

Cameroon's War: The Fight Against Impunity A Normative Analysis

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Abstract

The choice of the resolution of conflict by arbitration conducted by the mediator in the conflict to establish and monitor over time the specific causal relationships between trade, conflict, and rules thus legalizing politics. In other words, legalization would operate over time, a transfer of skills as well as powers to judicial bodies, ad hoc and/or permanent. Therefore, should it be considered, despite the differences they each have, that insofar as those courts are derived from dynamic with similarities in their substance, functions, and in their statutes, they are complementary and contribute to better compliance with international rules? Or, rather, the proliferation of courts and systems of settlement of disputes reflects the fragmentation of an international normative space, not conducive to a stable international scene that would place these jurisdictions in a competitive situation, adding, in the case of the African state already fundamentally unstable, to its instability and chronic marginalization?

Is the accusation that "globalization of law and order" or "globalization of justice" through "Good Governance" and the international legalization of the fight against corruption, threatens the sovereignty of States, credible in law? The short answer is: no. Though it's a "close call" by most accounts, there is no evidence or basis, legal or otherwise, that the so-called globalization of law and order constitutes a violation of sovereignty. Moreover, it seems to be a positive development of international law in the sense of greater synergy in the fight against a phenomenon with ramifications at both domestic and international levels. The positive effects of increasing international legalization of corruption are evident: for one, the result of illegal acts - the diversion of the funds looted to tax havens - in most cases so far out of reach, for most domestic judiciary systems is once again in the crosshairs of justice with, more than in the past, concrete opportunities to be followed by measures of repatriation.

On Saturday, March 11, 2006, (finally) caving to international pressure and the devastating effects of the stigma of perceived generalized corruption on foreign investment, the President of the Republic of Cameroon created a National Anti-Corruption Commission (NACC), and officially launched "Operation Hawk" ("Opération Épervier" in French). Today, by the admission of Cameroonian authorities themselves, this institution has so far produced mixed results, at best. Indeed, the lack of independence and means - in the broadest sense of the term: legal, political, logistics ... - has not allowed the National Commission on Anti-Corruption to establish itself as an effective structure to fight corruption, nor its ministerial offices, created to bring the fight to the lowest levels of government. Moreover, the draft text prepared in 2001 by the ad hoc committee to create a structure to fight corruption nationwide has not yet yield the results expected. Several measures provided in the Governmental Plan for the Fight against Corruption – part of the "Action plan for governance" agreed upon with Bretton Woods Institutions - are still not implemented, including a coalition Government-Civil society against corruption. This instability, nurtured "from within", ensures the sustainability, is the best guarantee for the status quo, for all people living off corruption in Cameroon.

Keywords: Sustainable Development, Good Governance, Corruption, Impunity, Globalization, Rule of Law, Sovereignty.

Résumé

Le choix de la résolution de conflit suivant le modèle de l'arbitrage mène le médiateur du conflit à établir et contrôler au fil du temps les rapports causaux spécifiques entre échange, conflit, et règles, judiciarisant ainsi la vie politique. En d'autres termes, la judiciarisation opérerait avec le temps, un transfert aussi bien de compétences que de pouvoirs, aux instances juridiques ad hoc et/ou

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permanentes. Doit-on considérer, malgré les différences qu'elles présentent, que dans la mesure où ces juridictions sont issues de dynamiques comportant des similitudes au niveau substantiel, fonctionnel et statutaire, qu'elles sont complémentaires et concourent à un meilleur respect des règles internationales? Ou, au contraire, cette multiplication des juridictions et des systèmes de règlements des différends reflète-elle une atomisation de l'espace normatif international, peu propice à la stabilité des relations internationales pour les États, qui placerait dès lors ces juridictions dans une situation de concurrence et, dans le cas de l'État africain déjà fondamentalement instable, viendrait ajouter à son instabilité et sa marginalisation chroniques? L'accusation selon laquelle la «mondialisation du droit» ou la «globalisation de la justice», à laquelle on assiste ces derniers temps sous l'égide de la «bonne gouvernance», notamment par le biais de la judiciarisation internationale de la lutte contre la corruption, menacerait la souveraineté des États, dans leur lutte contre la corruption est-elle crédible, fondée en droit? La réponse en un mot est: non. Il n'existe aucune preuve juridique de ce que la mondialisation du droit constituerait une atteinte à la souveraineté des États, au contraire. Il semble que ce soit une avancée positive du Droit International – et par extension 'naturelle', du droit interne - dans le sens de plus de synergie, dans la lutte contre un phénomène aux ramifications à la fois internes et internationales. Par contre, les effets positifs de la judiciarisation internationale de la corruption sont évidents; grâce à elle, le fruit des actes illicites – l'exil des fonds détournés vers les paradis fiscaux, notamment – dans la plupart des cas jusque là hors d'atteinte du pouvoir judiciaire interne, est à nouveau dans la ligne de mire de la justice, avec, plus que par le passé, des chances concrètes d'être suivi par des mesures de rapatriement.

Le samedi 11 mars 2006, pliant sous la pression internationale et les effets dévastateurs du stigmatisation sur les investissements étrangers, le président de la République du Cameroun créait une Commission Nationale Anti-corruption (CONAC) et lançait officiellement l'opération «Épervier». Pourtant, de l'aveu même des autorités camerounaises, ce dispositif n'a à ce jour produit que des résultats mitigés. En effet, l'absence d'indépendance et surtout de moyens – au sens le plus large du terme: juridiques, politiques, logistiques... - n'a pas permis à la Commission Nationale Anti-corruption de s'affirmer comme une structure efficace de lutte contre la corruption, ni aux cellules ministérielles créées pour lui suppléer d'être réellement fonctionnelles; le projet de texte préparé en 2001 par le Comité ad hoc, visant à la création d'une structure nationale de lutte contre la corruption n'a pas encore abouti; Plusieurs actions prévues dans le Plan Gouvernemental de Lutte contre la Corruption ne sont toujours pas mises en œuvre; la coalition gouvernement – société civile, prévue dans le plan d'actions prioritaires pour la gouvernance et la lutte contre la corruption est encore embryonnaire. Cette instabilité «en dedans» assure en fait la pérennité, est la meilleure garantie de survie pour l'ensemble des personnes vivant de la corruption: C'est le gage du «status quo».

Mots-clefs: Développement durable, bonne gouvernance, corruption, impunité, mondialisation, État de droit, souveraineté.

Introduction: “Doubles Champions du Monde!”

For more or less the past twenty years, Cameroon has been at war. With no weapon fired, it's a different kind of war. It's a war on corruption and impunity, a cancer that slowly and relentlessly, has crippled the prospects of one of the most promising countries in Sub-Saharan Africa, eating away the power of the state, its resources, its credibility and more importantly, with unknown consequences on its youth, once hailed “the future of the nation”.

Twice indicted in the past decade by Transparency International as the world's most corrupt country, some Cameroonians seemed, at first, unfazed by the bad press. In fact, some turned it into something positive, clamoring around, “We are champions of the world!”

Psychologists, psycho-sociologists and others will have a filled day, analyzing this, but personally, I don't subscribe to the notion that for the Cameroonian people, “there is no such thing as bad publicity”. Quite to the contrary, I think that what we are experiencing here is just one of the notorious “stages of grief”: Denial¹.

The choice of the resolution of conflict by arbitration conducted by the mediator in the conflict to establish and monitor over time the specific causal relationships between trade, conflict, and rules thus legalizing politics. In other words, legalization would operate over time, a transfer of skills as well as powers to judicial bodies, ad hoc and/or permanent. Therefore, should it be considered, despite the differences they each have, that insofar as those courts are derived from dynamic with similarities in their substance, functions, and in their statutes, they

1 The 5 Stages of Grief by Elizabeth Kubler-Ross in "On Death and Dying": Denial (this isn't *happening* to me! *You* are lying!); Anger (why is this happening to *me*?); Bargaining (I promise I'll be a better person *if*...); Depression (I don't *care* anymore); Acceptance (*I'm ready* for whatever comes). A lesser-known definition of the stages of grief described by Dr. Roberta Temes in her book, "*Living With An Empty Chair - a guide through grief*": Numbness (mechanical functioning and social insulation), Disorganization (intensely painful feelings of loss), Reorganization (re-entry into a more 'normal' social life).

are complementary and contribute to better compliance with international rules? Or, rather, the proliferation of courts and systems of settlement of disputes reflects the fragmentation of an international normative space, not conducive to a stable international scene that would place these jurisdictions in a competitive situation, adding, in the case of the African state already fundamentally unstable, to its instability and chronic marginalization?

Under the aegis of "good governance" and as part of its agreements with the IMF and World Bank, Cameroon is required among other things, to show "significant progress" in its fight against corruption. The country also signed on to the UN Convention against Corruption, which, unequivocally, gives ONE single, universal definition of the phenomenon (*the abuse of office for private gain*). Is the accusation that this "globalization of law and order" or "globalization of justice" through international legalization of the fight against corruption, threatens the sovereignty of States, credible in law?

The short answer is: no. There is no evidence or basis, legal or otherwise, that this so-called globalization of law and order constitutes a violation of sovereignty. Moreover, it seems to be a positive development of international law in the sense of greater synergy in the fight against a phenomenon with ramifications at both domestic and international levels. The positive effects of increasing international legalization of corruption are evident: for one, the result of illegal acts - the diversion of the funds looted to tax havens - in most cases so far out of reach, for most domestic judiciary systems is once again in the crosshairs of justice with, more than in the past, concrete opportunities to be followed by measures of repatriation.

