

Republic of Cameroon
Peace - Work - Fatherland

Audit Bench of the Supreme Court

## Annual Report 2012

## The Audit Bench of the Supreme Court

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The Audit Bench of the Supreme Court of Cameroon has jurisdiction to:

## (1) Control and rule on public accounts as well as those of public and semi-public enterprises;

Section 41 of Law No. 96/06 of 18 January 1996 to amend the Constitution of 2 June 1972:

#### (2) Declare and check de facto accounting;

Section 7 of Law No. 2003/005 of 21 April 2003 on the jurisdiction, organization and functioning of the Audit Bench of the Supreme Court of Cameroon.

#### (3) Give its opinion on any matter referred to it in connection with the control and audit of accounts.

Section 10 of Law No. 2003/005 of 21 April 2003 to lay down the jurisdiction, organization, functioning of the Audit Bench of the Supreme Court of Cameroon;

## (4) Give its opinion on Settlement Bills submitted to the National Assembly;

Section 39(c) of Law No. 2006/016 of 29 December 2006 to lay down the organization and functioning of the Supreme Court;

(5) Draw up and publish annual reports on State accounts to be submitted to the Head of State;

Section 39(d) of Law No. 2006/016 of 29 December 2006 referred to above

(6) Submit to the President of the Republic, the President of the National Assembly and the President of the Senate an annual report setting out the general results of its deliberations and pertinent observations with a view to reforming and improving upon the keeping of accounts and the discipline of accountants;

Section 3 of Law No. 2003/005 of 21 April 2003 referred to above.

This report was prepared by the Programming and Public Report Committee under the coordination of Mr. FOUDA AMOMBO, Master of the Supreme Court. The Committee includes among others Messrs THEUMOUBE Philippe, DJOKO André, MIKONE Martin Bienvenu, YEBGA MATIP, EZO'O BIZEME, Masters of the Supreme Court, Madam JIFON née NJOWIR Mary YIBEALA and Mr. HAMAN Dieudonné, Division Registrars.

Mr. EBENE Daniel, Advocate General was the Adviser to the Committee.

The proofreading of this report was done by a committee presided over by Mr. ATEBA OMBALA Marc, President of the Audit Bench and made up of Mr. MBENOUN Théodore, Mrs SIMO BOBDA née Lucienne SIMO TCHUENTE, Division Presidents, FOUDA AMOMBO, Coordinator of the Programming and Public Report Committee, Messrs MANGA MOUKOURI, HAKAPOKA Narcisse, KAMENI Pierre, DITOPE LINDOUME, MIKONE Martin Bienvenu, ALIMA Jean Claude, YEBGA MATIP, Masters of the Supreme Court, Mr. Michel PAGUEM, Registrar-in-Chief and Madam JIFON née NJOWIR Mary YIBEALA, Division Registrar.

Mr. EBENE Daniel, Advocate General represented the Procureur General at the Supreme Court.

The final report was adopted by the full Chamber on 31 December 2013.



In accordance with the provisions of Order No. 26/CDC/CSC of 19 October 2010 signed by the President of the Audit Bench to determine matters which the various Divisions of the jurisdiction shall examine, the Audit Bench, deliberating in Chambers, adopted the present report drawn up in application of section 3 of Law No. 2003/005 of 21 April 2003 to lay down the jurisdiction, organization and functioning of the Audit Bench of the Supreme Court.

#### The following were present:

- Mr. ATEBA OMBALA Marc, President of the Audit Bench;
- Mr. MBENOUN Théodore, Madame SIMO BOBDA née SIMO TCHUINTE Lucienne, Division Presidents.
- Messrs MANGA MOUKOURI Isaac, HAKAPOKA Narcisse, KAMENI Pierre, DITOPE LINDOUME, FOUDA AMOMBO, NGAN Evaristus Azeh, THEUMOUBE Philippe, DJOKO André, MIKONE Martin Bienvenu, NDJOM NACK Elie, ALIMA Jean Claude, YEBGA MATIP, EZO'O BIZEME, Masters of the Supreme Court.

The following were also present and participated in the discussions without taking part in the deliberations:

Mr. NDJODO Luc, Senior Advocate General at the Supreme

Court, Mr. EBENE Daniel, Advocate General at the said Court; Mr. PAGUEM Michel, assisted by Madam JIFON née NJOWIR Mary YIBEALA took the minutes.

Done at the Audit Bench of the Supreme Court this 31 December 2013.

Foreword

«Parva sed apta mihi»1

Within the framework of its powers of control of public accounts and those of public and semi-public enterprises, the Audit Bench of the Supreme Court is organized into five divisions as follows:

- division in charge of controlling and ruling on accounts produced by State accountants;
- division in charge of controlling and ruling on accounts produced by accountants of regional and local authorities and their public establishments, subject to the duties devolving upon lower audit courts;
- division in charge of controlling and ruling on accounts produced by accountants of public establishments of the State;
- division in charge of controlling and ruling on accounts produced by public and semi-public enterprises;
- review division<sup>2</sup>.

Within these activities, be the control of accounts, assistance and counsel to public authorities or its advisory role, it sits in ordinary sessions, in joint sessions, in chambers where matters falling within its ambit are determined by the President of the Audit Bench.

<sup>1«</sup>Modest, but it suits me»

<sup>&</sup>lt;sup>2</sup> Section 10 of law n° 2006/016 of 29 December 2006 – section 13 (1) of Law n° 2003/005 of 21 April 2003.

Since the Audit Bench commenced its activities in 2006, the various divisions above-mentioned operate regularly either in ordinary sessions or in chambers except for the review division which is waiting for the functioning of regional accounts courts.

It was in 2012 that the biggest session that sets the jurisprudence<sup>3</sup>, that is the Joint Divisions, finally entered in the financial jurisdiction,

This session is in charge of the examination, for the most part, of appeals lodged against final rulings within its ambit and matters sent to it either by order of the Chief Justice or by ruling of a division<sup>4</sup> and in addition, where need be, files forwarded to it by the Supreme State Audit Service (CONSUPE) or the National Anti Corruption Commission (CONAC).

In 2012, the Audit Bench ruling in Joint Divisions examined a new type of contentious matters but really common to all jurisdictions, that is, the examination of appeals. Here, respect of laid down conditions of admissibility leading to review of the facts forming the subject of the contested ruling turned out to be a real stumbling block. No appeal was judged admissible.

It is obvious that «ignorance of the law is no excuse». But international conventions duly ratified by Cameroon and the preamble of its Constitution all acknowledge that all men are entitled to a fair hearing before the courts<sup>5</sup>.

The desire for justice to be effectively rendered to appellants requires that a reminder be made of the principles which govern appeals against final rulings of the Audit Bench in the foreword of the 2012 Annual Report.

Africa Charter on Human and Peoples' RightsCharte africaine des droits de l'homme et des peuples

Article 7. (1): Every individual shall have the right to have his cause heard. This comprises:

(a) the right to an appeal to competent national organs against acts of violating his fundamental rights as recognized and guaranteed by conventions, laws, regulations and customs in force;

(b) the right to be presumed innocent until proved guilty by a competent court or tribunal;

(c) the right to defence, including the right to be defended by counsel of his choice;

(d) the right to be tried within a reasonable time by an impartial court or tribunal .

Preamble of the Constitution of 18 January 1996.

<sup>&</sup>lt;sup>3</sup> Section 35 (1) (i) of Law n° 2006/016 of 29 December 2006, «grounds on which an appeal may be based include»:

<sup>(1)</sup> Non compliance with the jurisprudence of the Supreme Court which ruled in a Panel of Joint Divisions of a Bench or of Joint Benches.

<sup>\*</sup>Section 41(2a) of the Law n° 2006/016 of 29 December 2006: «The panel of joint divisions shall hear cases referred to it by the First President or by decision of a division».

<sup>&</sup>lt;sup>5</sup>Universal Declaration of Human Rights

<sup>«</sup>The law shall ensure the right of every person to a fair hearing before the courts».

Indeed, in compliance with section 71 of Law n° 2003/005 of 21 April 2003 aforesaid, «there are two forms of appeal against judgments passed by the Audit Bench, namely: quashing of judgments and review».

According to the section 72 of the same law, quashing or appeal<sup>6</sup> for annulment is the appeal «before the Plenary Assembly of the Supreme Court» which session was not mentioned in the organization of the Supreme Court, subject of Law n° 2006/016 of 29 December 2006 but is substituted by the Panel of Joint Benches. According to the section 72 of law n° 2003/005 of 21 April 2003, this extraordinary appeal can only be exercised by the Procureur General of the Supreme Court, on the instruction of the Minister of Justice, acting at the instance of the Minister of Finance or the accountant concerned or the heirs of the latter. It stays execution. The petition is lodged with the registry of the Supreme Court.

As for the review falling within the ambit of the Audit Bench «sitting in Joint Divisions» and which is a means of retraction, its proceedings are fixed by sections 73 to 76 of Law n° 2003/005 of 21 April 2003.

According to the provisions of its sections 33(1) and 73(1), this aforesaid allows appeals only against final rulings on an account, in other words law rulings that have fixed the final nature of the accounts of official or de facto management and consequently settled on the situation of the accountant. Consequently, it excludes the possibility of review of final rulings with fines.

Moreover, the interim ruling rendered by a financial jurisdiction before which the principle of double ruling exists and which calls for responses from the people concerned with the interim rulings addressed to them, is not liable for review on appeal.

This appeal for review is opened to the accountant, the Minister in charge of Finance or the legal representatives of the relevant public

<sup>&</sup>lt;sup>6</sup> Section 33 of the aforementioned Law n° 2003/006 of 21 April 2003

<sup>(1)</sup> After examining the answers of the accountants and the complementary conclusions of the rapporteur, the Audit Bench give a final ruling on the accounts. The ruling on the accounts shall comprise two parts:

a) The first part shall certify the nature of the accounts, and any corrections shall be indicated;

b) The second part shall determine the regularity of the accounts, an accounting surplus or an accounting deficiency and where applicable indicate the respective periods when the operations were effectively carried out.

Section 73 of the same law

<sup>(1)</sup> Notwithstanding the final ruling on an account, the Audit Bench may, due to a mistake, an omission, forgery or duplication discovered after the ruling is passed, review such ruling of its own motion or at the request of either the accountant, the Minister in charge of Finance or the legal representative of the relevant public bodies or at the instance of the Procureur General of the Supreme Court.

bodies or the instance of Procureur General of the Supreme Court because of a «mistake, an omission, forgery or duplication discovered after the ruling is passed»; the review of a ruling can also be decided automatically both in favour of the accountant as against him for the same reasons.

The request for review must be founded on at least one of these four (4) reasons based on the justifications discovered after the contested ruling was taken. That is an important condition for admissibility because the supporting documents attached to the appeal must have existed before the contested ruling and that the accountant was in a situation where it was impossible for him to produce them at the first instance by reason of absolute necessity's case.

In addition, the request for review must meet the conditions of form.

It must be reasoned and addressed to the President of the Audit Bench and include:

- a statement setting out the facts and grounds of appeal;
- a copy of judgement for which review is sought;
- the supporting document including evidence of notification of the petition to the other parties involved.

Section 76 of Law n° 2003/005 of 21 April 2003 supra provides that:

- « (1) a petition for review must be lodged within six (6) months of service of the judgment on the accounting officer.
- (2) The petition for review shall not stay execution of the judgment. »

Through respect of the conditions above-mentioned, any appellant has the means to cause the merits of his appeal to be examined.

This, when the petition is deemed admissible, the Audit Bench passes a final ruling to allow or dismiss the petition on the strength of the supporting documents submitted.

Where the petition is deemed admissible, the Audit Bench rules on the merits of after parties have been given full hearing.

This brief reminder of the rules governing appeals against final rulings of the Audit Bench situates users of the financial jurisdiction on the full enjoyment of the right to fair hearing as laid down by section 8 of

the Universal Declaration of Human Rights<sup>7</sup>.

The interest of knowing it and the need to better apprehend the functioning of the high financial jurisdiction lead me to recommend the reading of this 2012 Annual Report established by the Audit Bench of the Supreme Court.

Alexis DIPANDA MOUELLE Chief Justice of the Supreme Court

<sup>&</sup>lt;sup>7</sup> Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.



This year the Audit Bench of the Supreme Court is producing its seventh annual report in compliance with section 3 of Law No. 2003/005 of 21 April 2003 to lay down the jurisdiction, organization and functioning of the Audit Bench of the Supreme Court of Cameroon which notably provides that: "The Audit Bench shall submit to the President of the Republic, the President of the National Assembly and the President of the Senate an annual report setting out the general results of its deliberations and pertinent observations with a view to reforming and improving upon the keeping of accounts and the discipline of accountants. This report shall be published in the Official Gazette of the Republic of Cameroon".

This report on the 2012 financial year is made up of four parts. The first part is a general presentation of all the activities of the Audit Bench under four main aspects:

- Administrative and financial management,
- Judicial control,
- Extra-judicial activities relating to administrative control, assistance to public authorities,
- Sensitization and information of users and citizens.

The two parts following mention some important decisions taken at the end of various controls and in conclusion of the exercise of the advisory jurisdiction of the Audit Bench.

The fourth part draws up an inventory of recommendations of the Audit Bench and for the first time looks at the impact of the work of the financial jurisdiction.

In the conclusion, the 2012 public report lays emphasis on the impact of the decisions of the Audit Bench and the obligation to render account incumbent on her both in compliance with section 3 of Law No. 2003/005 of 21 April 2003 referred to above and ISSAI standards which are henceforth being applied universally.



## **ACTIVITIES OF THE AUDIT BENCH**

## CHAPTER 1. ADMINISTRATIVE AND FINANCIAL MANAGEMENT OF THE AUDIT BENCH IN 2012

#### **SECTION 1. Staff of the Audit Bench**

The staff of the Audit Bench which was made up of 95 persons at the end of 31 December 201 generally witnessed a major change in 2012. In effect, through the special recruitment of 25,000 young certificate holders by the State, the financial jurisdiction received seventy-three (73) senior and middle level contract employees. The Bench thus seized the opportunity through internal training to provide the legal and judicial officers with the assistants they needed.

The human resources of the Audit Bench which increased to 178 persons by 31 December 2012 include legal and judicial officers, registry staff, senior contract staff, State employees and security staff.

#### Paragraph 1. Legal and judicial officers

The staff situation of legal and judicial officers of the Audit Bench witnessed a double evolution during 2012 marked on the one hand by the change in number: two additional legal and judicial officers arrived in the legal department while the legal and judicial officers of the bench dropped from twenty-two (22) to twenty-one (21) following the dismissal of one of them and on the other hand,

through the change in grade of two legal and judicial officers promoted from the third to the fourth scale.

Considering this double evolution, the distribution of legal and judicial officers at the Audit Bench by 31 December 2012 stood as follows:

- Group I Super scale Legal and Judicial Officers:1(Bench);
- Group II Super Scale Legal and Judicial officers: 5 including
   2 in the Legal Department
- Fourth Scale Legal and Judicial Officers: 18 including 1 in the Legal Department

#### Paragraph 2. Senior contract staff

The number of senior contract staff that was previously twelve (12) increased to sixty-nine (69) persons in 2012 through decision No.144/MJ/SG/DAG/SDP/SPNM of 29 March 2012 signed by Minister of State, Minister of Justice, Keeper of the Seals to post to the Audit Bench seventy-three (73) persons from the special recruitment of young certificate holders into the Public Service. This number included fifty-seven (57) from higher education.

The sixty-nine (69) contract employees are divided into two (2) categories: audit assistants and technical staff.

#### 1- Audit assistants

After internal training, the fifty-seven (57) new staff were assigned as audit assistants. They have come to increase the number of this category of staff which was composed only of nine (9) trained registrars.

As at 31 December 2012, the number of staff capable of performing the duties of audit assistants stood at sixty-six (66).

#### 2- Other technical staff

They are twelve in number (12) including:

- two (02) information technology specialists,
- nine (09 archivists and
- one (01) journalist.

#### Paragraph 3. Registry staff

These are staff were already absorbed in the corps of registry staff as well as eight (8) agents who were absorbed by decree No. 2011/020 of 04 February 2011 fixing the special rules and regulations governing registry staff independently of their tasks within benches. By 31 December 2012, this staff was twenty-three (23) including:

- 02 Senior Court Registry Administrators, (category A2)
- 05 Court Registry Administrators, (category A1);
- 05 Senior Court Registrars, (category B2);
- 03 Court Registrars, (cate2gory B1);
- 08 Assistant Court Registrars, (category C).

## Paragraph 4. Employees governed by the Labour Code and security staff

Employees governed by the Labour Code and security personnel from various corps (Gendarmerie, Police, Penitentiary Administration) are 53 in number. Their number dropped as a result of the absorbtion of the eight (8) agents mentioned above. This drop was compensated by the posting to the Audit Bench of persons from the special recruitment.

By 31 December 2012, this staff was distributed as follows:

- 19 secretaries:
- 25 drivers;
- 09 security agents.

upreme Court

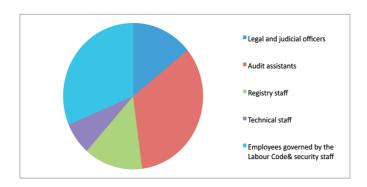
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### Paragraph 5. Staff number at the Audit Bench by 31 December 2012

Table 1: Staff at the Audit Bench by 31 December 2012

	Années							
Categories	2009		2010		2011		2012	
	No.	%	No.	%	No.	%	No.	%
Legal and judicial officers	24	27,920	25	25,77	23	24,21	24	13,48
Audit assistants							66	37,07
Registry staff	14	16,28	15	15,46	15	15,79	23	12,92
Technical staff	13	15,11	12	12,38	11	11,58	12	6,74
Employees governed by the Labour Code and security staff	35	40,69	45	46,39	46	48,42	53	29,77
Total	86	100	97	100	95	100	178	100

Graph 1. Distribution of staff by categories by 31 December 2012



**SECTION 2. Financial and material resources** 

#### Paragraph 1. Budget of the Audit Bench in 2012

Just like in 2011, the activities of the Audit Bench were essentially financed by the budgetary resources of the State.

In 2012, the initial budgetary allocation to the Bench, apart for staff remuneration, stood at 966 168 912 CFA F including 761 168 912 CFA F as running budget and 205 000 000 CFA F for investment. Compared to the 2011 financial year during which this allocation dropped remarkably both in terms of the estimates and execution plan, 2012 was characterized by increase in commitments by 38.67%, partial result of the increase in the general budgetary allocation of 18.64%.

The low rate execution of the investment budget (45.70%) remains dependent on the fact that the call or tenders for the architectural and technical studies of the construction project of the building to house the archives whose budget made up 50% of the allocation was declared unsuccessful.

The beginning of the increase in the budgetary resources allocated to the Audit Bench in 2012 expresses the will by the State authorities to endow the financial jurisdiction with adequate financial resources. However, the actual level of these resources still remains limited with regard to the needs linked to the optimum exercise of all the competences devolving on the institution today.

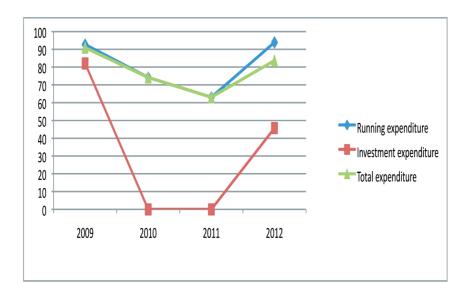


Table No. 2. Budgetary expenditure of the Audit Bench by 31.12.2012 (In thousands of CFAF)

		Financial years				
		2009	2010	2011	2012	
	Estimates	1 042 000	1 038 673	786 000	761 169	
Running expenditure	Execution	965 396	771 079	495 878	714 871	
	Rate of execution (%)	92,65	74,23	63,08	93,92	
Investment expenditure	Estimates	200 000	0	0	205 000	
	Execution	164 141	0	0	93 670	
	Rate of execution (%)	82,07	0	0	45,70	
Total expenditure	Estimates	1 242 000	1 038 673	786 000	966 169	
	Execution	1 129 537	771 079	495 878	808 541	
	Rate of execution (%)	90,95	74,23	63,08	83,68	

**Sources**: MINFI/DGB; MINEPAT/DPIP

Graphique n°2. Taux de réalisation des dépenses budgétaires en 2012



#### Paragraph 2. Material resources

#### 1. Real estate

The remarkable increase of staff numbers in the Audit Bench resulting from the posting of personnel recruited among the 25,000 young certificate holders into the public service increased the demonstrated nature of the premises being unable to conveniently accommodate the staff.

There is therefore the need to construct a head office with a larger holding capacity. This building that will house the archives, whose architectural and technical studies of are envisaged will the beginning of a solution.

#### 2. Vehicle fleet

Service vehicles of members of the Audit Bench are averagely four (4) years old. Their maintenance requires large sums of money. Allocations provided to this effect for their maintenance in 2012 were inadequate.

Moreover, the Audit Bench does not yet have a vehicle adapted to travel within the country. This situation seriously hampered the deployment of on-the-spot control missions in accordance with the programmed activities for 2012.

#### **SECTION 3. Capacity building at the Audit Bench**

Public finance management procedures are constantly changing. This means that control institutions must permanently adapt. This requires streamlined verification techniques and the appropriation of current developments in this area to establish and consolidate daily staff capacity.

In this vein and this since its establishment in 2006, training activities are in the forefront of the concerns of the Audit Bench. It was only normal for these activities to be continued in 2012.

The training took place both within the country and in other countries within the framework of international cooperation.

#### Paragraph 1. Training in the country.

These activities had two targets: audit assistants and registry staff.

#### A. Training of audit assistants

A training programme in the task of audit assistants was organized for the newly recruited contract employees of the Audit Bench for their integration. This programme was prepared and implemented by the Training and Cooperation Committee of the Audit Bench.

The lessons dispensed, based principally on management and control techniques of public finance were under the following topics:

#### 1. Judicial power

- Judicial organization;
- Organization and missions of the Audit Bench of the Supreme Court;
- The ethical framework of the duties of judges of a financial framework;

#### 2. Public finance

- The fundamentals of public finance;
- Keeping and reading of public accounts;
- The preparation and control of concordance of a current bank account statement;

#### 3. Control of accounts

- The methodology of judicial control;
- Control of accounts of State public accountants;
- Control of the accounts of Council Revenue Collectors;
- Control of accounts of Accounting Officers;
- Control of the accounts of public and semi-public enterprises;
- Control on documents;
- How to prepare a questionnaire;
- How to draft a judicial report (theoretical presentation and practical work);
- How to draft a ruling (theoretical presentation and practical work);
- De facto management;
- The putting into play of the responsibility of public accountants (total discharge rulling, partial discharge ruling, quietus, debit, notification of rulings, execution of final rulings);
- Responsibility of authorizing officers;

#### 4. Work with the legal department

#### 5. Support tools

- Use of computers;
- Intranet, Internet.

For two months from 14 May to 12 July 2012, these young staff followed this training that culminated in evaluation.

This training was immediately followed some days later by their taking the oath before the High Court of Mfoundi during a public hearing on 26 July 2012. Their start of work has brought an end to

the long wait for posting of audit assistants trained in the techniques of management and control of public finance, a subject severally times reiterated by the Audit Bench.

## B. Training of legal and judicial officers and registry staff in the drafting of a programme budget

This training was carried out from 25 to 26 July 2012 in a seminar which had many objectives:

- To enable staff of the Audit Bench to know the foundations and objectives of the Programme-Budget as well as its contribution in the management of public finance;
- To share the actual content of key concepts used in the programme budget so that all actors involved in the budget process have the same understanding and the same operational practice;
- To give participants the know-how necessary for the preparation of the programme budget in accordance with the requirements of Law No. 2007/006 of 26 December 2007 on the Financial Regime of the State;
- To show participants how to strengthen programmes to present them in the draft on administration performance

### Paragraph 2. Capacity building through international cooperation

In 2012 Legal and Judicial officers of the Audit Bench went on information mission to French financial jurisdictions and took part in a forum in Rabat in Morocco and a seminar in Libreville in Gabon.

