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From the Observatory for Monitoring Corruption and Professional Ethics in the Democratic Republic of Congo: the secular arm of the rule of law

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Abstract

This article analyses the legal and institutional role of the Observatory for Monitoring Corruption and Professional Ethics (OSCEP) in consolidating the rule of law in the Democratic Republic of Congo. Initially established as a public service responsible for promoting the Code of Conduct for Public Officials, the OSCEP was transformed into a technical public institution in order to strengthen its prerogatives, particularly in the prevention, detection and punishment of corruption and anti-values in socio-professional circles.

The study highlights a persistent gap between the formal scope of the OSCEP's statutory powers and its actual operational effectiveness. Through a teleological and systemic analysis of the applicable legal texts, supplemented by direct observation and interviews with the institution's agents, the article identifies the structural and functional causes of this dysfunction, which include weak institutional autonomy, insufficient internal scientific research, shortcomings in merit-based recruitment mechanisms, and the inertia of the judicial police function recognised by the OSCEP.

In conclusion, the author argues that revitalising the OSCEP requires targeted legal and institutional reforms, including effectively attaching it to the Prime Minister's Office, strengthening its financial autonomy, establishing binding ethical consultation mechanisms, and adapting the national procedural framework to international standards on combating corruption. The OSCEP is thus seen as a strategic instrument that is still under-exploited for strengthening ethical governance and the rule of law in the DRC.

Keywords: OSCEP, corruption, professional ethics, governance, prevention, autonomy, supervision, anti-values, Judicial Police Officer, Practical Effectiveness, institutional reform.

Introduction

Since the early 2000s, the Democratic Republic of Congo (DRC) has implemented a Code of Conduct for Public Officials in order to improve the management of public affairs and comply with international and regional requirements[1] . To ensure its implementation, a technical public service was established. The main objective was to prepare public officials to integrate universal moral values into the management of public affairs through an effective and reliable body for the

[1] Decree-Law No. 017/2002 of 3 October 2002 on the code of conduct for public officials, *in JORDC,* 44th year, special issue, 15 January 2003.

revaluation of public activities. This body was the Observatory of the Professional Code of Ethics (OCEP).

Focusing on the mission of promoting, disseminating, popularising and monitoring the Code of Conduct among the public, as well as ensuring its proper application[2] , the service thus established was unable to effectively reform the behaviour of public officials. This was due to certain limitations observed in the fulfilment of its mission[3] . Thus, in 2016, by Decree No. 16/020 establishing the statutes of a public institution called the Observatory for the Monitoring of Corruption and Professional Ethics (OSCEP), the public service was transformed into a public institution.

Following the change in legal status, the OSCEP was now governed by Law No. 08/009 of 7 July 2008 laying down general provisions applicable to public institutions and the aforementioned Decree establishing its new statutes. It was then assigned other powers, particularly in the areas of prevention, detection and, where necessary, punishment of corruption and other anti-social values in socio-professional circles. Despite the strengthening of its powers, the OSCEP seems to remain in the shadows and is not achieving the expected results.

The aim of this study is to analyse the scope of the OSCEP's statutory powers, the reasons for the gap between these powers and their intended purpose, and to propose some legal solutions that could revitalise it. The research question therefore seeks to determine: what is the scope of the OSCEP's powers? How can the gap between the OSCEP's statutory powers and its operational effectiveness be justified and remedied?

As a hypothesis, we postulate that the scope of the OSCEP's powers would derive from its purpose as an ethical governance tool with an educational, advisory and operational role, combining prevention, detection and support for the prosecution of corruption and all offences and breaches committed by public officials and private professionals. The causes of dysfunction would include a lack of political will, which would have a negative impact on institutional autonomy, technical support for OSCEP staff and logistics, and the absence of rigorous internal selection, monitoring and evaluation. We also believe that the OSCEP's attachment to the Prime Minister's Office, the technical and logistical support provided to staff, the strengthening of scientific research, internal restructuring and a permanent focus on detection would enhance the OSCEP's operational effectiveness.

These hypotheses will be verified, on the one hand, through teleological and systemic methods accompanied by documentary techniques, based on the idea that the rules establishing the OSCEP were made to be respected and supported in light of their purpose, so that they achieve the results expected by the institution. On the other hand, the observational method will be used, through interviews with OSCEP agents and participant observation, immersing ourselves closely in the operational difficulties by participating in the collective and professional life within the OSCEP.

This article consists of two parts. The first analyses the OSCEP's statutes (I) and the second focuses on its judicial police mission (II).

I. Critical analysis of the OSCEP's legal framework

The legal framework underpinning the institutionalisation of the OSCEP makes it possible to determine, on the one hand, its legal status and the related effects (I.1) and, on the other hand, the constraints on the effectiveness of its purpose (I.2).

I.1. Legal status and corporate purpose of the OSCEP

By focusing on technical expertise in the implementation of its public policy and responding to the financial constraints of public services, the State is transferring its powers to specialised institutions that fulfil a public service mission[4] . This is technical decentralisation, which gives a public institution its own legal personality and a certain degree of organisational and budgetary autonomy[5] . However, such autonomy is not absolute, as it remains subject to supervision.

[2] Article 3 of Decree No. 075/2003 of 3 April 2003 on the organisation and functioning of a public service called the Observatory of the Code of Professional Ethics, abbreviated to "OCEP", *in JORDC*, Part One, No. 11,[1]June 2003.

[3] Raising awareness among civil servants about the Code of Conduct without placing particular emphasis on corruption or taking action to prevent conflicts of interest, such as asset declarations or appropriate investigations, was a hindrance to anti-corruption efforts.

[4] "The public administration is integrative because it comprises all the administrative services of the central government, the provinces and decentralised territorial entities designed to perform state tasks with a view to satisfying the needs of the general interest." It is through this material or functional definition of public service that central government public enterprises and institutions are studied. J. KAZADI MPIANA, *Major public services of the State for law students*, Lecture notes, Official University of Bukavu, academic year 2022-2023, p.7. Unpublished.

[5] N. DANTONEL-COR, *Fiches d'institutions administratives* (Administrative Institutions Fact Sheets), Paris, Ellipses Edition Marketing, 2020, p.11.

Given that it has its own legal personality, it is necessary to critically analyse the extent of the autonomy enjoyed by the Observatory and the extent of the supervisory authority's powers (I.1.1), as well as to analyse the scope of its corporate purpose (I.1.2).

I.1.1. Scope of management autonomy and supervisory authority

Let us first examine its management autonomy (A) before analysing supervisory powers (B).

A. The OSCEP's management autonomy

A public institution is defined as "any legal entity governed by public law created by the State to fulfil a public service mission"[6] . Two conditions emerge from this definition. First, the entity benefiting from legal personality must derive solely from the will of the State, which decides through its bodies to divide its sovereign prerogatives in favour of a structure that it decides to set up. Secondly, the sole mission of this structure must be to provide a public service[7] . In order to carry out its mission effectively, the legal entity thus constituted must have its own assets and enjoy a certain degree of management autonomy, even though it is placed under the supervision of the sectoral minister[8] .

In the DRC, the competent authority for creating a public institution is the Prime Minister, who, by decree deliberated in the Council of Ministers, establishes the statutes, determines the nature of the public service concerned, and sets the assets and initial endowment of the public entity created[9] .

To this end, Decree No. 16/020 of 16 July 2016[10] specifies that the Observatory of the Professional Code of Ethics, created by Decree 075/2003 of 3 April 2003, is transformed into a public institution of a technical nature with legal personality. This new decree brings about a significant change in the legal status of the OSCEP, which, under its former name OCEP, was merely a public service under the hierarchical authority of the Minister of the Civil Service, although it enjoyed administrative and financial autonomy[11] .