I- The Republic of Cameroon: Brief Presentation²

The Republic of Cameroon (in French: *République du Cameroun*) is a unitary republic of central and western Africa. It is bordered by Nigeria to the West, Chad to the Northeast, the Central African Republic to the East, Equatorial Guinea, Gabon, and the Republic of the Congo to the South. The country is called "Africa in miniature" by politicians, poets and scientists alike, for its geological and cultural diversity. Natural features include beaches, deserts, mountains, rainforests, and savannas. The highest point is Mount Cameroon in the Southwest, and the largest cities are Douala, Yaoundé, and Garoua. Cameroon is home to over 200 different ethnic and linguistic groups. As a testimony to its colonial past, English and French are the official languages.

Compared to most African countries, Cameroon enjoys relatively high political and social stability. Indeed, in 2005, R. Niels Marquardt, then US Ambassador to Cameroon once said of the country, "Cameroon is one of those places where nothing ever happens." The President has broad, unilateral powers to create policy, administer government agencies, command the armed forces, negotiate and ratify treaties, and declare state of emergency. According to the Constitution, the president is selected by popular vote every seven years. The current president, in power for nearly 30 years, led in 2006 a successful campaign to lift the term-limit prescribed by the 1996 revised Constitution. He appoints government officials at all levels, from the Prime minister (considered the official head of government), to regional governors, divisional officers, and urban-council members in large cities. Since 1990, Cameroon has reunited with multi-party politics, with over 200 political parties officially existing. The ruling party is Cameroon's People Democratic Movement (CPDM); Main opposition parties include Social Democratic Front (SDF), National Union for Democracy and Progress (UNDP), and Cameroonian Democratic Union (UDC).

Last national Census and UN estimates place Cameroon's population at 19,522,000. As in most African states, the population is young: an estimated 40.9% are under 15, and 96.7% are under 65. The birth rate is estimated at 34.1 births per 1,000 people, the death rate at 12.2. Life expectancy is 53.69 years (52.89 years for males and 54.52 years for females). Cameroon has one of the highest school attendance rates in Africa. In 2008 Cameroon's GDP per-capita (PPP) was estimated as US \$2,300, one of the ten highest in sub-Saharan Africa. Major export markets include France, Italy, South Korea, Spain, the United Kingdom and more recently, China and the US.

A founding-member of OAU (which became AU in 2003), Cameroon has retain a very close relationship with former colonial power France, aligning itself on most international issues with Paris. Cameroon is part of the African Development Bank (BAD), the Organization for the Harmonization of Business Law in Africa (OHADA), the Bank of Central African States (BEAC, of which it is the dominant economy), and the Economic and Monetary Community of Central Africa (CEMAC), among other regional and subregional organizations.

2 Source: CIA – The World Factbook (Online at: <https://www.cia.gov/library/publications/the-world-factbook/geos/cm.html> - Page Viewed on January 10, 2010).

The country's currency is the franc CFA. Red tape, high taxes, and endemic corruption have impeded growth of the private sector. Unemployment was estimated at 30% in 2001, and about a third of the population was living below the international poverty threshold of US\$1.25 a day in 2009. Since the late 1980s, Cameroon has been following programmes advocated by the World Bank and International Monetary Fund (IMF) to reduce poverty, privatise industries, and increase economic growth. Finally, the quality of health care is generally low. Outside the major cities, facilities are often dirty and poorly equipped. Endemic diseases include dengue fever, filariasis, leishmaniasis, malaria, meningitis, schistosomiasis, and sleeping sickness. The HIV/AIDS seroprevalence rate is estimated at 5.4% for those aged 15–49, although a strong stigma against the illness remains, keeping the number of reported cases artificially low.

Cameroon in a Nutshell

Surface: 475.000 km².

20 million inhabitants.

Independence: January 1st, 1960; reunification with Southern Cameroon: May 20th, 1972.

Presidential regime.

Bicameral legislative system (National Assembly & Senate).

Officially bilingual (English & French).

More than 200 ethnic groups.

More than 200 political parties.

More than 50 newspapers, radio and TV stations (Public and Private).

Under IMF & WB's "IV" (Structural Adjustment) since 1989.

II- Corruption in Cameroon: General Assessment.

Corruption. Etymology: from the verb to corrupt, originally from Latin *corrumpere*: breaking completely, deteriorate physically or morally. Corruption is the act of abuse of power for other purposes than those it has been delegated, such as private interests, self-enrichment or for the benefit of a third-party (family, friends...). It also consists of, for a person bestowed with power over any decision - a public official, a civil servant, government official, an elected official, a doctor, sports referee, a private company employee, etc. - refraining from doing, doing, facilitate something, based on his or her position, in exchange for a promise of a gift, a sum of money, fringe benefits ... Another word usually related to corruption at a massive scale is that of kleptocracy, from the ancient Greek *kleptos*, thief and *kratos*, power, authority. Etymologically a kleptocracy is, literally, a government of thieves. Kleptocracy is usually a very negative assessment of a government, political system, a country whose leaders practice large-scale corruption, for personal enrichment or power. Other closely related concepts include nepotism, clientelism and rent seeking.

Corruption is responsible for rampant degradation of public property and utilities, and can even threaten security. For instance, according to experts, the collapse of buildings in Seoul and Turkey during the 1999 earthquakes is partly due to contracts not conforming to standards leading to construction on the cheap. Corruption also distorts the re-distributive role of the State. It feeds the informal sector and encourages tax evasion. It also distorts programs against poverty and undermines programs of international aid and reconstruction.

Institutional or "political" corruption. Generally speaking, "institutional corruption" can be defined as the most "legal" of all corruptions, in the sense that it is founded on acts of legal behavior - respecting the letter of the law, granted it had purposely been "fixed" or crafted accordingly, to allow the kind of so-called loopholes it needs to sustain itself - which tend, in the long run, to weaken the effectiveness of an institution, undermine public trust and, ultimately, ruin that institution.

"Perfect" institutional corruption occurs where political, bureaucratic and economic interests converge. One all too familiar example is when a legislature of corrupt politicians betray their voters by selling their votes to pressure groups; another one, administrative corruption, occurs when public officials accept bribes to allow someone to win a contract with no oversight or open-bidding process, or are ensured immunity after defrauding the IRS. In fact, opportunities for crime exist at all levels, from grand corruption of senior officials to "petty corruption", at the bottom of the ladder, so to speak. Corruption thrives not just on plainly illegal bribes, but even more on legal practices such as political donations, lobbying, and the revolving doors that reward lawmakers and regulators with juicy jobs in industry.

Much has been said about the cultural aspects of corruption, especially in developing countries³. But, as Dr. Sirrku K. Hellsten bluntly puts it “corruption prevents social justice and violates individuals’ rights, it maintains and widens inequality and it wastes scarce resources. Thus, it creates one of the most serious ethical problems for the global development⁴.”

Suffice to say that:

- Corruption is no "gift",
- You do not need "motivation" to do your job properly;
- Public work or state property cannot be managed as a “family heirloom”. And finally:
- Public service is a vocation, not an easy way out, much less a means of enrichment.

While Dr. Hellsten’s assessment that “Institutional corruption tends to create its own internal ‘reverse codes of social ethics’ particularly in the poor, developing countries in which corrupt practices have become part of everyday life - not only in high political offices but also on the grass -root level” is accurate, the assumption that “this reversed codes of social ethics can be best combated with civic education that goes hand in hand with teaching of professional ethics and promoting the respect for professionalism” is naive at best, and ineffective in the long run, as proven time and again by empirical facts. In this study, we intend to show why, and present a body of normative measures that would provide a better, more comprehensive approach to getting rid of institutional corruption in developing countries, thus making way for healthier economies and societies.

Corruption affects a significant number of households in Cameroon. But apart from the annual reports from Transparency International, scientific, accurate and fair surveys, produced locally on the subject are rare. The government of Cameroon is still on the record challenging Transparency International’s findings and procedures. Generally at issue here: their methodology, methods, standards and so-called “dangerous generalizations.” To avoid further controversy, we chose for the purpose of this presentation to give voice to locally commissioned research on the subject.

A report released July 26, 2010 by Cameroon’s Program for capacity building for structures of control (CCAC, Programme de renforcement des capacités des structures de contrôle du Cameroun, CASC in French) lists the most corrupt government agencies. Produced by Consultancy Services & Co., the survey was sponsored by the Cameroonian Ministry of Economy and the National Anti-Corruption Commission (CONAC). As revealed by newspaper *Jeune Afrique* in its August 2010 edition⁵, the findings of the report are exceptionally honest and serious. Indeed, this constitutes a significant departure from the usual stern denials of the regime in Yaoundé, regarding the depth and scope of the phenomenon in the country.

To really no surprise, the Ministry of Finance, with its customs and tax departments gets the top position (or rather the tail of the ranking), in the six regions where the survey has been conducted (Adamawa, Centre, Littoral, North West and South West). Next were the Departments of Justice, police and public works. Publicly owned companies are not spared, with the primary telecom operator Camtel leading the pack.