#### A. Information mission to French financial jurisdictions

From 29 September to 7 October 2012 a delegation of Advocates General of the Supreme Court working in the Audit Bench led by the President of the said institution made a working visit to the Cour des Comptes of France and the Regional Audit Bench (Chambre Régionale des Comptes) of Île-de-France.

The exchanges at the Cour des Comptes dwelled on:

- The traditional principles of its functioning (independence of the Court, contradiction and collegiality;
- Its missions;
- The role of the Legal Department of the French Cour des Comptes.

At the Regional Audit Bench of Ile-de-France, after its presentation, the discussions centred on:

- The role of the Registry;
- The role of the Public Prosecutor;
- Control of very large bodies;
- Selective judicial controls.

# B. Participation in the Pan-African forum on the Problematic of audit, control and evaluation of State institutions, social and economic policies in Africa: Foundations, challenges and strategies

This forum took place in Rabat in Morocco from 29 to 31 October 2012. The Audit Bench of the Supreme Court of Cameroon was represented in this forum by a delegation of three Legal and Judicial Officers led by the President of the Bench.

Apart from the Cameroon delegation, delegates of financial jurisdictions from the following countries also took part in this forum: Angola, Burkina Faso, Ivory Coast, Democratic Republic of Congo, the Gambia, Ghana, Guinea, Kenya, Lesotho, Libya, Mali, Morocco, Nigeria, Sierra Leone, Tanzania and Togo.

Organized by the African Training and Research Centre in Administration for Development (CAFRAD) with the support of the Hanns Seidel Foundation, a public utility private German body at the service of democracy, peace and development in Africa, this forum had two objectives:

- Generally, to sensitize officials of public finance control institutions on the expectations of the African populations who increasingly require that elected officials, leaders and those holding positions within the State structure or in society render account;
- Specifically, to bring together officials of audit services and

institutions, control and evaluation inspectorates, in order to examine the current challenges faced in the accomplishment of their missions, the appropriate strategies to take to succeed in their mission and improve on their performance.

To discuss this issue, the work was organized around the following topics:

- Basic principles and foundations of control, audit, inspection and evaluation of services, institutions, social and economic policies: why the control and what institutions to be involved?
- Capacity building of audit institutions through voluntary peer review.
- Adoption of performance and results based audit, control, inspection and evaluation;
- Use of information and communication technology in the audit, control, inspection and evaluation;
- Democratization of audit, control, inspection and evaluation;
- Public/private, civil society and populations' partnership in audit, control, evaluation and inspection.
- Audit and inspection based on the accomplishment of objectives.

#### C. Participation in the AISCCUF professional seminar

From 3 to 4 December 2012 a delegation of the Audit Bench of the Supreme Court of Cameroon led by its President and including a Master of the Supreme Court, took part in Libreville in Gabon in the professional seminar of Supreme Control Institutions having in common the use of the French language (AISCCUF) on the topic "social responsibility of Supreme Control Institutions: Independence at the service of the citizen".

The choice of the topic had as goal to put in action resolution A/66/209 of the United Nations adopted on 22 December 2011 which recommends "promoting the efficiency, accountability, effectiveness and transparency of public administration by strengthening Supreme Audit Institutions".

The following countries also took part in this seminar: Benin, Burkina

Faso Chad, Congo, Ivory Coast, France, Haiti, Luxemburg Senegal and the Comoros Islands.

The density of the subject required its development in three sub topics :

- The place of Supreme Audit Institution (SAI) in the institutional landscape;
- The activity of the SAI at the service of the citizen;
- Information of the citizen, concrete impact in daily life.

Each of these sub topics was discussed during a roundtable nourished with current experiences from various countries.

As to how to locate the place of the SAI in the institutional landscape, the first roundtable defined the SAI as an organization created to manage and meet the general interests.

It appears both as an institution and a supreme authority that intervenes at the ultimate stage, hence the qualification of supreme institution. As for control, it is a body that ensures compliance with the rules in force.

Due to the demands of citizens and development partners for reinforced transparency of institutions and more information on how public finance is managed, the mandates of SAIs should evolve towards expanding their skills to incorporate control of regularity, effectiveness, efficiency and timeliness.

The second roundtable which had as topic the SAI activity at the service of citizens used presentations of the experiences of the Court of Accounts of Morocco and the Canton of Valais. It was demonstrated in a practical way how an SAI carries out its mandate effectively.

Information at the service of the citizen, subject to the third roundtable, had as examples Cameroon and the Canton of Valais.

## CHAPITER 2. JUDICIAL CONTROL

### SECTION 1. Control and judgment of accounts in the various divisions of the Audit Bench

Three divisions are responsible for the control and judgment of accounts which must be produced by public accountants of the State, Council Revenue Collectors, and Accounting Officers of Public Administrative Establishments (PAE).

#### Paragraph 1. Production of accounts

#### • Management accounts of public accountants of the State

The management accounts of accountants of the State concern thirteen (13) financial districts, namely the Paymaster General's Office, the Accountant General's Office, the financial districts of the Adamawa, Centre, East, Far North, Littoral-Douala, Littoral-Nkongsamba, North, North-West, West, South and the South-West. According to section 26(2) of Law No.2003/005 of 21 April 2003, "accounts produced by certified public accountants, finalized and examined in accordance with the instruments in force, shall be submitted for adjudication of the Audit Bench within three (3) months following the closing of the financial year".

Section 62(3) of Law No. 2007/006 of 26 December 2007 relating to the Financial Regime of the State indicates that: "Revenue and

expenditure may be recorded in the books during a period complementary to the financial year whose time limit shall be 28 February of the year, according to the conditions specified by regulations". Taking into account this complementary period of two months, the Audit Bench set 31 May of year n+1 as the deadline for submission of accounts at the Registry of the financial jurisdiction. The next table gives information with regard to the annual production of accounts of accountants of the State for the 2012 financial year. It should however be noted that the management accounts produced during a year are the accounts of the financial year n-1 except those produced beyond the regulatory deadlines.

Table No. 3. Annual production of management accounts of accountants of the State

Years	Accounts produced	Accounts expected	Accounts produced / Accounts expected (%)
2010	13	13	100
2011	13	13	100
2012	08	13	61,53

This table reveals that the production of management accounts by accountants of the State dropped from 100% in 2010 and 2011 to 61.54% in 2012.

#### Management accounts of Council Revenue Collectors and other public accountants in Regional and Local Authorities

In compliance with section 31 of Law No. 2009/011 of 10 July 2009 on the financial regimes of regional and local authorities,

- « (1) a financial year shall cover a civil year.
- (2) However, a complementary period running from 1st to 31st January shall be granted to regional and local authorities for the settlement of pending operations to the closing of the financial year. In a desire for harmonization, the Audit Bench equally fixed 31 May

of year n+1 as the deadline for the deposit of accounts of regional and local authorities at the registry of the financial jurisdiction.. The table below indicates the production of accounts in the 2012 financial year.

Table No. 4. Annual production of accounts of regional and local authorities

Years	Accounts produced	Accounts expected	Accounts produced / Accounts expected (%)
2010	4	337	1,18
2011	29	374	7,75
2012	228	374	60,09

It should be noted that the 2011 annual report contained a material error which gave the impression that the number of accounts expected at the financial jurisdiction by 31 December 2011 was 394. It was in effect 374. The number did not change in the 2012 financial year but the production of accounts witnessed a net improvement, increasing by 1.18 % in 2010, to 7.75 % in 2011 and to 60.9 % in 2012.

#### Management accounts of accounting officers of Public Administrative Establishments

Just like the management accounts of State public accountants, the complementary period after the end of the financial year is two months and the deadline for the production of management accounts at the financial jurisdiction remains set at 31st May of year N+1.

Considering these precisions, the table below gives the situation of the production of management accounts of accounting officers of PAE by December 2012.

Table No. 5. Annual production of management accounts of accounting officers of Public Administrative Establishments (PAE)

Years	Accounts produced	Accounts expected	Accounts produced / Accounts expected (%)
2010	21	97	21,6
2011	45	97	46,4
2012	48	97	49,5

The table above indicates that the production of management accounts of accounting officers of PAE doubled between 2010 and 2011 and since then it grows slowly, increasing from 46.4 % in 2011 to 49.5 % in 2012.

### Figures of the production of management accounts by 31 December 2012

By 31 December 2012, the total production of management accounts is that indicated in the table below:

Table No. 6. Production of accounts by 31/12/2012

Years	Accounts produced	Accounts expected	Accounts produced / Accounts expected (%)
2010	38	447	8,50
2011	87	484	17,90
2012	284	484	58,60
Total	409	1415	28,90

The table indicates that the rate of production of management accounts multiplied by 7 between 2010 and 2012, increasing from 8.5% to 58.60%. However, on the whole three years, 409 management accounts were produced out of the 1415 expected, that is a production rate of 28.90%.

### Paragraph 2. Judgment of accounts

Be it in an ordinary hearing or Joint Divisions, the proceedings of judgment of a management account notably provides for examination which culminates in a report. This report is forwarded to the Legal Department for its submissions. At the hearing, the judgment hearing rules, based on the examination report and the submissions of the Legal Department, by an interim or final report.

#### • Examination reports

Reports prepared are either for examination reports for fines or examination reports on the merits.

Examination reports with fines concern the cases of delays in the production of accounts. These rose from 191 in 2010 to 228 in 2011 and then dropped to 128 in 2012. Despite the drop in the number of accounts produced during the year, the volume of their number expresses the determination of the financial jurisdiction to pursue the sanction of public accountants who do not regularly produce their management accounts. The number of reports on examination on merits increased from 54 in 2010 to 88 in 2012.

## Interim rulings

The number of interim rulings with fines dropped between 2010 and 2011. The number dropped to 136 in 2012, a figure which is quite close to that of 2010. During the same period, the number of interim rulings on the merits increased slightly, rising from 33 in 2011 to 37 in 2012.

# Final rulings

The number of final rulings on merits increased significantly from 15 in 2011 to 46 in 2012 even if the number of final rulings with fines dropped (66 in 2011 and then 41 in 2012).

All of the judicial decisions taken by the Audit Bench by 31 December 2012 stand as follows:

Table No. 7: Figures of the examination and judgment of accounts by 31 December 2012

ltem ·		Years			
		2010	2011	2012	
Examination	For fine	191	228	128	
reports	On merits	54	72	88	
Interlocutory judgments		0	02	03	
Interim and final rulings		0	0	02	
Interim rulings	Fine	181	99	136	
	On merit	34	33	37	
Final rulings	Fine	9	66	41	
	On merit	13	15	46	
Forwarded cri- minal affairs		1	0	0	
Declared de facto manage- ment		0	6	39	
Total number of decisions taken		489	521	520	

# SECTION 2. Judgment of accounts in Joint Divisions sessions<sup>8</sup>

During the past three financial years, the Joint Divisions session was seised with petitions for reviews against rulings by the Audit Bench. It has also had to examine matters that were referred to it by the Budget and Finance Disciplinary Board and the National Anti Corruption Commission.

All of the files received at the Joint Divisions session in 2010, 2011 and 2012 can be summarized in the table below:

<sup>&</sup>lt;sup>8</sup> Cf. The list of files within the ambit of Joint Divisions sessions received at the Audit Bench.

Table No. 8. Files received at the Joint Divisions session in 2012

Item	Years			
iteiii	2010	2011	2012	
Budget and Fi-				
nance Disciplinary	12	06	06	
Board (CDBF)				
Petitions for	1	4	9	
review	1	4	9	
National Anti Cor-				
ruption Commis-	0	1	0	
sion (CONAC)				
Others	0	0	0	
Total	13	11	15	

The table indicates a rapid increase in the number of petitions which rose from four (4) in 2011 to nine (9) in 2012.

By 31 December 2012, statistics of the activity of Joint Divisions of the Audit Bench are summarized in the table below.

Table No. 9. Decisions taken in Joint Divisions sessions in 2012

Actes	Years			
Actes	2010	2011	2012	Total
Examination reports including:	-	17	25	42
- Counter reports	-	2	2	4
- Report on facts de- ferred to the public prosecutor	-	-	1	1
Interlocutory judg- ments	-	3	3	6
Interim rulings		0	8	8
Final rulings			12	12

The table above reveals an intensification of Joint Divisions sessions with notably an acceleration of proceedings. This is the first time this Joint Divisions session is rendering rulings on merits including eight (8) interim rulings and twelve (12) final rulings.

# CHAPITRE 3. ADMINISTRATIVE CONTROL

# **SECTION 1. Control of enterprises not subjected to the rules of public accounting**

This control is performed within the Fourth Division of the Audit Bench.

## Paragraph 1. Production of accounts

Enterprises concerned with this control are State corporations, semipublic enterprises, private enterprises beneficiaries of a State monopoly or those to whom concession of a public service had been granted, produce in the forms and deadlines fixed by law and the OHADA accounting system, summary financial statements: balance sheet, income statement, statement of sources and application, and the attached statement.

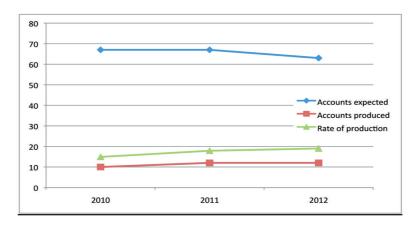
The deadline for production of these statements at the Audit Bench is fixed for 30 September of the year following that to which they refer.

In 2012, the summary financial statements of twelve (12) enterprises were produced at the jurisdiction. The evolution of the production of this category of accounts by 31 December 2012 stands as follows:

Table No. 10. Production of financial statements by 30 December 2012

Years	Accounts produced	Accounts expected	Accounts produced / Accounts expected (%)
2010	10	67	14,9
2011	12	67	17,9
2012	12	63	19,0

Graph No. 3: Evolution of the production of accounts of public and semi-public enterprises



# Paragraph 2. Observation reports

Audit of accounts entered in the 2012 control programme of the Fourth Division gave rise to the adoption of ten (10) interim observation reports and four (4) final observation reports.

The final observation reports concern the accounts of ECAM PLACAGES S.A for the 2004-2007 financial years, the Société des Eaux Minérales du Cameroun (SEMC) for the 2004 and 2005 financial years, the Unité de Traitements Agricoles par Voie Aérienne (UTAVA) for the 2004 to 2007 financial years and the Société Hôtelière de l'Est (MANSA HOTEL) for the 2004 and 2005 financial years.

# **SECTION 2. Opinions of the Audit Bench**

Two opinions were issued by the Audit Bench in 2012.

- Opinion No. 001/2012/CSC/CDC of 13 November 2012 on the Settlement Bill for the 2011 financial year issued following Letter No.12/536/MINFI/SG of 26 September 2012 by the Minister Finances;
- Opinion No. 002/2012/CSC/CDC of 28 December 2012 on the draft instruction on the computerized process of transfer operations between accountants issued at the request of the Director General of the Treasury, Financial and Monetary Cooperation.

  These two opinions are included in part three of the present report.

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# **CHAPTER 4.** OTHER ACTIVITIES OF THE AUDIT BENCH

# **SECTION 1. Exchange forums between the Audit Bench** and the Finance and Budget Committee of the National **Assembly**

On 13 June and 15 November 2012, two forums were organized in the premises of the National Assembly between the Audit Bench and Finance and Budget Committee of the National Assembly within the framework of their annual exchanges on the control of public finance.

Like the forums of previous years, these forums were attended by other control structures, namely:

- the Services of the Supreme State Audit;
- the National Agency for Financial Investigation (ANIF);
- the National Anti-Corruption Commission (CONAC);
- the Ministry of Finance.

The representative of the European Union whose financial support is crucial in the holding of these forums, also took part.

# Paragraph 1. Topics of the forums.

**For the forum of 13 June 2012,** two presentations were made:

- Presentation of the Annual Report of 2010 of the Audit Bench;
- The Audit Bench and the prospect of the full entry into force of Law No. 2007/006 of 26 December 2007 on the Financial Regime of the State.

The first presentation rendered account of the judicial and administrative activities of the Audit Bench during the period from 1 January to 31 December 2010.

In the second presentation the Audit Bench raised the issue of the respect of the calendar of the progressive entry into force of certain provisions of the financial regime of the State and equally recalled the due date of 1 January 2013, date of full entry of Law No. 2007/006 of 26 December 2007.

Its interrogations dwelled on:

- the putting in place of the general accounting of the State with its implications such as the principle of the establishment of rights and obligations, the inventory of the patrimony of the State and the determination of amortizations;
- the preparation of the general rules governing public accounting as well as the statutory instruments for harmonization with the new legal provisions.

The topics on the programme of the **forum of 15 November 2012** concerned:

- Review of the recommendations of preceding forums;
- Decentralization: legal and financial aspects.

The first presentation made an inventory of recommendations of preceding forums. This exercise helped in doing a census of the four categories of the following recommendations:

- The recommendations on the collaboration between the various public finance control structures;
- The recommendations on the level of production and quality of accounts submitted for examination by the Audit Bench;
- The recommendations on the application of Law No. 99/016 of 22 December 1996 on the General Rules and Regulations governing public establishments and public and semi-public enterprises and the OHADA Uniform Acts;
- The recommendations on the missions and the place of the Audit Bench.

The second presentation came to the conclusion that the clarification of the legal framework, the appropriation of the reform by all the stakeholders, acceleration of the decentralization process, release of the general allocation for decentralization are the unavoidable objectives of its effective implementation.

## Paragraph 2. Recommendations

The main recommendations that emerged from the two forums of 2012 concern:

- transmission of the recommendations of the Forum to the Government;
- effective implementation of performance audit (economy, effectiveness and efficiency) by the Audit Bench henceforth established by the financial regime of the State;
- respect of the deadlines for the implementation of certain provisions of the financial regime of the State such as the institution of the complete patrimonial accounting which among others will be expressed through the production of the general accounts of the State;
- publication of the decree on the regulations governing public accounting in order to endow public accountants with a harmonized framework for rendering accounts;
- internalization of international standards on supreme control institutions of public finance and consequently the creation of an Audit Court in compliance with article 72 of the CEMAC Directive No. 01/11-UEAC-190-CM-22 of 19 December 2011 relating to finance laws;
- providing the Audit Bench with the financial, material and human resources for the proper execution of its missions;
- building the capacities of members of the Finance and Budget Committee and the personnel of the Support Unit on Budgetary and Accounting matters;
- use by the Committee of the Audit Bench's expertise as the need arises;

- commencement of urgent actions in view of building the capacities of Council Revenue Collectors to enable them produce management accounts in the prescribed forms and deadlines;
- review of the law of 1999 on the general rules and regulations governing public establishments, public and semi-public enterprises in view of their harmonization with the OHADA Uniform Acts and the reaffirmation of the jurisdiction of the Audit Bench over the said entities;
- the establishment of a coordination body between the various public finance control structures for an optimum allocation of public resources.

# **SECTION 2: Permanent consultation between the Audit Bench and the Ministry of Finance**

# Paragraph 1. Legal basis

The Permanent Consultation Framework between the Audit Bench and the Ministry of Finance was instituted by Decision No. 001897/MINFI/CAB of 29 July 2008. Its objective was to enable the financial jurisdiction, among others, to:

- accompany the General Directorate of the Treasury, Financial and Monetary Cooperation in the preparation for examination the management accounts of principal accountants and in the monitoring of the decisions concerning them;
- accompany the process of the gradual implementation of the financial regime of the State instituted by Law No. 2007/006 of 26 December 2007, and the drafting of the various enabling instruments;
- give its opinion on the various instruments in issues of the rendering of accounts and generally on any matter concerning public accounts.

Initially restricted to the level of the Directorate General of the Treasury, Financial and Monetary Cooperation, this framework has gradually been opened to the Directorate General of Taxes,

the Directorate General of Customs and the Directorate General of the Budget.

Its work continued in 2012 and dwelled on the following themes:

- the problem of the bills collectible on computerized taxes and the collection notices;
- the means of appeal against the rulings of the Audit Bench;
- the commentary on the rulings rendered by the First Division of the Audit Bench;
- the difficulties faced by accountants in the preparation and presentation of management accounts;
- the need for transmission of accounts in figures of principal accountants of the State to the Audit Bench in view of the preparation of the opinion on the Settlement Bill;
- the clearance of operations with provisional budget heads;
- the preparation of the new accounting framework of the State;
- the need for the establishment of a data base of irregularities imputed on accountants..

# Paragraph 2. Work results of the Framework

Exchanges and discussion on the above themes led the Framework to adopt several resolutions:

# 1- On the preparation of the nomenclature of income and expenditure supporting documents

This recommendation made by the permanent Framework in 2011 was being applied in 2012. Thus, the General Directorate of the Treasury, Financial and Monetary Cooperation set up a restricted task force which prepared three procedure manuals to be used by the following accounting stations: Accountant General's service, service of the Paymaster General of the Treasury and Regional Treasuries.

# 2- On the organization of a mission to clearance of accounts 420,450 and 470

Within the prospect of the transfer of balances of deposit accounts in the "Deposit and Custodial Fund" the permanent framework asked the Directorate General of the Treasury and Financial and Monetary Cooperation to carry out a clearance of the said accounts. This exercise started in 2012 through the dispatch of two missions from the DGTCFM all over the national territory.

# 3- On the preparation of a draft instruments to amend decree No. 87/1141 of 20 August 1987

The Audit Bench had observed that a number of interim rulings had been addressed to accounting officers for the non respect of decree No. 87/1141 of 20 August 1987 to fix the remuneration and benefits of personnel of public enterprises, public establishments, and semi-public enterprises. To this end, the President of the Audit Bench had addressed an interim order to the Minister of Finance on 17 December 2008, an order in which the financial jurisdiction subscribed to the reform of the 1987 decree.

The Framework followed the same logic by wishing that the Minister of Finance initiate this reform.

# 4- On the organization by the Minister of Finance of a special campaign for recovery of tax arrears in order to reduce the bills receivable in the balance of accounts

The application of the resolution of the Permanent Framework on the recovery of bills receivable of computerized taxes and the recovery notices enabled the Minister of Finance to organize a special recovery of tax arrears. At the end of this operation, the sum of 5 336 481 226 CFA F was recovered out of a projected approximately 10 billion francs. Equally, this operation helped to clear by setoff of the bills receivable of 185 283 831 574 CFA F in application of cross debts conventions.

## 5- On the establishment of patrimonial accounting

Given that the financial regime of the State enters into force fully from 1 January 2013, the permanent Framework led important discussions which ensured the acceleration of the drafting of several instruments including:

- General regulations governing public accounting;
- Accounting standards of the State;
- The General Chart of Accounts of the State;
- The harmonized budgetary and accounting nomenclature;
- General Instruction on State accounting;
- Preparation of opening balance of the State by 1 January 2014.

Within the framework of the last two missions, the exchange and dialogue platform also participated in reviewing of certain instruments with a financial and accounting nature. These include draft decrees on the general rules of public accounting, the administrative control and the budgetary calendar.

### **SECTION 3. Sensitization activities of the Audit Bench**

# Paragraph 1. Public presentation of Bench's work

On 19 December 2012, the Audit Bench of the Supreme Court for the second consecutive time organized a ceremony for the public presentation of its work, that is, the 2010 Annual Report and the Annual Report on the accounts of the State 2004-2009.

The following took part in the ceremony:

- the print and audiovisual media;
- the development partners;
- the representatives of civil society organizations;
- the citizens from a broad spectrum of the society.

The opening speech was an opportunity to recall one of the aspects of the social role of the legal institution of control of public finances, the obligation to render account of its action to citizens, which action consists notably in:

- Supporting the control functions developed by the State;
- Making recommendations having as goal the reinforcement of the administration and public management at the service of citizens;
  - Informing public entities, society and the citizen.

The public presentation ceremony therefore falls within the logic of including the concerns of citizens and render account of the result of the work of the financial jurisdiction.

During this presentation ceremony, exchanges between the President of the Bench and the media which followed concerned especially:

- the imbalance between the volume of activities of the Audit Bench and the allocated human, material and financial resources;
- the low rate of production of accounts;
- the main irregularities raised in the various controls and the sanctions pronounced;
- the date of the setting up of Regional Accounts Courts;
- the communication by a judicial institution;
- the diversity of public finance control bodies;
- the elevation of the Audit Bench to an Audit Court;
- the reservations made by the Audit Bench in the Opinion on the 2010 Settlement Bill.