While legal personality is recognised in Article 1 of Decree No. 16/020 of 16 July 2016, its assets are determined in Articles 2, 5 and 6. Article 4 specifies the nature of its mission and Article 7 establishes the organisational structure of the Observatory. In addition to subrogation in the property, rights, shares, assets and liabilities of the OCEP, the Observatory may acquire other property in the course of carrying out its mission. The OSCEP's activities are financed from the state budget, state financial allocations in the form of subsidies, taxes and duties created in its favour or transferred to it, contributions or donations from public officials and services, donations, bequests and various interventions from national, public and private institutions, as well as international institutions[12] .

To guarantee its administrative autonomy, the Observatory's bodies are the Board of Directors, the Directorate-General and the Board of Auditors. The Board of Directors is the Observatory's planning, guidance, control and decision-making body. It defines the Observatory's general policy, determines its programme, sets its budget and approves its year-end financial statements[13] . The Board of Directors is made up of five members: a representative of the Minister for the Civil Service, a representative of the Minister for Justice, a representative of the General Inspectorate of Finance, a representative of the Observatory and the Director General[14] .

The Observatory is managed by the Directorate-General, which represents it in legal proceedings and acts on its behalf

[6] Article 2 of the Law on Public Institutions.

[7] "A public service is an enterprise created and controlled by the government to ensure, on a permanent and regular basis, in the absence of sufficient and effective private initiative, the satisfaction of collective needs deemed essential": P. WIGNY, *Administrative Law*, Fourth Edition, Brussels, Éditions Bruylant, 1962, p.19.

[8] Article 3 of Law No. 08/009 of 7 July 2008 on general provisions applicable to public institutions, *in JORDC*, 49th year, special issue, 12 July 2008.

[9] Article 5 of Law No. 08/009 of 7 July 2008 on general provisions applicable to public institutions, *in JORDC*, 49th year, special issue, 12 July 2008.

[10] Article 1, paragraph 1, of Decree No. 16/020 of 16 July 2016 establishing the statutes of a public institution called the Observatory for the Monitoring of Corruption and Professional Ethics, abbreviated to OSCEP, *in JORDC*, No. 15, col. 31, Kinshasa, 1 August 2016.

[11] Article 1 of Decree No. 075/2003 of 3 April 2003 on the organisation and functioning of a public service called the Observatory for Professional Ethics, abbreviated to OCEP, in JORDC, Part I, No. 11, 1 June 2003.

[12] Articles 5 and 6 of Decree No. 16/020 of 16 July 2016 establishing the statutes of a public institution known as the Observatory for the Monitoring of Corruption and Professional Ethics, abbreviated to OSCEP, *in JORDC*, No. 15, col. 31, Kinshasa, 1 August 2016.

[13] Article 8 of Decree No. 16/020 of 16 July 2016 establishing the statutes of a public institution called the Observatory for the Monitoring of Corruption and Professional Ethics, abbreviated to OSCEP, *in JORDC*, No. 15, col. 31, Kinshasa, 1 August 2016.

[14] Article 9 Decree No. 16/020 of 16 July 2016 establishing the statutes of a public institution called the Observatory for the Monitoring of Corruption and Professional Ethics, abbreviated to OSCEP, *in JORDC*, No. 15, col. 31, Kinshasa, 1 August 2016.

in dealings with third parties. The Directorate-General implements the decisions of the Board of Directors and is responsible for the day-to-day management of the Observatory. It implements the budget, prepares the financial statements and manages all services[15] . It should be noted that the Observatory operated for ten years without a Board of Directors. At that time, the Directorate-General was responsible for designing, managing and implementing its programmes.

While the Director General and Deputy Director General are appointed and dismissed by order of the President of the Republic, on the recommendation of the Government deliberated in the Council of Ministers, for a five-year term renewable once, senior staff are appointed, assigned, promoted and, where applicable, dismissed by the Board of Directors on the recommendation of the General Management. The power to appoint and dismiss support staff lies with the Director General[16] .

A category of command staff may be promoted to a support role, to assist the General Management. These are an Administrative Director, a Financial Director and a Technical Director. We consider, however, that this list is not exhaustive, since it is provided that "the Observatory may have the provincial directorates and offices necessary for its management"[17] . We can therefore understand the usefulness and validity of the Operations and Asset Declaration Department, which was created in response to the need to effectively implement No. 25/15 of 9 April 2025 on the asset declaration regime for public officials in the DRC.

While the Decree gives the Minister responsible the power to suspend members of the Executive Board as a precautionary measure, it does not give him the power to appoint, promote or dismiss them. This raises the question of the basis on which the Minister responsible appointed certain directors to the Observatory, given that this power lies with the Board of Directors and should be exercised by the Director General, who is responsible for its day-to-day management and to whom the Council of State had assigned the prerogatives recognised as belonging to the Board of Directors until its effective establishment.

In response, we are tempted to assert that a decree signed by the Minister responsible for the civil service appointing a civil servant to a public institution cannot have any effect other than that of secondment. Indeed, secondment cannot exceed five years and can only be renewed in the interests of the service[18] . It is therefore understandable that those who have been working at the Observatory for more than five years under a ministerial order, most of whom have civil service registration numbers, are in an irregular situation. In order to guarantee them legal protection, decisions to renew their secondment should be granted by the Minister of the Civil Service, or the Board of Directors should decide to appoint them as OSCEP contract staff, thereby renouncing their civil servant status. The same does not apply to those who have the status of solicitor.

B. Supervisory power

Unlike a public service placed under hierarchical authority, which is exercised automatically both over the person attached to that service and over their actions, even when no text provides for it ([19]), supervisory power is strictly exercised within the limits of the law. In fact, the hierarchical superior may, at any time, for reasons of illegality or expediency, exercise the power to instruct, substitute, reform or cancel the acts of his subordinates. He may even determine their assignments, ratings and sanctions in the event of misconduct[20] . Supervision, on the other hand, cannot be presumed or improvised and must necessarily derive from the text that organises decentralisation. Hence the principle that "there is no supervision without a text"[21] .

At the Observatory, which is recognised by the Minister responsible for the civil service, supervisory power is

[15] Article 15 of Decree No. 16/020 of 16 July 2016 establishing the statutes of a public institution called the Observatory for the Monitoring of Corruption and Professional Ethics, abbreviated to OSCEP, *in JORDC*, No. 15, col. 31, Kinshasa, [1]August 2016.

[16] Article 39 of Decree No. 16/020 of 16 July 2016 establishing the statutes of a public institution called the Observatory for the Monitoring of Corruption and Professional Ethics, abbreviated to OSCEP, *in JORDC*, No. 15, col. 31, Kinshasa,[1]August 2016.

[17] Article 3, paragraph 2, Decree No. 16/020 of 16 July 2016.

[18] Article 33 of Law No. 16/013 of 15 July 2016 on the status of career civil servants in the public service, *in JORDC*,[57th]year, part one, special issue, Kinshasa, 3 August 2016.

[19] Hierarchical authority is an unconditional power affecting all the activities of subordinates, whether these involve the performance of legal acts or material operations. Through the prerogatives of instruction, correction and substitution, each of which constitutes a particular aspect of this authority, it enables superiors to *command and control*. *Read here the summary of C. CHAUVET, Le pouvoir hiérarchique*, Collection thèse, Paris, LGDJ, 2013.

[20] C. CHAUVET, *Op.cit.*

[21] MBOKO DJ'ANDIMA, J.-M. *Congolese Public Service Law*, Louvain-la-Neuve, Academia, L'Harmattan, 2015, p.71.

exercised only by means of prior authorisation, approval or opposition[22] .