Also according to the report, victims of corruption are spread among retirees, weakened by the complexity of administrative procedures in order to receive their social benefits. Young people looking for work are next, candidates for jobs who are systematically shaken down for access to employment. Ditto for the sick, who are ransomed daily in clinics and hospitals. Same thing for traders and transporters, who, in order to survive, maintain, the reports says, a “complex relationship” (Kind of a love-and-hate situation) with the administrations of customs, taxation and police.

In February 2007, the Institute of Statistics of Cameroon released its third Survey of Cameroon’s households⁶. As you can see here, although the data collected were not as damning as Transparency’s, they are nonetheless impressive, to say the least:

The results of ECAM III show that in 2007, over 42% of households have been facing, as victims or actors of,

3 Pranab Bardhan: "Corruption and Development: A Review of Issues", *Journal of Economic Literature*, American Economic Association, vol. 35(3), pages 1320-1346, September 1997.

4 ‘Cleaning Up Dirty Hands: "The Relationship Between Institutionalized Corruption and Reverse Social Ethics in the Developing World" (Online at: <http://www.cas.usf.edu/philosophy/amfitan/papersamfitan2002/sirkkuhellsten.htm> - Page Viewed on January 10th, 2010).

5 Georges Dougelli: "Corruption: Yaoundé fait son autocritique". *Jeune Afrique* n. 2587 du 8 au 14 aout 2010.

6 Deuxième Enquête Camerounaise auprès des Ménages, sous le thème “Pauvreté et gouvernance au Cameroun en 2001” (Online at: <http://www.statistics-cameroon.org/pdf/Ecam%20II/ECAM%20II%20-%20Pauvrete%20et%20gouvernance%20au%20CAM%20en%202001.pdf> - Page Viewed on January 10th, 2010). Troisième Enquête Camerounaise auprès des Ménages (Online at: <http://www.statistics-cameroon.org/pauvr/pauvrete.htm> - Page Viewed on January 10th, 2010).

corruption. It is in most cases of early, systemic corruption, involving small sums of money and officials of small categories. The richest households are most affected by the phenomenon of corruption than poor households.

Indeed, during 2007 nearly 46% of households that are not poor - from local standards – were actors or victims of corruption, against about 34% among poor households. Regionally, areas with high incidence of poverty such as the Far North, North and North West are least concerned. Finally, according to place of residence, households in rural areas are more likely to have faced corruption in 2007 compared to urban households.

III- The Cost of Corruption on Cameroonian Economy.

Asked to describe his views of the facts, acts and practices of corruption in business in Cameroon, the President of the *Groupement Interpatronal du Cameroun* (GICAM), the largest organization of Cameroonian businessmen and women, recalled the figures of a survey conducted in 2008 among 1052 companies. It showed essentially that 76% of business leaders confirmed corruption had a negative impact on their activities in 2007, against 73% in 2006. 49% of bosses admitted to having paid bribes to tax officials, 36% said they paid between 1 and 5% of their turnover for services. 63% of businessmen said they also no longer have confidence in the judicial system in Cameroon, while 48% of managers believe that the legal framework affects business negatively.

For the President of GICAM, corruption manifests itself in all steps of business, including the practice of bribery, kickbacks for services, and this is more noticeable in public procurement, public expenditure and the judiciary. In terms of justice, for example, he explained that it takes at least 40 procedures and 800 days to reach the end of a process, and it is this complexity and slowness that open doors to corruption, stakeholders wanting see their “dossiers” dealt with as soon as possible.⁷

IV- Good Governance and the Fight against Corruption.

“La main qui donne est toujours au-dessus de celle qui reçoit.” Proverb from Guinea, West Africa.

“Good governance is the single most important way to end poverty and support development.” Kofi A. Annan, UN Secretary-General, August 2004.

American economist and 2009 Nobel Laureate Oliver E. Williamson was the first to have used the concept of governance in his theory of corporation in 1975⁸. Governance emerged as a theory of transaction costs that a company must make in choosing between in-sourcing (internalisation), and outsourcing (externalisation) of sub-contracting. The idea of governance thus referred primarily to the idea of arbitration between strategic options that guarantee either control, to the detriment of cost (internalization), or the reverse (externalisation).

Although the topic of corporate governance developed mainly in the financial literature, a broader search shows that it is now the subject of considerable attention, from lawyers and economists, but also political scientists, sociologists and specialists in management science, a wide variety of writings that reflects a wide diversity of theoretical frameworks. Yet, in most of those within the public sector and private sector that use the term governance, it means above all a movement of “decentralization” of decision-making, with the proliferation of places of decision and actors involved. It refers to the introduction of new forms of more flexible regulations, based on partnership between different actors⁹.

After the end of the Cold War and the collapse of the Soviet bloc, a similar convergence on the same political principles seemed to emerge, first in the framework of the CSCE, convergence embodied in “the Charter of Paris for a new Europe” of November 21, 1990, which closely associated “rule of law, democracy and human rights.” Subsequently, these principles were further developed in the Copenhagen Document and the Moscow

7 Report on a 3-day forum of business and administrative officials organized by CONAC (From newspaper Le Messenger. Online: <http://www.lemessenger.net/2009/10/corruption-au-cameroun-les-chiffres-de-la-honte/> - Page Viewed on January 10, 2010)

8 Williamson, Oliver Eaton: *Markets and hierarchies. Analysis and antitrust implications*, Free Press, New York, 1975.

9 Charreaux, Gérard: *Les théories de la gouvernance: de la gouvernance des entreprises à la gouvernance des systèmes nationaux* (Online at: <http://www.u-bourgogne.fr/LEG//wp/1040101.pdf> - Page Viewed on January 10 2010).

Document of the Conference on the Human Dimension of the CSCE. Overall, today in the literature, distinctions of “types” of governance are made according to the institutions that advocated them. For instance, in the political arena, general divisions include global governance, the European governance, regional governance, local governance, urban governance, territorial governance, etc... depending on the scales of governance discussed, the idea being that there is no single model of governance, but many governance systems.

'Good governance' and 'democratic governance' thus made their introduction in the early 1990s, pushed by international financial and economic institutions, which - finally – saw the link between governance and development. With good governance, the relevant question seemed now to be: *What development, and for whom?*¹⁰ The first part of the question focuses on a holistic and integrated development, while the second highlights an approach focused on populations' needs, immediate, short, medium and long term. In the wake of "sustainable development", another concept "generated" and expended thanks to globalization by researchers involved in climate change over the past 20 years, the development is now seen not as an abstract ideal, wrapped in confusing economic numbers, but as a correlative phenomenon, a pragmatic process, requiring clear references, direct and constant maintenance of ecological balance and a more efficient development of human resources.

This new vision of development emphasizes that development process to be effective must take into account, decisively, among others, the activities of members of civil society, institutions and grass-roots organizations, and must make use of their initiative and participation. Finally, more generally, following this new approach, development can no longer be measured solely in impersonal and standardized quantitative terms and statistical tables,

The concept of governance has evolved considerably since its appearance in the debates on development issues in the late 1980s. In early trials classics in political science on the subject, we spoke mostly of the concept of "governability", which placed "laws", "rights" and "order" (Rule of Law) at the centre of development. With the end of the Cold War, governance has replaced the "governability" and was redefined as the “remodelling” or reinvention of governance in the broadest sense, to meet the new challenges of development in the era of globalization. From then on, governance will be addressing issues related to mechanisms for the negotiation of different interests in society. It was indeed increasingly seen as the concept encompassing a range of mechanisms and processes that maintain the system, empower the people and ensure that society reclaim its development process (Taking ownership of their destiny)¹¹. The United Nations Committee for Development Planning in its report issued in 1992 entitled “Poverty Alleviation and Sustainable Development: Goals in Conflict?” identified the following as being part of the attributes of good governance:

1. Territorial and ethno-cultural representation, mechanisms for conflict resolution and for peaceful regime change and institutional renewal;
2. Checks on executive power, effective and informed legislatures, clear lines of accountability from political leaders down through the bureaucracy;
3. An open political system of law which encourages an active and vigilant civil society whose interests are represented within accountable government structures and which ensures that public offices are based on law and consent;
4. An impartial system of law, criminal justice and public order, which upholds fundamental civil and political rights, protects personal security and provides a context of consistent, transparent rules for transactions that are necessary to modern economic and social development;
5. A professionally competent, capable and honest public service, which operates within an accountable, rule, governed framework and in which the principles of merit and the public interest are paramount;
6. The capacity to undertake sound fiscal planning, expenditure and economic management and system of financial accountability and evaluation of public sector activities;
7. Attention not only to central government institutions and processes but also to the attributes and capacities of sub-national and local government authorities and to the issues of political devolution and administrative decentralization.

10 Andy Pike, Andres Rodriguez-Pose and John Tomaney: "What Kind of Local and Regional Development and for Whom?", *Regional Studies*, Vol. 41.9, pp. 1253–1269, December 2007 (Online at: http://ec.europa.eu/regional_policy/consultation/terco/pdf/6_university/7_curds_newcastle.pdf - Page Viewed on January 10 2010).