# RULINGS OF THE AUDIT BENCH IN 2012





# CHAPITRE 1. RULINGS MADE AT ORDINARY HEARINGS OF THE AUDIT BENCH

## SECTION 1. Judgment No. 12/ADA/S3/12 du 08 août 2012

Management accounts of the accounting officer of the General Hospital of Douala for 2004 and 2005 financial years

The year two thousand and twelve And the eighth day of August

#### THE AUDIT BENCH OF THE SUPREME COURT

Taking a final ruling in its Third Division responsible for controlling and judging on the accounts of accountants of State public establishments, in its ordinary hearing hall;

Whereas Mr. T. E. P., appointed accounting officer of the General Hospital in Douala by Order No.163/CF/MINEFI/ of 22 November 2000 by the Minister of State in charge of the Economy and Finance performed his duties until 31 December 2005;

Whereas in compliance with the terms of the provisions of section 26(2) of Law No. 2003/005 of 21 April 2003 to lay down the jurisdiction, organization and functioning of the Audit Bench of the

Supreme Court: "Accounts produced by certified accountants, finalized and examined in accordance with the instruments in force, shall be submitted to adjudication to the Audit Bench within 3 (three) months following the closing of the financial year";

Whereas there is need to take into account the complementary period of two (2) months provided for by the Presidential circular relating to the execution of the State budget to close the deadline for submission of management accounts at the Registry of the Audit Bench, five months after the close of the financial year, that is to say 31 May of the following financial year;

Whereas by 30 July, 2012, the management accounts of the Douala General Hospital for the 2004 and 2005 financial years submitted at the Audit Bench are limited to a few documents of budget execution, as well as supporting revenue and expenditure documents without including all the elements of the management account in figures;

Whereas up till the date of 30 July 2012 the management accounts for the 2004 and 2005 financial years were not ready for examination and considered not submitted;

In consequence whereof Mr. T. E. P. is reputed not have produced the management accounts for the 2004 and 2005 financial years;

Whereas in compliance with the terms of the provisions of section 54 of Law No. 2003/005 of 21 April 2003 to lay down the jurisdiction, organization and functioning of the Audit Bench of the Supreme "Any accountant who fails to submit his accounts in the form and within the time-limit stipulated by the regulations may be ordered by the Audit Bench to pay a fine not exceeding half of the accountant's monthly duty allowance at the time the acts were committed and for each month of lateness".

Whereas by the date of 30 July 2012, the management accounts for

the 2004 and 2005 financial years were still not submitted at the Registry of the Audit Bench;

That there is need to establish that at the date referred to above, the accounting officer has a total per financial year, a delay in the production of his accounts as follows:

- for the 2004 financial year: from 31 May 2004 up till 30 July 2012, that is 97 months;
- for the 2005 financial year: from 31 May 2005 up till 30 July 2012, that is 85 months;

Whereas in application of the provisions of article 4 of decree No. 73/251 of 22 May 1973 relating to the guarantee and responsibilities of Treasury accountants and in the absence of a specific instrument provided for accounting officers, Mr T. E. P. is by assimilation classified at the level of a treasurer managing a 2nd or 3rd class station being entitled to an allowance of 50,000 francs.

Whereas according to the terms of section 54 of the law of 21 April referred to above, the fine incurred by the accounting officer is an amount equal to half of the monthly duty allowance, that is to say 25,000 francs;

That there is need to clear the fine to be paid by Mr. T. E. P. As follows:

For the 2004 financial year:

25.000 f x 97(months) = 2.425.000 CFA F

For 2005 financial year:

25.000 f x 85 (months) = 2.125.000 CFA F

That is a total: 4. 550.000 CFA F

Whereas by Order No. 05/ADA/S3/11 of 02 February 2011, the Audit Bench of the Supreme Court condemned Mr. T. E. P. to pay the aforementioned fines for not producing management accounts for the 2004 and 2005 financial years to the Audit Bench;

Whereas by the same order, a deadline of two months from the date of its notification to Mr. T. E. P., was accorded him to pay the fines imposed and produce the expected management accounts;

Whereas based on the acknowledgement of receipt of Order No. 005/ADA/S3/11 of 02 February 2011 addressed to Mr. T. E. P. put in the file, it proves that the accused was aware of this order;

Whereas by date of 22 April 2011, the deadline accorded to Mr T. E. P. to meet the decision contained in the interim ruling has expired; and that the accountant has provided no positive response to the requests addressed to him;

Note is consequently taken of the default of Mr. T. E. P. To produce the accounts expected.

# For these reasons, Taking a final ruling, Hereby decides as follows

Article 1: Mr T. E. P. is condemned to pay fines as follows:

For the 2004 financial year:

 $25.000 \text{ frs } \times 97 \text{ (months)} = 2.425.000 \text{ CFA F}$ 

For the 2005 financial year:

 $25.000 \text{ frs } \times 85 \text{ (months)} = 2.125.000 \text{ CFA F}$ 

That is a total of: 4. 550.000 CFA F

<u>Article 2</u>: The amount which is 25.000 CFA F shall continue to run per month of delay up till the production of the management accounts for the 2004 and 2005 financial years at the financial jurisdiction;

<u>Article 3</u>: Following the ascertainment of the default of Mr. T. E. P. to produce the management accounts for the 2004 and 2005 financial years, it is up to the Minister of Finance to cause the production of the said accounts;

<u>Article 4</u>: Pronouncement of a discharge of Mr. T. E. P is suspended. Article 5: This order shall be notified to:

- the current accounting officer of the General Hospital of Douala;
  - Mr. T. E. P. S/C ACCT/MINFI;
  - the Minister of Public Health;
  - the Minister in charge of Finance.

Thus done, judged and pronounced in public the same day, month and year as indicated above.

# SECTION 2. Judgment No.10/CSC/CDC/S1 of 14 August 2012

# Management of credits at the Sub Divisional Office of Jakiri, 2005 financial year

The year two thousand and twelve And the fourteenth of August

#### THE AUDIT BENCH OF THE SUPREME COURT

Sitting in its First Division in charge of the control and judgment of accounts of State accountants holding in the ordinary hearing hall; Rendered during a public hearing, in compliance with the law, the 2nd Judgment on the de facto management of Mr. A.F. A. during the 2005 financial year as follows:

Whereas by interim ruling No. 03/ADD/CSC/CDC/S1 of 24 January 2012, Mr. A.F. A. was declared a de facto accountant for the management of funds of an amount of 1 462 119 francs CFA relating to the purchase orders numbers 5483462, 5198961, 5483460, 5198963, 5483458, 5198957, 5483464 et 5198965 respectively of amounts 186 032, 182 008, 154 490, 152 828, 209 238, 209238, 184 303 and 183 982 CFA francs issued by him in 2005 to the benefit of HONESTY ENTERPRISE and for the purchase of spares for vehicle maintenance, medicines, office supplies and fuel and in his capacity as vote holder of the Jakiri Sub Divisional Office:

Whereas the aforementioned judgment;

- had enjoined Mr. A.F. A. to produce his application account of the sums handled;
- had given him three months from the date of notification to produce his responses;
- had stated that in the absence of a reply within a time limit, it will continue regardless and decide on the merits definitively;

Whereas in reaction to this judgment within the set deadline Mr. A.F. A. indicated having received funds on the basis of a power of

attorney issued to him by Madam M. née P. T., manager of HONESTY ENTERPRISE BABESSI to help her obtain payments for her settlement vouchers;

That in support to this statement, he attached the said document dated 10 February 2003 in which it is indicated that he was effectively mandated by Madam M. née P. T, manager of the beneficiary enterprises;

That he also produced an attestation dated 10 December 2011 signed by the same Madam M. née P. T, Managing Director of HONESTY ENTERPRISE, to acknowledge having effectively received the sums of money due her;

That these elements confirm the version of Mr. A.F. A.;

Whereas in addition to section 44(2) of the law of 21 April 2003 which states that "The Audit Bench may, for the purpose of equity and barring cases of bad faith and dishonesty on the part of the de facto accountant, compensate for the inadequacy of the supporting documents produced";

Whereas the documents produced are sufficient in themselves to exonerate him;

For these reasons,

Taking a final ruling,

State that these is no reason to maintain Mr. A.F. A. as de facto accountant;

He is exonerated;

That the document be returned to the management account concerned;

Thus done, judged and pronounced in public the same day, month and year as indicated above.

# CHAPITRE 2. DECISIONS RENDERED BY JOINT DIVISIONS SESSIONS

# SECTION 1. Judgment No.02/AD/CSC/CDC/SR of 30 August 2012

Special Account for Financing of Sustainable Development Projects in Water and Sanitation (Compte d'Affectation Spéciale pour le Financement des Projets de Développement Durable en matière d'Eau et d'Assainissement (CAMEE), 2004 & 2005 financial years.

The year two thousand and twelve

And on the thirtieth day of August

The Audit Bench of the Supreme Court of Cameroon sitting in Joint Divisions in the ordinary session hall at its head office building on Winston Churchill avenue in Yaounde;

#### ON THE ADMISSIBILITY OF THE PETITION FOR REVIEW

Whereas by petition dated 1 June 2011 received at the Audit Bench on the same day and registered under number 296, Mr. D. W. D., Accounting officer of the Special Account for Financing of Sustainable Development in Water and Sanitation (CAMEE) prays the review of the decision contained in Judgment No. 19/AP/CSC/CDC/S3 of 07 July 2010;

Whereas the aforementioned Law No.2003/005 of 21 April 2003 provides that:

- « Section 30.(1) "The interim ruling on the accounts shall be notified to the accountants from whom they emanate and their ministers through legal channels.
- (2) Accountants shall have two months with effect from the date of the notification of the interim ruling, within which to comply with the orders of the Bench, under pain of the penalties provided for by this law".
- « Section 33. (1) After examining the answers of the accountants and the complementary conclusions of the rapporteur, the Audit Bench shall give a final ruling on the accounts...»
- « Section 73.(1) Notwithstanding the final ruling on an account, the Audit Bench may, due to a mistake, an omission, forgery or duplication discovered after the ruling is passed, review such ruling of its own motion or at the request of either the accountant, the Minister in charge of Finance or the legal representatives of the relevant public bodies or at the instance of the Procureur General of the Supreme Court.»

It emerges from the joint provisions of the aforementioned sections that the interim ruling calls for a response from the accountant concerned within the deadline in view of a final ruling on the account while a petition for review is open only for final judgments rendered on an account;

But whereas it emerges from the contested Judgment No.19/AP/CSC/CDC/S3 of 07 July 2010 that the Audit Bench (Third Division) taking an interim ruling had condemned D. W. D., accounting officer of CAMEE to pay a fine for delay in the production of accounts and enjoined him to produce the said accounts or the means of his defence within a two (2) months from the date of notification of the present judgment;

That it appears that the procedure continues and provisional interim judgment above is not subject to judicial review but rather calls for responses to the injunction from the accounting

That the petition for review be declared inadmissible;

For these reasons, Takes a final ruling,

#### **HEREBY ORDERS AS FOLLOWS**

<u>Article 1:</u> The petition for review presented by the accounting officer D. W. D. is inadmissible

<u>Article 2:</u> The proceedings of the judgment on accounts pending before the Audit Bench shall continue up till final culmination.

Article 3: The present Judgment shall be notified to:

- the Minister of Finance;
- the Minister of Mines, Water and Energy;
- the Director General of CAMEE;
- Mr. D. W. D.;

Thus done, judged and pronounced in public the same day, month and year as indicated above.

SECTION 2. Judgment No. 03/AD/CSC/CDC/SR of 30 August 2012 Technical Committee for Monitoring Economic Programmes (Comité Technique de Suivi des Programmes Economiques (CTS), 2004 & 2005 financial years

The year two thousand and twelve And on the thirtieth day of August

The Audit Bench of the Supreme Court of Cameroon sitting in Joint Divisions in the ordinary session hall at its head office building on Winston Churchill avenue in Yaounde;

#### ON THE ADMISSIBILITY OF THE PETITION FOR REVIEW

Whereas by petition dated 8 December 2010 Madam K. F. L. seised the Audit Bench to review Judgment 10/CSC/CDC/S3/AD of 16 June 2010 for the pure and simple annulment of the debits forming the subject of injunctions numbers 6 and 8 pronounced against her, arguing that the Audit Bench was completely unaware of the

missions of the Technical Committee for Monitoring of Economic Programmes and the context in which bonuses were paid";

Whereas the aforementioned Law No. 2003/005 of 21 April 2003 provides that:

« Section 73: (1) Notwithstanding the final ruling on an account, the Audit Bench may, due to a mistake, an omission, forgery or duplication discovered after the ruling is passed, review such ruling of its own motion or at the request of either the accountant, the Minister in charge of finance or the legal representatives of the relevant public bodies or at the instance of the Procureur General of the Supreme Court.

(2) The petition shall be reasoned and addressed to the President of the Audit Bench. It shall include:

- a statement setting out the facts and grounds of appeal;
- a copy of the judgment for which review is sought;
- supporting documents, including evidence of notification of the petition to the other parties involved. »

« Section 76: A petition for review must be lodged within 6 (six) months of service of the judgment on the accounting officer. » That for a petition for review to be admissible it must:

- be directed against a final judgment on account:
- be submitted within a deadline of six(6) months from the date of notification of the judgment to the accountant concerned and in the dorms prescribed by law and
- be grounded on at least on one of the four cases provided for in section 73(1) mistake, an omission, forgery or duplication discovered after the ruling is passed;

But whereas in her aforementioned petition for review Madam K. F. L. does not mention any ground for opening the petition for review. It appears that this simple request for withdrawal of the contested provisions of the judgment cannot be admitted without violating the authority of res judicata attached thereto in accordance with section 70(1) of Law No. 2003/005 of 21 April 2003.

The petition is hereby declared inadmissible. For these reasons, Taking a final ruling,

#### **HEREBY ORDERS AS FOLLOWS**

<u>Article 1</u>: The petition for review of Judgment No.10/CSC/CDC/S3/AD of 16 June 2010 from Madam K. F. L. is inadmissible.

Article 2: The present judgment shall be notified to:

- the Minister of Finance;
- the Coordinator of the Technical Committee for Monitoring Economic Programmes and
- to Madam K. F. L., accounting officer at the CTS, Thus done, judged and pronounced in public the same day, month and year as indicated above.

# SECTION 3. Judgment No. 07/AD/CSC/CDC/SR of 30 August 2012

MATTER: M. E. H. L., ex-Bursar of the Technical, Industrial and Commercial High Scholl, Yaounde

The year two thousand and twelve And on the thirtieth day of August

The Audit Bench of the Supreme Court of Cameroon sitting in Joint Divisions in the ordinary session hall at its head office building on Winston Churchill avenue in Yaounde;

Whereas within the framework of the activities of the Anti-Corruption Unit of the Ministry of Secondary Education, it was established that the sum of 37 688 500 CFA F being examination registration fees for the 2004-2005 session collected by the Bursary of the Technical High School was not paid into the bank account opened to this effect at the Société Camerounaise de Banque in the name of the Baccalaureat Examination Board; that the file

constituted at the end of the investigations by the Unit implicate Mr. M. E. H. L. Bursar at the High School and Mr. B. B., a worker in the administration of the Technical High School whose signature was on certain forged deposit slips and forwarded to the Supreme State Audit Services and led to the commencement of criminal proceedings; That the Budget and Finance Disciplinary Board seised by Decision No. 007/D/PR/SG/ CONSUPE/CDBF rendered in its session of 13 September 2007, declared M. E. H. L. and B. B. in debit of the sum of 37 688 500 F CFA F,

- B. B. for 4 522 000 CFA F and
- M. E. H. L. for 33 166 500 CFA F;

That the Minister Delegate at the Presidency of the Republic in charge of Supreme State Audit Services signed Order No. 009/APR/SG/CONSUPE/CDBF of 04 October 2007 declaring M. E. H. L., Service Number 168 838-B ex-bursar of the Technical High School of Yaounde in debit to the Public Treasury of the sum of 33 166 500 CFA F;

Whereas according to the terms of section 48(1) of the aforementioned Law No. 2003/005 of 21 April 2003 "The public accountant shall be presumed personally and financially liable for:

- accounting deficiencies observed in his accounting records;
- making the controls provided for by the laws and regulations;
- collecting revenue and paying regularly justified expense;
- preserving funds and securities;
- handling funds and transferring available funds;
- keeping the accounts of his station".

Whereas following the transmission to the Audit Bench by letter No. 00193/L/PR/CONSUPE/CDBF/SP/SG/SMS of 04 March 2010 by the Minister Delegate at the Presidency in charge of Supreme State Audit Services of files equally constituted from the report of the Anti-Corruption Unit and relating to matters concerning:

- B. A., for misappropriation of 1 610 000 CFA F,
- A. G., for misappropriation of 1 383 000 CFA F,
- E. A., for misappropriation of 740 000 CFA F,
- T. T., for misappropriation of 1 979 000 CFA F,

The President of the First Division of the Audit Bench committed Mr.KAMENI, Master of the Supreme Court to carry out an examination of the matter against M. E. H. L.;

Whereas Barrister EHONGO, Advocate and his Counsel of made it known that M. E. H. L. has been the subject of several proceedings relating to this matter; that he had appeared before the Budget and Finance Disciplinary Board which declared a deficit of the sum of 3 166 500 CFA F and declared him in debit to the public treasury of this amount;

Whereas Law No. 74/18 of 05 December 1974 relating to the control of authorizing officers, managers and vote holders of public funds and public enterprises as amended by Law No. 76/4 of 08 July provides that:

- <u>« Article 11 (revised)</u>. If the enquiry discloses facts which may be deemed to consitute felonies or misdemeanours, the Chairman of the Board shall transmit the file to the judicial authorities. This transmission shall initiate an action by the State, the local authority or the undertaking in question against the person implicated. »
- <u>« Article 12</u>.(1) Decisions of the Budget and Accounts Disciplinary Board may not form the subject of a claim or complaint but a petition for cancellation may be made to the administrative court without such petition being a stay.
- (2) An application for review may be made to the Board by the person concerned or the Minister in charge of the General State Inspectorate if any new facts come to light or if new documents are discovered which throw doubts on the guilt of the person concerned. »
- <u>« Article13</u>.(1) The fine referred to in Section 1 above shall be imposed by the Board and Accounts Disciplinary Board. It shall run from 200,000 to 2,000,000 francs.
- (2) In addition, the amount of the real damage suffered by the State or one of the bodies corporate referred to in Section 1, calculated on the basis of the figures available to the Board shall, where

applicable, be debited to the offending employee.

- (3) The special fine and, as the case may be, the amount of the debit shall be the subject of an order issued by the Minister in charge of the General State Inspectorate.
- (4) This debit order shall be executed by the Treasury for the State or the public corporation concerned... »

That it emerges from the aforementioned provisions that the decisions of the Budget and Finance Disciplinary Board are not liable for appeal but may be the subject of an appeal for annulment jor administrative appeal;

That they have the authority of res judicata and are the subject of an order by the Minister in charge of Supreme State Audit which is executed by the Treasury;

Whereas it is common ground that a decision of the Budget and Finance Disciplinary Board and an order taken to apply it have occurred in the same facts forming the subject of the present proceedings and that M. E. H. L. and B. B the subject of criminal proceedings for the same facts:

It follows that the facts of the present proceedings have resulted in a binding decision of the Budget and Finance Disciplinary Board, liable only for annulment or administrative appeal;

The Audit Bench would not rule on the same facts without violating the authority of res judicata attached to that decision;

The present proceeding is declared inadmissible;

## For these reasons, Taking a final ruling,

Article 1:Takes note of Decision No. 007/D/PR/SG/CONSUPE/CDBF of 13 September 2007 by the Budget and Finance Disciplinary Board and Order No. 009/A/PR/SG/CONSUPE/CDBF of 04 October 2007 by the Minister Delegate at the Presidency in charge of the Supreme State Audit Services that took place on the matter.

Article 2: Declares the present proceedings inadmissible of authority

of res judicata.

Thus done, judged and pronounced in public the same day, month and year as indicated above.

# SECTION 4. Judgment No. 17/AD/CSC/CDC/SR of 30 August 2012

MATTER: M. N. E., Ex-Revenue Collector of Mbalmayo and E. C., ex-Service Head for Accounts and Cash at the Mbalmayo Revenue Collector's office

The year two thousand and twelve And on the thirtieth day of August

The Audit Bench of the Supreme Court of Cameroon sitting in Joint Divisions in the ordinary session hall at its head office building on Winston Churchill avenue in Yaounde;

Whereas the elements in the file reveal that following a control at the Revenue Office Mbalmayo by the Division for the Control of Budgetary Operations of the Directorate General of the Budget, implicating Mr. N. E., Revenue Collector, his predecessor E.Z., and E.C. State employee after the burglary at this accounting station on 17 May 2003, the Minister of Finance by decision 04/01171/D/MINFIB/DCOB of 14 June 2004, considers Mr. N. E. in debit to the public treasury of the sum of fifty nine million seven hundred thousand (59 700 000) CFA francs for misappropriated 597 zero coupons; that the Minister of Delegate at the Presidency of the Republic in charge of Supreme State Audit seised for confirmation of this debit by decision, submitted this file by decision No. 00007/D/PR/MIN CONSUPE/CDBF of 29 July 2005, for the opinion to the Budget and Finance Disciplinary Board, an organ which declares itself incompetent and transmitted the file to the Audit Bench based on the provisions of section 2(1) of Law No. 2003/005 of 21 April 2003.

Whereas this proceeding transmitted to the Audit Bench in compliance with the provisions of section 79(2) of the

aforementioned Law No. 2003/005 of 21 April 2003 according to which "Upon establishment of the Audit Bench, the institutions which were previously in charge of controlling and auditing accounts, as well as inflicting sanctions on accounting officers shall forward all their pending files to the Bench" falls within the framework of the clearance of accounts and the sanction of responsibilities of accountants governed by decree No. 78/470 of 05 November 1978 supra;

Whereas this instrument notably states that:

- <u>« Article 16 :</u> The General State Inspectorate shall audit the accounts of accounting officers and determine their personal and financial liability by order of the Minister in charge of the General State Inspectorate. »
- <u>« Article 38</u>: Ministers and Vice Ministers may also call into question the responsibility of accounting officers under their authority if they have failed to collect revenue, made irregular expenditure or if their accounts show a deficit of funds or securities. »
- <u>« Article 39:</u> In such a case, the Ministers concerned shall immediately inform the Minister of Finance who shall, if necessary, issue a surcharge decicion and a collecting order for the corresponding amount. »
- <u>« Article 40</u> : The surcharge decisions and copies of the corresponding collection order shall be forwarded immediately to the Minister in charge of the General State Inspectorate who shall confirm, amend or repeal them either when the accounts have been audited or on the recommendation of the Budget and Accounts Disciplinary Board. »

That the result is that the Audit Bench has jurisdiction;

Whereas according to the terms of article 69 of Ordinance No.62/07/04 of 07 February 1962 supra "except in the case of force majeure or by express waiver provided for by decree, the Treasury accountant shall be personally and financially responsible for the keeping of funds and securities in his keeping and for which he orders the operations".

Whereas article 76 of this ordinance provides that "the personal and financial responsibility of a Treasury accountant extends in principle to all the operations of the station which he is managing from the date of installation up till the date of cessation of duties";

Whereas it is acknowledged that appointed as Revenue Collector of Mbalmayo on 2 February 2002, Mr. M. N. E. Took service on 8 March 2002 during a break in service in the absence of his predecessor E. Z.;

That the transmission of zero-coupon securities took place on the record by, Madam E. C. to Mr. A. E. in accordance with memorandum No. 1 of 26 June 2002, that is one month and eighteen days after assumption of service by Mr. M. N. E.;

It follows that as the zero -oupon securities being managed put under his control were effectively placed in his custody;

It follows that he was responsible and that it is right that the balance due was issued against him for misappropriated zero coupon securities;

## For these reasons, Taking a final judgment,

<u>Article 1</u>: Declares itself competent.

<u>Article 2</u>: The debit balance of an amount of fifty nine million seven hundred thousand francs pronounced against Mr. M. N. E. By decision No. 04/01121/D/ MINFI/DCOB of 14 June 2004 by the Minister of Finance is hereby confirmed;

<u>Article 3</u>: The present Judgment shall be notified:

- to the Minister of Finance;
- Mr. M. N. as well as Madam E. C.;

Thus done, judged and pronounced in public the same day, month and year as indicated above.