"Art. 25. The following are subject to prior authorisation:

- Real estate acquisitions and disposals;
- Loans with a maturity of more than one year;
- Acquisitions and disposals of financial holdings;
- The establishment of agencies and offices abroad;
- Works and supply contracts for an amount equal to or greater than 500,000,000 Congolese francs. The amount specified in the previous paragraph may be updated by order of the Minister responsible for finance.

Art. 26. Without prejudice to other provisions of this decree, the following are subject to approval:

the staffing structure;

- The Observatory's budget, adopted by the Board of Directors on the recommendation of the Executive Management;
- The staff regulations established by the Board of Directors on the recommendation of the Executive Management;
- The staff remuneration scale;
- The internal rules of procedure of the Board of Directors;
- The annual activity report "[23] ".

The deliberations and decisions adopted by the Board of Directors, subject to approval, shall only become enforceable ten clear days after their receipt by the supervisory authority. The latter shall declare that it authorises their immediate enforcement. We believe that this period is granted to the supervisory authority to assess the appropriateness of approval, either explicitly during this period or implicitly upon its expiry. It also gives the supervisory authority the opportunity to object on the grounds of illegality or conflict with the general interest or the specific interest of the Observatory[24] . This period therefore complies with the principle that "silence on the part of the administration constitutes acceptance".

Two points should be noted regarding this framework for supervisory powers. Firstly, the supervisory minister cannot justify his opposition on the simple grounds of expediency, as is the case with hierarchical or political authorities. On the other hand, he may only oppose when he considers the deliberations or decisions of the Board of Directors to be contrary to the law, the general interest or the interest of the Observatory. In this case, his opposition, which does not justify these three reasons, may appear abusive and unfounded. Furthermore, opposition is only valid on matters that the law requires the Board of Directors to submit for prior authorisation or approval. Consequently, any decisions that do not fall within its remit, or decisions taken by the Director General, may only be annulled in the event of illegality by the administrative or labour court, as the case may be.

I.1.2. The corporate purpose of the OSCEP

The corporate purpose refers to the reason for which a public institution was established. It therefore corresponds to the motive that led the founder to take action. In other words, the corporate purpose represents all the activities that the State has assigned to the institution[25] . The purpose makes it possible to determine the regime for each type of institution and to delimit the scope of the powers of public officials. It also specifies the nature of the institution.

Article 4 of Law No. 08/009 of 7 July 2008[26] stipulates that, "depending on its purpose, a public institution is either administrative, social and cultural, or scientific and technical in nature". This provision makes it possible to determine the nature of the Observatory, in accordance with the statutory provisions. Indeed, pursuant to Article 4 of Decree No. 16/020 of 16 July 2016, , "the Observatory is the technical and advisory body of the Government...". Let us therefore analyse the Observatory as an advisory body to the government (A) on

[22] Articles 23 and 24 of Decree No. 16/020 of 16 July 2016 establishing the statutes of a public institution called the Observatory for the Monitoring of Corruption and Professional Ethics, abbreviated to OSCEP, *in JORDC*, No. 15, col. 31, Kinshasa,[1]August 2016.

[23] Decree No. 16/020 of 16 July 2016 establishing the statutes of a public institution called the Observatory for the Monitoring of Corruption and Professional Ethics, abbreviated to OSCEP, *in JORDC*, No. 15, col. 31, Kinshasa,[1]August 2016.

[24] Article 29 of the Law on Public Institutions and Article 27 of Decree No. 16/020 of 16 July 2016 establishing the statutes of a public institution called the Observatory for the Monitoring of Corruption and Professional Ethics, abbreviated to OSCEP, *in JORDC*, No. 15, col. 31, Kinshasa, 1August 2016.

[25] F. LENGLART, *Company Law*,[5th]edition, Paris, Hachette, 2023,

[26] Article 4 Law No. 08/009 of 7 July 2008 on general provisions applicable to public institutions, *in JORDC*,[49th]year, special issue, 12 July 2008.

the one hand, and as a scientific and technical institution on the other (B).

A. OSCEP as an advisory body to the Government

Consultation consists of an administrative authority seeking the opinion of an individual authority or body before making its decision[27] . A distinction must be made between optional consultation with optional advice, mandatory consultation with optional advice, and mandatory consultation with binding advice. From a temporal perspective, whether mandatory or optional, consultation always takes place prior to the decision[28] . In terms of binding force, the competent decision-making authority is not bound by the optional opinion. This is particularly the case when the opinion has been sought without any legal obligation to do so. On the other hand, when a text expressly provides for a binding opinion, the decision-making authority is bound by it.

At this level, mandatory consultation may result in an optional opinion when the decision-making authority can only comply with all the issues raised, but with the possibility of making amendments to the draft text without raising new issues[29] . It may also be compliant when the text expressly provides that the decision accompanied by a favourable opinion must comply with that opinion without the decision-making authority having the right to make amendments, under penalty of illegality; and in the event of disagreement, it can only challenge the opinion or decision before the competent administrative court[30] .

On the question of the nature of the Observatory's opinions, we can say that they are merely optional opinions, despite their importance. Indeed, while the Observatory should play a decisive role, particularly in public procurement and public appointments, by giving opinions on the moralisation of these operations, there is no text within our reach that grants the Observatory such a requirement to give opinions.

It is worth asking whether the advisory role of the Observatory is merely regulatory hypocrisy, as it is not followed by any other text expressly referring to the OSCEP in any other matter. However, in a country such as the DRC, where morality is eroded by anti-values such as nepotism, clientelism, favouritism and tribalism, every decision to appoint public officials, members of the Government, senior civil servants and executives of the public administration, senior magistrates and senior officers should be subject to mandatory consultation with the Observatory[31] .

The same applies to procurement. With regard to admissions to public administrations and public services, in order to ensure greater efficiency and integrity in the processes, a text should centralise the organisation of competitive examinations and admission tests at the Observatory.

Thus, in the absence of a request for advice from policy makers, we believe that, in order to fulfil its advisory role, the Observatory should anticipate its opinions through scientific reports and publications, not only to inform national anti-corruption policy but also to enlighten decision makers in their decision-making. Although these opinions are not binding but merely recommendations, they could serve as a strategic framework for the fight against corruption. These opinions could also serve as a guide for researchers and partners interested in the evolution and challenges of the fight against corruption in the DRC. As such, beyond being a simple consultant, the Observatory would be a reservoir of leading thinkers on strategies for eradicating corruption.

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[27] P. ETIENNE, *Les institutions administratives en tableaux*, Paris, Ellipses Éditions Marketing, 2021, p. 28.

[28] *Ibid., p. 29.*

[29] On 23 October 1998, the Assembly of the Council of State handed down an important decision in the case between the Union of CFDT Federations of Public and Related Services (UFFA-CFDT) and the Prime Minister. The UFFA-CFDT challenged Decree No. 94-874 of 8 December 1994, which laid down the common provisions applicable to trainees in the State and its public institutions, requesting its annulment on the grounds of abuse of power. Background to the case: The UFFA-CFDT, a trade union representing civil servants, considered that the contested decree had not been drawn up in accordance with the required procedures, in particular with regard to ministerial countersigning and prior consultation with the competent authorities.https://www.legifrance.gouv.fr/ceta/id/CETATEXT000007981060/ccessed on 2 March 2025.