11 UNDP, Report on the Workshop on Governance for Sustainable Human Development, MDGD, New York, April 1996.

With this new strategy - Structural adjustment programs (SAP)¹² having become too unpopular - the conditionalities of IMF loans are modified. So does the language that accompanied the new loans: to reflect the new emphasis put on the fight against poverty, they are now called Poverty Reduction Strategies (PRS). The originality of PRSPs¹³ is that they incorporate the concept of "good governance" and should be completed neither by experts of IMF and World Bank, but by governments in poor countries in collaboration with their "civil society" the "experts" in Washington only intervening at the end of the process, to either give or deny their approval. Not to be outdone, leaders around the African continent, which has an historical record of bad governance, have sought to improve the performance of their administrations. The governance environment has been given a central place in the New Partnership for Africa's Development (NEPAD) – an initiative that represents the latest attempt by African leaders to place the continent on a path of sustainable development encompassing good governance and prosperity with a consolidation of peace, security, and stability. The NEPAD lists a number of prerequisites for African countries to move forward in their quest for sustainable development. Key among these is the proper adherence to good political, economic, and corporate governance.

Although their statutory role is to assist states in their efforts to reduce their budget deficit, adjust monetary policy, liberalize trade and exchange rate regime and, more generally, enhance the role of market forces and private sector, the Bretton Woods Institutions (BWI) were now targeting the African State, zeroing on an institution that constitutes the backbone of the system around which these countries build their development. It is obvious that the effective management of public affairs for the Africans has become one of the essential issues in the implementation of any development plan in the past, be it socialist-inspired or otherwise. Therefore, according to the BWI, only the pursuit of political, social and especially economic and financial capacity within African countries will ensure a return to growth, promote better governance or modify the administrative structure and policy of these States, particularly in the mechanisms of representation, organization and legitimation of regimes.

Summary of new conditionalities for aid

Transparency

Accountability

Responsibility

Decentralization (Empowering Civil Society).

Kenneth W. Abbott et al.¹⁴ define legalization as aiming to provide "identifiable dimensions of variation whose effects on international behavior can be empirically explored" (p. 19). It revolves around three characteristics that international institutions may or may not display. "Obligation" means that states are "legally bound by a rule of commitment in the sense that their behavior there under is subject to scrutiny under the general rules, procedures and discourse of international law, and often of domestic law" (p. 17). "Precision" is a feature of rules that "unambiguously define the conduct they require, authorize or proscribe" (p. 17). "Delegation" provides third parties with "authority to implement, interpret and apply the rules; to resolve disputes; and (possibly) make further rules" (p. 17). Each characteristic can vary independently. Legalization "encompasses a multidimensional continuum" (p. 17), ranging from full legalization, to harder or softer forms of legalization (with different degrees and combinations of obligation, precision, and delegation), to complete absence of legalization.

For most legal scholars, the very phenomenon of the proliferation of international organizations indicates a

12 According to *Association pour la Taxation des Transactions Financières pour l'Aide aux Citoyens (ATTAC)*, Structural Adjustment Programmes (SAPs) can be defined as a series of "measures of economic policy advocated by the IMF and World Bank to developing countries experiencing debt problems. These measures aim, in a gradual transformation of structures, restoring the overall financial stability and create conditions for healthy growth. Their role in the liberalization of the economy, the diminishing role of government in this area, priority given to exports, hence the rampant exploitation of domestic resources and the devaluation of currencies. In: *Que faire du FMI et de la Banque Mondiale?* Eds Mille et une nuits, Paris, 94p, p.19. 2002.

13 "*The Poverty Reduction Strategy Papers (PRSPs) are prepared by governments in low-income countries through a participatory process which involved both at national stakeholders and external development partners including the IMF and World Bank. The PRSP outlines policies and macroeconomic, structural and social that a country will pursue over several years to promote growth and reduce sources of external financing and related funding sources*". FMI, Poverty Reduction Strategy Papers (PRSPs), September 2005, Washington, DC. (Online at: <http://www.imf.org/external/np/prsp/prsp.asp> - Page Viewed on January 1, 2010).

14 *Legalization and World Politics*. Edited by Judith L. Goldstein, Miles Kahler, Robert O. Keohane, and Anne-Marie Slaughter. Cambridge, MA: MIT Press, 2001. p. 319.

certain "constitutionnalization" of the international judicial order, built not only to regulate States coexistence, but also to favor their active cooperation in a number of domains overflowing the traditional framework of strict inter-states relations, such as the protection of human Rights, at the regional or universal level. The end of the 20th century was marked by the multiplication of international jurisdictions and regulatory institutions: International Court of Justice, Court of Justice of the European Communities, WTO's organ of regulations and disagreements, NAFTA's framework of regulations, International Court of the sea, Human rights courts (European, American, African) International Criminal Court, International Penal Court, among others. The choice of the model of conflict resolution through arbitration takes the mediator to establish and check over time specific causal links between exchanges, conflict, and rules, thus "legalizing" political life. In other terms, legalization operates with time, a transfer of competences as well as a transfer of power to legal instances, both ad hoc and permanent. The framework of the international legalization of the fight against corruption includes, among other major policies:

- The UN Convention against Corruption;
- The StAR Initiative.
- V- Theoretical Debate: Rule of Law vs. State Sovereignty.
- *A True-False "Chicken-and-Egg Dilemma" for purists: In any (authentic) democratic society, people give up their popular sovereignty to the state, better equipped to enforce the rule of law.*
- *Interdependence or Interference?*
- *"Just which part of World BANK don't you get?! Remember the old French saying: "On ne prête qu'aux riches?" Random exchange on the streets of Yaoundé, Cameroon.*

This is more than a rhetorical question. Case in point: Cameroon's continuous reluctance, along many other African states, to ratify the Rome Treaty creating the International Criminal Court (ICC).

In any case, in the opinion of most observers in Africa, 'good governance' as conditionality for aid is the most tangible political concept of this "international realignment", that is globalization. To some, the origin of its use is the 'Speech of La Baule'¹⁵, of François Mitterrand, on June 20, 1990, as part of the 16th Conference of Heads of State of Africa and France that took place then in the French town of La Baule-Escoublac (Loire-Atlantique), which sought to redefine the Franco-African relations by establishing cooperation on new foundations, such as democracy and respect for human rights and a more rational relationship between democracy and development, while others stick to the advent of "conditionalities" of international aid by the Bretton Woods Institutions (BWI). According to Jacques de Larosière, former IMF director (1978 - 1987) conditionalities are a set of "economic, financial and other measures that must be taken in one country to restore a sustainable external position at the end or towards the end of a program supported by the Fund."¹⁶

Critics of "good governance" denounce an ideology of disengagement of the welfare state since the neoliberal turn of the late 1980s. Some researchers see it as a theory of decomposition of the state. For example, Jean-Christophe Mathias¹⁷ denounced the abandonment of the term "government" in favor of that of "governance", explaining that this could mean a fatal break in the decision-making power and effectiveness of the state, sole legitimate bearer of national and popular sovereignty, replaced by a participatory democracy with no real political meaning and attributes.

For Arnaud Zacharie, good governance and its conditionalities are just a ploy for donor-countries to keep poor countries under their yoke, in an international environment that is still ruled by the law of "the mighty dollar". "One must question the vagueness and arbitrariness of the concept of "good governance". It does not include clear international standards, although they exist in positive international law. The concept is arbitrary and its purpose in reality often reveals very distant from the actual need for "good governance" (...) Moreover, beyond the theoretical analysis, we cannot ignore the fact that dictatorships usually cannot endure without the support of "geostrategic" outside powers, including the major donors, some of which refuse to implement an International Criminal Court (ICC). According to Zacharie, "lack of financial resources experienced by poor countries makes it difficult to implement rule of law, presented as the "sine qua non" condition of good governance. It comes to no surprise, then, that "(...) The new conditionalities drawn by the concept of "good governance" have not

15 La Baule speech (Online at: <http://www.congoforum.be/upldocs/Discours%20de%20la%20Baule.pdf> - Page Viewed on January 10, 2010).

16 In *Finances et développement*. Juin 1982, p.4. Also: Samsom, C: "L'encadrement juridique de la conditionnalité des accords de confirmation du FM". *Etudes Internationales*, 1988, pp. 651-672.

17 Jean-Christophe Mathias, "Politique de Cassandre", in *Sang de la Terre*, 2009.

replaced the old macroeconomic conditionalities [of infamous SAPs] but are added. So, conditionalities, already heavy in the past, are proved much more difficult to implement in poor countries dependent on external funding.¹⁸

In a joint article entitled "Conditionality, democratic governance and development, the dilemma of the chicken and egg" problem or definition?" Expert Iconzi, Gisèle Belem and Corinne Gendron, economists at the University of Quebec in Montreal (UQAM) pose the problem in different terms: "If the principles of democratic governance are based on the assumptions that human rights and freedoms are to be generally accepted, it raises questions about its alleged link(s) to development. For one, is democratic governance a prerequisite for development or its absolute consequence? Is it appropriate to subject it to development assistance? [Conversely], Is not it absurd to reject it by reducing it to an unattainable luxury for the poor? On the other hand, if [it was to be assumed that] democracy actually has a universally accepted definition, can it be reduced to a single model, be it the dominant one? This raises fundamental questions of the relevance of some criteria of evaluation [of the 'level' of good governance and democracy], which are supposed to both reflect the universality of human rights and freedoms and respect for the specificity of reference values, as well as the level and pace of development of each nation"¹⁹.