#### SECTION 5. Judgment No. 21/AD/CSC/CDC/SR of 13 December 2012

Petition for review of Judgment No. 12/ADA/S3 du 22 juin 2011 Matter M. née: M. M. S.., Ex-Accounting Officer of the Central Census and Populations Studies Bureau (BUCREP),

The year two thousand and twelve

And on the thirteenth day of December

The Audit Bench of the Supreme Court of Cameroon sitting in Joint Divisions in the ordinary session hall at its head office building on Winston Churchill Avenue in Yaounde

By petition dated 20 September 2011 received at the office of the President of the Bench on 21 September 2011 under registration 497 and at the Registry under No. 438 M. née: M. M. S seised the President of the Audit Bench with the following prayer:

"The President of the Audit Bench,

Yaounde

I have the honour most respectfully to seek the review of Judgment No. 12/ADA/S3/11 for the following reasons:

- Retired in January 2011 and replaced by Madam D. B., your summons for me to attend the hearing reached me well after the hearing date. I did not refuse to attend the hearing.
- Besides, out of the 2004 and 2005 accounts which are problematic in my accounting station, I have, out of good faith regularly produced the accounts of the following years at your service and responded to your injunctions through correspondences deposited in your structure (photocopy). .
- In fact, I was appointed to BUCREP in July 2005. The 2004 management account which is entirely the management of my predecessor, Mr. A., was prepared and deposited by himself at the Central Accounting Office of MINFI. Following your injunctions, I personally commenced research at BUCREP and at the ACCT-MINFI. I succeeded in getting a copy of account in figures (photocopy). The

major difficulty resides in the fact that Mr. A. is deceased and up till now I cannot find elements to reconstitute this account. In the mail register at BUCREP, I was able to find a trace, proof of the deposit at the ACCT-MINFI (photocopy). How can I be called to answer for the management of my predecessor when I was not yet in service in the structure and which management account he himself had taken the care to deposit at MINFI and even moreso, the Audit Bench was not yet functional.

- With regard to the 2005 accounts, I submitted a copy of this incomplete figure account without supporting documents at the ACCT-MINFI (photocopy), this financial year was partially managed by my predecessor and by me. The problem resides in the fact that part of the supporting documents was submitted in the office of the Registrar-in-Chief by the DAJAF of BUCREP at the time Mr. B. And my accountant against acknowledgement of receipt and in my absence (photocopy).

Concerned about producing a complete management account on figures and on documents, I requested the Registrar to help me get the supporting documents but in vain. I was helpless and unable to prepare this account because I only had a part of the documents, all the more because the other documents were not delivered to me and were deposited without me having all relevant references. It is only very recently that I was able to get the acknowledgement of receipt from the Registrar which enabled me to prepare the 2005 account fully (photocopy).

While counting on your understanding, I pray you, Mr. President, to grant me mitigating circumstances considering the facts related above by authorizing the review of the aforementioned judgment. I wait to get your instructions /-

Madam M. S."

#### ON THE ADMISSIBILITY OF THE PETITION

Whereas in relation to the petition for review, the aforementioned Law No. 2003/005 of 21 April 2003 provides that:

- « Section 73. (1) Notwithstanding the final ruling on an account, the Audit Bench may, due to a mistake, an omission, forgery or duplication discovered after the ruling is passed, review such ruling of its own motion or at the request of either the accountant, the Minister in charge of finance or the legal representatives of the relevant public bodies or at the instance of the Procureur General of the Supreme Court.
- (2) The petition shall be reasoned and addressed to the President of the Audit Bench. It shall include:
  - a statement setting out the facts and grounds of appeal;
  - a copy of the judgment for which review is sought;
  - supporting documents, including evidence of notification of the petition to the other parties involved.»
- <u>« Section 76.</u> (1). A petition for review must be lodged within 6 (six) months of service of the judgment on the accounting officer. »

It follows that the petition for review must be lodged against the decisions of "final rulings on an account", that is only against judgments which finally fixed the nature of a certified management account of a de facto management and closed the situation of accountant in compliance with section 33 of Law No 2003/2005 of 21 April 2003 referred to above;

That in any case, for a petition for review to be admissible must be:

- made against a final judgment on an account;
- grounded on at least one of the four(4) cases provided for by law: mistake, an omission, forgery or duplication discovered after the ruling is passed,
- address a reasoned petition to the President of the Bench including:
  - a statement setting out the facts and grounds of appeal;
  - · a copy of the judgment for which review is sought;
  - supporting documents, including evidence of notification of the petition to the other parties involved:

Whereas in the event of the review, all these admissibility requirements that stem from the nature of the contested judgment, the form of the request and the time-limit are cumulative.

But whereas the contested judgment condemned M. née: M. M. S for late filing of BUCREP accounts for the 2004 and 2005 financial years and lack of response to orders of the Bench, "which will continue to run up till the effective production of the said management accounts to the Audit Bench".

That the judgment to pay fine does not fit into the category of final judgment liable for a petition for review as defined above,

That it must declare the petition for review against that judgment to pay fine inadmissible

For these reasons, Taking a final judgment,

#### **HEREBY ORDERS AS FOLLOWS:**

<u>Article 1:</u> The petition for revision of Judgment No. 12/ADA/S3 of 22 June 2011 introduced by Madame M. M. S née M is inadmissible. <u>Article 2:</u> The present shall be notified to:

- the above-mentioned person;
- the Director of BUCREP,
- the Minister of Finance,
- the Minister of the Economy, Planning and Regional Development as well as
- the serving accounting officer of BURCEP.

Thus done, judged and pronounced in public the same day, month and year as indicated above.

#### SECTION 6. Judgment No. 22/AD/CSC/CDC/SR of 13 December 2012

Petition for review of Judgment No.202/D/S2 of 24 December 2010 Matter: A. J. T., Revenue Collector of the Batibo Rural Council

The year two thousand and twelve

And on the thirteenth day of December

The Audit Bench of the Supreme Court of Cameroon sitting in Joint Divisions in the ordinary session hall at its head office building on Winston Churchill Avenue in Yaounde,

By petition dated 17 February 2011 received at the office of the President of the Audit Bench on 1 April 2011 and registered under No. 165, Mr. A. J. T. seised the President of the Audit Bench praying for the following:

### « REQUEST FOR THE REVIEW OF JUDGEMENT N° 202/D/S2 OF 24/12/2010 PASSED BY THE 2ND DIVISION COURT.

I have the honour to humbly appeal for a review on the above-quoted judgment from the 2nd Division Court of the Audit Bench debiting me to pay a total of 4.034. 300 francs based on Injunction N° 4 and 6. I am pleading that this decision be reviewed due to the fact that the said amount as per Injunction N° 4 was approved by the Senior Divisional Officer at the time. He did this approval based on an appeal letter from the Mayor appealing to him to authorize him to charge the particular Budget head for the payment of his house maintenance allowance because a wind disaster had blown down his house and the rains were fast approaching. A copy of the appeal letter and some pictures of the house at the time the wind disaster took place are here attached as Appendix A. And it was based on this appeal letter that the then S.D.O. had to sign Municipal Decision N° 03/2004 authorizing the payment. Copy of this municipal decision is here attached as appendix B.

I regret the fact that the receipt and relevant backing documents were not submitted at the time the Accounts were produced and Judged.

But I plead with Your Lordship to consider the justification presented and grant the appeal to cancel the said amount debited on me due to the fact that the work on the mayor's residence was effectively done as testified by the letter of the Batibo Council Work Supervisor here attached as appendix C and that the said sum was actually signed on the payment voucher and used for the purpose by the Mayor as reflected in receipt and the acknowledgement letter that has been retrieved from the Mayor as a justification to this expenditure made on his residence. Copies are here attached as appendix D and E respectively.

Sir, from all the above justifications, it is clear and understood that the total sum debited on me was actually signed for, received and used by the Mayor for his house maintenance and not by me. Copies of the voucher phase  $N^{\circ}$  466 signed by the Mayor is here attached as Appendix F.

I am only pleading that it will be too heavy and frustrating for me to afford to pay this heavy sum out of my small monthly salary which is my only source of income as a worker. When actually the said amount of 3.000.000 frs meant for the maintenance of the Mayor's residence was signed, received and used for the maintenance by the Mayor as can be seen on one copy of the Payment Order N° 446 quoted above for your consideration. Sir, I am also sorry to mention here that I am a father of a family of nine children who are all solely depending on the small monthly salary I earn for their feeding, education etc.

As concerns Injunction N° 6 amounting to 1.034.300 francs, I regret to say that on three occasions the Council Vehicle got bad in some far off villages of the Municipality the Driver Mr. M. G. called on the Mayor, who instructed him to do all he could to have the vehicle repaired in order to safeguard it from thieves. The Driver did this and brought the receipts for all the parts bought to the Mayor who then prepared the payment voucher for reimbursement on the basis of the Driver's request letter and the receipt, whose copies are attached here as appendix G, H and I respectively.

I am sorry that I carried out the payment only based on the letter and receipts.

Sir, I also beg to confess to Your Lordship to consider the fact that when I was appointed to this delicate job in 2001, we had very little knowledge on the new Council Nomenclature and no training was provided to us. We only tried to keep the accounting documents handed to us by the out gone State Treasurers at the time.

We were only surprised when the Audit Bench was introduced to us in the later part of 2007, to note that what we took over from the State Treasurers was not the expectations of the Audit Bench. Even the few Support Staff in the Council are not trained and have very little to support us as Municipal Treasurers.

With all the above explanation, I am pleading for mercy and beg that the review be considered.

Thanks for your kind consideration.

Yours faithfully,

A. J. T.

M.T. Batibo Council"

#### ON THE ADMISSIBILITY OF THE PETITION

Whereas relating to the petition for review, the aforementioned Law No. 2003/005 of 21 April 2003 provides that:

« Section 73. (1) Notwithstanding the final ruling on an account, the Audit Bench may, due to a mistake, an omission, forgery or duplication discovered after the ruling is passed, review such ruling of its own motion or at the request of either the accountant, the Minister in charge of finance or the legal representatives of the relevant public bodies or at the instance of the Procureur General of the Supreme Court.

- (2) The petition shall be reasoned and addressed to the President of the Audit Bench. It shall include:
  - a statement setting out the facts and grounds of appeal;
  - a copy of the judgment for which review is sought;
  - supporting documents, including evidence of notification of the petition to the other parties involved. »

<u>« Section 76.</u> (1) A petition for review must be lodged within 6 (six) months of service of the judgment on the accounting officer. »

It follows that the petition for review to be admissible must be:

- made against a final judgment on an account;
- grounded on at least one of the four(4) cases provided for by section 73(1) above: mistake, an omission, forgery or duplication discovered after the ruling is passed,
- address a reasoned petition to the President of the Bench including:
- a statement setting out the facts and grounds of appeal;
- a copy of the judgment for which review is sought;
- supporting documents, including evidence of notification of the petition to the other parties involved:
- introduced within a deadline of six (6) from the date of notification of the judgment to the accountant concerned.

Whereas Mr. A. J. T. in his petition does not raise any of the four cases provided for review by the aforementioned instrument or any related legal provisions;

Nowhere is a new element raised to justify a petition for review likely founded on an automatic decision to review the contested judgment.

That, moreover, despite a reminder made by the Registrar-in-Chief to notify his petition to the Minister of Territorial Administration and Decentralization and the Minister of Finance and to attach to his petition proof of the required notification, he did not produce documents establishing these notifications in the file.

His petition for review is irregular;

Whereas it is necessary to declare it inadmissible

For these reasons, Taking a final ruling,

#### **HEREBY ORDERS AS FOLLOWS**

<u>Article 1.</u> – The petition for review of Judgment No. 202/D/S2 of 28 December 2010, from Mr. A. J. T. is inadmissible.

Article 2. – His discharge is suspended.

Article 3. - The present Judgment shall be notified to :

- the above-mentioned person,
- the Mayor of the Batibo Council,
- the Minister of Finance,
- the Minister of Territorial Administration and Decentralization,
- the incumbent Revenue Collector.

Thus done, judged and pronounced in public the same day, month and year as indicated above



## **EXTRA-JUDICIAL ACTIVITIES OF THE AUDIT BENCH IN 2012**





# CHAPITRE 1. REPORT No. 05/ROD/S4 of 27 SEPTEMBER 2012 ON THE ACCOUNTS OF ECAM PLACAGES S.A, 2004 to 2007 financial years

#### I. REMINDER OF THE PROCEEDINGS

By ordinances Nos. 22/CSC/CDC/S4 of 13 August 2007 02/CSC/CDC/S4 of13 January 2010, the President of the Fourth Division designated a rapporteur for the control of the accounts of the Compagnie d'Exploitation Industrielle des Bois du Cameroun (Ecam Placages SA) for 2004 to 2007 financial years.

The control report deliberated by the competent session of the Audit Bench in its meeting of 06 September 2010 consisted of interim observations made at the end of the examination.

This report was notified to the Director General of Ecam Placages SA by the Registrar-in-Chief of the Audit Bench by correspondence No. 1080/CSC/CDC/G of 23 June 2011, received on the 30 of the same month.

The competent session of the Audit Bench, after examination of the responses by the Director General of Ecam Placages S.A. transmitted by mail of 25 August 2011 registered at the Audit Bench under number 429 on 31 August 2011 and after having taking cognizance of the submissions by the Procureur General at the Supreme Court, ruled in its session of 27 September 2012 its final observations in a report, the extracts of which follow:

### II. JURISDICTION OF THE AUDIT BENCH IN MATTERS OF CONTROL OF ECAM PLACAGES S.A. ACCOUNTS

The Ecam Placages SA accounts for 2004- 2005 and 2006-2007 financial years were entered in the programme of control of the Audit Bench respectively for the 2007 and 2009 financial years.

The Audit Bench based its jurisdiction on the legislation in force especially section 41 of the Constitution of 18 January 1996, Law No. 99/016 of 22 December 1999, Law No. 2003/005 of 21 April 2003 and the OHADA Uniform Act of 17 April 1997 relating to commercial companies and economic interest groups.

To the Director General, "Law No. 99/016 of 22 December 1999 defines a semi-public enterprise as corporate body governed by private law and having financial autonomy whose share capital is jointly held by either the State, regional and local authorities or public corporations on the one hand and by corporate bodies or natural persons governed by private law on the other hand". (Section 2(6)).

With a share capital of about 30% % (29.99), Ecam Placages is a semi-private enterprise.

Ecam Placages is thus subject to the provisions of the OHADA Uniform Act as a limited company and legislative provisions to which semi-public enterprises are subject and more the General Provisions of Chapter 2 of the law of 22 December 1999 by reason of the fact that the said law does not indicate the "special provisions" applicable to semi-public enterprises".

Quoting verbatim section 8 of Law No. 2003/005 of 21 April 2003 to lay down the jurisdiction, organization and functioning of the Audit Bench of the Supreme Court, the Director general continues: "ECAM PLACAGES SA does not fall in any of the categories of corporate persons listed in section 8 of Law No. 2003/005 of 21 April 2003; ECAM PLACAGES SA does not have certified public accountants or de facto accountants within the meaning of the 2003 law.

Consequently and considering what precedes, ECAM PLACAGES SA is not eligible for control by the Audit Bench but is subject to other legal controls provided for the laws in force".

The Director General concludes his correspondence in these terms: In conclusion, ECAM PLACAGES SA, while reaffirming its desire for collaboration as indicated and manifested above, thinks that it should not be considered as an enterprise whose accounts and documents should be subject to the control and judgment of the Audit Bench of the Supreme Court while the spirit and letter of the instruments state the contrary.

The elements of law which justify this affirmation are indicated in the aforementioned instruments. They are mainly drawn from Laws Nos. 2003/005 and 99/016.

Taking account of the preceding, Ecam Placages SA prays you Mr. President to consider the arguments and instruct the cessation of control of Ecam Placages S.A. by the Audit Bench of the Supreme Court.

Of course, Ecam Placages remains subject and will continue to submit to all controls required by legislation". .

To the Audit Bench, the argument by Ecam Placages S.A is based on an incomplete reading of the law which obscures the real foundation of the jurisdiction of the Audit Bench over this category of enterprises. This jurisdiction is founded on an established legal framework.

Section 41(1) of the Constitution 18 January 1996 provides that: "The Audit Bench shall be competent to control and rule on public accounts, as well as on those of public and semi-public enterprise". Ecam Placages SA, a semi-public enterprise, thus classified in the category of public and semi-public enterprises by virtue of the law of 22 December 1999, as its Director effectively admits, falls within the ambit of section 41 of the Constitution which has not set a threshold of public shares in the share capital.

Part II of this law titled Jurisdiction of the Audit Bench lists in its section 8 the various categories of "corporate persons" whose "accounts and annexed documents of certified public accountants

are subject to the control and judgment by the Bench.

To Ecam Placages SA this would mean:

- the fact of not having certified public accountants or de facto accountants;
- the fact that SNI does not hold the minority blocking shares (at least 33.3% of the shares) and does not hold any decision-making power,

within the meaning of this law on which is based the conviction of the Director General on the ineligibility of his enterprise to be controlled by the jurisdiction.

This conclusion is hasty. Firstly, it should be borne in mind that the Constitution establishing the Audit Bench fixed its scope of jurisdiction and no other law, especially domestic, can by reason of hierarchy of standards restrict it for unconstitutionality.

In any case, if shortcomings could be detected in the law of 2003, the Cameroonian legislator did not go contrary to the Constitution.

A careful reading of sections 10 and 11 of Part II of the 2001 law which deal with the jurisdiction of the Audit Bench is enough to remove any doubts regarding the jurisdiction of the Court over the control of the Ecam Placages S.A and that of any other enterprise of this category.

One of the modalities of referral is defined by section 11 according to which:

"The list of corporate bodies governed by private law in which the State and other corporate bodies governed by public law, holds either jointly or severally, more than half of the capital, a share of the capital, or the decision—making power, shall be notified to the Audit Bench by the Minister in charge of Finance".

Only enterprises whose accounts a liable to be controlled by the jurisdiction can feature on this list. Periodically, the Minister in charge of Finance communicates to the Audit Bench the list of public establishments, public and semi-public enterprises as annexed to the State budget. The last list effectively included Ecam Placages.

Such a decision by the Minister of Finance draws its legitimacy from section 9 (Part I General Provisions) of Law No. 99/016 which provides that:

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"External audits may be requested by the statutory organs of public and semi-public sector corporations or by the Minister in charge of Finance, save for semi-public corporations in which the State holds less than twenty-five (25%) of the capital and voting rights".

The Director General who himself reveals that these are the only provisions of the 1999 law which concern semi-public corporations including Ecam Placages S.A cannot in the same vein forget the provisions of the same Part I which recognize that the financial supervisory authority performed by the Ministry of Finance over semi-public corporations in which the State holds at least twentyfive (25) per cent of the capital gives it the right to turn to the Audit Bench, legal external audit body, to carry put such an audit.

The accounts of Ecam Placages are and remain subject to control by the Audit Bench of the Supreme Court.

#### III. PRESENTATION OF ECAM PLACAGES S.A

#### 1. Creation and corporate purpose

The Cameroon Industrial Wood Exploitation Company (Compagnie d'Exploitation Industrielle des Bois du Cameroun, Ecam Placages SA,) was created on 23 March 1976. It was registered in the Trade and Personal Credit Register of Mbalmayo under number 76 B7 and set up head office there.

Ecam Placages SA is the result of partnership between the National Investment Corporation (SNI) and two foreign companies, ITALLEGNO and SLOTER. COCAM, a wood processing company already installed in Mbalmayo was associated in this partnership. The corporate purpose of ECAM Placages S.A. focusing on forest exploitation comes in several activities related thereto namely:

- Manufacture of quality sawn wood, timber, blockboards, particle boards, plywood and generally all similar products resulting from slicing, sawing gluing, wood veneer;
- commercialization of finished, semi finished products and logs;

creation or the participation in all activities that could directly
or indirectly be connected to the corporate purpose or to similar, connected or complementary corporate purposes (article 3 of the Articles of Association).

#### 2. Capital, ownership

Before the increase in the capital of December 1991, the capital of Ecam Placages S.A. stood at 406 000 000 CFA F held by SNI 44.7%, that is 18,163 shares The shares of the other partners at the same date were 18,621 shares (45.86%), 2,083 shares (5.13%), and 1,729 shares (4.26%) respectively held by ITALLEGNO, SLOTER and COCAM. Small carriers held the remaining four (4) shares.

The issuance of 54,400 new shares having taken the capital to 950,000,000 CFA F in December 1991 modified this distribution and reinforced the shares of SLOTER, which became the majority shareholder with 59.86% of the capital. The SNI, while increasing its shares by 83%, witnessed its shares drop by 21.72% despite the recuperation of all of COCAM's shares. The increase in ITALLEGNO's shares by more than 130% did not modify its share percentage.

In 2003, the share capital Ecam Placages SA was raised to 2 760 000 000 CFA F by the issuance of 181,000 shares. This increase witnessed a distribution of shares that saw the emergence of a new majority shareholder, ITALLEGNO. At the same time, SNI's decline grew. It lost the second place to SLOTER as indicated in the new distribution of the 276,000 shares as follows:

- ITALLEGNO SPA: 100,412 shares, that is 36.38%;
- SLOTER: 92,800 shares, that is 33.61%;
- SNI: 82 800 shares, that is 30.00%;
- Others: 4 shares, that is 0.01%.

During its session of 8 December 2005, two years after, the General Assembly of Ecam Placages S.A. approved the proposal for reduction of the share capital by 45%. The share capital thus dropped from 2

760 000 000 CFA F to 1 518 030 000 CFA F, representing 151 803 shares. This reduction of the share capital did not affect the share percentage of the main shareholders.

#### 3. Organs of ECAM PLACAGES S.A

Ecam Placages SA harmonized its Articles of Association with the OHADA Uniform Act on commercial companies and economic interest groups in 1999. It thus put in place the administration and control organs provided for by the said Act: General Assembly, Directorate General and Auditors.

Concerning the functioning of these organs, the Audit Bench observes that the legal mandate of certain board members and auditors was not respected based on the documents submitted in support to the accounts produced for control.

With regard to board members, article 420 of the Uniform Act, as well as section 36(2) of Law No.99/016 of 22 December 1999 on the general rules and regulations governing public establishments and enterprises of the public and semi-public sectors, fix at six (6) years the maximum duration of their mandate. But it seems the Chairperson of the Board of Directors of Ecam Placages S.A. whose mandate should not exceed his mandate as Board member, (article 463 UA) has been in this position uninterruptedly since his election by the general Assembly of 15 March 1985, that is to say 25 years equivalent to more than 4 mandates as at 31 December 2007.

Ecam Placages SA cannot justify this situation by the application of the provisions of articles 16 and 20 of the Articles of Association according to which "this mandate shall be renewable", the said provisions being contrary to the law.

As for the Auditor in place, he was appointed by the ordinary General Assembly on 10 December 1983 for a three-year mandate which was regularly renewed up till 1996 (GA of 19/02/96).

The harmonization of the Articles of Association of Ecam Placages SA with the OHADA Uniform Act in 1999 led to the modification of the duration of the Auditor's mandate which is henceforth six (6) years. The current Auditor's first mandate of six (6) years started in

January 2001. The renewal runs from January 2007.

In total, as at 31 December 2007, the Auditor of Ecam Placages SA had put in 27 years in this position. The principle of a maximum duration of six financial years having been laid down by the OHADA Uniform Act and the 1999 law, the Audit Bench believes that the current performance of the duties of auditor is irregular. Any other interpretation of the provisions of the Uniform Act in the matter would only serve to justify this irregularity.

Ecam Placages SA disagreed with this analysis by the Audit Bench according to which the Chairman of the Board of Directors as well as the Auditor had, by 31 December 2007, served well above the legal limits of their respective mandates.

This is the argument developed.

#### Organs of Ecam Placages S.A.

In the report on the organs of enterprise, the Audit Bench based on Article 420 of the Uniform Act and section 36(2) of Law No. 99/ 016 noted that the mandate of the Chairman of the Board of Directors which must be six (06) years maximum was renewed beyond the time-limits prescribed by the above-mentioned instruments.

