

**(a) Summary of information relevant to reviewing the implementation of the article**

390. Cameroon referred to Article 1, paragraph 3 of the constitution and explained that it stipulates that English and French are the two official languages of Cameroon. Therefore, MLA requests can be received in either language.

391. Cameroon stated that it has notified the Secretary-General of the United Nations as prescribed above.

***Art. 1 (3) Constitution:***

The official languages of the Republic of Cameroon shall be English and French, both languages having the same status. The State shall guarantee the promotion of bilingualism throughout the country.

It shall endeavour to protect and promote national languages.

**(b) Observations on the implementation of the article**

392. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Article 46 Mutual legal assistance**

**Paragraph 15**

*15. A request for mutual legal assistance shall contain:*

*(a) The identity of the authority making the request;*

*(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;*

*(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;*

*(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;*

*(e) Where possible, the identity, location and nationality of any person concerned; and*

*(f) The purpose for which the evidence, information or action is sought.*

**(a) Summary of information relevant to reviewing the implementation of the article**

393. Cameroon stated that it is in compliance with this provision by virtue of the direct application of the Convention.

**(b) Observations on the implementation of the article**

394. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Article 46 Mutual legal assistance**

**Paragraph 16**

*16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

395. Cameroon stated that it is in compliance with this provision by virtue of the direct application of the Convention.

**(b) Observations on the implementation of the article**

396. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Article 46 Mutual legal assistance**

**Paragraph 17**

*17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.*

**(a) Summary of information relevant to reviewing the implementation of the article**

397. Cameroon explained that the requests for mutual legal assistance may only be executed in accordance with positive law in force in Cameroon. However, to the extent not contrary to the domestic law, requests can be executed in accordance with the procedures specified in the request.

**(b) Observations on the implementation of the article**

398. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Article 46 Mutual legal assistance  
Paragraph 18**

*18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

399. Cameroon stated that it permits the hearing of individuals to take place by video conference as described above.

**(b) Observations on the implementation of the article**

400. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Article 46 Mutual legal assistance  
Paragraph 19**

*19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.*

**(a) Summary of information relevant to reviewing the implementation of the article**

401. Cameroon stated that the rule of specialty is observed in practice in direct application of the Convention.

**(b) Observations on the implementation of the article**

402. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Article 46 Mutual legal assistance**

## Paragraph 20

20. *The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.*

### (a) Summary of information relevant to reviewing the implementation of the article

403. Cameroon stated that confidentiality is observed in practice in direct application of the Convention.

### (b) Observations on the implementation of the article

404. It was concluded that Cameroon is in compliance with this provision of the Convention.

## Article 46 Mutual legal assistance

### Paragraph 21

21. *Mutual legal assistance may be refused:*

(a) *If the request is not made in conformity with the provisions of this article;*

(b) *If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;*

(c) *If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;*

(d) *If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.*

### (a) Summary of information relevant to reviewing the implementation of the article

405. Cameroon cited the CEMAC AML/CFT Regulation, Article 58.

#### ***Article 58: Cases where mutual judicial assistance can be refused***

The request for mutual assistance may only be refused:

a) if it does not emanate from a competent authority in accordance with the legislation of the requesting State, or if it was not transmitted legitimately;

b) if granting the request is likely to be prejudicial to law and order, sovereignty, security or the fundamental principles of the law of the requested member State;

c) if the facts on which it is based are subject to criminal prosecution or had already been subjected to a final decision in the territory of the requested member State;

d) if the offence mentioned in the request is not provided for in this Regulation or the non-contrary provisions in force in the requested member State or if it does not have common characteristics with the offence provided for in this Regulation or the non-contrary provisions in force in the requested member State.

406. Outside the field of AML/CFT, in the absence of legislation, the Convention would be applied directly.

**(b) Observations on the implementation of the article**

407. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Article 46 Mutual legal assistance  
Paragraph 22**

*22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.*

**(a) Summary of information relevant to reviewing the implementation of the article**

408. Cameroon explained that this provision of the Convention is applied directly by virtue of Article 45 of the Constitution.