According to Professor Bonnie Campbell²⁰, the heavy legacy of debt of international economics of the 1970s explains the important role of multilateral financial institutions (such as the IMF and World Bank Group) and their growing role in determining policies of indebted countries. However, in the late 1980s, after a decade of liberalization strategies that were aimed at reviving the economies of countries undergoing structural adjustment, the mixed performances of these led to a reflection that seek to anchor and legitimize interventions that had become more and more multifaceted and complex. The solutions proposed by the World Bank, which assumed the role of leadership in the field of institutional reform, will be made in two major publications: *Governance and Development* (1992) and *Governance. The World Bank's Perspective* (1994).

In *Governance and Development*, the concept of governance is deliberately very broadly defined: "(...) the manner in which Power is exercised in the management of a country's economic and social resources for development"²¹. In the 1992 document, "governance" covers essentially a more efficient and transparent public sector, greater accountability from officials in the administration of public affairs, the rule of law based on strict observance of laws and regulations, applicable to all without exception, and the free flow of information.

The second document makes a clear distinction between three main aspects of governance: - The shape of the political system - The process by which authority is exercised in managing economic and social resources of a country – and a government's ability to design, formulate and implement policies and general conduct of government functions²².

The World Bank's approach has been the focus of many accusations, amplified by the failures of structural adjustment policies of the late 1980s. These charges include, according to Professor Mick Moore²³, a major "cultural and ideological bias, the negligence of the diversity of historical experiences and finally, the centrality of liberal-pluralist paradigm (which assumes, schematically that the citizen will behave better toward the state if it stops "exploiting" and "tyrannizing" them) which are the heart of this particular formulation." Moore bases his

18 In: Zacharie, Arnaud, 2004, *La "bonne gouvernance" préalable ou conséquence du financement du développement?*, Ed CADTM, Paris, p.36; Zacharie, Arnaud, *La bonne gouvernance est-elle un préalable aux financements internationaux ou est-ce le contraire?* Centre National de Coopération au développement, Belgique. Actes de la Table ronde préparatoire N°3: La bonne gouvernance: Objet et condition du financement. (Online at: <http://democratie.francophonie.org/IMG/pdf/Bonne.gouv.prealable.fin.int.contraire.pdf> - Page Viewed on January 10 2010)

19 (Online at: <http://www.francophonie-durable.org/documents/colloque-ouaga-a5-iconzi.pdf> - Page Viewed on January 10 2010)

20 In *Gouvernance, réformes institutionnelles et redéfinition du rôle de l'État: quelques enjeux conceptuels et politiques soulevés par le projet de gouvernance décentralisée de la Banque mondiale*. Bonnie Campbell, Actes de la journée d'études de l'équipe CEDIM/FCAR sur le thème: Mondialisation, Gouvernance et État de droit du 10 mars 2000 (Online at: http://www.ieim.uqam.ca/IMG/pdf/Gouvernance_reformes_institutionnelles_et_redefinition_du_role_de_l_État_quelques_enjeux_conceptuels_et_politiques_soulevés_par_le_projet_de_gouvernance_decentralisée_d_e_la_Banque_mondiale.pdf - Page Viewed on January 10, 2010)

21 *Governance and Development* (1992). World Bank, Washington, DC, p. 1

22 *Governance. The World Bank's Perspective* (1994). World Bank, Washington, DC, Notes 1, page 58.

23 Moore, Mick P. : "Declining to learn from the past? The World Bank on Governance and development". *I.D.S. Bulletin*, Vol. 24 no. 1, 1993, p.39-49.

assertion on what he sees as the age-old British and American tradition of "minimalist and even suspicious view of state intervention": "governance is very much an ideological product, and one that reflects currently dominant Anglo-American/liberalist/pluralist social-political doctrine".

Building on his theme of alleged cultural and ideological biases by the World Bank, Moore particularly draws attention to the "faith" placed in the concept of rule of law and the legal and judicial system: "More precisely, governance exhibits a faith in the power of the legal process and an implicit belief that "the more law the better" which is not even "Western" or "Anglo-American", but peculiarly American – and at odds with a great deal of evidence from many parts of the world. It is however contrary to a great deal of evidence to infer from this that reliable, predictable and orderly market transactions await the provision of such legal framework."

To further demonstrate the relevance of his remarks the author cites the impressive performance of countries in Southeast Asia in recent decades, especially Japan, in which the judiciary played a minor role in the management of transactions. But most importantly, according to him, the Bank's document is particularly silent on the issues of construction and reproduction of power bases and political order that will, ultimately, allow to 'stick', 'hold' and grow the adjustment and recovery policies that these institutions promote.

To its critics, the World Bank would point that it is in accordance with its statutes, as the 1992 document makes it clear: by prescribing guidelines, measures and conditions to borrowers to follow, it is within its "mandate", as stated by the Charter, namely within the two areas that directly affect the management and economic policies of all its stakeholders. But as Michel Lelart points out, this measure does not clearly appear in the Statutes of the international organization, issued in July 1994 in Bretton Woods, NH²⁴. At most, as indicated by Manuel Guitan²⁵, Article 1-V states that one of the objectives of the IMF is "to give confidence to Member-States in making the general resources of the Fund temporarily available to them under *adequate safeguards*, thus providing them the opportunity to correct maladjustments in their balance of payments without resorting to measures destructive of national or international prosperity." The exercise of this statutory role in favor of member-countries in difficulty is done so by a specific legal instrument called 'conditionality'. In fact, according to Boubakari Oumarou, Assistant-Professor at the Faculty of Law and Political Science, University of Ngaoundéré (Cameroon), it is based on the "general principles" that drive the organization, and of global economic and financial considerations that the IMF created this notion *ex nihilo*, giving it as time went by, a precise content."²⁶

Early in the 1990s, at the instigation of NGOs and proponents of a "sustainable and eco-friendly development", the United Nations Development Programme (UNDP) decided to put emphasis on prospects of a "substantial development", integrating human rights to the concept of sustainable development. A new discourse about development emerged, coined by some the "Lipset hypothesis"²⁷, marked by the repeated use of terms till then unknown or ignored in the literature on development. Human rights, civil liberties, good governance and democracy, social development... were now part of the lexicon of actors in development and aid. Quickly, the Bretton Woods Institutions (BWI) adopted this new vocabulary: The World Bank (WB) and International Monetary Fund (IMF), involved in the Millennium Development Goals (MDGs), decided to "attack the root causes of poverty and focus on the conditions necessary for sustainable development."²⁸ In light of this "novel" idea, the Washington Consensus and their Structural Adjustment Plans (SAPs) were apparently useless. A "second generation of reforms" were now the talk of the day, supported by "new principles". The "rediscovery" of institutions and their role in economic processes was manifested by the emergence of a "neo-institutionalism"²⁹ highly influenced by North³⁰, on which the Bretton Woods Institutions based their discourse

24 Lelart, Michel: "Le Fonds Monétaire International". *QJ*, n. 2617, PUF 1995, page 25.

25 Guitan, Manuel: "Conditionnalité du Fonds et processus d'ajustement international: L'environnement mouvant des années 70". In *Finances et Développement*, mars 1981, p.11.

26 In: "La conditionnalité, vecteur juridique de l'assistance financière du FMI au Cameroun". *Afrilex* No 4, pp. 132-149. (En ligne: <http://www.afrilex.u-bordeaux4.fr/sites/afrilex/IMG/pdf/04dos7oumarou.pdf> - Page consultée le 20 janvier 2010.)

27 Barro [1997], Dahl [1999], Isham J., Kaufmann D., and Pritchett L. H. [1997], "Civil Liberties, Democracy, and the Performance of Government Projects", *The World Bank Economic Review*, vol.11, n°2:219-42.

28 World Bank [2000], *Reforming Public Institutions and Strengthening Governance*, Washington, IBRD, XI.

29 Hugon P. [2003], *Renouveau et évolution de l'économie du développement dans un contexte de mondialisation*, in Bekolo-Ebe et al, *Dynamiques de développement*, Paris, Montchrétien; pp.107-133.

30 North, Douglass Cecil, Ph.D., Nobel Laureate of Economy 1993 (with Robert Fogel), Spencer T. Olin: *Institutions, Institutional Change and Economic Performance. Political economy of institutions and decisions*. Cambridge University Press, 1990. ISBN: 0521397340, 9780521397346.

Page 3: "Institutions are the rules of the game in a society or, more formally, are the humanly devised constraints that

on institutional reform.

"Sustainable development" and strategies of "integrated development" are at the heart of the new consensus, sometimes wrongly confused, according to economist Joseph Stiglitz, another Nobel laureate of economics (2001), to a real paradigm shift. In fact, we would argue, these changes simply correspond to a reconstruction of the concept of sustainable development rather than the "revolution" some were quick to predict: beyond the environmental concerns that were originally at its core, the new consensus among donors now integrates political and social issues. This broadening of the concept opens up a wide variety of definitions and its variation in many forms, including the importance of human rights and freedoms.