But the special statuse which is Law No.º 99/016 does not define the operating rules of semi-public enterprises in terms of functioning and control organs on the one hand and on the other hand section 36(2) ( Part II ), referred to by the Bench fixes the functioning of "public enterprises" as defined in section 2(5) ( Part I) of the said law as a "corporate body governed by private law and having financial autonomy whose share capital is held exclusively by the State, one or more regional and local or one or more public corporations and whose and whose object is to carry out in the general interest activities of an industrial, commercial and financial nature." In this regard, this section does apply to our company. Moreover, article 420 of the OHADA Uniform Act rather defines the

duration of the mandate and not the principle of its limitation.

The mandate of a Chairman of a company managed by a Board of Directors other than an Executive is our case, is defined in article 478 which provides that: the duration of the mandate of the Chairman of the Board of Directors cannot exceed that of his mandate. The mandate of the Chairman of the Board shall be renewable.

The same conclusions are applicable to the Auditor, whose mandate in semi-public corporations to is not fixed by Law No. 099/016 but by the Uniform Act in its articles 704 to 709 which instead lay down the principle of duration without fixing any restriction as to the number of mandates.

In conclusion, the renewal of the mandates of the Chairman of the Board and that of the Auditor was done in compliance with the applicable texts in Ecam Placages and its Articles of Association".

To the Audit Bench, section 36(2) can be read as applying to the specific case of public corporations of section 19 which can be found in the common provisions (Part I) to semi-public corporations, administrative public establishments and public corporations and which provides in its paragraph 1:

"No one may serve as a Board member representing the State or local government authority on more than one Board of Directors of administrative public establishments, public corporations and semipublic corporations. Moreover, a Board member representing the State may not hold more than two successive terms within the same corporation".

For the Audit Bench, ECAM Placages SA being a limited company, the relevant provisions of limited companies applicable to public corporations, public companies essentially are applicable on it mutatis mutandis.

In conclusion, the Audit Bench confirms that the mandate of the Chairman of the Board of Directors and the auditor is illegal, as they are currently held beyond the maximum period prescribed by Law No. 99 / 016 of 22 December 1999.

#### IV. ACTIVITIES OF ECAM PLACAGES S.A

#### 1. Wood processing

It is materialized by slicing, sawing, bonding and peeling. The results of these operations are two main finished products, the simple veneer and jointed veneer. The production of these two types of veneers during the period 2004 to 2007 has evolved as summarized in the table below:

Table of evolution of the production of veneer

Year	2004	2005	2006	2007
Simple veneer	11 505 302,95	10 232 248,09	10 640 049,25	9 550 413,81
Jointed veneer	754 107,56	670 522,28	1 014 070,60	1 015 977,93
Total veneer	12 259 410,51	10 902 770,37	11 654 119,85	10 566 391,74

**Sources:** Ecam Placages S.A (Situation of the production of various lines of products, 2004-2007)

#### 2. Marketing

Ecam Placages S.A. sells primarily simple and jointed veneer. This sale is largely for export and the rest for the local market.

The annual turnover in exports between 2004 and 2007 represents an average of more than 98 % of the total turnover of ECAM Placages S.A. Between 2004 and 2007 it experienced a decrease of 5.10% from 4,138,234,000 CFA F to 3,927,454,000 CFA F. This decrease was mainly due to the drop of 36.95 %.in local sales

Control of currency repatriation generated by foreign sales was based on the reconciliation of bank statements, billing statements and including the bundle of documents of the domiciliation of the export license. With the exception of export sales in 2004, of which the absence of many documents failed to ensure the effectiveness of full repatriation of sales proceeds, the control has not identified any manifest violation in the application of currency transfer regulations for transactions of the financial year under review . Differences often found between the invoice amount and that credited to the ECAM Placages S.A. account in the domiciliary banks of the transactions concerned corresponded to the deducted bank charges.

It thus appears that, out of a billing of export sales of 16,126,162,431 CFA F for the four years in question, ECAM Placages S.A. repatriated 98.44 % of the proceeds of the said sales, equivalent to 15,876 million CFA F.

## 3. Creation or participation in any activity directly or indirectly related to the corporate purpose

During the 2004-2007 period, ECAM Placages SA neither created nor took an interest in a business whose activities are related to its purpose. However, from the financial statements of this period, the control noted that Ecam Placages S.A. had interests in a logging company in Bangui in the Central African Republic. The results of operations of this company named Centre Forestier de Production (CFP) have been ruinous to ECAM Placages S.A. Its claim against the liquidation of Centre Forestier de Production, included in the current assets from its balance sheet during the period under review amounted to FCFA 354,438,905 CFA F, subject to a reservation made regularly by the Auditor during the certification of accounts.

Furthermore, the equity of ECAM Placages S.A. in activities relating to its corporate purpose is deduced from the situation of equity presented in the annexed notes to the financial statements as at 31 December 2004.

Indeed, the structure of ECAM Placages S.A. equity at 31 December 2004 includes a *merger loss accounting for 2,384,869,000 CFA F*. It was a takeover of ECAM FORESTS SARL by ECAM Placages S.A, after the period under review.

This resulted in the merger loss whose impact on the equity structure is such that they represented barely 55 % of the share capital at 31 December 2004.

In the light of these two cases, it appears clearly that the creation or participation of ECAM Placages S.A in activities relating to its corporate purpose has not always been financially profitable. It is appropriate to ask whether the shareholder to whom was entrusted the management of ECAM Placages S.A. did not violate his obligations by making decisions in conditions that did not ensure the profitability of the company nor protected the interests of all the shareholders.

It should be recalled that the management has consistently been entrusted to the shareholder ITALLEGNO. And the commercialization agreement between ECAM Placages S.A. and ITALLEGNO of 28 March 1990 states in Article 1:

"This Agreement is to define the obligations incumbent on ITALLEGNO SPA to ensure the export marketing of ECAM Placages products. It further defines (Annex I), SLOTER obligations towards the NATIONAL INVESTMENT CORPORATION, if certain conditions of profitability of the ECAM PLACAGES unit are not met, ITALLEGNO benefitting moreso of the management of the company and a technical assistance contract."

While rendering obsolete the marketing agreement of 28 March 1990, the Convention between the main shareholders of ECAM Placages S.A. signed on 23 June 2005 and registered on 16 August 2005, in its Article 2(4), confirmed ITALLEGNO in the role as a shareholder responsible for the management of the company.

Also, the Bench notes that the SNI, including the two other major shareholders, in accordance with Article 3 of the above convention, severally guaranteed a minimum return of 12 % of paid up capital, whatever the result of operations, that is 99,360,000 CFA F, before the reduction of the share capital imposed by the deterioration in the financial situation of ECAM Placages S.A. resulting from the merger absorption of ECAM FORESTS SARL, must now give up annually 45 % of this remuneration.

In response to the provisional observations of the Audit Bench on the item on Ecam Placages activities for the period under review, the Director-General gave the following explanations:

#### On the repatriation of proceeds of export sales

All the documentation proving that the proceeds of all export sales were repatriated is available: sales invoice, bill of lading, domiciliation form, repatriation certificate issued by the bank, notice of bank credit, bank statement that received the repatriation of funds.

## Creation or participation of ECAM Placages in activities directly or indirectly related to the corporate purpose

Ecam Placages had no share in a partnership in the Central African Republic. Rather it bought logs from it.

Similarly, the creative decisions of the company ECAM Forests or purchase of logs from the Central African Republic were not the unilateral decisions of ITALLEGNO but were taken in response to specific situations.

#### <u>Creation of the Forest exploitation Company (ECAM Forêts)</u>

Ecam Placages could no longer carry out logging from 1992 to 1996; it got supplied from the domestic market. But the problem supply of logs in quantity and quality soon conditioned production. .

To remedy this situation, the partners decided to create the Société Ecam Forêts which was to contribute in supplying logs to ECAM Placages.

## <u>Search and purchase of logs from the CAR from the Centre Forestier</u> <u>de Production (CFP).</u>

The problem of supply of logs having become crucial and worrying and the production capacity being reduced by 50 %, it was necessary to resort, in 2002, to other sources of supply.

Information collected from suppliers in countries of the sub-region had hinted about good prospects from CFP which was exploiting a logging concession in the CAR.

During negotiations with this company, the price of Aniegre logs delivered at Mbalmayo was set at 200,000 CFA/m3. This was a unit price which made them very competitive compared to good quality local Aniegre logs (140 000 to 170, 000).

In 2002, CFP delivered to ECAM Placages a volume of 3088 m3 or 22 % of total purchases for the year (14,182m3). In 2003 2,218 m3 were delivered in three months (until 15/03/2003 date of the coup d'état) compared to 3140 m3 of purchases in Cameroon for the same period.

By this fact, the CFP had become one of our most important suppliers of logs.

This company which did not possess enough equipment to conduct an operation on a larger scale, signed a leasing contract with ECAM Placages which has equipment in its fleet in Ecam Forêts.

The lease was for a D7G Caterpillar, a 528 B heaver, 966 C loader, a Mercedes Benz tractor trailer, a Toyota 6000.

In return, ECAM Placages obtained the exclusive rights to purchase logs from this exploitation.

Prospectors were put at the disposal of this company for the proper monitoring of the operations of preparing logs for the plant. Ecam Placages received logs and equally billed the leasing of the material. Trade relations between the two companies experienced a break in March 2003 following the coup d'état in the CAR and the looting that ensued.

The new government immediately suspended all former concessions and upon resumption of operations, several months later, there was a dispute between CFP and the SCAD company which led to a seizure carried out on the ECAM equipment and miscellaneous items belonging to CFP including a stock of logs of about 2300 m3 in various parks. These logs were meant for Ecam Placages

Legal proceedings ensued between the two Central African companies and ECAM Placages retained a Central African lawyer to claim its ownership of the leased equipment, since according to a clause in the lease agreement, CFP could become owner of the material after having paid in full .

Central African justice granted ECAM Placages its request to recovers its equipment, which by resolution of the Board of Directors, included it in its assets for a value of 50 million CFA francs on the basis of a leasing value of 135 million after deduction of depreciation due to the use the CAR.

A court ruling then permanently canceled the CFP license. After very long court proceedings, this ruling forced this company into bankruptcy and eventually liquidation in 2008.

It follows from what is described above that the advances granted by the ECAM to the CFP supplier were covered by the 2,300 m3 of logs already prepared and ready, logs whose value was well above 355 million but being the subject of seizure could not be recovered by ECAM and at the end of the legal proceedings were obviously unusable.

In summary, the decision to create ECAM Forêts and leasing the equipment in the CAR were the result of unavailability of raw material, a problem that had become very serious and structural. In both cases, one cannot speak of inappropriate decisions. Nobody could predict the change of the operating rules or the unscrupulous behavior of some operators or predict a war and its impact on the decisions taken.

These decisions were taken in a particular context and following supply problems. Ecam Placages saw its economic situation deteriorate sharply, its industrial potential threatened by incompressible fixed cost and the social climate at the plant deteriorate quickly due to low staff morale subjected to endless layoffs. We had to save the industrial potential of partners and the jobs of workers".

#### SNI giving up 45% of its annual remuneration

The remuneration of the SNI based on its participation in the share capital of 950 million, the same since 1993 before the increase in capital in 2003, would have remained the same if the allocation of

losses in 2005 was conducted in its entirety, including the creation of provision for doubtful debts as originally planned by the shareholders. The partial allocation of losses and the consequent but partial reduction of capital was an economic and strategic decision by the shareholders without wanting to change the initial desire for "financial reorganization".

However, and notwithstanding that the goal of the shareholders always remained financial reorganization, ITALLEGNO and SLOTER granted to SNI as minimum dividend, pursuant to the agreement between senior partners and agreements with SNI, the 12 % on the capital that is about 15 million more than the dividend paid before 2003.

Ultimately, ECAM Placages has for several years been facing a structural problem that is its log supply. This problem is increasingly a threat to the industrial complex which the partners want it to be prosperous in Mbalmayo.

Mr. President of the Audit Bench, we have brought to light the above elements not only on the observations raised by the Bench but also aspects of the management of our company that will give a better insight into this structure.

All decisions made by the management, the Manager, the Board of Directors and partners since the inception of the company have always been directed towards finding appropriate solutions to protect investment, employment and the continuation development activity of ECAM Placages S.A., taking into account the global economic environment and the environment of the moment.

Moreover, were it not for the search for solutions, this partnership between the State of Cameroon (SNI) and European investors (ITALLEGNO and SLOTER) via the industrial and commercial activity of ECAM Placages S.A, would not have lasted since 1976, that is to say 35 years soon.

The Bench takes note of the motivations that led to the creation of the forest exploitation company Ecam Forêts and justifications for its liquidation. It also notes that the explanations of the DG of ECAM Placages confirm that the activities of this subsidiary whose capital was 100% owned by ECAM Placages S.A were not profitable. These

activities created a financial shortfall valued at 2,384,869,000 CFA F whose impact on the net worth of ECAM Placages was extremely important.

With regard to the renunciation by SNI of 45 % of its annual remuneration, the facts raised by the Audit Bench can be summarized as follows:

- the Convention between the principal shareholders of ECAM Placages S.A guarantees the SNI an annual minimum remuneration of 12% of its paid up share capital as at 31 December of that year;
- In return for the management of ECAM Placages entrusted to ITALLEGNO and the exclusive sales agreement signed between ITALLEGNO and ECAM Placages SA;
- this remuneration which was 99,360,000 CFA F per year until the capital reduction in 2005 was reduced by 45% due to the poor performance of the company which led to a restructuring of the equity.

While recognizing the negative impact of external factors have had on the profitability of the company, the fact remains that managers are accountable for its operating results. They cannot therefore be cleared of the shortfall suffered by the SNI since 2005.

The Audit Bench therefore confirms the deterioration of the agreed remuneration of SNI.

#### V. RELIABILITY AND REGULARITY OF ACCOUNTS

#### 1. Approval of accounts and posting of profits

The process for approval Ecam Placages S.A accounts for the 2004, 2005, 2006 and 2007 financial years complied with the provisions of the OHADA Uniform Act on Commercial Companies and Economic Interest Groups and No. Law No. 99/016 of 22 December 1999 on the general rules and regulations governing public establishments and enterprises of the public and semi-public sector. Indeed, all General Assembly meetings were convened within the

legal deadline to approve the accounts duly certified by the auditor and the allocation of the net operating income.

#### 2. Notional dividends

In his general reports on the financial statements for the years under review, the auditor made reservations on the net operating income of ECAM Placages S.A. As a result sufficient consideration was not given to the risk of non-collection of some very old debts. In other words, the precautionary principle, according to which "any likely loss is systematically recorded as expenditure" was ignored.

This is the case with the debt on the liquidation of the Centre Forestier de Production (CFP) which was 484,887,000 CFA F in 2004 and which through compensation increased to 354 million CFA F in 2006 and 2007.

Compensation of debts is thus traced in the entries of ECAM Placages SA:

- The Centre Forestier de Production (CFP) had a debt of 79448 000 CFA F featuring in the liabilities of ECAM Placages SA. in the suppliers, creditors column at 31 December 2004 and 2005;
- The debt of ECAM Placages SA on CFP (and former CFP) as indicated in the financial statements amounted to 484,887,000 CFA F in 2004 and 483,887,000 CFA F in 2005;
- Lastly, ECAM Placages SA included in its capital heavy gear belonging to CFP, valued at 50,000,000 CFA F account 245 10300. The Heavy Gear was so debited by the credit of account 41 11 002-CFP of the same amount.

On this last operation, the Audit Bench considered whether the assessment of heavy gear at 50 million CFA F resulted from the auditor's report of contributions or stemmed from a unilateral decision ECAM Placages SA or was an agreement between the two parties.

Whatever the case, provisioning at 100% of this debt is unavoidable because for her, "there is no chance of recovery" as noted by the auditor in his general report on the financial statements at 31 December 2006.

The non-incorporation of the bad debt allowance and those of other suppliers' accounts, accounts receivable and payable, advances and prepayments accounts, leads to artificially inflate the net operating income (NOI). The table below summarizes the findings of the auditor on the impact of unfunded or insufficient bad debt allowance on loans in the net operating income.

#### Comparative table of the net operating income of (NOI) of Ecam Placages SA approved by the General Assembly and corrected with provisions for doubtful debts

	2004	2005	2006	2007
NOI approved by the GA (Net profit)	99 080 000	102 643 000	75 753 000	57 076 000
NOI corrected with allowances (Net loss)	- 626 100 000	- 885 000 000	- 807 000 000	- 807 000 000

Source: General report of the Auditor

This table shows that compliance with accounting principles OHADA led, not to profits during the period under review, but rather to very significant losses. It turns out that the General Assembly of shareholders of ECAM Placages SA approved in 2005, 2006 and 2007 the distribution to shareholders of 90 % of the profit after deduction of 10% of the legal reserve.

The Bench concludes that the General Assembly of shareholders passed resolutions seeking payment of notional dividends in 2005, 2006 and 2007.

#### 3. Net situation (equity) of ECAM PLACAGES S.A.

In 2004, the share capital of ECAM Placages S.A. was 2.76 CFA F billion and its net worth, as resulting from the third resolution of the General Assembly of 23 June 2005, after posting of profit for the 2004 financial year stood at 1,519,458,877 CFA F or 55 % of the share capital.

In December 2005, the share capital was reduced and brought almost to the amount of equity at 31 December 2004, that is to 1,518,030,000 CFA F.

Moreover, from the examination of accounts approved by the General Assembly, it appears that equity now represents just over 100 % of the share capital, that is exactly:

- 100.70 % in 2005;
- 101.20 % in 2006;
- 101.70% in 2007.

This positive report rather masks a deterioration of equity. Indeed, if ECAM Placages SA had established the financial statements in compliance with accounting standards and principles, including taking into account the uncertainties related to the recovery of certain debts as rightly suggested by the auditor, the net situation would be:

- 634 million CFA F in 2005 instead of 1,622 million CFA F;
- 723 million CFA F in 2006 instead of 1,605 million CFA F;
- 730 million CFA F in 2007 instead of 1,594 million CFA F.

The Audit Bench observes here that in relation to the share capital, equity accounted for only 41.77 %, 47.63 % and 48.09 % respectively in 2005, 2006 and 2007, the percentage for which the law recommends an alert procedure.

In general, the Bench notes that the non-compliance by ECAM Placages SA. of certain accounting principles generally accepted in the OHADA space, led to the preparation of financial statements that do not give a true picture of the assets, the financial position and results of the company during the 2004 to 2007 financial years.

The reaction of ECAM Placages SA to comments made by the Audit Bench in connection with the reliability and regularity of accounts under review (no bad debts allowance, lack of reliability in operating income, distribution of notional dividends, justification of an alert procedure ... ) shows all of its ambiguity in the following paragraph extracted from the response by the Director General:

"All these reasons mentioned above have meant that provisions for depreciation have not been made, notwithstanding the reservation

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relating thereto made by the auditor, the prospects of recovery are, in our opinion, still possible for a large part of debt. However, the capital increase was considered a possible risk for most of these bad debts."

For the Audit Bench it is difficult to understand that on one hand, the decisions to increase capital reflect "a possible risk for most of these bad loans ", and on the other hand, depreciation and provisions are not made notwithstanding the reservations of the auditor.

The Bench considers that the explanations given by the Director General of ECAM SA Placages S.A are not likely to remove the doubts about the reliability and regularity of the financial statements of the company for the 2004-2007 period.

#### VI. PURCHASE OF A SECOND HAND DRYER

By letter No DG/FS/BP/MM/123-04 of 16 March 2004, the Director General of ECAM Placages SA requested for assistance in the form of a loan of 150 million CFA F from AFRILAND FIRST BANK, to finance purchase of a second hand dryer.

In this letter, the Director General said that the additional funding is provided by the parent company, ITALLEGNO, which has already made an advance payment of 75 000 Euro, or 49 million CFA F.

On 24 June 2004, the Chairman of the Board of Directors gave a "special delegation of powers to the Director-General to sign with any credit agreement to finance new investments any local bank ... up to a maximum of 220 million CFA Francs."

The Audit Bench observes that the Director General exercised the powers of the Board of Directors which alone "solicits all appropriations or other means of short-term credit ...authorizes all medium or long term borrowings... granting special powers, which occurred three months after the letter to the bank, cannot be regarded as an act of regularization.

The interim observation report made two observations on this point:

The difficulty of understanding the exact amount of the investment:

- The performance by the Director General of powers assigned to the Board of Directors without having been mandated;

On the first point, the Audit Bench notes that "the Director General submitted to the Board a budget that included costs known as the cost of purchasing the dryer and all other estimated costs as approach costs (land and sea), customs clearance, civil engineering costs, cost of installation and start-up with the assistance of a foreign technician and all possible hazards. The budget took into account variable costs and contingencies so as to bring the project to a successful conclusion. Coming back before the Board a second time to request additional funding would have been very embarrassing." On the second point, there is a discrepancy between the terms of the Resolution No. 4 of the Board of Directors on 27 April 2004 and those of the "special delegation of powers" of the Chairman of the Board of Directors dated June 24, 2004. The sequence of accounting records and other documents below then confirms that the Director General did not wait for the special letter of delegation of powers to exercise the powers not falling directly within his competence.

The cacophony between the two documents is perceptible indication of the time of making the investment in question.

For Resolution No. 4: "The Board of Directors of ECAM Placages SA ... After having considered the report of the activities by March 2004, And deliberating over it,

Approved investments totaling 220 CFA F million for the purchase of a second-hand dryer.... " .

As for the special delegation of powers, it states: "... I, the undersigned ... acting in my capacity as Chairman of the Board of Directors.....;

On the basis of Resolution No. 4 of the Board of Directors on 27 April 2004 approving the investments required for the current year, hereby grant, Mr. Franco SCARABELLO, powers as Director General of ECAM Placages to sign with any local bank, any loan agreement to finance new investments of the said company of a maximum amount of 220 million CFA Francs ... ".

Upon review of the two documents, it is difficult to determine the exact destination of funds: did they finance the investments made

and approved by the Board of Directors or will they be used to finance new investments?

Meanwhile, the chronology of records and documents relating to the purchase of the dryer is as follows:

- 16 March 2004: Request for financial assistance through a loan of 150 million CFA F signed by the Director General and addressed to Afriland First Bank;
- 26 March 2004: Order for transfer by the Director General for an amount of € 75,000 as an advance to purchase the dryer;
- 6 April 2004: Date of transaction of transfer of € 75,000;
- 19 April 2004: Pro forma invoice of € 170,000 from Kontinental Furnier Trust Reg, supplier of the dryer, received on 20 April 2004;
- 27 April 2004: Resolution No. 4 approving investments for 220 million CFA F;
- 7 May 2004: Order for transfer of € 95,000 by the Director General for the balance of the purchase of the dryer (attachment, pro forma invoice indicated above);
- 07 May 2004 date of the transfer operation of the balance of the purchase;
- 24June 2004: Special delegation of powers to the Director General;

This chronology shows that the special delegation of powers intervened only in regularization. Indeed, by 24 June 2004, the Director General had already ordered transfers for payment of the advance and the balance of the purchase invoice of the dryer. The Audit Bench confirms his observation that the General Manager of ECAM Placages SA used powers normally vested in the Board of Directors without delegation or mandate.

## CHAPITRE 2. OPINION No. 001/2012/CSC/CDC OF 13 NOVEMBER 2012 ON THE SETTLEMENT BILL OF THE 2011 FINANCIAL YEAR

The Audit Bench of the Supreme Court sitting in Chambers issued Opinion No. 001/2012/CSC/CDC on the Settlement Bill of the 2011 financial year including observations on the form and substance extracts of which follow:

#### I - REGARDING THE FORM

## 1.1 Transmission of the Budget Review Bill for the 2011 financial year to the Audit bench

The Settlement Bill for the 2011 financial year was received at the Audit Bench on 26 September 2012 while that of the 2010 financial year addressed by the Minister of Finance was received on 24 October 2011 with considerable delay.

If, as the Minister of Finance stated, there is an effort being made to meet the deadline of 26 days for the transmission of the aforementioned Settlement Bill to Parliament, the fact remains that referral to the Audit Bench has always been late and could not enable the Bench to give its opinion before 30 September 2012 and that by this fact, the Minister of Finance could not keep the legal deadline for the deposit of the Settlement Bill in Parliament.