**(b) Observations on the implementation of the article**

409. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Article 46 Mutual legal assistance  
Paragraph 23**

*23. Reasons shall be given for any refusal of mutual legal assistance.*

**(a) Summary of information relevant to reviewing the implementation of the article**

410. Cameroon explained that this provision of the Convention is applied directly by virtue of Article 45 of the Constitution.

**(b) Observations on the implementation of the article**

411. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Article 46 Mutual legal assistance  
Paragraph 24**

*24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.*

**(a) Summary of information relevant to reviewing the implementation of the article**

412. Cameroon stated that information on the customary length of time between receiving requests for mutual legal assistance and responding to them is not available.

**(b) Observations on the implementation of the article**

413. During the country visit, it was added that the obligation to handle MLA requests promptly also followed from the direct application of the Convention. Nevertheless, it was recommended to monitor the length for carrying out MLA requests and take action if this length was considered to be unsatisfactory.

**Article 46 Mutual legal assistance**

**Paragraph 25**

*25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.*

**(a) Summary of information relevant to reviewing the implementation of the article**

414. Cameroon explained that this provision of the Convention is applied directly by virtue of Article 45 of the Constitution.

**(b) Observations on the implementation of the article**

415. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Article 46 Mutual legal assistance**

**Paragraph 26**

*26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.*

**(a) Summary of information relevant to reviewing the implementation of the article**

416. Cameroon explained that this provision of the Convention is applied directly by virtue of Article 45 of the Constitution.

**(b) Observations on the implementation of the article**

417. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Article 46 Mutual legal assistance  
Paragraph 27**

*27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.*

**(a) Summary of information relevant to reviewing the implementation of the article**

418. Cameroon explained that safe conduct of witnesses could be granted by virtue of the direct application of the Convention.

**(b) Observations on the implementation of the article**

419. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Article 46 Mutual legal assistance  
Paragraph 28**

*28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.*

**(a) Summary of information relevant to reviewing the implementation of the article**

420. Cameroon explained that this provision of the Convention is applied directly by virtue of Article 45 of the Constitution.

**(b) Observations on the implementation of the article**

421. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Article 46 Mutual legal assistance  
Paragraph 29**

*29. The requested State Party:*

*(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;*

*(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.*

**(a) Summary of information relevant to reviewing the implementation of the article**

422. Cameroon explained that this provision of the Convention is applied directly by virtue of Article 45 of the Constitution.

423. Moreover, section 641(2) CPC, although dealing with extradition proceedings, could also be applied by analogy.

***Section 641 —***

*(1) The President of the Republic may, by decree order the extradition to a foreign government applying for it, of any foreigner charged with or convicted of an offence, in the requesting State.*

*(2) The President of the Republic may, by decree, on an application made through diplomatic channels permit, the despatch to any foreign authorities of exhibits or documents in the possession of a Cameroonian authority on condition that, in the case of originals, they shall be returned without delay.*

**(b) Observations on the implementation of the article**

424. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Article 46 Mutual legal assistance  
Paragraph 30**

*30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

425. Cameroon listed the following agreements:

- three bilateral treaties (with Mali; the Democratic Republic of the Congo and France);
- the General Convention on Judicial Cooperation, signed at Antananarivo on 12 September 1961 under the auspices of the former African and Malagasy Common Organization (OCAM) (the ‘Tananarive Convention’);
- the Agreement on Judicial Cooperation between the Member States of the Economic and Monetary Community of Central Africa (CEMAC);

**(b) Observations on the implementation of the article**

426. It was concluded that Cameroon is in compliance with this provision of the Convention.

## Article 47 Transfer of criminal proceedings

*States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.*

### (a) Summary of information relevant to reviewing the implementation of the article

427. Cameroon stated that there is no legislation on the transfer of criminal proceedings.

### (b) Observations on the implementation of the article

428. It was recommended to consider the possibility of transferring criminal proceedings in cases where such transfer is considered to be in the interests of the proper administration of justice.