The differences in the approach and definition of the contents of the concept can be summed from the standpoint of the distinction between what we will call a "substantive approach" and an "instrumental approach". The first considers that the respect and the expansion of rights and freedoms are "consubstantial with the process of development"³¹ and that poverty is the deprivation of rights and freedoms. The second looks at the effectiveness of rights and freedoms as a tool for development. These two approaches are not incompatible, as shown by another Nobel laureate, Amartya Sen: The economic efficiency of Rights and Freedoms reinforces the necessity to develop. But if efficiency is to be contradicted, the adoption of a purely instrumental perspective may eventually lead to the denial of rights and freedoms in the name of growth and efficiency. Substantive and instrumental approaches thus become contradictory.

Research on poverty has been accompanied by many investigative works, particularly the *Participatory Poverty Assessments* that led the WB to define the poor as "voiceless", unable to make their voice being heard, defend themselves and get the respect they deserve," men without any power" that makes sense to "empower". Gradually, the BWI moved to adopt a vocabulary very similar to that of Sen and the UNDP: Official documents define four elements for the key objective of empowering the Poor: 1. Access to information, 2. Inclusion and participation, 3. Responsibility 4. Local organizational capacity³².

One of the reasons given to justify this approach is that democracies are generally more sensitive to "pressure from below," they are more sensitive to the plight of the poor than authoritarian regimes, provided they are not an ethnic minority under-represented politically. But what is also generally true, is that governments, governments have proven, time and again, as a matter of sovereign principle, to be very reluctant to give up any of their powers, no matter how dire the situation for their own people. Also, in their quasi-permanent quest to retain or expand their grip on power, given the choice, they are most likely to choose to promote popular policies that might be effective in the short term (such as redistributive policies, expansion of social programs³³), yet prove negative in the medium and long term.

And so, not surprisingly, the BWI came to the conclusion that "good" and "sound" policies, that guarantee long-term growth – and effective re-imburement of their loans - are more painful in the short term, and less pro-poor, notably because they seem to reinforce inequalities and because structural adjustments necessarily involve a redistribution and realignment of employment, making them therefore less popular... It therefore comes to no surprise that SAPs seem to have regained popularity among donors. As professor Benoît Prevost once put it:

"(...) A strange loop is thus closed: Structural adjustment plans are back, but in a new form. They are considered, ultimately, the only way of salvation. And so, when the IMF affirms it supports "healthy" policies that create an "environment conducive to development and the fight against poverty," it is with the same principles as those set out in the 1980s. A reading of official texts devoted to discussions on the strategic documents of poverty reduction, makes it clear that the main donors (particularly the U.S.) remain convinced of the validity of policies under the "Washington Consensus". The repeated need to "take concrete steps to broaden participation and public understanding of program goals"³⁴ sounds strange, especially after the defence of the expression and participation in good governance. As if, at the end, the failure of SAPs could only be explained by a lack of communication and acceptance by the

shape human interaction."

Page 16: "Institutions are not necessarily or even usually created to be socially efficient; rather they, or at least the formal rules, are created to serve the interests of those with the bargaining power to create new rules."

31 Sen A. [2003], *Un nouveau modèle économique*, Paris, Odile Jacob, p57.

32 World Bank Annual Report, 2002, VI.

33 Varshney [1999], Barro R.J. [1996], « Democracy and growth », *Journal of Economic Growth*, 1 :1-27 et Barro [1997].

34 FMI [1999], *Initiative en faveur des pays pauvres très endettés*, document à usage officiel, DC/99-24, Washington D.C.

*populations of developing countries, of the idea of "a bitter pill is the price today for a better life tomorrow"*³⁵

At the end of the day, rather than making a major change of policy, the BWI showed a mere change of attitude, expressing their "concern" over poverty. At most, they have deemed essential that "safety nets" be implemented to fight against the effects of adjustment and crises such as those faced by emerging Asian economies in the late 1990s. But don't get your hopes too high, here: Let it be very clear, that the nets we are talking about are for exceptional circumstances. The IBW still see no need for putting together any kind of social policies or a clearly defined social security system for less-fortunate countries, to accompany the bitter pill of "adapting Third-world economies" to a "globalized world".

So, in our view, the real question is: *Who stands to benefit from Good Governance in the long run? Or better yet: Who has an interest, any interest, in Good governance failing?* Which leads us to the actual, concrete scene of the "battle": Cameroon.

VI- The "Institutional" Approach: The 'NACC'

The fight against corruption in Cameroon did not start with the La Baule's speech, or conditionalities of structural adjustment programs of IMF and World Bank. One still remembers the "Operation Antelope", whose results were published in 2007 by Polycarpe Abah Abah, then Minister of Economy and Finance, which revealed that no fewer than 20,000 "ghost workers" received a wage from the Public Treasury. Other peculiar facts in the report: 16 600 workers were long dead at the time, other more than 120 years old, yet their wages regularly collected by others, including more than 4 000 senior officials receiving multiple monthly money transfers. But the true irony of the history is that just a year later, the same Abah Abah will find himself under an audit that will take him in prison for ... embezzlement of public funds, to the tune of billions of francs CFA!

Through legislative decisions, Cameroon gradually equipped itself with a broad range of legal devices, composed of penal provisions contained in several codes (Penal, Electoral, Civil Service) or resulting from signing on to international conventions including the UN Convention on the Fight against Corruption or, more recently, a mutual agreement between Cameroon and Interpol, the International Criminal Police, to establish a joint investigative unit for crimes related to corruption. The institutional arrangements established by the Plan against Corruption adopted in December 1997, consists of an ad hoc committee established in 1998 with the Prime Minister. This then led to the creation of an Observatory for the Fight Against Corruption (Role: warning, investigation, motions for sanctions and reform) comprised with all branches government and formed by equal numbers of representatives of both the administration and civil society. The country has also recently set up a Financial Investigation Agency responsible for the fight against money laundering and monitoring of fraudulent movements of money. Finally, other structures include: State Control, the Higher Court of Accounts, Ministerial General Inspections, the Public Procurement and Regulatory Agency...) This process culminated in 2006 with the creation of a quasi-public agency, the National Anti-Corruption Commission (NACC, CONAC in French). Quasi-public agencies are independent governmental corporations that are created through enabling legislation to perform a particular service or set of public functions. They are technically public entities and often exercise public powers; but they remain relatively independent of the government that founded them.

This independence can make quasi-public agencies useful tools for carrying out specific government purposes, but it can also create problems. Quasi-public agencies are governed by independent boards rather than accountable to the voters or elected officials. The directors of these agencies, who are usually appointed for extended periods, are empowered to make operational decisions independent of the legislature. Though chartered by government and ultimately the fiscal responsibility of taxpayers, the budgets of quasi-public

35 « (...) Une étrange boucle est alors bouclée: on retrouve les Plans d'ajustement structurels, sous une forme nouvelle. Ils constituent, finalement, la seule voie de salut envisagée. Ainsi, lorsque le FMI favorise des politiques « saines » qui créent un « environnement propice à la lutte contre la pauvreté », c'est avec les mêmes principes que ceux énoncés dans les années 1980. A la lecture des textes officiels consacrés aux débats sur les documents stratégiques de réduction de la pauvreté, il est explicite que les principaux bailleurs de fonds (en particulier les Etats-Unis) restent convaincus de la validité des politiques menées dans le cadre du Consensus de Washington. La nécessité répétée de « prendre des mesures concrètes pour élargir la participation et la compréhension par la population des objectifs des programmes » résonne étrangement après la défense de l'expression et de la participation au sein de la bonne gouvernance. Comme si, au final, l'échec des PAS pouvait s'expliquer par un défaut de communication et d'acceptation, par les populations des PVD, du prix à payer aujourd'hui pour une vie meilleure demain... (...)» Prévost, Benoît: *Droits, libertés et « bonne gouvernance » : quelle cohérence?* (Online at: <http://www.francophonie-durable.org/documents/colloque-ouaga-a5-prevost2.pdf> - Page Viewed on January 10, 2010).

agencies are often exempt from legislative review and governmental limitations on debt. Quasi-public agencies are also exempt from many budgetary rules that other parts of government must follow. Given the lack of built-in accountability to rules and democratic oversight, quasi-publics should have more transparency than other parts of government, not less.

The decree creating the NACC provided it with unprecedented, broad powers to investigate, prosecute and sanction all kind of corruption. Another first: the decree even allows it to open judicial inquiries into “all cases of corruption that reached it without giving out the names of its sources”. Among other tasks, NACC will also evaluate the work of ministerial committees of public procurement, these markets having become public in Cameroon in recent years as a great machine to divert money from the state.

Officially, CONAC was presented as the central tool in the “grand strategy” implemented by the government to tackle corruption, with a special emphasis on “everything institutional”. It went even further than that; as prescribed by the decree kicking it off, the specifications of the new structure focused on the following actions:

- Diagnosis of the phenomenon of corruption (causes occurrences and consequences).
- Organization of a campaign information and awareness.
- Organization of a regular national forum on corruption.
- Strengthening the legal framework of the fight against corruption.
- Reorganization of CONAC (which replaced the Observatory) to make it an independent institution. CONAC was now allowed to open judicial inquiries into all cases of corruption that reached its “ears,” and ensure immunity to its sources and whistleblowers. It will also, among other things, assess the work of committees of public procurement and bidding contracts, these markets having become public in Cameroon in recent years a great machine to divert money from the state.
- Plan a regular review of other governmental agencies over the fight against corruption.
- Establishment and operationalization of a national coalition against corruption involving all parts of the social structure (civil society, private sector, advocacy groups and NGOs).
- Help set-up a Consumers Rating control advocacy group.