[30] This is the case for the procedure for creating a municipality, where the Prime Minister's Decree must comply with the opinion of the Provincial Assembly. Similarly, for neighbourhoods, the Governor's order must comply with the opinion of the Municipal Council. The same applies to the administrative authority responsible for concluding public contracts, which decides on the basis of the opinion of the public procurement management unit within the administration concerned. See Articles 6 and 46 of Organic Law No. 08/016 of 7 October 2008 on the composition, organisation and functioning of decentralised territorial entities and their relations with the State and the provinces, *in JORDC*, Part I, Special Issue, 10 October 2008; Article 14 of Decree No. 23/12 of 3 March 2023 on the public procurement procedures manual, *in JORDC*, Part I, Special Issue, 7 March 2023.

[31] In France, since the creation of the High Authority for Transparency in Public Life (HATVP) in 2014, prospective ministers have been subject to thorough checks before their official appointment. These checks cover their tax situation, declaration of assets and interests to ensure there are no conflicts of interest, and their criminal record, in order to prevent any potential scandals. Although not required by law, this practice has become commonplace to ensure the integrity of government members. In the DRC, however, asset declarations must be made within 30 days of the appointment of the person concerned. The important thing, however, would be to check the person before they come to power.https://www.lemonde.fr/les-decodeurs/article/2024/09/20/gouvernement-barnier-en-quoi-consistent-les-verifications-de-la-hatvp_6325753_4355770.html?utm_source=chatgpt.coma accessed on 2 March 2025.

A. OSCEP as a technical body for combating corruption and other anti-values

The Observatory pursues several missions that can be grouped into three areas: the promotion of ethical values, the moralisation of public administration, and the prevention and fight against anti-values in socio-professional circles[32] . Unlike administrative institutions, a decentralised public service of a technical and scientific nature, such as the OSCEP, specialises, as we have just said, in particular in providing technical and scientific support likely to improve knowledge of the risks and the means of combating and preventing them[33] .

As such, by providing sound and objective technical and scientific advice to resolve problems in its field of intervention, the OSCEP should have within its ranks researchers capable of developing strategies, formulating theorems and articulating theories that can effectively curb the consequences of corrupt practices and other anti-values. This would strengthen the analytical, methodological and operational framework.

Indeed, the performance of a technical anti-corruption institution would be based on functional differentiation and dynamic complementarity between three key entities within it. The first entity would be analytical, the second methodological and the third operational.

Let us say that the analytical entity, which would generally be embodied by a research unit, would perform an essential cognitive function by producing diagnoses based on data analysis, the study of corruption mechanisms and the identification of systemic risks, thus informing strategic decision-making. On the basis of these analyses, the methodological entity, supported by a technical department, would translate the analytical findings into internal standards, procedures, benchmarks and standardised tools, ensuring the uniformity, legal certainty and effectiveness of public anti-corruption action. Finally, the operational entity, represented by the Operations Department, would implement these methods through concrete prevention, control and investigation actions in the field.

Technically, the functional interaction between these three levels, i.e. from analysis to action via methodology, would establish a virtuous cycle of institutional learning, in which operational feedback feeds into analysis, which in turn continuously adjusts the methodological frameworks. It should be noted that such a structure would have an impact on the profile of OSCEP staff. It would require analysts with scientific and forward-looking skills, technicians with expertise in regulatory and procedural engineering, and operators with practical, ethical and decision-making skills, thereby contributing to the professionalisation and specialisation of human resources in the fight against corruption.

It would therefore be less productive to disregard these criteria, as one of the Observatory's agents interviewed on this subject stated, saying that "sometimes the people recommended are not up to the job, but continue to work simply so as not to hurt the recommender's feelings. But this undermines the effectiveness of the ethics office".

I.2. Critical analysis of the operational effectiveness of the OSCEP

To analyse the effectiveness of the OSCEP's purpose, we will start from our formula that, for the OSCEP to be effective in the field, it must maintain a balance between incentive missions, observation missions and deterrence missions.

We will now develop the formula that should guide the Observatory's internal planning and evaluation (1.2.1) and then conduct a descriptive study of the tripartite distribution of the OSCEP's missions (1.2.2).

I.2.1. Composite indicators for internal monitoring and planning for the OSCEP

A composite indicator is a synthetic measure that combines several individual indicators, such as basic variables, into a single index, making it possible to assess a complex situation[34] . It facilitates overall understanding, progress monitoring and comparisons, the construction of which is based on methodological choices such as weighting or aggregation that influence the results[35] .

[32] Article 4, paragraph 1, of Decree No. 16/020 of 16 July 2016 establishing the statutes of a public institution called the Observatory for the Monitoring of Corruption and Professional Ethics, abbreviated to OSCEP, *in JORDC*, No. 15, col. 31, Kinshasa, 1 August 2016.

[33] https://observatoire-risques-nouvelle-aquitaine.fr/prevention/acteurs-du-territoire/etablissements-publics-techniques-et-scientifiques/; accessed on 2 March 2025.

[34] See E. PICHON et al., *Ten composite indicators for policy-making*, Brussels, European Parliament Research Service, 2021.

[35] See Ch. ARNDT et al., *Governance Indicators: Uses and Abuses*, Paris, OECD Publishing, 2006.

On this basis, in an annual exercise, we believe it is possible to propose a formula for calculating the practical effectiveness of the OSCEP (EP) as a performance index. Starting from the idea that, during planning, a balance should always be maintained between incentives (prevention), observation (detection) and deterrence (repression), it is appropriate to propose a formula based on measurable indicators of actions carried out in proportion to planned actions.

A. Presentation of the PE

The EP, or practical effectiveness of incentive measures, observation measures and deterrent measures, forms the basis of the formula: $\mathbf{EP} = \frac{(\boldsymbol{\alpha I+\beta C+\gamma D})}{\mathbf{T}} \times \mathbf{100}$

1) Indicators and coefficients

The indicators and weighting coefficients are presented as follows:

PE: Practical effectiveness;

T: Simple arithmetic mean of the total number of actions planned for the three areas per year as a basis for standardisation;

I: number of incentive actions carried out;

C: number of anti-value actions observed and documented;

D: number of dissuasive actions that have had an effect (administrative sanctions, prosecutions, recommendations followed, etc.);

a,β , y: importance coefficients assigned to each mission (weighted according to their actual impact); the axis that has been largely achieved has a coefficient of 0.4, while the other two axes each retain a coefficient of 0.3 to give a total of 1 or 100%.

Thus, if EP = 100%, this means that all missions have been fully executed in relation to the objectives. On the other hand, if EP < 100%, there is a gap between the planned actions and those actually carried out or which have had an effect. Interpreting the result, based on overall efforts on the one hand and efforts made per axis on the other, makes it possible to determine which axis of missions can be strengthened to improve the result in the next financial year.

2) Reading the formula

The Practical Effectiveness of the OSCEP is equal to the weighted sum of incentive, observation and deterrent actions, divided by the total number of planned actions, multiplied by 100. This means that practical effectiveness **(PE)** is obtained by multiplying the number of **incentive** actions **(I)** by its importance coefficient **(α**), then adding the number of **observation** actions **(O)** multiplied by its coefficient **(β),** then adding the number of **deterrence** actions **(D**) multiplied by its coefficient (γ). This sum is then divided by the **total number of planned actions** (**T**) to obtain a fraction of the effectiveness. Finally, the result is multiplied by **100** to express it as a percentage.

In mathematical terms, the formula **"$\mathbf{EP} = \frac{(\boldsymbol{\alpha I+\beta C+\gamma D})}{\mathbf{T}} \times \mathbf{100}$ "** can be read as "practical effectiveness equals **alpha times the number of incentive actions, plus beta times the number of observation actions, plus gamma times the number of deterrent actions**, all divided by the total number of actions planned per axis, then multiplied by 100".