## Article 48 Law enforcement cooperation

### Paragraph 1

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;*

*(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:*

*(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;*

*(ii) The movement of proceeds of crime or property derived from the commission of such offences;*

*(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;*

*(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;*

*(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;*

(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

**(a) Summary of information relevant to reviewing the implementation of the article**

429. CONAC has signed a Cooperation Protocol dated 13 December 2011 with the French Central Service for Prevention of Corruption. This agreement provides for exchanges in terms of training and information sharing between the two structures in different areas of the fight against corruption. Means of communication have been established with the Congolese Anticorruption Agency. CONAC has also signed a Cooperation Protocol with the Administrative Control Authority of Egypt (ACA-Egypt) to exchange experts and training as well as share information in corruption related issues. Contacts have been established with the Congolese Anti-corruption Agency. Cameroon has been a member of the Agreement on Cooperation in Criminal Police Matters between the States of Central Africa since 2015.
430. Alongside the other ten members of the Economic Community of Central African States, Cameroon, through CONAC, set up in Libreville, Gabon, on December 11, 2015, the Network of Central African Anti-Corruption Agencies (usually known by its French name “Réseau des Institutions nationales Anti-Corruption d’Afrique centrale (RINAC)”).
431. Cameroon is a member of INTERPOL. Cameroon’s investigation and enforcement agencies take part in information exchanges with the other INTERPOL member countries. The INTERPOL Bureau for Central Africa has its offices in Yaoundé. The INTERPOL National Central Bureau (NCB) is located within the police, which has specialized liaison officers for INTERPOL. Cameroon shares information via Interpol and uses the I-24/7 secure network. There is also a CEMAC/Interpol cooperation agreement of 2001
432. The Cameroonian FIU, the National Agency for Financial Investigations (NAFI or ANIF) is a member of the Egmont Group of FIUs. The members of the Egmont Group communicate using a secure website. ANIF has been a full member of the Egmont Group since October 2010.
433. NAFI does not require MoUs to cooperate with other FIUs. Between CEMAC members, information is exchanged spontaneously. Cameroon referred to Article 56 of the CEMAC AML/CFT Regulation on cooperation between the Cameroonian National Agency for Financial Investigations (NAFI) and foreign financial investigation services.

***Article 56 CEMAC: NAFI’s relations with foreign financial investigation services***

In compliance with the legislative provisions and international conventions applicable in the area of protection of privacy, the National Agency for Financial Investigation may forward to the authorities of other member States or third-party States performing similar duties, information that it possesses on transactions that appear to have a link with one of the offences outlined in this Regulation, subject to reciprocity and on condition that the foreign competent authorities are subject to the same obligations of professional secrecy.

This information cannot be communicated if a criminal procedure has already been initiated in the Member State requested concerning the same facts or if such communication is likely to prejudice the sovereignty, security, essential interest or law and order of the Member State. National Agencies for Financial Investigation shall be represented in meetings of services

responsible for processing financial information and in other international institutions devoted to combating money laundering and financing of terrorism.

434. Under Art. 33 of the AML/CFT Regulation, NAFI has the power to block financial transactions for 48 hours. However, within CEMAC, there is no requirement to declare cash transfers.
435. The Police Chiefs Committee of Central Africa has developed a sub-regional strategy on the fight against crime.
436. There are French liaison police officers based in Cameroon.

**(b) Observations on the implementation of the article**

437. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Article 48 Law enforcement cooperation  
Paragraph 2**

*2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.*

**(a) Summary of information relevant to reviewing the implementation of the article**

438. Cameroon stated that it does, in part, consider this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by the Convention. It explained that if Cameroon receives a request for assistance in matters of detection and prosecution based on the Convention, it will automatically act in accordance with the Convention, on the understanding that it constitutes an integral element of its legal system.
439. Cameroon also stated that it has entered into bilateral or multilateral agreements or arrangements on direct cooperation with law enforcement agencies of other States Parties.
440. CONAC has signed a Cooperation Protocol dated 13 December 2011 with the French Central Service for Prevention of Corruption. This agreement provides for exchanges in terms of training and information sharing between the two structures in different areas of the fight against corruption. Means of communication have been established with the Congolese Anticorruption Agency.
441. Cameroon is a member of the Agreement on Cooperation in Criminal Police Matters between the States of Central Africa (signed in Yaoundé on 29 April 1999).
442. Alongside the other ten members of the Economic Community of Central African States, Cameroon, through CONAC, set up in Libreville, Gabon on 11 December 2015,

the Network of Central African Anti-Corruption Agencies (usually known by its French name “Réseau des Institutions nationales Anti-Corruption d’Afrique centrale (RINAC)”).