The Ministry of Finance takes note of the observation and is committed to make every effort to ensure that the transmission deadline of the Settlement Bill is substantially improved in 2012 compared to 2011.

Note is taken.

#### 1.2. Form and content of the forwarded 2011 Settlement Bill

The 2011 Settlement Bill and the accompanying documents forwarded to the Audit Bench were better prepared compared to that 2010 financial year. This bill contains most of the records and documents required by sections 20 and 22 of Law No. 2007/006 of 26 December 2007 referred to above. However the development of revenue operations contains no information on the amounts to be recovered, an anomaly previously identified in the 2010 Settlement Bill.

The Ministry of Finance, taking note of this observation, explained that following the opinion of the Audit Bench on the 2010 Settlement Bill and its instructions, special recovery, clearance and accounting missions are crisscrossing the country to monitor the debts of the State and performance of collection services and control of undue extinctions of debts; that even though some elements of these amounts to be recovered are presented in accrual accounting in the balance of accounts and financial statements (interim balance sheet as at 31 December 2011) in accordance with section 63 of the Law on the Financial Regime of the State, it is the limits of the information system that do not allow for the moment restitute by type of revenue, issuances, receipts and amounts to be recovered. It is appropriate to acknowledge the efforts and diligence committed to meet the requirements of the above-mentioned texts relating to the presentation of a statement of amounts to be recovered under the provisions of section 22 especially that it is acquired, in his defense, that Article 63 referred to above shall not apply until the vear 2012 (Section 78 of law No. 2007/006 of 26 December 2007 referred to above).

## II- THE SUBSTANCE OF THE EXECUTION OF THE 2011 FINANCIAL YEAR

## 2.1. The macroeconomic context in which the 2011 financial year was executed

The budgetary framework for the 2011 financial year... was done in a rather serene environment...

At the global level, in a difficult economic environment in which hovered the uncertainties related to the intensification of financial tensions in the euro zone, growth slowed from 5.3% to 3.9% between 2010 and 2011.

In sub-Saharan Africa, however, although growth varied from one country to another, it remained strong. Regional production rose by 5.1% in 2011. In the CEMAC zone, growth remained strong although it decreased slightly from 5.1% to 4.6%.

In Cameroon, after two years of decline attributed to the global economic and financial crisis, the recovery observed in 2010 was strengthened with a growth rate which rose from 3.2 % to 4.1 % between 2010 and 2011.

As in 2010, the main drivers of the recovery were the non-oil activities (food crops, forestry, construction, transport and telecommunications) whose expansion was approximately 5 %, while the oil sector continued to decline.

The level of inflation remained a little lower than the CEMAC convergence criterion which is 3 %.

As regards public finances "during 2011 financial year", internal revenue amounted to 2 257.4 billion CFA F. They increased by 321 CFA F billion, representing a growth rate of 16.6%. This increase is due both to oil revenue (140.9 CFA F billion) and non-oil revenue (180.6 CFA F billion). Regarding cumulative expenditure for the 2011 financial year, they amounted to 2 699.2 billion CFA F and increased by 335.9 billion CFA F, that is a growth rate of 14.3 % compared to the 2010 financial year.

As regards the public debt, the actual service declined from 370.3

billion CFA F in 2010 to 318.7 billion CFA F in 2011, representing a decrease of 13.9%. This decrease was mainly driven by the sharp decline in domestic public debt from 284.1 billion CFA F in 2010 to 230.1 billion CFA F in 2011 ( that is, -19 %), while the external debt increased from 86.2 billion CFA F to 88.6 billion CFA F during the same period.

#### 2.2 Execution of the 2011 budget

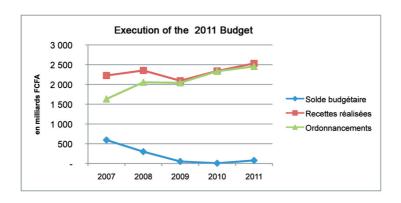
#### 2.2.1. The budget balance

#### 2.2.1.1. Sincerity of budgetary entries

#### Budget balance of the 2011 financial year and its evolution since 2007

The budget balance, as transcribed in the Settlement Bill represents the difference between the revenue earned (revenue collected) 2 531 754 050 964 CFA F and the authorized expenditure 2 454 250 747 633 CFA F.

The Settlement Bill for the 2011 financial year shows a budget balance of 77 503,303,331 CFA F. After a steady decline in the budget balance for the 2007-2010 financial years, which rose from 594 150 966 110 CFA F in 2007 to 7 881 171 816 FCFA in 2010, the balance increased significantly in 2011 as shown in the graph below.



## Total execution rate of revenue and expenditure of the 2011 financial year

At the end of 2011 financial year, the overall rate of revenue in relation to the estimated amounts stood at 98.47 %. There is a marked increase compared to 2010 (92.85%) and almost meets the 2007 value (98.90%).

On the expenditure side, the rate of authorizations compared to the final allocations is 95.46 %. This rate is in steady increase since 2007.

#### 2.2.1.2. Genuineness of the Settlement Bill

Analysis of the trial balance and the impact of transactions made on the provisional accounts in the budget balance

Public accountants responsible for accounting and preparation of accounts must ensure compliance with the principles and rules of public accounting in order to guarantee transparency, regularity, genuineness of accounts and ensure that they give a true picture of the assets and financial position of the entity in question.

In violation of these principles and accounting rules, the following irregularities were observed in the overall balance of the consolidated accounts for the year 2011

a) Poor brought forward to the opening balance of the 2011 financial year of closing balances of the 2010 financial year of certain State assets accounts of classes 3 to 5

Closing balances of the 2010 State assets accounts as at 31 December were not faithfully entered in the opening balance of the 2011 financial year and this in violation of the principle of immutability of the nature of accounts which requires that the debits and credits of a management culminate in the trial balance, in the closing balance and that these balances are entered without alteration in the opening balance of the next management account. Concerning the opening balance, this has resulted in differences more or less respectively for 36 and 74 accounts. Other accounts

have the same balance between conflicting figures between the closing and input balances.

The table below illustrates some of the cases identified in the opinion and whose difference in absolute terms is above 5 billion CFA F.

Account	Item	2010 closing	2011 opening	Diffe	rences
number		balance	balance	In surplus	In minus
39000	Difference on input balance	SD 984 087 122 628	SC 907 228 392 939		76 858 729 689
39001	Debt stock	SD 1 408 435 783 591	0		1 408 435 783 591
39030	Repeat of opening balance HIPC/IADM	SD 99 718 419 000	SD 59 039 168 568		40 679 250 432
39031	Exceptional repeat BEC HORS PP	SD 323 358 538 417	SD 14 300 949 827		309 057 588 590
40000209	Personnel expenditure balance forwarded 2009	SC 3 383 992 850	SC 10 468 424 307	7 084 431 457	
40000210	Personnel expenditure balance forwarded 2010	SD 7 430 665 000	SD 1 794 771 275		5 635 893 725
400003	Personnel expenditure pension forwarded	SC 9 876 816 022	SC 23 964 615 519	14 087 799 497	
4000061	Payment vouchers Investment expenditure 2007 to 2010	SC 53 550 985 875	SC 67 951 706 269	14 400 720 394	
4000063	Commitment vouchers internal debt	SD 11 332 142 478	SC 26 473 153 058		Contradictory balances
4000064	Commitment vouchers external debt	SD 11 997 000 000	SC 2 126 000 000		Contradictory balances
4000069	Commitment vouchers DM counterpart funds	SC 135 005 854 231	SC 214 348 257 450	79 342 403 219	
4000070	Commitment vouchers HIPC functioning	SC 3 708 350 354	SC 9 253 354 842	5 545 004 488	
4000071	Commitment vouchers HIPC investment	SC 16 339 667 649	SC 43 620 462 223	27 280 794 574	
4000084	Special Commitment vouchers Transfer	SC 10 308 026 314	SC 15 369 643 917	5 061 620 603	
4000090	Commitment vouchers functioning	SC 16 118 797 348	SC 29 422 012 511	13 303 215 163	

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4000091	Commitment vouchers Investment	SC 24 910 853 364	SC 30 261 987 766	5 350 934 402	
4010068	Bank transfer Other expenditure on personnel	SC 26 171 733	SC 9 227 067 111	9 200 895 378	
421	Financial services of Councils	SD 404 929 704	SC 255 085 037		Contradictory balances
470401	Various Deposit and Consignments	SC 83 773 054 744	SC 90 686 396 403	6 913 341 659	
471373	Disburement CCA	SD 43 882 502 687	0		43 882 502 687
480014	Automobile stamp duty to be distributed	SD 966 000	SC 12 999 000		Soldes contradictoires
4802010	Revenues to be adjus- ted 2010	SD 150 297 872	SC 8 923	Contradictory balances	Contradictory balances
4810009	Expenditure to be adjusted 2009	SC 21 554 842 329	SD 12 866 928 393	Contradictory balances	Contradictory balances
481211	VAT credits to be budgeted	SD 8 000 000 000	0		8 000 000 000
48121210	Legal costs to be budgeted 2010	SC 18 700 000 000	0		18 700 000 000
48121809	Expenditure to be budgeted Road Fund 2009	SD 36 690 276 456	0		36 690 276 456
48122208	Expenditure to be bud- geted PSRR 2008	SD 7 862 184 964	0		7 862 184 964
48131	Legal costs	SD 21 108 001 410	SD 5 037 357 840		16 070 643 570
5103	Short term loan	SD 16 041 877 395	0		16 041 877 395
56000	Current account in BEAC	SD 11 472 962 525	SD 18 376 511 114	6 903 548 589	
570000	Cash	SD 19 286 321 258	SD 19 067 188 995		219 132 263

It is clear that the poor carry forward of 2010 closing balance to the opening balance of the 2012 financial year in certain State assets accounts of class 3-5 violates the principle of immutability of the nature of account and alters the accuracy of accounting information. The Ministry of Finance which agrees offers explanations from two types of transactions to signify its lack of full autonomy in the implementation of budgetary and accounting procedures applied, such as procedures imposed by development partners on expenditure from debt relief:

- 1°) within the context of securing of State assets accounting, instructions were given to accountants to proceed in making entries of opening balance on the basis of actual documents and not on the basis of balances. This effect was sometimes to reduce stocks and sometimes to increase them in order to give a true picture of the financial situation of the State. This exercise is necessary until reliable opening balances that allow effective changeover in State assets accounting is available.
- 2°) the multi-year implementation cycle of some so-called specific expenditure, such as expenditure on HIPC funds, C2D funds or IADM funds forced the take-over and the payment of the expenditure by the accounting officer, often several years after the commitment phase by the authorizing officer. These previous expenditure lodged in the opening balance column during their take-over created a distortion with the closing balance of the year N-1. And exceptional repeats have not featured in the opening balance at 31 December 2010 but entered in the opening balance of the 2011 financial year amounting to a total of 173 340 118 395 CFA F respectively in the following accounts:
  - 39090 "exceptional re-entry of HIPC and IADM opening balance"; 59 039 168 568 CFA F;
  - 39031 "exceptional re-entry of opening balance excluding HIPC"; 14 300 949 827 FCFA.

Beyond these explanations, the fact remains that it is always necessary for the accountant to carry forward, without alteration, the closing balances of State assets accounts from a financial year to the opening balance of the following year and that to give him the latitude to modify balances obtained from the entries previously validated on the ground of lack of supporting documents would result in a violation of the principles of genuineness and regularity of accounts. Similarly, funds provided by international donors are public funds which follow the same rules in accordance with article 2(3) of CEMAC Directive 01/11-UEA No. C -190 -22 -CM of 19 December 2011 relating to finance laws, even for specific expenditure.

#### b) Abnormal direction of balances of certain accounts

Assignment accounts summarized in the table below show at the end 2011 financial year balances of abnormal direction and this in violation of the provisions of Treasury Instruction No.11/001/MINFI/SG/DGTCFM/DT/DR of 1 January 2011 on the nomenclature of the Treasury accounts applicable from 1 January

N°	Number of assignment account	Nature of operations	Amount of ba- lance in account	Direction of esta- blished balance	Abnormal direction of the balance according to the nomenclature of accounts
1	400006012	Commitment order materials budget 2012	5 000 000 000	Debit balance	Credit balance or nil
2	400009007	Purchase order running budget 2007	3 119 224	Debit balance	Credit balance or nil
3	4020065009	Adjusted budgeted operations 2009	2 000 000 000	Debit balance	Credit balance or nil
4	4504020	Deposits MINEPAT	76 798750	Debit balance	Credit balance or nil
5	4505	Deposits of administra- tives structures	54 845 781	Debit balance	Credit balance or nil
6	470420	Guarantees by accountants	103 853 800	Debit balance	Credit balance or nil
7	470540	FEICOM	123 383 162	Debit balance	Credit balance or nil
8	470568	Export surcharge to be distributed	591 447 674	Debit balance	Credit balance or nil
9	471201	Computerized advances on salaries	5 705 107 640	Credit balance or nil	Debit balance
10	471201026	Computerized advances on salaries 2006	2 370 009 181	Credit balance or nil	Debit balance
11	47120107	Computerized advances on salaries 2007	28 301 416 561	Credit balance or nil	Debit balance
12	47120108	Computerized advances on salaries 2008	2 419 793 052	Credit balance or nil	Debit balance
13	47120206	Avances sur pensions (30%) 2006	587 653 115	Credit balance or nil	Debit balance
14	47120207	Advances on pensions (30%) 2007	6 863 327 689	Credit balance or nil	Debit balance
15	48002310	Local development tax 2010	30 499959	Debit balance	Credit balance or nil

2011 to specify the meaning of the balances of all assignment accounts used for the budget year.

It is clear that the meaning of the balances of some accounts summarized in the table above are not in conformity with the Treasury instructions stated above and impairs the genuineness of the accounting information..

The Ministry of Finance agrees and points out that in the work to clean up the balance of payments, its competent services received three technical assistance missions from the International Monetary Fund, AFRITAC and the French Directorate General of Public Finance for the clearance of these anomalies to allow migration on a sound footing into the new accounting system (State assets accounting also called accrual accounting) established by the financial regime of the State and that this issue will also be placed on the agenda within the permanent MINFI/Audit Bench framework for dialogue.

Note is taken to invite the Ministry of Finance to strictly comply with the regulations in force.

## c) Operations assigned on provisional accounts and not adjusted before the close of the 2011 financial year

Transactions assigned on the provisional accounts summarized in the table below, were not adjusted before the end of the 2011 financial year and in violation of General Instruction on the Accounts of the State and Treasury Instruction No. 003/006I/MINFI/DT/DER of 31 December 2003, which state that the transactions charged in the provisional accounts must receive final assignments before the end of the financial year.

In effect, the Treasury Instruction No. 003/006I/MINFI/DT/DER 31 December 2003 provides that "the provisional assignment accounts must be identified and result in adjustment during the complementary day. The complementary day covers the period reserved for the adjustment of normal operations that do not affect the availability of cash accounts (Cash, Bank, CCP) notably:

- Taking charge of revenue and expenditure of the closed financial year;
- Reception of Statements of Operations to be Transferred (EDOT);
- Clearance of provisional accounts, third party accounts, correspondent accounts, council accounts, rejected accounts ...etc.

During this period, the above transactions are ante-dated to 31 December and imperatively end on 31 January of the current financial year in the ledger of miscellaneous transactions (LJOD)".

Adjustment consists in clearing provisional accounts by giving them permanent assignments upon receipt of the budgetary coverage and the establishment of supporting documents.

For the 2011 financial year, the budget balance, as described in the Settlement Bill transmitted to the Audit Bench, is in excess by 77,503,303,331 CFA F. This balance is calculated as the difference

1	4802011	Revenue to be adjusted 2011	SC 1 241 247 204
2	480411	Revenue to be budgeted-Pension contribution 2011	SC 17 740 805
2	4810011	Expenditure to be budgeted 2011	SD 14 861 890 376
3	481111	Rejection of expenditure 2011	SD 5 804 738
4	48121311	Bonus for sales of stamps 2011	SD 304 616 055
5	48121411	Loss of exchange-PGT 2011	SD 1 860 471 596
6	48121511	Reimbursement of telephone allowance. Diplomats PGT 2011	SD 36 755 000
7	48121711	Expenditure to be budgeted escrow account 2011	SD 63 408 216
8	48131011	Non urgent legal fees 2011	SD 10 971 381 434
9	4813111	Legal costs to be distributed 2011	SD 439 580 084
10	48131111	Urgent legal fees 2011	SD 20 981 879 075
11	4813211	Bonus on sales of stamps 2011	SD 691 765 108
	TOTALS	REVENUE TO BE ADJUSTED	SC 1 258 988 009
	TOTALS	EXPENDITURE TO BE ADJUSTED	SD 50 208 551 682

between cash (2 531 754 050 964 FCFA) and authorizations (2 454 250 747 633 CFA F).

Taking into account the revenues and expenditure assigned on the provisional accounts summarized in the table above and that should normally receive a final assignment before the end of the financial year, the amounts of receipts should have been 2 533 013 038 973 CFA F (that is 2 531 754 050 964 + 1 241 247 204 +17 740 805) and the authorizations of 2 504 459 299 315 (that is 2 454 250 747 633 + 50 208 551 682) and the budget balance would rather have a surplus of 28 553,739,658 CFA F.

It follows that the transactions assigned on provisional accounts and were not adjusted before the end of the financial year distort the result of budget execution and impair the genuineness of the Settlement Bill presented .

The Ministry of Finance agrees and stresses:

- 1°) that thanks to the constant observations of the Audit Bench since the 2009 Settlement Bill, the volume of expenditure to be adjusted that is not settled at the end of the financial year has been decreasing over the years; ;
- 2°) that, in fact, most of the provisional assignment accounts consist of expenditure incumbent on accountants, such as legal fees, which peaked at 31 billion CFA francs in 2011 and for which the Treasury is required for the proper administration of justice and by extension, improving the business climate, to make payment without prior authorization, pending the ever-suggested reform of these expenditure which are not evaluative according to the Financial Regime of the State;
- 3°) that the resurgence of revenue to be adjusted constitutes an omission whose clearance of which would have ensured an increase in the performance of class 7 revenue and for which efforts will be made.

Noting that the use of provisional assignments is a fact in the execution of the State budget, which can be disrupted by restrictive factors and remedial measures proposed, there is the assumption that the default in budgeting as established violates the principle of budget authority and alters the sincerity of the budget balance.

The need to take account of income and expenditure assigned on provisional accounts that would normally receive a final imputation before the end of the financial year would bring the budget balance in the 2011 Settlement Bill from 77,503,303,331 CFA F to 28,553,739,658 CFA F.

#### 2.2.2. Execution of revenues

The Settlement Bill for the 2011 financial year submitted to the Audit Bench provides in its section 1: "are recorded in the State budget for the 2011 financial year, revenue of amount 2,531 351,754,964 CFA F ... " as against 2 340 351 834 587 CFA F in 2010, that is an increase of 190 999 920 377 CFA F in absolute terms and 8.16% in relative value.

## 2.2.2.1. Revenue allocation in the Settlement Bill of the 2011 financial year

The rate of implementation of revenue forecasts is generally 98.47 %. The major revenue items experienced an implementation rate of 99.59 % for tax revenue and 127.79 % for other revenue. The lowest rate of 58.62 % implementation concerns loans and external grants.

#### 2.2.2. Analysis of execution

#### a) Evolution of execution

The revenue execution described in the 2011 Settlement Bill is net progression since 2009. Indeed, these revenues have evolved respectively by 437 808 162 450 CFA F, that is 7.47% compared to 2009 and by 191 402 216 377 FCFA, that is 5.62% compared to 2010.

#### b) Differences between forecasts and receipts by type of income

Annex I of the Settlement Bill based on section 22(1)1 of Law No 2007/006 of 26 December 2007 on the Financial Regime of the State which provides that the "Settlement Bill shall be accompanied by the development of budgetary transactions presented by type, identifying forecasts, collections and outstanding collections, payments and outstanding payments..." shows a table of differences between the forecasts and receipts by type of revenues as summarized below:

Item	Budget voted	Ajdustement	Amened budget	Execution	Difference
I.Non-tax revenues	2 114 000 000 000	0	2 114 000 000 000	2 263 850 765 789	149 850 765 789
A. Tax revenues	1 552 030 000 000	0	1 552 030 000 000	1 545 682 648 440	-6 347 351 560
B. Other revenues	561 970 000 000	0	561 970 000 000	718 168 117 349	156 198 117 349
II. Loans and donations	457 000 000 000	0	457 000 000 000	267 903 285 175	-189 096 714 825
Grand total	2 571 000 000 000	0	2 571 000 000 000	2 531 754 050 964	-39 245 949 036

This table does not comply with the provisions of section 22 mentioned above in that it does not include amounts to be recovered. The difference of -39,245,949 036 CFA F being only the difference between forecasts and actual budgetary revenues, cannot be the bills collectible.

It follows that just as in previous years, the Settlement Bill of the 2011 financial year provides no information on the amounts to be recovered.

The Ministry of Finance which considers this observation relevant stands by the arguments developed above and takes note.

#### 2.2.3. Execution of expenditure

#### 2.2.3.1. Evolution of expenditure

The expenses recorded in the Settlement Bill for the 2011 financial year amounted to 2 454 250 747 633 CFA F, that is a rate of execution of 95.5 % in relation to the forecast of 2,571 billion CFA F.

#### (i). Evolution of expenditure from 2009 to 2011

The rate of execution budget expenditure is in net progression from 88.7% in 2009 to 92.5% in 2010 and 95.5% in 2011.

## (ii). Evolution between allocations, absorptions, payments and bills payable

Annex II on the evolution between allocations, absorptions, payments and bills payable provided for in section 22 (1) of Law No 2007/006 of 26 December 2007 on the Financial Regime of the State presented on page 4 of the Annexes to the 2011 Settlement Bill, miscellaneous expenditure and distribution in allocations, commitments, authorizations, payments and bills collectible.

Table 7. Evolution between allocations, absorptions, payments and bills payable in CFA F

Item	Allocation (1)	Commitment (2)	Authorization (3)	Payment (4)	Bills payable (5)
Functioning budget	1 543 503 000 000	1 529 424 556 060	1 528 259 611 652	1 364 548 165 249	57 459 519 346
Public Investment Budget	656 697 000 000	573 114 393 528	566 227 859 270	399 788 860 848	86 776 446 249
Debt Service	270 800 000 000	259 763 276 711	259 763 276 711	217 643 141 199	1 139 472 530
Bills payable	100 000 000 000	100 000 000 000	100 000 000 000	100 000 000 000	0
Total	2 571 000 000 000	2 462 302 226 299	2 454 250 747 633	2 081 980 167 296	145 375 438 125

Source: Settlement Bill, Annex II;

The Ministry of Finance itself admits that differences exist between the authorizations (3) on the one hand and the aggregation of payments (4) and bills collectible (5) on the other hand, that is (3) - [(4) + (5)]. These differences in CFA are:

Functioning budget 106 251 927 057
 Investment Budget 79 662 552 173
 Debt Service 40 980 662 982

The Ministry explains these differences by "rejections on authorized expenditure but which are not settled, because they arrived in accounting stations after 31 December or February 28, the complementary period.

In general, this expenditure is returned to Ministries concerned to be audited and then transferred to the Autonomous Sinking Fund as payment outlet of the domestic debt".

To the Audit Bench, these differences are inconsistent and explanation given inadequate insofar as, on the one hand, clearance that is not within the accounting phase precedes authorization and on the other hand the complementary period which imperatively ends on 28 February has as purpose the adjustment of such operations and finally these differences do not appear in the 2010 Settlement Bill.

The Ministry of Finance feeling that this observation was mainly due to a misunderstanding arising from the use of the term clearance which is one of the four stages of the administrative phase of the execution of public expenditure, explains:

The information does not seem inconsistent, this at least two (02) reasons;

Firstly: payments and outstanding balances are systematically lower than the authorizations for all categories of expenditure (functioning, investment, debt service);

Secondly: the gap found between the authorizations on the one hand, payments and outstanding balances on the other hand is recurrent in our public finance execution system. In fact, and as mentioned below in Annex 2, this gap is explained by regularly committed, cleared and authorized expenditure, but rejected and returned to the spending ministries by accountants because they reached the assigned accounting stations after the 28 February deadline for the complementary period. In general, this expenditure

are identified and transferred to the Autonomous Sinking Fund acting as the payment outlet.