B. Mathematical validity of the formula

The mathematical objectivity of this formula is justified by its compliance **with the** principles **of weighted averages and proportions**. It **is based on a standard weighted average calculation and is proportional to the total number of planned actions (T). It is also flexible in that** the weightings **(α, β, γ)** can be adjusted according to the strategic importance of the missions and, finally**, it is expressed as a percentage.**

1) Weighted average

The formula follows the **principle of weighted average**, a classic mathematical concept used to give **more weight** to certain values according to their importance[36] . Each mission **(I, C, D**) is multiplied by a coefficient (**α, β, γ**) that represents its impact in the calculation of practical effectiveness (**EP**).

2) Respect for proportionality

The **numerator (αI+ βC + γD)** adds up the actions carried out, taking into account their relative weights. The **denominator (T)** adjusts this sum so that the PE is a **proportional ratio** (number of successful actions out of the total number of planned actions). Finally, multiplying by **100**

[36] Th. COGET, "Excel weighted average: Complete guide to effective calculation," *in Excelleur*, 18/07/2024, unpublishedhttps://www.exceleur.fr/excel-moyenne-ponderee/accessed 25 February 2025.

converts the result into **a percentage**, which makes it easier **to** interpret and compare the results of several financial years.

3) Weightings ensure a balanced distribution

The sum of (α, β, γ) must be equal **to 1 (**or **100%** if expressed as a percentage). This ensures that **each mission contributes consistently** to the EP, without any mission being overrepresented or ignored. Hence the respect for the **FPIO** principle during planning.

However, there are a few issues with the proposed formula. If $\boldsymbol{\alpha + \beta + \gamma \neq 1}$, the weightings will not be well balanced. Furthermore, if **T is too low**, a small variation in I, C or D can skew the result.

Example 1:

If the annual report for the 2024 financial year had the following indicators and coefficients:

T=100; I=30; C=40; D=20 and a=0.3; b=0.4; y=0.3

Calculate the practical effectiveness of the OSCEP for the year 2024.

Solution:

$$\mathbf{EP} = \frac{(\boldsymbol{\alpha I + \beta C + yD})}{\mathbf{T}} \times \mathbf{100}$$

$$\mathbf{EP} = \frac{(\mathbf{0,4x30}) + (\mathbf{0,4x40}) + (\mathbf{0,3x20})}{\mathbf{100}} \times \mathbf{100}$$

$$\mathbf{EP} = \frac{\mathbf{9+16+6}}{\mathbf{100}} \times \mathbf{100}$$

$$\mathbf{EP} = \frac{\mathbf{31}}{\mathbf{100}} \times \mathbf{100}$$

$$\mathbf{EP} = \mathbf{31}\%$$

Interpretation of the result:

A PE of 31% means that the OSCEP is not very effective in carrying out its missions. Incentives and deterrents seem to be insufficient, while investigations work relatively well but without deterrent consequences, so their impact remains limited.

Areas for improvement**:**

- Strengthen deterrence because, if sanctions were better proposed and, where appropriate, applied, the score would increase.
- Improve awareness to reduce anti-values in the socio-professional environment;
- Optimise the synergy of the three missions for a better overall impact.

Example 2:

During the annual assessment for 2008, the OSCEP noted the following indicators:

T= 50; I= 44; C= 48; D=40 and a=0.3; b=0.4; D=0.3;

Calculate the practical effectiveness of OSCEP for 2008.

Solution:

$$\mathbf{EP} = \frac{(\boldsymbol{\alpha I + \beta C + yD})}{\mathbf{T}} \times \mathbf{100}$$

$$\mathbf{EP} = \frac{(\mathbf{0,3x44}) + (\mathbf{0,4x48}) + (\mathbf{0,3x40})}{\mathbf{50}} \times \mathbf{100}$$

$$\mathbf{EP} = \frac{\mathbf{13,2 + 19,2 + 12}}{\mathbf{50}} \times \mathbf{100}$$

$$\mathbf{EP} = \frac{\mathbf{44,4}}{\mathbf{50}} \times \mathbf{100}$$

$$\mathbf{EP} = \mathbf{88,8}\%$$

Interpretation of results:

If the EP is 88.8%, this means that the OSCEP is practically excellent in carrying out its missions. All actions are perfectly executed. Incentives, observations and deterrents are close to the number of planned actions.

Areas for improvement:

All areas are practically excellent, but they need to be improved in order to maintain this result or increase it in the next financial year.

I.2.2. Tripartite distribution of OSCEP missions (ICD)

Based on Article 4 of Decree No. 16/020 of 16 July 2016, we can estimate that it is possible, as we have already said, to distinguish three main classifications of OSCEP missions. First, the promotion of ethical values aimed at encouraging targets to adopt responsible behaviour. Secondly, the moralisation of public administration, aimed at identifying irresponsible behaviour by public officials. Finally, the repression of corruption and anti-values in socio-professional circles, using dissuasive sanctions.

A. Promotion of ethical values (incentive)

The promotion of ethical values is approached here as encouraging public officials to adopt behaviours, attitudes or actions that comply with professional competence and professional ethics[37] .

Article 1 of Decree-Law 017/200 of 3 October 2002 on the Code of Conduct for Public Officials defines professional competence as "the ability of a public official to personally and conscientiously fulfil all the obligations imposed by laws and regulations in accordance with their duties or mandate. It follows that professional ethics are the set of moral values and ethical principles that guide the behaviour, attitudes and actions of public officials in the exercise of their duties or mandate." These values and principles deserve to be highlighted in the following paragraphs.

Thus, with a view to understanding how the Observatory could persuade professionals to apply ethical values spontaneously**,** we are tempted to identify five of the fifteen missions of the OSCEP provided for in Article 4(2) of Decree No. 16/020 of 16 July 2016, the purpose of which would necessarily be incentive-based. These would be:

1) Ensuring the promotion, dissemination, popularisation and monitoring of the Code of Conduct for Public Servants in socio-professional circles and among the general public;
2) Ensuring the prevention of anti-values and other practices that are contrary to professional ethics;
3) Encourage national institutions to organise training in this area;
4) Providing training and professional development for State personnel in the field of preventing and combating anti-values;
5) Promote the creation, throughout the country, of a network of institutional committees to combat anti-values in socio-professional circles.

With regard to the values that constitute professional ethics, a reading of the various provisions of Decree-Law No. 017/2002 of 3 October 2002 leads us to identify 28 behaviours and attitudes that are required of all public servants, which we refer to as the 28 commandments of the public servant. These include:

1. Professional competence (Articles 4 and 5);
2. Dedication (Art. 6);
3. Punctuality (Art. 6);
4. Rigour (Art. 6);
5. Responsibility (Art. 6);
6. Honesty (Art. 6);
7. Integrity (Art. 6);
8. Fairness (Art. 6);
9. Dignity (Art. 6);
10. Impartiality (Articles 6 and 22);
11. Loyalty (Articles 6 and 22);
12. Civility (Art. 6);
13. Courtesy (Art. 6 and 19);
14. Duty of discretion (Art. 6)
15. Compliance with laws and regulations (Art. 9(3));
16. Probity (avoiding corruption, fraud, theft, etc.) (sections 9(2), 16 and 17);
17. Transparency (declaration of assets) (Art. 9(5));
18. Professional secrecy (Articles 13 and 14);
19. Proper management of public resources (Art. 15);
20. Rejection of favouritism, nepotism and influence peddling (Art. 16);
21. Non-discrimination (Art. 22);
22. Objectivity (Art. 22);
23. Availability (Art. 20);
24. Supervision and knowledge transfer (Art. 21)
25. Sense of responsibility in cases of corruption (Art. 18);
26. Honour and sincerity (Art. 19);
27. Avoidance of conflicts of interest (Art. 12);
28. Refusal of gifts or undue advantages (Art. 17).