443. Concerning FIUs, a multilateral agreement creating the “FIU Conference of Central Africa” has been negotiated with other Central African countries. This organ will allow the participating countries to exchange opinions, reflect on weaknesses detected in the states’ respective systems, and discuss possible improvements to the mechanisms in place.

444. The NAFI has also signed bilateral agreements with FIUs in a large number of countries.

Requests sent and received by NAFI		
Requests received	Number	Total
2011	17	153
2012	42	
2013	49	
2014	45	
Requests sent		
2011	15	173
2012	42	
2013	61	
2014	55	

**(b) Observations on the implementation of the article**

445. It was concluded that Cameroon is in compliance with this provision of the Convention.

**Article 48 Law enforcement cooperation  
Paragraph 3**

*3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.*

**(a) Summary of information relevant to reviewing the implementation of the article**

446. Cameroon referred to Law N°2010/012 of 21 December 2010 on Cybersecurity and Cybercrime in Cameroon, the law on e-commerce of 21December 2010, and to international tax conventions as components of the pertinent legislative framework.

447. NAFI was said to have treated many cases of cyber-crime on the basis of this law.

**(b) Observations on the implementation of the article**

448. It was concluded that Cameroon is in compliance with this provision of the Convention.

**(c) Technical assistance needs**

449. Cameroon stated that it requires technical assistance for the (full) implementation of the article under review. Cameroon has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

- Technological assistance (e.g. set-up and management of databases/information-sharing systems)
- Capacity-building programmes for authorities responsible for cross-border law enforcement cooperation

450. Some of the forms of technical assistance previously mentioned, have already been provided. The ANIF in particular has benefitted from three training series offered by the World Bank.

#### **Article 49 Joint investigations**

*States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

451. Cameroon reported that joint investigations have been carried out on the basis of the 2015 Agreement on Cooperation in Criminal Police Matters between the States of Central Africa. The countries involved were Chad, the Central African Republic and Cameroon.

##### **(b) Observations on the implementation of the article**

452. It was concluded that Cameroon is in compliance with this provision of the Convention.

##### **(c) Technical assistance needs**

453. Cameroon stated that they do require technical assistance for the (full) implementation of the article under review. Cameroon has indicated that the following form of technical assistance, if available, would assist it in better implementing the article under review: capacity-building.

## Article 50 Special investigative techniques

### Paragraph 1

*1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.*

#### (a) Summary of information relevant to reviewing the implementation of the article

454. Cameroon referred to Article 65 of the CEMAC AML/CFT Regulation, Sections 92(3) and 308 CPC and Art. 49 of the Cyber-crime Law.

#### ***CEMAC Regulation***

##### ***Article 65: Special investigation techniques***

In order to obtain evidence for the original offence and evidence for offences provided for in this Regulation, the judicial authorities may notably, order, for a specified period:

- a) the placing under surveillance of bank accounts and related accounts;
- b) access to computer systems, networks and servers;
- c) the placing under surveillance or telephone tapping, photocopying machines or electronic transmission or communication means;
- d) the audio and video recording of events, gestures and conversations;
- e) the disclosure of authentic documents and under private seal, banking, financial and commercial documents.

The authorities may order the seizure of the above-mentioned documents.

With the sole aim of obtaining pieces of evidence on offences provided for in this Regulation, the competent judicial authority may also authorize the performance of acts which could be repressed in pursuance of this Regulation as transactions under cover or deliveries that are monitored. A detailed report shall be forwarded to him at the end of the transactions.

The transactions mentioned in this article shall be ordered only where there are strong indications to suspect that these accounts, telephone lines, computer systems and networks or documents are being used or are likely to be used by suspected persons to commit offences provided for in this Regulation.