NACC's Record so far: 0 Arrest, 0 convictions. On December 26, 2008, a fact-finding mission commissioned by CONAC in the of coastal, central, southern, western and south-western regions, following reports from whistleblowers at the Citizens Association for the Defence of Collective Interests (CADCI, Association citoyenne de défense des intérêts collectifs, ACDIC in French), revealed that 700 million francs CFA had been diverted from the national corn program, at the Ministry of Agriculture and Rural Development³⁶. A vast network of bribery, through questionable grants awarded to some shady joint initiatives groups (ICG, Groupements d'initiatives communes, GIC), some non-existent, has thus deprived many farmers of precious funds that could have helped them boost their production of corn in these times of economic hardship. A list of 47 people facing prosecution was annexed to the report, which was then forwarded to the Deputy Prime Minister, Minister of Agriculture and Rural Development for appropriate disciplinary action. On Tuesday August 4, 2009, after having suffered a number of setbacks - the Minister having systematically turned down their numerous requests to meet with him - investigators at the National Anti-Corruption Commission finally met with Minister of Agriculture in his chambers. Since then... *Silence radio!*

VII- The “Judiciary” Approach: ‘Operation Hawk’ (Opération Épervier)

"Hawk" is the name given to a broad judicial operation, conducted by the Ministry of Justice in the fight against corruption in Cameroon. To its credit, this operation, launched in 2004 but formalized by Presidential Decree in 2006, has put up dozens of arrests of alleged hijackers of state assets, including:

- Jean-Marie Atangana Mebara, Former Minister of State and SG of the Presidency of the Republic
- Polycarpe Abah Abah, Former Minister of Economy and Finance
- Urbain Olanguena Awono, Former Minister of Public Health

36 «Filière Maïs : La Conac enquête chez Jean Nkueté.» Par Jean Baptiste Ketchateng. 23/01/2009 Source: Quotidien Mutations (En ligne à: http://www.bonaberi.com/ar,filiere_mais_la_conac_enquete_chez_jean_nkuete,5984.html. Page consultée le 10 janvier 2010).

- Alphonse Siyam Siwe, Former Minister of Water and Energy
- Jerome Mendouga, Former Ambassador to the US
- Emmanuel Gerard Ondo Ndong, Former GM of FEICOM (in charge of financial assistance to local cities and towns councils)
- Gilles Roger Belinga, Former GM of Cameroon's Real Estate Company (Societe Immobiliere du Cameroun - SIC)
- Haman Adama, Former Minister of National Education
- Remy Ze Meka, Former Minister of Defense
- Joseph Edou, Former GM of the State's Land Loan Fund (Credit Foncier du Cameroun)
- Edouard Etonde Ekoto (Colonel, retired), Former Chairman of the Board of the Douala Port Authority (Port Autonome de Douala)
- Dr. Maurice Fezeu, Former Coordinator of the National Committee against HIV/AIDS
- Zaccheus Forjindam, Former Director General of Chantier Naval et Industriel du Cameroun
- Norbert Ndong, Former Director of the development of higher education
- Jean Baptiste Nguini Effa, Former CEO of Cameroon Petroleum Deposits (SCDP)
- Hubert Wang, Permanent Secretary of the National Committee for the Fight Against TB
- Maurice Fezeu, Permanent Secretary of the National AIDS Control Committee
- Raphael Okala, Permanent Secretary of the Malaria Control Committee

VIII- Limits and possible normative solutions.

A- Limits:

A 'state-centric' approach to fighting corruption: Today, by the admission of Cameroonian authorities themselves³⁷, this institution – which replaced the defunct "Observatoire National de Lutte Contre la corruption" - has so far produced mixed results, at best. Indeed, the lack of independence and means - in the broadest sense of the term: legal, political, logistics ... - has not allowed the National Anti-Corruption Commission to establish itself as an effective structure to fight corruption, nor its ministerial cells, created to bring the fight to the lowest levels of government. Moreover, the draft text prepared in 2001 by the Ad Hoc Committee to create a structure to fight corruption nationwide has not yet yielded the results expected. Several measures provided in the Governmental Plan for the Fight against Corruption – part of the "Action plan for governance" agreed upon with Bretton Woods Institutions - are still not implemented, including a coalition Government-Civil society against corruption. This instability, this "smoking mirror" is in fact the best protection for all people living off of corruption: It is indeed the guarantee of the status quo.

This sad result is even more exemplified by what critics call "a deliberate selective approach to the application of law", citing as evidence the case of article 66 of the Constitution. As a matter of fact, an important law whose application could effectively contribute to the fight against corruption and embezzlement of public money is, literally, "collecting dust" in archives, almost two and a half years after its enactment. Indeed, the No. 003/2006 Act of April 25, 2006 on the declaration of assets of public officials is yet to be enforced. Since it was enacted, its implementing regulations are still awaited. The president, who must sign the bulk of the by-laws and designate its members, thus setting in motion the Commission in charge of enforcing the law, takes its time. Under the law, the commission shall receive, operate and maintain updated the statements of all those involved. Also according to the law of April 25, 2006, persons subject to this control, currently in office or while in office, have to declare their property and assets with a period of no more than 90 days from the start of activities of the Commission. But so far, neither the President nor the members of this Commission are appointed. The absence of the Senate is also problematic, since, by statute, it must designate one member of the Commission. And last but certainly not least, a certain "politicization" of the investigations: the problem of the independence of the judiciary. The subject has been a matter of controversy almost from day one, as reported by "*Jeune Afrique*".³⁸

37 Website of Cameroon's Ministry of Foreign Relations (Online at <http://www.diplocam.cm/spip.php?article186> Page viewed on January 10, 2010)

38 Jeune Afrique: Paul Biya accusé d'instrumentaliser "Épervier". 25/01/2010 à 15h:48. Article composé par la rédaction Web de Jeune Afrique, avec le concours de l'AFP (En ligne: <http://www.jeuneafrique.com/Article/ARTJAWEB2010012>)

B- The issue of recovery of stolen assets.

Quite surprisingly, the laws in Cameroon don't say much on the subject. According to a recent press conference by the Minister of Communication³⁹, in the interest of justice, "complete recovery of stolen monies has always been a tool at the disposal of prosecutors and the accused interested in making a deal to avoid jail time", but that remains to be seen. It is a fact though, that those convicted of embezzlement of public funds tend to also be heavily fined, under the general legal principle that "the punishment should fit the crime", and set the necessary and appropriate example to discourage further attempts to break the law; but one has to wonder how much of that punishment is real, when the thieves are allowed to keep their loot, stashed overseas. The question is central for an economy that has been struggling for years, and for the credibility of a state whose citizens' distrust for everything related to government intervention is at an all-time low. For one, it implicates the issue of fiscal paradises, and their renowned taste for secrecy. More than ever before, international cooperation is needed here. To make the circle complete – and "to put their mouth where their money is", so to speak - the international community, after stigmatising corruption and its disastrous effects, should take on the issue head-on.

C- Possible normative solutions: Get government out of the shadows!

1- Rehabilitation of the NACC.

2- Toughening International Law at both bilateral and multilateral levels.

- The Multilateral Level:

On its website, the World Bank (WB) boasts itself as "a leading global development agency providing support to building the performance and accountability of core public sector institutions—with lending in public sector governance comprising approximately US\$4.7 billion in FY 2008 and US\$5.8 billion in FY09. Enhanced mechanisms on corruption risk assessment, disclosure, oversight, and monitoring, help the Bank ensure that development funds are used for their intended purpose."

On September 17, 2007, the World Bank (WB) and the United Nations launched the Stolen Assets Recovery (StAR) Initiative to help reduce the barriers to asset recovery and thereby facilitate the return of stolen assets.

The StAR Initiative seeks to support this cooperation by helping countries access and share knowledge and experience on asset recovery; build national capacity to undertake asset recovery; implement innovations in asset recovery, such as non-conviction based methods for the confiscation of the proceeds of corruption; support and facilitate countries' efforts to share information and collaborate with foreign jurisdictions, for example, by filing mutual legal assistance requests;

An important objective to the success of the StAR Initiative is to build global networks from both developed and developing countries that work collectively to recover stolen assets.

- Bilateral:

Other partners of Cameroon should follow the example of the United States of America, which apply with great severity their "Resolution 77.50", which prohibits any official suspected of corruption in Cameroon from coming to America.

That more foreign jurisdictions declare themselves competent to hear cases of misappropriation of funds, transferred to their respective countries on the basis of referrals from nationals of those countries.

That the repatriation of funds from tax havens be subjected to one or more international conventions, bilateral or multilateral.

IX- The *Chame-lion*.