Although these values are theoretical, the Observatory must therefore put in place strategies to instil, explain and promote understanding of these abstract concepts by translating them into the real lives of public officials. It is therefore customary at the OSCEP for all newly recruited officials to develop and present a module related to the promotion of ethical values. It should be noted, however, that despite this requirement, these modules are gathering dust in the OSCEP's drawers without being used by the outside world.

Apart from a few experts who are often called upon to provide training in other departments, there is currently no OSCEP policy on promoting ethical values among other groups, such as young people. Such a policy would reinforce the incentive to uphold values in the management of public affairs.

[37] According to Article 4 of Decree-Law 017/200 of 3 October 2002 on the Code of Conduct for Public Officials, "the reference values for public officials are based on professional competence and ethics".

B. Moralisation of public administration (observation)

We can consider the moralisation of public administration as the objective pursued by incentive and deterrent measures. Some of the Observatory's missions can therefore be used to ascertain or detect whether public officials have adopted the ethical values recommended to them or, on the contrary, have disregarded them, with a view to imposing dissuasive sanctions. According to Article 4(2) of Decree No. 16/020 of 16 July 2016, these missions are as follows:

1) Receiving from public officials, upon taking office, annually during their term of office and at the end of their career or term of office, a declaration of their personal assets and liabilities and those of their immediate family;
2) Receiving reports of anti-values and complaints of corruption and other related practices and conducting investigations into them;
3) Developing appropriate measures concerning the declaration of public officials;
4) Produce an annual report on its activities, send it to the relevant minister, and ensure its wide dissemination;
5) Propose to the Government and any other competent authority appropriate measures to prevent and punish violations of the provisions of the Code of Conduct for Public Officials, as well as violations of other provisions relating to the fight against anti-values in socio-professional circles.

C. Combating corruption and anti-values in socio-professional circles (deterrence)

Decree-Law No. 017/2002 of 3 October 2002 on the Code of Conduct for Public Officials[38] does not directly define the term 'anti-value'. Nevertheless, it clearly describes its manifestations through prohibited behaviours that are contrary to professional ethics. We can therefore define anti-values, in line with the Code of Conduct, as any behaviour, attitude or practice that goes against the principles of professional ethics and the moral values expected of a public official.

We can then classify these anti-values into two main categories: criminal offences that the OSCEP has the authority to investigate (provided for and punished by the Criminal Code) and administrative and disciplinary offences that it must also investigate (punished by administrative and disciplinary measures):

1) Criminal offences found in the Code of Conduct for Public Officials

- Corruption and related offences (Articles 16 and 17)

These include corruption, extortion, influence peddling, misappropriation of public property, receipt of undue payments, false documents and fraud (production or use of forged documents).

- Attacks on national security and sovereignty (Art. 16)

These include offences of complicity with the enemy (assisting a foreign force against the DRC), attacks on national sovereignty (membership of a group threatening national independence) and bearing arms against the country.

- Abuse of office and conflict of interest (Articles 12 and 15)

These offences include sexual harassment, illegal use of public property (for private interests), conflict of interest (making decisions in favour of one's own personal interests) and undue favours (unmerited appointment or promotion).

Before presenting disciplinary offences in detail, we would like to point out that any criminal offence constitutes a disciplinary offence on the part of a public official[39] . In addition, disciplinary action may be taken independently of criminal proceedings brought as a result of the same acts committed by the public official[40] .

[38] Decree-Law No. 017/2002 of 3 October 2002 on the Code of Conduct for Public Officials, *in JORDC,* 44th year, special issue, 15 January 2003.

[39] "Any breach by an official of the duties of his office, the honour or dignity of his functions, constitutes a disciplinary offence"; Article 64 of Law No. 16/013 of 15 July 2016 on the status of career civil servants, *in JORDC*, 57th year, part one, special issue, Kinshasa, 3 August 2016.

[40] Article 32 of Decree-Law No. 017/2002 of 3 October 2002 on the Code of Conduct for State Public Officials, *in JORDC,* 44th year, special issue, 15 January 2003.

2) Disciplinary or moral offences

These are offences falling under the disciplinary regime and resulting in administrative or disciplinary sanctions such as: warning, reprimand, disciplinary suspension or transfer, dismissal or revocation. Examples include:

- Breach of professional duties (Articles 4, 5, 6, 9, 19, 20 and 22)

Such conduct includes negligence at work, unjustified absences or tardiness, refusal to carry out a legal assignment, and inappropriate behaviour towards the public or superiors.

- Drunkenness and sexual vagrancy (Art. 9, point 2)

This includes drunkenness while on duty (which undermines the credibility of the administration) and immoral sexual behaviour (harassment, inappropriate relationships at work).

- Disrespect and misconduct (Articles 19 and 20)

This includes the use of foul language, insults or threats, psychological harassment and a lack of courtesy and respect towards colleagues and users.

- Breach of professional secrecy (Articles 13 and 14)

This includes the disclosure of confidential information and the use of government or departmental data for personal purposes.

- Discrimination and nepotism (Art. 22)

This includes favouritism based on origin, ethnicity, religion or political opinions and giving special treatment to former public officials.

As is the case with incentives and detection, deterrence can also be achieved through the missions set out in the decree establishing the OSCEP's statutes. With a pool of judicial police officers at its disposal, the Observatory must undertake several initiatives to obtain the final result from the sanctioning authority in the event of a violation of the Code of Conduct by a public official. The OSCEP must therefore, in particular:

1) Act as the State's interface for the prevention and monitoring of corruption and the promotion and control of professional ethics practices;
2) Take action on its own initiative in cases of flagrant violations of the provisions of the Code of Conduct for State Public Officials;
3) Provide the government and other relevant state services with the information it holds that is necessary for investigating cases of corruption and other anti-values.

II. The OSCEP's judicial police and its limitations

Article 38 of Decree No. 16/020 of 16 July 2016 stipulates that the Observatory's commanding officers have the status of judicial police officers with general jurisdiction, exercised in accordance with Order 78-289 of 3 July 1978 on the powers of judicial police officers attached to the ordinary courts. To do so, they must comply with the restrictions associated with the exercise of this function. They are therefore required to be authorised and sworn in.

II.1. Powers of judicial police officers

Ordinance 78-289 of 3 July 1978 defines the various powers of judicial police officers, particularly in terms of territorial, material and personal jurisdiction, including those of the OSCEP.

II.1.1. Territorial jurisdiction

Under Article 3 of Order 78-289 of 3 July 1978, the judicial police are placed under the authority of the public prosecutor within the jurisdiction of each district court. They are supervised by the Attorney General within the jurisdiction of each court of appeal. To comply with this, under penalty of sanctions, Article 6 requires judicial police officers to respect the limits of their territorial jurisdiction and to exercise their powers only within these clearly defined areas.

However, despite this restriction, the Ordinance recognises three levels of territorial jurisdiction. Judicial police officers with limited territorial jurisdiction[41] , with extended territorial jurisdiction and with national jurisdiction. Before determining the scope of the OSCEP's judicial police officers, let us first explain the requirements for each level of jurisdiction.

OPJs with limited jurisdiction may only exercise their functions within the jurisdiction of a single district court. To

[41] Article 7 of Ordinance 78-289 of 3 July 1978 on the powers of judicial police officers in common law courts, *in Official Journal of Zaire*, No. 15,[1]August 1978, p. 7.

do so, they must be authorised by the public prosecutor of their jurisdiction before exercising their powers. If an OPJ has to investigate outside their jurisdiction, they must inform the public prosecutor of the place where they are going and be assisted by a local OPJ[42] .