The indication "..authorized expenditure not settled by accountants ..." is indeed present at the bottom of Annex 2. In reality, it is not the clearance phase which precedes authorization noted by the Bench ... but a validation of clearances that have been made in advance by the authorizing officers. This data constraint was introduced into the system to allow an ultimate control of the regularity of the bundle of expenditure documents to be paid by the accountant. It is only after this validation of the clearance that the endorsements of credits are prepared. These endorsements are the crucial parts of the set of expenditure documents that justify and support the payment by the paying accountant.

The explanations and information on the rejection of committed, cleared and authorized expenditure but transmitted to the public treasury after the complementary period are certainly relevant and note should be taken. But the fact still remains that the quality of the information furnished by the Settlement Bill, the situation of the said rejections by budget head should be produced in support to the corresponding annex.

#### 2.2.3.2. Analysis of expenditure

#### 2.2.3.2.1. Expenditure executed at 100 %

The current functioning expenses consist of personnel expenditure, expenditure on goods and services and intervention expenditure (transfers and pensions). Section 3 of the 2011 Settlement Bill of 2011 describes "expenditure of the same amount by head divided into investment and functioning" It appears that some heads show a budget execution rate of 100 %. These include the National Assembly (Head 3), the Economic and Social Council (Head 5) ELECAM (Head 51) and the National Commission for Human Rights (head 52).

The Ministry of Finance considers that the expenditure is fully executed when the funds are released to the said structures, which

has nothing to do with the actual rate of execution of the expenditure involved.

To the Audit Bench, the execution rate used by the Ministry of Finance for these structures does not reflect reality and therefore does not give a true picture of the execution of the budget.

The Ministry of Finance argues that expenditure structures falling within Head 03 (National Assembly) Head 05 (Economic and Social Council) Head 51 (ELECAM) Head 52 (National Commission on Human Rights) Head 52 are executed in accordance with the disbursement process which is the only indicator of budgetary execution in those structures. The physico-financial evaluation is a concern falling under another cycle in the execution of public finances, that of a posteriori control of expenditure which may be internal or external to the administration. If this argument seems plausible, it must be remembered that the Settlement Law is a single document that covers all information relating to the execution of the budget of the State to which they relate and therefore the Settlement Bill can only be complete if it contains budget information for all Heads.

The Minister of Finance who ensures "the preparation of the finance bills" section 33 of the Financial Regime of the State) and "sees to the proper execution of the finance law" (section 45) should have all the information on the effective consumption of budgetary credits of a financial year in order to draft the Settlement Bill.

An examination of the same section 3 of Settlement Bill 2011 reveals overruns in certain budget Heads :

Item Forecasts		Autorizations	Rate of execution %
MINJUSTICE (Head 8)	13 570 000 000	13 774 905 483	101,51
MINJEUN (Head 20)	4 236 000 000	5 693 211 259	134,40
MINFOF (Head 33)	11 325 000 000	11 528 207 379	101,79
Pensions (Head 55)	121 000 000 000	138 678 939 930	114,61
Common Heads	494 300 000 000	504 461 286 872	102,06

It should be noted that no decision is included in the file of the 2011 Settlement Bill (decree or order) justifying the amendment of credits (open) that have a limited nature except for credits meant for pension payments.

The Ministry of Finance argues in this regard that:

The overruns relate to four (04) Heads: MINJUSTICE (Head 8) MINJEUN (Head 20) MINFOF (Head 33) and pensions (Head 55). A detailed analysis of each head (section 2) reveals that the overruns are recorded only in sub-heads 62 (wages) and Head 55 (pensions) where credits are evaluative in nature.

Seen in this light, overruns could have been recorded without this posing a particular problem.

It is in this category of expenditure which is a classic exception to the principle of limitation of public finance credits that the few overruns recorded in the 2011 Settlement Bill fall:

- MINJUSTICE: sub-head 62 (salaries): 104.63 %;
- MINJEUN: sub-head 62 (salaries): 202.22 %;
- MINFOF: sub-head 22 (salaries): 111.30 %;
- Head 55: Pensions: 114.61 %.

With respect to the classic exception to the limitation public finances raised above, Ordinance No. 62/OF/4 of 7 February 1962 laying down the method of presentation, the conditions of execution of the budget of the Federal Republic of Cameroon, its revenues, expenditure and all related transactions that will be used as from 1 January 2013 recalls especially:

Article 26: The various appropriations for the ordinary expenses are of an evaluative or restrictive nature. "

Article 27: Evaluative appropriations are used to pay State debts arising from special legal provisions or permanent agreements. They apply to the public debt, legal costs, civil damages, rebates and refunds. Expenditure to which evaluative credits apply is imputed, if necessary, beyond the allocation recorded in the heads that concern them. These overruns are subsequently approved by a supplementary budget. "

Article 28: All credits which do not fall within the category referred

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to in the preceding article, are restrictive. Expenditure on restrictive credit can only be committed and authorized within the limits of appropriations. These can only be changed by amending the finance law or as provided in Article 12. "

"Article 12: Transfers of credit from one item to sub-head and from sub-head to sub-head are authorized by order of the Minister of Finance. However, no transfer of appropriations can be made by decree from an evaluative ppropriation in favor of a restrictive appropriation or from appropriation for personnel to appropriation for materials, unless it is to meet expenditure that could not be foreseen at the time of the budget preparation. Transfers of credits from Head to Head are authorized by decree upon proposal of the Minister of Finance within the limit of one tenth of the total amount of the Head bearing the transfer".

Law No. 2007/006 of 26 December 2007 relating to the Financial Regime of the State is not far from the spirit of the instruments mentioned above in its provisions in force since 26 December 2007: Section 16(1) Payment appropriations shall be restrictive, subject to the provisions of sections 17 and 28 of this law.

- (3) Expenditure shall be committed or authorized only within limits of payment appropriations made.
- Section 17(1) Appropriations relating to State expenditure and debt repayments, civil damages, enforcement of securities granted by the State in case of natural disasters and calamities shall be evaluative.
- (2) The expenditure to which these evaluative appropriations shall be charged, where necessary, shall be in excess of the amount allocated. In such case, government shall inform Parliament on the reason for the overrun and the execution outlook for the remainder of the year.

From the instruments referred to above, it follows in principle that payment appropriations are restrictive. However, there is a category of credits whose scope has expanded with the Financial Regime of the State, which may be exceeded (evaluative credits) or increased easily and transfers thereto authorized by regulatory decisions and reasons for the overrun as well as the execution prospect for the remainder of the year reported to Parliament by the Government.

But the regulatory acts authorizing transfers of appropriations relating thereto and at the very least, evidence of the information of parliament are not attached to the 2011 Settlement Bill.

The observation of the Audit Bench remains relevant. The principle of limiting credits remains very valid.

#### 2.2.3.2.2. Investment expenditure

## a) Allocation for the Support Programme to Decentralization and Local Development (PADDL)

The allocation to the Support Programme to Decentralization and Local Development (PADDL) has as budget item 3-56-01-207-078 and lodged in Head 7 "Territorial Administration and Decentralization" of the State Budget. The 2011 finance law had provided for the amount of 2 billion CFA francs in its initial allocation. However, only 289 656 000 CFA F had been dispatched to the Regions. The execution of this general allocation for decentralization is summarized in table 9.

Table 9. Execution of allocation to the Support Programme to Decentralization and Local Development (PADDL) In thousands of CFA F

Item	Initial allocation	Current allocation	Commitment	Clearance	Clearance %	Execution %
Central Administration	2 000 000	1 710 345	0	0	0	0
Adamawa	0	25 862	25 862	25 862	100,00	100,00
Centre	0	51 724	51 724	25 515	49,33	49,33
East	0	20 690	20 690	15 517	75,00	75,00
Far North	0	31 034	31 034	31 034	100,00	100,00
Littoral	0	20 690	20 690	0	0,00	0,00
North	0	20 690	20 690	15 517	75,00	75,00
North-West	0	251 500	168 950	36 207	100,00	100,00
West	0	41 379	41 379	41 379	100,00	100,00
South	0	20 690	20 690	0	0,00	0,00
South-West	0	20 690	20 690	0	0,00	0,00
Total	0	2 000 001	289656	191031	65,95	9,55

Source: Annex VI, Statement of execution of the Public Investment Budget, Head 7;

This table indicates that out of an amount of 289 656 000 CFA F initially dispatched to the Regions, 191 031 000 CFA F were executed, that is a rate of 65.95%.

The remainder of the untransferred allocation of 1 710 345 000 CFA F was not used during the 2011 financial year.

Note is taken that out of an allocation for the Support Programme to Decentralization and Local Development (PADDL) of 2 billion CFA F, only 191 031 000 CFA F were used, that is an execution rate of 9.55%.

To the Minister of Finance, the execution of this allocation was devoted to the purchase of office furniture for the "Department of Regional and Local Authorities" of an amount of 289 655 128 CFA F in terms of commitment on the item 07-3-00-04-2261.

Note is taken of this information but the observation on the low execution rate of this allocation is maintained.

## d- Programme for Territorial Management for Sustainable Development

The Programme for Territorial Management for Sustainable Development, lodged in the Ministry of Territorial Administration and Decentralization is the subject of budget item 2-07-01-223-256. The 2011 finance law had provided 3 billion CFA F for the execution of the said programme. Table 10 gives the execution as at 31 December 2011.

Tableau 10. Execution of the Programme for Territorial Management for Sustainable Development

Item	Initial allocation	Current allocation	Commitment	Clearance	Clearance %	Execution %
Central Administration	878 978	878 978	838 899	838 899	95,44	95,4
Adamawa	150 000	150 000	143 173	63 644	42,43	42,43
Centre	243 000	243 000	240 717	24 767	10,19	10,19
East	201 500	201 500	197 419	147 558	73,23	73,23
Far North	164 000	164 000	162 110	99 946	60,94	60,94
Littoral	150 000	150 000	149 999	3 375	2,25	2,25
North	219 200	219 200	217 489	82 353	37,57	37,57
North-West	251 500	251 500	168 950	5 552	2,21	2,21
West	156 500	156 500	155 448	2 979	1,90	1,90
South	337 700	337 700	333 535	97 816	28,97	28,97
South-West	247 622	247 622	246 625	86 664	35,00	35,00
Total	3 000 000	3 000 000	2 854 364	1 453 553	50,92	48,45

 $\textbf{Source}: \textbf{Annex VI, Statement of execution of the Public Investment Budget, Head \ 7\ ;}$ 

Table 10 above indicates that despite the fact that the Ministry of Finance said that for 2011 financial year, the allocation of 3,000,000,000 was executed at 95.15% in terms of commitment and 48.45% in terms of clearance, the rate of execution of the Programme for Territorial Management for Sustainable Development, especially with regard to the West Region (1.90%), North West (2.21%), Littoral (2.25%) and Centre (10.19%).

#### 2.2.3.2.3. Debt service

Debt service includes external public debt (Head 56) and internal public debt (Head 57). The 2011 Settlement Bill indicates that the rate of execution of this debt was 95.92% as can be seen in the table below:

Item	Allocations	Authorizations	Rate of excecution %
Dette publique extérieure	80 000 000 000	90 987 000 000	113,73
Dette publique intérieure.	190 800 000 000	168 776 276 711	88,46
Total	270 800 000 000	259 763 276 711	95,92

This table indicates that payments of external debt were executed at 113.73% for the principal and 228.57% for the financial costs. The details of this external debt are stated in section 2 of the 2011 Settlement Bill:

Item	Allocations	Authorizations	Execution rate %
Public external debt	80 000 000 000	90 987 000 000	113,73
15. Reimbursement of the principal of the LMT external debt	65 153 916 720	57 596 000 000	88,40
17.Reimbursement of principal on behalf of third parties	422 000 000	422 000 000	100
64. Financial costs	14 424 083 280	32 969 000 000	228,57

Appropriations for expenses and reimbursement of State debt being of an evaluative nature, no transfer is needed to cover expenses beyond the listed allocation. However, the reasons for the overrun and execution prospect for the remainder of the year must be reported to Parliament in accordance with section 17 of the Law on the Financial Regime of the State.

Explanations of the Ministry of Finance based on the comparative analysis between the amount of the 2010 commitments of 315 020 172 180 CFA F against 73,164,712,893 CFA of payment with zero CFA francs left to pay and that of 190.8 billion FCFA against 126 656 141 199 CFA F with 1,139,472,530 FCFA remains payable in 2011 do not alter the conclusion that there is nothing in the file of the 2011 Settlement Bill to provide information on communication to Parliament of the reasons for the overrun and execution prospects

for the remainder of the year as regards the principal and interest costs of the external debt.

#### 2.2.4. Earmarked Accounts

According to the provisions of section 26(1) of the law 26 December 2007 relating to the Financial Regime of the State, "Earmarked accounts shall show, under conditions provided for in the finance law, budgetary transactions financed by special revenues which are by nature directly related to the expenses concerned."

And in application of the provisions of section 25(1) of the aforementioned Law No. 2007/006 of 26 December 2007, eleven (11) Earmarked Accounts were opened by Law No. 2010/015 of 21 December 2010 on the finance law for the 2011 financial year.

#### 2.2.4.1. Information deficit

In terms of the formal presentation, the 2011 Settlement Bill includes explanatory notes by Earmarked Account, as recommended by Opinion No. 001/2011/CSC/CDC 14 November 2011 and in accordance with the provisions of section 22(4) of the Law of 26 December 2007 referred to above.

However, except for certain accounts such as Earmarked Account for the Promotion of Cultural Policy and the Earmarked Account for the Promotion of Tourism, these annexes do not always provide the details of revenue and expenditure to ensure their compliance with the statutory purpose of the creation of the account.

The Ministry of Finance takes note of this observation which will be considered in the range of training measures that will be undertaken with a view to improving future Settlement Bills.

It is necessary to take note and remember the need to adopt a model format for presentation of these accounts.

## 2.2.5. Examination of financial statements of the 2011 financial year

#### 2.2.5.1 The place of financial statements in the 2011 Settlement Bill

Law No. 2007/06 of 26 December 2007 relating to the Financial Regime of the State provides that the general State accounting is described in the general account of the State.

Directive No. 01/11-UEAC-190/CM-2 of 19 December 2011 on finance laws, to which Cameroon adheres, in accordance with section 3(2) of the aforementioned law, dealing with the Settlement Law in its chapter of Part III on finance laws, gives the following composition of the general account of the State:

- the trial balance of the year;
- the financial statements: balance sheet, income statement, statement of cash flows and accompanying statement.

The Minister of Finance agrees with these provisions. He also believes that it is useful to produce "on an experimental basis, like what was done in the 2010 bill in the 2011 bill." That's the whole point of Annex V of this Settlement Bill.

#### 2.2.5.2 Examination of the form of financial statements

#### 1/ Trial balance

The trial balance summarizes all accounts indicating the opening balances, movements of the period and the closing balance. The balance of accounts for the 2011 financial produced in support of the Settlement Bill was not prepared in full compliance with this procedure. The opening balances of certain accounts did not give enough information, with the notable example of the accounts of Class 2 capital assets accounts.

Data of previous capital assets prior to 2011 (2003 to 2010) being available, they should, in compliance with the rules for preparing the trial balance, have been entered in debit in the opening balance.

The material presentation of the balance sheet should have been observed by entering the balances from previous years (2003-2010) (Year N-1) brought-forward into the trial balance and the document being "provisional", consider for example to remember accounts whose balances could not be known or determined.

The Ministry of Finance noted this observation and promised to take steps in 2013 to ensure that the assets that are in the database in the Treasury are included in the opening balance of 2013 financial year. It is necessary to take note.

#### 2/ Balance sheet and income statement

The balance sheet at December 31, 2011 which is attached to the general account of the State for the 2011 financial year has a significant inadequacy. It does not provide information on depreciation of fixed assets and this lacuna also reflects on the income statement, which therefore cannot account for amortization and provision for depreciation of certain elements of State assets.

As emphasized by the Finance Minister in his transmission letter, this data will be mastered with the introduction of State assets accounting. The fact remains that the failure to take into account the depreciation of assets does not give a correct situation of the balance sheet of assets, undervalues operating costs and leads to an unrealistic operating result, all of which affect the genuineness of the financial statements.

It should be noted once again that the absence of State assets accounting and the failure to take into account the depreciation of capital assets do not help in determining the net value of the said assets or the corresponding allocations deducted from the operating result.

The adoption of this accounting framework the draft of which is available, the Ministry of Finance says, is necessary for the production of general account of the State from the 2012 financial year as provided for in sections 63 and 78 of the Financial Regime of the State..

## 2.2.5.3 Substantive examination of financial statements in the 2011 Settlement Bill

#### a) Balance sheet

#### Fixed assets of the State

The Audit Bench notes the failure to take into account depreciation, which does not ensure understanding of the net value of State assets consisting of fixed assets.

#### Financial situation

In general accounting, the financial situation is confused with equity, that is to say, the share capital plus reserves and including retained earnings. It therefore determines the difference between current assets and current liabilities (Assets - Liabilities payable).

Given the specificities of the action of the State, its balance sheet has no share capital. The financial situation in this case and particularly for the 2011 financial year was determined from retained earnings eventually increased by the net income for the period in expectation of allocation and which is entered as a liability.

The General Instruction on State Accounting provides a model balance sheet, inspired by the General Accounts Chart of the State, with liabilities in the column of long-term resources, a block consisting of equity especially those recognized in Account 12 State assets results (retained earnings) .

According to the above instruction, the State assets result is the management result calculated and recorded in account 875 of the trial balance. This result corresponds to the difference between expenditure (Class 6) and revenues (Class 7).

The State assets result for the 2010 financial year of 330 259 104 215 CFA F features in the balance sheet in 2011 under the designation of "Retained earnings". That of the 2011 financial year is 634 222 085 142 FCFA.

In total, the financial situation at 31 December 2011, contrary to the amount of 634 222 085 142 CFA F in the balance sheet would be 790 582 965 783 CFA F and should be read as a combination of :

Brought forward from previous financial years	-173 898 223 574 CFA F
New brought forward (result of 2010)	330 259 104 215 CFA F
Result from the period (while waiting for posting or carried forward)	634 222 085 142 CFA F

On analysis, it follows that in general accounting, the balance of the income statement usually contributes to its "non distributed" fraction in consolidating the financial situation. This is therefore not the only element of the financial situation. In this case, " brought forwards from previous years", (2010 results) should have been added to this net position to give an accurate picture of the account.

The Ministry of Finance envisages the solution from 2014 with the culmination of the setting up of State assets accounting.

It is necessary to take note and remember once again the legal deadline of 2012.

#### b) Uncertain evaluation of stocks and shares

The balance of accounts at 31 December 2011 shows for the 2601 Shareholdings a debit balance of 14,649,102,134 CFA francs corresponding to the acquisition of holdings in State-owned enterprises in 2011. Previous balances in this account that are not entered in the opening balance, are however, given in the explanatory statements of the balance sheet. These statements do not whatsoever indicate State participation in private enterprises, public or private financial institutions, public or private companies.

The change in this account therefore results only from new investments in public companies. This amount which is the same for accounts balance, however, is different from the amount shown in expenditure table of expenses recorded in 2011 (section 2 of the Settlement Bill) which indicates total authorizations of 15 228 102 134 CFA F. It therefore follows that investments totaled 14,649,102,134 CFA F and the acquisition of medium and long terms shares at 579 million FCFA.

Because of the absence of documents relating to transactions of

account 261, this causes the Audit Bench to have reservations about the reliability of the balance of this account.

Concurring with this observation, the Ministry of Finance provided the Audit Bench with the detailed situation of account 261 at 15,228,102,134 CFA drawn from the IBIS application of the Directorate General of the Budget and announced the dispatch in 2013, of a mission to carry out a census of the State's stock in the State-owned and semi-public companies, a mission whose results are expected to update this item in the balance sheet of the State. The analysis of the detailed statement of account 26 "Titled MLT/Investments/Assignments established that the total amount in the table of 15,228,102,134 CFA F differs from that of 14,649,102,134 CFA F in account 26 in the trial balance, that this a difference of 579 million CFA F was not registered in the trial balance . Moreover, it is assumed that the amount of 1,788,438,140 FCFA (BE E545601) committed and authorized respectively on 22 and 29 February 2012, thus in the year 2012 should not be included in this table, which leaves some uncertainty about the reliability of the balance in account 26, more understandable as it is. It is appropriate to note the response of the Ministry of Finance.

#### **CONCLUSION**

The examination of the Settlement Bill for the 2011 financial year enabled the financial jurisdiction to note improvements and shortcomings in the implementation of this exercise introduced by section 39(c) of the Law No. 2006 / 016 of 29 December 2006 and executed on the basis of Law No. 2007/006 of 26 December 2007 (Articles 20-32, 60-67), that is the Settlement Bill of the 2011 financial year in form and substance.

#### On the form

Despite the obstacles that still litter the path to effective implementation of the Financial Regime of the State, the Settlement

Bill for the 2011 financial year contains, apart from the bills collectible, most statements and documents that must accompany it in accordance with the requirements of sections 20 and 22 of Law No. 2007/006 of 26 December 2007 referred to above.

The non-compliance with the transmission deadline of the Settlement Bill for the 2011 financial year to the Audit Bench for opinion is the only point on which the expected efforts seem to produce mixed results.

#### On the substance

The execution of the finance law for the 2011 financial year, is essentially satisfactory, marked by high levels of execution in both revenue (98.47 %) and expenditure (95.46 %), while that no amendments have been made in the budget during this financial year. Many identified irregularities led to the establishment of a questionable budgetary and accounting situation. Thus, the budget balance in surplus of 77,503,303,331 CFA F registered in the Settlement Bill should be reduced to 28,553,739,658 CFA francs for non adjustment before the end of the 2011 financial year, of operations assigned to provisional accounts. In addition, abnormal movement of balances of certain accounts and poor deferral of the opening balance of the 2011 financial year, of the closing balance of the 2010 of certain State assets accounts of classes 3-5 undermine the genuineness of the Settlement Bill.

Measures leading to address the information gap in the details of revenue and expenditure of certain Earmarked Accounts and to establish accrual accounting due from the 2012 financial year, announced by the Ministry of Finance, if they were actually taken, would likely contribute to the reliability of financial information of the State.

Notwithstanding the shortcomings of form and substance identified above, the Audit Bench of the Supreme Court is of the opinion that the Settlement Bill for the 2011 financial year could be adopted.

Thus issued the same day, month and year above. "

# CHAPITRE 3. OPINION No. 002/2012/CSC/CDC OF 28 DECEMBER 2012 ON THE DRAFT INSTRUCTION ON THE COMPUTER PROCESSING OF TRANSFER OPERATIONS BETWEEN ACCOUNTANTS

The Audit Bench of the Supreme Court of Cameroon sitting in Joint Divisions in the ordinary session hall at its head office building on Winston Churchill Avenue in Yaounde, sitting in an advisory capacity rendered the following opinion

Mindful of the Constitution;

Mindful of Law No. 2003/005 of 21 April 2003 to lay down the jurisdiction, organization and functioning of the Audit Bench;

Mindful of Law No. 2006/16 of 29 December 2006 relating to the organization and functioning of the Supreme Court;

Mindful of Law No. 2007/006 of 26 December 2007 relating to the Financial Regime of the State;

Mindful of Order No. 26/CDC/CSC of 19 October 2010 by the President of the Audit Bench to lay down the matters to be examined by the various sessions of the Audit Bench of the Supreme Court;

Considering the request for opinion on the draft instruction on the computer processing of transfer operations between accountants, subject of correspondence No. 0576 of 30 November 2012 from the Director General of the Treasury, Financial and Monetary Cooperation;

Considering the file prepared following this request;

Mindful of Order No.2012/01/CDC/CSC 082 of 11 December 2012 by the President of the Audit Bench to designate Messrs MANGA MOUKOURI Isaac and NDJOM NACK Elie, Masters of the Supreme Court, Judge Rapporteurs on the file for request for opinion;

Considering the report of 18 December 2012 relating to the request for opinion on the "draft instruction on computer processing of transfer operations between accountants";

Considering the submissions of the Legal Department dated 28 December 2012;

Mindful of Order No. 2012/16/CAB/PCDC/CSC of 27 December 2012 to convene members of the Audit Bench to sit in Chambers to examine the file on the aforementioned request for opinion;

The examination of the request for opinion file thus constituted calls for the following observations regarding the form and substance.