In a democratic society, legal scholars don't make laws; politicians (legislators) do. This allows them to affect the lives of their constituents in a unique way. In power since November 6, 1982, Paul Biya who by then had spent most of his political career in the shadow of Cameroon's first dictator Ahmadou Ahidjo, knows this all too well. And so, though early on in his presidency he often presented himself as the champion of democracy and

5154831/arrestation-cameroun-corruption-procespaul-biya-accuse-d-instrumentaliser-epervier.html. Page consultée le 15 mars 2010)

39 "Sortie médiatique: Les contres-vérités de Tchiroma." Par François Bambou, journal La Nouvelle Expression du 4 février 2010. Repris en ligne par Cameroon info net (<http://www.cameroon-info.net/stories/0,26082,@,sortie-mediatique-pourquoi-issa-tchiroma-n-a-pas-convaincu.html> - Page consultée le 10 février 2010)

freedom, Biya (literally) retracted from the world, reneged on all his promises and self-proclaimed ideals, resorting mainly to ethnics politics to maintain himself in power. This is especially true after the attempt by a Coup, or Putsch to oust him failed on April 6, 1984, thanks to an army that chose to respect the constitutional order, rather than buying into the grievances of a few disgruntled officers. Here is how French journalist François Soudan puts it : “One thing is certain: during the twenty years [following his takeover], democratization will only happen in small, parsimonious doses, in a country where the political system, more highly structured than elsewhere in francophone Africa, was never renowned for its flexibility. Dosages follow constant rebalancing according to an unwritten rule, key to stability but also sclerosis, which states that no significant sector of the elite is permanently kept out of the profits (if not the exercise) of power. Consequence: the peaceful democracy, balanced, of consensus and alliance which Paul Biya has always claimed, amounts to a de facto one-man-show and one-party system, with the decay of the opposition as its background”⁴⁰.

Paul Biya’s political campaign, during the run-up of the much-contested 1992 presidential election, in an attempt to project an image of strength and that of a resolute leader, labeled him “*l’homme-lion*”. In actuality, I would argue that, like many of his African counterparts, his actions place him much closer to a less glamorous member of the African fauna: the chameleon, mainly for his ability to re-invent himself, when faced with international political pressure. In the early days of his reign, the man used the words “*rigueur dans la gestion et moralisation des comportements*” as the slogan of choice for his regime. Asked about the rampant corruption of his cronies on national television in 1987, he famously quipped, almost defiantly: “*Où sont les preuves?*”⁴¹ He then went on to explain with lengthy detail that the rule of law, which he introduced as one of the pillars of his “*Renouveau*” prescribed, essentially, that everybody, including cabinet ministers, was innocent until PROVEN guilty. Opponents often point to the hypocrisy of this statement, given the prosecutorial powers vested in the government, in this very French-like system of justice, as exemplified by operation “*Epervier*”. Nevertheless, to its credit, as early as 1986, the government launched operation “*Antilope*,” aimed at getting rid of all ghost civil servants, though it took 20 years for the findings of the operation to be published (2007).

In the early 1990’s, the man experienced yet another transformation, in the aftermath of Francois Mitterrand’s La Baule’s speech, where the French leader indicated to his African counterparts attending the France-Africa Heads of States Summit that from then on, international aid, at least France’s specifically, would be conditioned by “significant” democratic improvements, especially in the areas of rule of law and the fight against corruption. Asked about it on the steps of the Elysee Palace in Paris, the Cameroonian leader almost bragged: “I do not think I distort the President’s thought when I say that I am his best student.” (“*Je ne pense pas déformer la pensée du président [Mitterrand] quand j’affirme que je suis son meilleur élève [en matière de démocratie].*”)

Conclusion: Half-full or half-empty. The limited choice for the Cameroonian people.

The purpose of this paper was to engage the proponents of the idea of “permanent interference” by the BWI in Cameroon’s war on corruption and impunity. The examination of facts show a slightly different picture, though: the reality is, both sides seem to have “alternate motives”, either in making a firm stand for good governance, by pushing for accountability and the rule of law, and the other for, well, for lack of better words, “faking it”, as exemplified by CONAC, a clear case of institutional corruption.

Summary of the critics: The Lack of Clarity of the Political Will on both sides of the issue.

It is a fact that the BWI, created after World War II, face some tough times, many questioning their relevance and calling for the reform of a system accused of being mostly out of touch with contemporary global economy. In order for them to justify their existence to their stakeholders, they have to reinvent themselves, which they

40 «Une chose est sûre: pendant les vingt années suivant [sa prise de pouvoir], la démocratisation ne se fera plus qu’à doses homéopathiques dans un pays où le système politique, plus fortement structuré qu’ailleurs en Afrique francophone, n’a jamais brillé par sa flexibilité. Aux dosages succèdent les rééquilibres en fonction d’une règle non écrite, clé de la stabilité mais aussi de la sclérose, qui veut qu’aucun secteur significatif de l’élite ne soit durablement tenu à l’écart des bénéfices (sinon de l’exercice) du pouvoir. Conséquence: la démocratie apaisée, d’équilibre, d’alliance et de consensus dont Paul Biya s’est toujours réclamé, se résume à un monopartisme de fait sur fond de déliquescence des formations de l’opposition.» Jeune Afrique: Dans la tête de Paul Biya Par François Soudan. Version électronique postée le 20/05/2010 à 10h:45 (Online at: <http://www.jeuneafrique.com/Articles/Dossier/ARTJAJA2575p024-032.xml1/cameroun-president-censure-paul-biyadans-la-tete-de-paul-biya.html> - Page Viewed on May 20, 2010)

41 Literally, “show me the evidence!”

apparently successfully accomplished, presenting themselves as “champions of the poor”.

In Cameroon, many local politicians, rather than facing the failure of their policies, were quick to paint the conditionalities of financial aid as tantamount to a “diktat”: on one hand, appealing to the nationalist sentiment of their supporters, yet on the other, using the poor people they are supposed to serve as bait to attract donors, putting their country under so much debt it is only a matter of time they reach their breaking point and, in so doing, feeding into a modern-day version of Rudyard Kipling’s “white man’s burden”, the age-old so-called “guilt”.

By all means, the situation in Cameroon is certainly not unique. An attractive cash package of \$5 million (£3.4 million) over ten years, including \$200,000 annually for life thereafter, plus \$200,000 per year for a decade to support public interest activities of the candidate’s choice: The incentive, the world’s largest individual award for statesmen, was initiated by Mo Ibrahim, a Sudanese communications entrepreneur who began the scheme three years ago in an attempt to encourage good leadership on a continent with a history of poor governance, corruption and despotism. Sadly, and despite the generous terms, this prize to reward good governance and outstanding democratic leadership in Africa went unclaimed, for the second consecutive year. Previous winners include Festus Mogae, the former President of Botswana, Joaquim Chissano of Mozambique and Nelson Mandela, who was made an honorary laureate in 2007. This year, like last, the prize committee headed by Kofi Annan, the former UN Secretary-General, found itself in the embarrassing situation of having no winner for 2009⁴².

By many accounts, Cameroon is arguably the most peaceful country in the central African region. But things could change. In 2009, *Foreign Policy* called Cameroon a “failing state”, causing quite a stir in Yaounde. According to the internationally acclaimed journal, one single issue explains this: endemic, unrepentant corruption. On Tuesday, 08 June 2010 in Douala, outgoing U.S. ambassador in Cameroon Janet E. Garvey turned to businessmen, members of the local chapter of the American Chamber of Commerce, a structure created in Cameroon three years ago, to explain the volatility of the political situation in the wake of an presidential election year. During the monthly meeting of the Cameroonian branch of the American Chamber of Commerce, Mrs Garvey addressed – and endorsed – the report published a few days before by an NGO, the International Crisis Group (ICG). For the first time, the non-governmental organization that conducts worldwide studies on the prevention and resolution of armed conflicts, had been interested in Cameroon, in a report that highlights potential sources of instability, while recognizing the strategic nature of the country in the sub-region. After 28 years under Biya’s presidency, Cameroon is, at the eve of the presidential election scheduled for 2011, in a situation of great, potential instability. The vagueness prevailing around important constitutional and legal issues (such as the transfer of power in case of vacancy), rivalries between the barons of the regime, government’s repeated attempts to control the election process, a broken political contract between rulers and ruled, high level of poverty and many other dissatisfactions of the population, rampant corruption and the frustrations of a large part of the military have raised fears of the possibility of a major crisis. To avoid this, according to the report by International Crisis Group, Biya and his government must restore the independence of the body responsible for organizing and supervising elections, make institutional and impartial the fight against corruption and ensure the neutrality of security forces. They must also, urgently, put in place the institutions established by the 1996 Constitution, to avoid a power vacuum and the possibility of violence during transition, including in the case it was caused by an unforeseen event such as death in office of the president, now aged 77. Finally, the report admonishes Cameroon’s most influential partners, particularly France and the United States to actively support these measures to prevent unrest.

“Politics in Africa is like dance: Two steps forward, one step backwards”.
Some random, really angry, bitter person on the streets of Yaounde.

When you are thirsty, it doesn’t really matter, whether the glass is half-full, or half-empty. The people of Cameroon are thirsty for justice, and they welcome any attempt, all attempts to bring about an environment free from corruption, and to put an end to impunity⁴³.

42 “\$5m prize for good governance goes unclaimed again in Africa” by Raymond Baguma from The Times, London (Online at <http://www.timesonline.co.uk/tol/news/world/africa/article7150026.ece> - Page Viewed on June 15, 2010).

43 *I wrote this paper as a support to my PowerPoint presentation on the same subject, given Wednesday, May 5th, 2010 at Carleton University in Ottawa, at the conference celebrating the 40th anniversary of the Canadian Association of African Studies (CAAS). Thanks a million, to the organizing committee for selecting my proposal, and for a conference so well organized!*

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