A certain category of OPJs is also recognised as having the possibility of extending their territorial jurisdiction to several high court jurisdictions[43] . In this case, authorisation is granted by the public prosecutor of their main place of residence, and all other prosecutors concerned must be informed. They are assigned an identification number and a special OPJ card[44] . Finally, some judicial police officers are authorised to carry out their duties throughout the national territory[45] . To this end, their authorisation is issued by the public prosecutor in Kinshasa, who must inform all public prosecutors in the DRC. They are also assigned a special identification number and a national judicial police officer card.

With regard to the OSCEP, it should be noted that all commanding officers are recognised as judicial police officers[46] . Thus, with regard to their assignment, a distinction must be made between officers assigned to posts with national, provincial and territorial jurisdiction. In this regard, we believe that an OSCEP officer assigned to a territory can only exercise the functions of a judicial police officer within the jurisdiction of the high court where he or she is located and be reinstated by the public prosecutor of that jurisdiction.

On the other hand, commanding officers in the provincial directorates of the OSCEP may investigate compliance with the code of conduct and related offences throughout the jurisdiction of the respective courts of appeal. Finally, judicial police officers assigned to the Directorate-General may have national jurisdiction to investigate cases of corruption in all provinces of the country, including even those where provincial directorates have not yet been established.

II.1.2. Substantive jurisdiction

The material jurisdiction of judicial police officers covers offences that they have the power to detect, investigate and prosecute. Article 6 of the aforementioned Ordinance stipulates that judicial police officers are responsible for investigating, detecting and gathering evidence of criminal offences. However, they must act within the limits of their material jurisdiction, i.e. within the scope of the offences assigned to them.

Although OSCEP judicial police officers have general jurisdiction, their specific mission is to monitor corruption and professional ethics. Their material jurisdiction therefore covers mainly all corruption offences, in particular passive and active corruption, extortion, embezzlement of public funds, as well as offences related to professional ethics such as illicit enrichment, abuse of office, illegal taking of interest, sexual harassment, forgery and use of forged documents, money laundering, obstruction of investigations, and all other anti-values provided for in the Code of Conduct for Public Officials, which are classified as offences under criminal law.

However, it has been noted at the OSCEP that, to date, the judicial police mission seems to be fading into the background[47] . Indeed, for more than three years, no offences have been recorded by its judicial police officers. However, even if this were to be the case, we can still criticise certain practical limitations. The latter must forward the reports to the Public Prosecutor's Office, which decides on prosecution. However, given the current state of the judiciary, in which confidence seems to have been lost[48] , the question arises as to what happens when, for personal interests or any other motive for malfeasance, the Public Prosecutor's Office to which the case has been referred does not decide to prosecute or closes the case without further action despite the evidence and serious indications of guilt.

[42] Article 12 of Ordinance 78-289 of 3 July 1978 on the powers of judicial police officers in common law courts, *in Official Journal of Zaire*, No. 15,[1]August 1978, p. 7.

[43] Article 10 of Ordinance 78-289 of 3 July 1978 on the powers of judicial police officers in common law courts, *in Official Journal of Zaire*, No. 15,[1]August 1978, p. 7.

[44] Ordinance 78-289 of 3 July 1978 on the powers of judicial police officers in common law courts, *in the Official Journal of Zaire*, No. 15, 1 August 1978, p. 7.

[45] Article 11 of Order 78-289 of 3 July 1978 on the powers of judicial police officers in common law courts, *in Official Journal of Zaire*, No. 15,[1]August 1978, p. 7.

[46] Article 38 of Decree No. 16/020 of 16 July 2016 establishing the statutes of a public institution called the Observatory for the Monitoring of Corruption and Professional Ethics, abbreviated to OSCEP, *in JORDC*, No. 15, col. 31, Kinshasa,[1]August 2016.

[47] Of the seven OSCEP agents interviewed about the existence of OSCEP judicial police officers, four answered yes, without knowing of any cases already investigated by them; two answered that they did not know of any OSCEP judicial police officers, while only one presented at least two cases already investigated by their judicial police officers.

[48] Speech by the Minister of Justice at the États généraux de la justice (Justice Forum).

We may also ask ourselves whether the fact that the Observatory's agents have the power to note disciplinary breaches gives them the power to summon a public prosecutor who has not justified the dismissal of a case referred by the OSCEP. In our opinion, we can say that this is the case, as it would even be a consequence of its role as a monitor of corruption and any other anti-values on the part of public officials. Another solution would be to recognise the Observatory's right to request that the investigating magistrate's superior remove the latter from the case and assign it to another magistrate specialising in the fight against corruption, even if the case has already been closed.

We also believe that another solution would be to grant the OSCEP the power to submit the case directly to the Tribunal. There is also a need to set up specialised chambers composed of judges who are specialists in the fight against corruption. Uganda could serve as an example. The Anti-Corruption Division of the Ugandan High Court deals with cases brought by the Public Prosecutor's Office as well as those brought by the Office of the Inspector General of Anti-Corruption or the tax authorities[49] .

II.1.3. Personal jurisdiction

Personal jurisdiction refers to the categories of persons over whom a judicial officer may exercise authority.

The spirit of the provisions of Article 2 of Ordinance 78-289 of 3 July 1978 is that any person who commits an offence on Congolese soil is subject to the jurisdiction of the OPJ. The latter may investigate any person involved in an offence, unless specific rules apply. This means that any person who has committed an offence may be questioned by the OSCEP's judicial police officers, who have general jurisdiction for this purpose.

However**,** senior political and judicial officials[50] cannot be investigated by OSCEP police officers as a matter of course. The latter must forward the files to the Attorney General at the Court of Appeal or to the Attorney General of the Republic, who decides on the action to be taken. The persons concerned here are magistrates, members of the government, members of parliament and dignitaries of the National Order of the Leopard[51] . This may be justified by the immunities enjoyed by the latter and in view of the respectability of their office.

The difficulty here is that it is often those who enjoy privileges and immunities who are involved in corrupt practices. We therefore believe that the Observatory, recognised as the State's intermediary in the prevention and monitoring of corruption[52] , should have the power to take action. This reform would then make it possible to effectively combat anti-values among dignitary public officials by gathering evidence to be used in prosecutions at the end of the term of office of persons protected by immunity. The actions taken by the Director General may serve to suspend the statute of limitations on the facts.

II.2 Investigation procedure by judicial police officers

The investigation procedure consists of the judicial police officers receiving referrals and conducting investigations, seizures and arrests, as well as forwarding reports to the public prosecutor's office.

II.2.1. Investigations

With regard to investigations, the aforementioned order distinguishes between several types and defines the powers of judicial police officers in this area.

A. Preliminary investigation: flagrant offence and request from the Public Prosecutor's Office

The initiative to conduct an investigation may arise in several ways. It may be an ex officio investigation, on the instructions of the public prosecutor, or following a complaint or report[53] . Each investigation consists of establishing the identity of the suspects, collecting evidence and drawing up a report[54] . It must be conducted quickly so that the results can be forwarded to the public prosecutor.[55] Articles 41 and 42 of Ordinance 78-

[49] C. MATTHEW STEPHENSON et al., *Specialised Anti-Corruption Courts: A Comparative Map*, French translation by Sofia M. WICKBERG and Alice LEMARIGNIER, U4 Analysis Document, January 2017, p.18.

[50] Article 43 of Order 78-289 of 3 July 1978 on the powers of judicial police officers in common law courts, *in the Official Journal of Zaire*, No. 15,[1]August 1978, p. 7.

[51] Article 43 of Order 78-289 of 3 July 1978 on the powers of judicial police officers in common law courts, *in Official Journal of Zaire*, No. 15,[1]August 1978, p. 7.

[52] Article 4, paragraph 2, drawn from 2 of the Decree of 2016.