#### On the form

According to the provisions of section 10 of the aforementioned Law No. 2003/005 of 21 April 2003, "The Audit Bench shall give its opinion on any matter referred to it in connection with the control and verification of accounts."

The request for opinion by the General Director of the Treasury, Financial and Monetary Cooperation on the draft instruction on the computer processing of transfer operations between accountants is admissible in its form.

#### On the substance

The above instruction is organized around four (04) principles which call for the following comments:

#### I- On the exclusive treatment by electronic exchanges

The General Director of the Treasury, Financial and Monetary Cooperation raises the following reason in support of his proposed instruction on electronic exchanges for transfer operations between principal accountants:

"Indeed, since the entry into force of the single issue voucher and single payment voucher of taxes shared between the State and the Regional and Local Authorities, transfer operations between accountants have exploded, making manual processing and the routing of documents to the destined accountant difficult;

To cope and to honour the commitments made to the National Committee on Local Finance, we have developed a secure software for the electronic processing of those operations, while empowering the initiator accountant or sender. "

Several facts argue for the exclusive treatment of electronic exchanges: firstly, the service head of data processing of accounts becomes the main actor and he has a unit for the clearance of accounts before the computer key-in. In addition, after the production of the monthly balance, the file on the Statement of Operations to be Transferred (EDOT), now available in the PATRIOT application electronically generates eligible transfers operations. This option significantly reduces hours spent on the manual preparation of Statements of Operations to be Transferred (EDOT) and transmission delays other".

The Bench approves the option proposed by the Directorate General of the Treasury, Financial and Monetary Cooperation.

### II – On the perfect correspondence between sent and received data

The General Director of the Treasury, Financial and Monetary Cooperation supports his choice by the perfect correspondence between the data sent and the data received and explains:

"Production deadlines of the trial balance being the same for all centralizing accountants, that is, ten (10) days after the monthly statements, exploitation of operations generated in the EDOT file may allow the initiating accountant to export the amounts due to the recipient accountant. And therefore ten (10) days after the closing of the accounts, the assignee revenue or expenditure accountant may account for the data sent to him in real-time. This procedure also has the advantage of putting an end to unbalanced transfers into the consolidated in the balance of Treasury Operations"

In fact, the principal objective sought by the exclusive treatment of electronic exchanges is the perfect concordance between the data sent and the data received. In the case where the commissioning of the data transfer application CEREBRO can cover the whole Treasury network, there will be no differences in trial balances due to unconsolidated transfers".

The Audit Bench endorses this approach which has the advantage of bringing the forwarding and receiving accountants closer.

#### III-On the non-repudiation of sent or validated operations

The General Director of the Treasury, Financial and Monetary Cooperation supports the principle of non-repudiation of sent or validated operations, which means that the accountant making transfers cannot change the sums taken over by recipient accountant. This principle is certainly justified, but it should be noted that during clearance of accounts and even during keying of operations, we can make mistakes because it is human manipulation from a single sheet.

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The system should therefore provide for corrections from the claims made by the recipients. The instruction should therefore specify the various exceptions to non-repudiation; the system can call for corrections to be initiated by the Directorate General of the Treasury, Financial and Monetary Cooperation or following complaints from users or recipient accountants.

#### IV- On the accountability of the initiating accountant of the operation

To the General Director of the Treasury Financial and Monetary Cooperation, within this framework, the personal and financial responsibility of accountants is involved under the following conditions:

- generation/exportation of data without physical evidence;
- exportation of non-corresponding data with physical documents in support;
- re-entry of previously sent or received data by means of electronic exchange.

This provision certainly establishes the responsibility of the initiating accountant of the transaction on the correspondence between the entries and physical supporting documentation, but for more efficiency, the system should include regular controls for the physical reconciliation of supporting documents and entries. The National Inspectorate of Services in the Directorate General of the Treasury Financial and Monetary Cooperation would not all alone be able to carry out all these controls, as stated in the draft instruction.

The effectiveness of the proposed system is based on the traceability and security of transferred operations. To ensure traceability and security of operations transferred digitally, it is proposed that the instruction should include security on:

- integrity, completeness of data,
- compulsory publication of a printout giving information on identification, the subject and amount of the transfer,
- compulsory publication of a journal of issued transfers and a journal of transfers received which will be the subject of quarterly

reconciliation by the National Institute of Statistics and the services of the General Accountant of the Treasury.

These quarterly reconciliation statements performed by the internal audit of the Directorate General of the Treasury, Financial and Monetary Cooperation will, for information purposes, be sent to the Audit Bench as computer printouts of EDOTs sent and received, attached to the management accounts of the accountant concerned.

#### **CONCLUSION**

#### **ON THE FORM**

The request for opinion on the draft instruction on the computer processing of transfer operations between accountants is admissible.

#### ON THE SUBSTANCE.

The numerical size of the Statements of Operations to be Transferred (EDOT) in the accounting procedures of the State is such that computing processing is required.

The Audit Bench is of the opinion that the treatment of transfer operations between accountants be computerized subject to the observations on non-repudiation, security and traceability.

Thus issued the same day, month and year above.

The following signed the minutes of this opinion:





## RECOMMENDATIONS OF THE AUDIT BENCH AND THE IMPACT OF ITS WORK

Generally, recommendations made by the Audit Bench in its annual report result from the shortcomings noticed during its work and notably from its judicial or administrative controls. For the most part, the irregularities raised in 2012 had already been the subject of recommendations in the previous reports.

Some of these recommendations are bound to be repeated here because the necessary readjustments not having been started, the raised shortcomings persist as pertinently shown by the 2012 controls. These recommendations are found in chapter 1.

Chapter 2 gives the recommendations that resulted from the work of the 2012 financial year while chapter 3 attempts an evaluation of the impact of the work of the financial jurisdiction.

## CHAPITRE 1. RECOMMENDATIONS PRIOR TO THE 2012 FINANCIAL YEAR WHOSE IMPLEMENTATION IS STILL AWAITED

## **SECTION 1. On the keeping and production of management accounts of the State**

The shortcoming linked to the current methods for constituting guarantees by accountants does not ensure having all the guarantees required for the performance of the functions of public accountant. The Audit Bench reiterates the importance of this guarantee when it comes to applying sanctions of fines or debits.

Equally, the increasing volume of budgetary expenditure executed through the making available of funds reflects the use of the preferential procedure for the execution of the State budget. It is therefore important to be reminded of the urgency to return to the normal procedure of commitment of public expenditure, hence the relevance to reiterate the related recommendation. .

With regard to "Deposit and Custodial" accounts, it is important for balances in treasuries be duly justified before their transfer to the Deposit and Custodial Fund at the risk of committing the activities of this fund on unreliable bases.

### Recommendation No. 07-13: oath and guarantee by public accountants

The Audit Bench recommends that the Minister of Finance take all the measures necessary for accountants in office to take the oath and deposit a guarantee within a reasonable deadline.

Recommendation No. 09-06: Justification of expenditure relating to the disbursement of funds

The Bench noticed that the making available of funds effected in the form of disbursement to a cashier or a direct beneficiary which is an exceptional budget execution procedure tends to be generalized. It can encourage irregular expenditure and embezzlement of public funds.

The Audit Bench also recommends that the making available of funds should really remain an exceptional measure and that cashiers forward to the attached accountant within the timelines set by the decision of making available, an application account with attached expenditure supporting documents

## Recommendation 11-01: transfer of justified balances of "Miscellaneous Deposit and Custodial" Accounts.

The Audit Bench recommends that prior to the transfer of balances of the "Deposit and Custodial " accounts to the Deposit and Custodial Fund, they should be purged so as to leave only justified amounts in the balance of transferred accounts

## SECTION 2. On the respect of legal and regulatory provisions governing the organization and functioning of public and semi-public enterprises

By an interim ruling of 17 December 2008 to the Minister of Finance, the Audit Bench recommended a review of Law No. 99/016 of 22 December 1999 on the rules and regulations governing

public establishments, public and semi-public enterprises to put them in conformity with the changes and particularly with the OHADA Act.

While waiting for this review, the Audit Bench continues to raise the same shortcomings in its controls and repeat the recommendations made since 2007 such as the following:

## Recommendation No. 07-3: Conforming the articles of association of public and semi-public enterprises

The Audit Bench recommends the application of the provisions of section 112(1) and (2) of Law 99/016 of 22 December 1999 referred to above according to which:

(1) Public establishments, enterprises in the public and semi-public sector must comply with the provisions of this law within 1 (one) year starting from the date of its enactment.

At the expiry of this time-limit, ad hoc representatives shall be appointed by decision of the minister in charge of finance to enterprises which have not complied with the provisions of this law for a period of not more than 6 (six) months for the specific purposes of updating their articles of association, producing financial statements and setting up the appropriate governing

Recommendation No. 07-4: respect of the duration of the mandate and incompatibilities of the various management organs of public establishments and public and semi-public enterprises provided for by the law referred to above.

### Recommendation n°07-10: preparation of enabling instruments of Law No. 99/016 of 22 December 1999.

The Audit Bench recommends, where necessary, the enactment of enabling instruments of the law referred to above which lays down the benefits to be granted to management and control organs of public establishments and public and semi-public enterprises.

### **SECTION 3. Aspects linked to the Financial Regime**

The deadline for the full entry into force of Law No. 2007/006 of 26 December 2007 relating to the Financial Regime of the State is fixed for 1 January 2013. The Audit Bench recalls the urgency of putting in place all the measures that will ensure the application of all the provisions of this law from this date.

## Recommendation 10-01: Inventory and evaluation of assets of the State, Regional and Local Authorities

Even though the provisions relating to the regularity and genuineness of public accounts will only be applicable from 1 January 2013, it is important that on the approach of this timeline to immediately commence an inventory and an evaluation of the patrimony of the State, Regional and Local Authorities and public establishments, especially as this work will necessarily extend to the training and updating of personnel in the preparation of accounts.

## Recommendation 10-02: publication of the decree to govern public accounting

All the enabling instruments of Law No. 2007/006 of 26 December 2007 are not conditioned by the 1 January 2013 deadline. This refers especially to the decree to govern public accounting provided for by section 65 which is still awaited up till today.

The absence of a decree to govern public accounting, in conformity with the standards of the new financial regime, may jeopardize the harmonization of the preparation and presentation framework of public accounts.

The Audit Bench recommends the implementation of the provisions of section 65 of Law No. 2007/06 of 26 December 2007 relating to the financial regime of the State concerning the publication of the decree governing public accounting in order to provide public accountants with a harmonized framework for the rendition of accounts.

### Recommendation 10-04: content of the Settlement Bill

The Audit Bench recommends that the Settlement Bill which is forwarded to it for its opinion should contain all the elements of the bill as it is addressed to Parliament to enable the Bench have all the elements of appreciation of the execution of the corresponding finance law.

### Recommendation 10-05: Permanent information of the Audit Bench on the execution of the finance law.

To better apprehend the work of drafting the Settlement Bill, the Audit Bench recommends that periodic information (quarterly) be given to the Audit Bench on the execution of the finance law all through the year, as is the tradition in the relations between ministries in charge of finance and financial jurisdictions.

### SECTION 4. On the budgetary balance in the Settlement Bills

The recurrent substantive observation of the Audit Bench on the Settlement Bills for the 2009, 2010 and 2011 financial years concerns the alteration of the budgetary balance as a result of the non adjustment of operations assigned on provisional accounts before the close of the financial year.

Adjustment consists in clearing accounts with provisional heads by giving them final heads upon receipt of the budgetary cover and the establishment of supporting documents.

The budgetary balance in Settlement Bills established in the absence of this adjustment is disingenuous according to the Audit Bench. The Bench reiterates the respect of the provisions of Treasury Instruction No. 003/006I/MINFI/DT/DER of 31 December 2003 which provides that "the provisional assignment accounts must be identified and lead to adjustment during the complementary day. The complementary day covers the period reserved for the adjustment of regular operations that do not affect cash accounts (Cash, Bank, CCP) including:

- the takeover of the revenue and expenditure of the closed financial year;
- reception of Statements of Operations to be Transferred (EDOT);
- clearance of provisional assignment accounts, third person accounts, correspondents, Councils and reject accounts ... etc. During this period, the above operations are backdated to 31 December and must cease on 31 January 31 of the current financial year in the journal of miscellaneous operations (LJOD).

### Recommendation 11-03: Genuineness of budget balances

Within the framework of the execution of the budget and particularly the drafting of the Settlement Bill, the Audit Bench recommends the respect of the principles and procedures of the processing and registration of accounting and budgetary operations in order to improve on the determination of budget balances and give genuine results of execution of the budget.

## CHAPTER 2. NEW RECOMMENDATIONS

## SECTION 1. The effective implementation of decentralization

The Audit Bench notes that despite extensive legislation on the transfer of powers to Regional and Local Authorities, several enabling instruments are still awaited. The main difficulty arising from the non-promulgation of the enabling legislation is that decentralized functions are poorly defined and there is no clear distinction between genuinely decentralized operations and operations decentralized from the central services. This shortcoming of the instruments is the cause of many dysfunctions observed in the financial management of Regional and Local Authorities

## Recommendation No. 12-01: on the clarification of the legal framework of decentralization

The Audit Bench recommends clarification of the legal framework for decentralization so that all stakeholders are able to understand and appropriate the tools of reform.

### **SECTION2.** On Earmarked Accounts

The Settlement Bill includes explanatory statements by Earmarked Account in accordance with section 22(4) of Law No. 2007/006 of 26 December 2007.

These annexes do not always provide the details of income and expenditure to ensure compliance with the statutory purpose for which the account is created.

In addition, no legal or regulatory provision sets the destination of the surplus of the mobilized resources against the decided ceilings on the one hand and the balances of the unused resources on the other hand.

## Recommendation No.12-02: format of Earmarked Accounts and destination of surplus resources

The Audit Bench recommends adopting a model format of presentation of Earmarked Accounts on the one hand and secondly that in the absence of statutory or legal provisions on the subject, clarifications should always made on the allocation of surplus revenues from Earmarked Accounts.

### **SECTION 3.** Overruns of evaluative credits

The Settlement Bill of the 2011 financial year transmitted to the Audit Bench for opinion does not include any element of information (decree or order) on the reasons of the overrun of allocated credits in certain heads.

- MINJUSTICE: sub-head 62 (salaries): 10.63%;
- MINJEUN: sub-head 62 (salaries): 202.22%;
- MINFOF: sub-head 22 (salaries): 111.30%;
- HEAD 55: pensions: 114.61%.

## Recommendation No. 12-03: information of Parliament on overruns of budgetary credits

In the execution of budgetary expenditures, the Audit Bench recommends in accordance with section 17(2) of the Financial Regime of the State, that transfers related to evaluative credits authorized by regulatory instruments, the reasons for the overrun as well as execution prospects for the rest of the year be always forwarded to Parliament by the Government.

## CHAPTER 3. IMPACT OF THE WORK OF THE AUDIT BENCH BY 31 DECEMBER 2012

Significant recommendations made by the Audit Bench under its various activities are published in the annual reports. Unlike judicial decisions whose pecuniary nature can facilitate execution, recommendations within a dynamic of change of habits, methods and procedures, regulations, take longer to materialize. The same applies to the evaluation of their follow-up.

Some impacts can be considered here:

- Financial impact;
- Improving public governance;

### SECTION 1. Recommendations with a financial impact

The work of the consultation between MINFI and the Audit Bench was the subject of a resolution relating to the launching of a special recovery campaign of fiscal debts in order to reduce the amount to be recovered in the balance of accounts.

The implementation of this resolution enabled the Ministry of Finance to organize a special campaign for recovery of fiscal debts. At the end of this operation, the sum of 5 336 481 226 CFA F was

collected out of an estimated sum of about 10 billion. This operation also helped in the clearance by compensation of an outstanding sum of 185 283 831 574 CFA F in application of crossed debts agreements.

## **SECTION 2. Recommendations aimed at improving governance**

### Benefits granted personnel of public establishments

The Audit Bench had observed that a number of injunctions are addressed to Accounting Officers for the non respect of the decree to lay down the remuneration and benefits of officials of public enterprises. To this end, the President of the Audit Bench had addressed an interim ruling to the Minister of Finance on 17 December 2008, a ruling in which the financial jurisdiction had proposed reform of the 1987 instrument.

### Mastery of expenditure on cash advance

The opinions of the Audit Bench on the first three Settlement Bills have constantly raised observations on the need to master expenditure of cash advance.

Expenditure assigned on provisional accounts must receive final imputations before the closure of the financial year but this principle is not always respected.

This expenditure reduces as much the volume of budgetary expenditure of the year and consequently alters the budgetary balance. For example, their non consideration in the budgetary expenditure of the 2009, 2010 and 2011 financial years led to budget surpluses of 52,334 billion, 7,881 billion and 77,503 billion CFA F respectively. The budgetary adjustment of this expenditure before the closure of the financial years concerned led to different budgetary balances: deficit of 20,068 billion in 2009, of 24,899 billion in 2010 and surplus of 28,553 billion CFA F in 2011.

The respect of budgetary and accounting principles inevitably

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nt of information on the situation of
accounts. culminates in the improvement of information on the situation of finance and rendering of State accounts.

## Conclusion

The statistics and jurisprudence of the Audit Bench published in this annual report express not only the intensification of its activities but also the gradual coverage of its full jurisdiction.

In any case, this is just the application of section 3 of the law of 21 April 2003 which prescribes that the financial jurisdiction renders account of its work each year.

This obligation by the Audit Bench to make known the results of its work is also founded on the ISSAI<sup>9</sup> Standard 20 whose principle 8 recalls that "supreme audit institutions communicate widely at the given time, on their activities and the results of their audits through the media, the internet or other means".

The report is not limited to the work done by the financial jurisdiction; it also includes the results of this work, that is to say the impact of the decisions of the legal control institution.

The follow-up of the decisions of the Audit Bench presented in part four of this report is a major innovation. The work of the jurisdiction and its effect, expressed in the form of improvement of public finance governance or the re-establishment of the State, regional and local authority or even an administrative public establishment in their rights compromised by accounting irregularities are the revenue compensation expected by the citizen.

<sup>&</sup>lt;sup>9</sup> International Standards of Supreme Audit Institutions.

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This compensation must be presented to him because it is established since 1789 that "society has the right to ask any public agent to render account of his administration" <sup>10</sup>

<sup>&</sup>lt;sup>10</sup>Article 15 of the Declaration of Human and Citizen's Rights of 26 August 1789.

Annexure

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### FILES TRANSMITTED TO THE AUDIT BENCH

### 2010 financial year

Serial number	Origin of file	Content of file	Date of reception
01	CDBF/CONSUPE	Matters concerning AMOUGOU Daniel, Revenue Collector at the South Regional Road Transport Service, Ebolowa; ELLA Benjamin, Revenue Collector of Kribi; TCHAGOU Etienne, Revenue Collector in the East Region	08/11/2010
02	CDBF/CONSUPE	Matter concerning Mrs. GOUSSI KINDEY née ENGOULOU Marie Thérèse	11/11/2010
03	CDBF/CONSUPE	Matters Mr ATTA OKALA Jules, ex-Econome, Revenue Office of the District Hospital of Mbalmayo	21/11/2010
04	CDBF/CONSUPE	Matter concerning MESSIENG Emmanuel, Mlle EDOU Marie Chantal Revenue Collection Office of Mbalmayo	08/12/2010
05	CDBF/CONSUPE	Matter concerning ASSAMBA G., AMBASSA TSALA and others, Bursars of Colleges and High Schools	08/12/2010
06	CDBF/CONSUPE	Matter concerning ROULY MBILA Department of Examinations and Certification, MINESEC	16/12/2010
07	CDBF/CONSUPE	Matter concerning FOUDA François, Department of Examinations and Certification, MINEDUB	16/12/2010
08	CDBF/CONSUPE	Matter concerning MINKONGO Thomas Louis Department of Financial and Material Resources, MINESEC	30/12/2010
09	CDBF/CONSUPE	Matter concerning AKERE Jacob and ALIMA , Treasury of the Cameroon Embassy In the Central African Republic	30/12/2010
10	CDBF/CONSUPE	Matter concerning AKU AKO David Sub Treasury and Council Revenue Office NJINIKOM	30/12/2010
11	CDBF/CONSUPE	Matter concerning MALONGA Annick Noëlle Imprest Fund Office	30/12/2010
12	CDBF/CONSUPE	Matter concerning LEBONGO Blaise, Imprest Fund office MINEDUB	30/12/2010



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Supreme	Serial No.	Origin of file	Content of file	Date of reception
Su	01	CONAC	Matter concerning AGOGHO Johny, AMAH NDONG and others Sub-Treasury ANDECK, North-West	24/08/2011
	02	CDBF/CONSUPE	Matter concerning BOMBA EFFA et AVODO Maurice, Tax Revenue Office of Littoral 4 in Douala	//
	03	CDBF/CONSUPE	Matter concerning ASSAWOGA Dominique	05/09/2011
	04	CDBF/CONSUPE	Matter concerning ONGODO Léopold and NGASSAM Marc Justin	07/09/2011
	05	CDBF/CONSUPE	Matter concerning ESSAMA OTABELA	15/09/2011
	06	CDBF/CONSUPE	Matter concerning Taibe née ENGOLO Marinette, NDAM DJIBO and HAMBOA Benjamin	30/09/2011
	07	CDBF/CONSUPE	Matter concerning ESSAMA OTABELA	02/11/2011

### 2012 financial year

Serial No.	Origin of file	Content of file	Date of reception
01	CDBF/CONSUPE	Matter concerning AKISSEH Alexander NNOH and MBWAYA JOB EFANGE Control mission at the Limbe City Council	02/03/2012
02	CDBF/CONSUPE	Matter concerning ABDOUL AZIZ and NDTOUNGOU Jean / University of Yaounde II, : 2006 to 2009 FY	//
03	CDBF/CONSUPE	Matter concerning Chantal TOCKE/ARMP: 2007 to 2010 FY ARMP, 2007 – 2010 FY	//
04	CDBF/CONSUPE	Matter concerning BUOUNA Adalbert and others Bursars, and Principals of Secondary and High Schools	09/04/2012
05	CDBF/CONSUPE	Matter concerning AMAH NDONG Godwill and others Mayors in the North-West	23/04/2012
06	CDBF/CONSUPE	Matter concerning NTIMBAN Frédéric Former Council Revenue Collector of Ebolowa and others, Revenue collectors and cashiers in Councils, hospitals, and technical college in the South Region	23/04/2012



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SECTION 3. Judgment No. 07/AD/CSC/CDC/SR of 30 August 2012
SECTION 4. Judgment No. 17/AD/CSC/CDC/SR of 30 August 2012
SECTION 5. Judgment No. 21/AD/CSC/CDC/SR of 13 December 2012
SECTION 6. Judgment No. 22/AD/CSC/CDC/SR of 13 Dcember 2012
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CHAPTER 3. OPINION No. 002/2012/CSC/CDC OF 28 DECEMBER 2012 ON THE DRAFT INSTRUCTION ON THE DATA PROCESSING OF TRANSFERS BETWEEN ACCOUNTANTS
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Supreme Court

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### **Have signed this Annual Report minutes:**

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MBENOUN Théodore Augustin

SIMO BOBDA Lucienne Née SIMO TCHUINTE

### **Divisions Presidents**

MANGA MOUKOURI Isaac HAKAPOKA Narcisse

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FOUDA AMOMBO NGAN Evaristus AZEH

THEUMOUBE Philippe DJOKO André

MIKONE Martin Bienvenu NDJOM NACK Elie

ALIMA Jean Claude YEBGA MATIP

EZO'O BIZEME

### **Masters of the Supreme Court**

## PAGUEM Michel Registrar-in-Chief of the Audit Bench

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