The judicial authority may, by a reasoned decision, given at the request of the Legal Department performing the transactions outlined in this article, delay the freezing or seizure of money or any other property, until the conclusion of investigations and order, if that is necessary, special measures to safeguard them.

The transactions outlined in this article shall not lead to criminal, civil liability or any other liability of persons who carried them out.

#### ***Code of Criminal Procedure***

##### ***Section 92:***

(1) (a) A judicial police officer may, in the course of an investigation, question any person whose statement is likely to lead to the discovery of the truth.

(b) The person summoned for questioning shall appear and answer any question and if he fails to appear, the judicial police officer shall inform the State Counsel who may issue a writ of *habeas corpus* against him. Such person shall be brought before the said State Counsel

(2) A judicial police officer may:

- conduct the search of a house, or premises and make seizures in accordance with the provisions of sections 93 to 100;

- remand persons in police custody, pursuant to sections 119 and following;
- request the assistance of any expert or of any person capable of assisting him in any given phase of the investigation; make a request in writing for transportation with immediate effect, in any public or private road, railway, water or air transport vehicle. The original of the written request shall be left with the carrier.

(3) In cases of felonies and misdemeanours punishable with at least two years imprisonments, the judicial police officer may, on the written authorization of the State Counsel, and under the control of the latter, in accordance with the conditions laid down in section 245, in the course of the investigations:

- intercept, record or transcribe all correspondences sent by means of telecommunication;
- take any photographs at private premises.

(4) Any one heard as a witness or as a person vicariously liable, may not, in any circumstance, be subject to remand in police custody.

**Section 308 —**

(a) *Except where otherwise provided by law, an offence may be established by means of proof.*

(b) *Any proof in rebuttal of an allegation may be established by any means.*

(c) *Proof by means of wiretapping electronic listening devices or other instruments of surveillance is admissible under the conditions laid down in sections 92 and 245 above.*

**Cyber-crime Law**

**SECTION V**

**DE L'INTERCEPTION DES COMMUNICATIONS ELECTRONIQUES**

**Article 49.-**

(1) *Where it is not established that the person summoned has received the registered letter addressed to him by the bailiff in accordance with the provisions of section 47 or where the summons was served on the Legal Department or the mayor's office, a judicial police officer may be requested by the Legal Department to undertake another search with a view to effectively notifying the person concerned.*

(2) *In all cases, the judicial police officer shall draw up a report of the action he has taken and forward it without delay to the Legal Department.*

(3) *Where a judicial police officer has effectively served the summons on the person cited therein, this shall be deemed personal service.*

**(b) Observations on the implementation of the article**

455. It was noted that Section 92(3) CPC and Art. 49 of the Cyber-crime Law cover electronic surveillance but not other special investigative techniques.

456. During the country visit, it was reported that in practice, the police use such techniques but there is no explicit legal base for it.

457. Concerning the admissibility in court of evidence derived from special investigative techniques, it was said that section 308 CPC provided for the liberty of proof from any source. However, concerning surveillance, this article explicitly refers to section 92 CPC, while there is no provision for other forms of special investigative techniques. Therefore, and for the sake of legal clarity and certainty, it was recommended to consider explicitly legislating on the use and admissibility in court of special investigative techniques.

**Article 50 Special investigative techniques**

**Paragraphs 2 - 4**

*2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or*

*arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.*

*3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.*

*4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.*

**(a) Summary of information relevant to reviewing the implementation of the article**

458. Cameroon has not concluded agreements on the use of special investigative techniques.

**(b) Observations on the implementation of the article**

459. Cameroon is encouraged to consider concluding agreements on the use of special investigative techniques.

**(c) Technical assistance needs**

460. Cameroon stated that they do require technical assistance for the (full) implementation of the article under review. Cameroon has indicated that the following forms of technical assistance, if available, would assist it in better implementing the article under review:

Capacity-building programmes for authorities responsible for designing and managing the use of special investigative techniques

461. Some forms of technical assistance previously mentioned are already provided. Cameroon stated the extension and/or expansion of such assistance would help them to adopt the measure(s) described in the article under review.