[53] Article 33 of Order 78-289 of 3 July 1978 on the powers of judicial police officers in common law courts, *in the Official Journal of Zaire*, No. 15,[1]August 1978, p. 7.

[54] Article 34 of Order 78-289 of 3 July 1978 on the powers of judicial police officers in common law courts, *in the Official Journal of Zaire*, No. 15,[1]August 1978, p. 7.

[55] Article 35 of Order 78-289 of 3 July 1978 on the powers of judicial police officers in common law courts, *in Official Journal of Zaire*, No. 15,[1]August 1978, p. 7.

289 of 3 July 1978 stipulate that witnesses and suspects who are questioned are not required to take an oath.

In the event of a flagrant offence[56] , the judicial police officer is required to immediately record the offence and inform the public prosecutor[57] . They must preserve any evidence, clues and objects related to the offence and question any witnesses present,[58] , and carry out searches and seizures without the suspect's consent, if necessary.[59] However, as soon as a public prosecutor arrives, the judicial police officer is automatically relieved of the investigation.[60] We believe that this limitation in matters of corruption can lead to a climate of impunity in cases where the magistrate is already involved in corrupt practices. Indeed, although the accused in corruption cases enjoy the right to a fair trial, certain measures, such as shorter time limits for sexual violence offences, should apply to pre-trial investigations in corruption cases.

Article 99 of Ordinance 78-289 of 3 July 1978 stipulates that the Public Prosecutor's Office may at any time assign a specific task to a judicial police officer, who is required to carry it out. It may even grant the judicial police officer additional powers, such as the power to conduct forced searches or issue summonses under compulsion for a given task[61] . However, we believe that the OSCEP, which is called upon to monitor the conduct of public officials, particularly magistrates, should be granted the necessary powers by law to enable it to escape the influence of magistrates. Indeed, as we have already said, the best option is for the Observatory to be able to submit its reports directly to the competent courts and tribunals. This is particularly the case when the Observatory's judicial police officers are called upon to investigate failure to report or false reporting on the part of the Attorney General of the Republic.

B. Transmission and control of reports

Articles 125 to 135 of Ordinance 78-289 of 3 July 1978 govern the drawing up of reports by judicial police officers, which must be drawn up immediately after each investigation and forwarded to the public prosecutor. The question then arises as to whether the OSCEP can take other appropriate action at the end of investigations. It should also be noted that a report drawn up by a judicial police officer who is not authorised or whose authorisation has been suspended is null and void[62] .

II.2.2. Seizures and arrests

Given that since its creation, the OSCEP has never seized property that was the subject of an offence or taken a suspect into custody, one may wonder whether this inertia stems from a lack of jurisdiction or is merely a practical flaw. It should be noted that OSCEP police officers have general jurisdiction, under which they have the power to seize property and arrest suspects in accordance with the Code of Criminal Procedure. According to our interviews with a few authorised judicial police officers within the Observatory, the internal focus for effectively combating corruption is the promotion of ethical values[63] . However, by not playing its role as a judicial police force, the Observatory seems to be overlooking a very important aspect that ultimately undermines all its efforts.

The question is rather what should be done if preventive measures fail? Believing that enforcement is solely the responsibility of the courts and tribunals, the Observatory is failing in its mission to ensure that all anti-values in socio-professional circles are identified and that their perpetrators are brought before the appropriate courts. There is therefore a need to reform the internal structure of the OPJ in order to ensure the dynamism in detection and repression that is necessary for the mission of monitoring corruption and professional ethics.

[56] What is a flagrant offence?

[57] Articles 82-84 of Order 78-289 of 3 July 1978 on the powers of judicial police officers in common law courts, *in the Official Journal of Zaire*, No. 15,[1]August 1978, p. 7.

[58] Articles 87-89 of Ordinance 78-289 of 3 July 1978 on the powers of judicial police officers in common law courts, *in the Official Journal of Zaire*, No. 15,[1]August 1978, p. 7.

[59] Article 93 of Order 78-289 of 3 July 1978 on the powers of judicial police officers in common law courts, *in Official Journal of Zaire*, No. 15,[1]August 1978, p. 7.

[60] Article 98 of Ordinance 78-289 of 3 July 1978 on the powers of judicial police officers in common law courts, *in Official Journal of Zaire*, No. 15,[1]August 1978, p. 7.

[61] Articles 99 to 102 of Order 78-289 of 3 July 1978 on the powers of judicial police officers in common law courts, *in the Official Journal of Zaire*, No. 15,[1]August 1978, p. 7.

[62] Article 19 of Ordinance 78-289 of 3 July 1978 on the powers of judicial police officers in common law courts, *in Official Journal of Zaire*, No. 15,[1]August 1978, p. 7.

[63]Fifteen out of twenty OSCEP agents questioned on this subject consider integrity education to be the main action for overcoming corruption, without attaching great importance to detection.

A. Seizure of objects

Articles 47 to 71 of Order 78-289 of 3 July 1978 govern the procedure for seizing objects. In order to strengthen the evidence, judicial police officers may seize objects in the course of their investigations, but subject to several conditions and restrictions. To this end, the only items that may be seized are[64] , traces and clues left by the perpetrators of offences, items that may be used to establish the truth, items that may be confiscated, in particular those used to commit the offence and those that are the proceeds of the offence. Furthermore, a judicial police officer may only seize an item if it is related to an ongoing investigation.

The destination of seized objects is strictly regulated. Articles 66 to 71 of the aforementioned Ordinance set out the procedures for sealing buildings and fixtures and fittings, as well as the temporary custody of seized property, before it is transferred directly to the public prosecutor at the end of the operation. Perishable items are to be sold at auction, while dangerous or harmful items are to be destroyed.

It should be noted that searches and house visits require the consent of the head of the household; only in the event of refusal can the public prosecutor order a forced search. In all cases, however, searches may only be carried out between 5 a.m. and 9 p.m., except in cases of flagrant offences.[65] One consequence of this is that without authorisation from the public prosecutor's office, a judicial police officer cannot carry out a forced search, which can hinder sensitive investigations requiring the surveillance techniques and undercover operations provided for in Article 50(1)(i) of the United Nations Convention against Corruption.

If, in the course of investigating compliance with asset declarations, the OSCEP is authorised to obtain all relevant information, including restricted information[66] , the question arises as to whether, in order to obtain information requiring home visits, the OSCEP must first seek authorisation from the Public Prosecutor's Office. We believe that it would not be necessary to seek such authorisation because the asset declaration regime is a special regime and could therefore adopt a certain degree of expediency that derogates from the Code of Criminal Procedure, which is the general rule.

Other conditions are also imposed for the seizure of protected documents and objects. This is the case for searches of law firms, doctors' offices and other protected professions, which require the presence of a representative of the profession. Furthermore, letters and parcels may only be seized at the request of the Public Prosecutor's Office[67] .

Given the multiple restrictions mentioned above, which appear to reduce the powers of the Observatory's judicial police officers, we can say that Ordinance 78-289 of 3 July 1978 and the Decree of 6 August 1959 establishing the Code of Criminal Procedure, being earlier, do not meet the special procedural prerogatives granted to anti-corruption agencies in the United Nations Convention against Corruption and the African Charter on Preventing and Combating Corruption. It is therefore necessary for Congolese legislation to be brought into line with international commitments.

B. Arrests and police custody

A reading of Articles 72 to 81 of Ordinance 78-289 of 3 July 1978 makes it clear that arrest can only be made in respect of a suspected offender punishable by at least six months' imprisonment, and where there is serious evidence of guilt against him; or when there is a risk of flight or doubtful identity for offences punishable by 7 days to 6 months' imprisonment.

An arrested person must be brought before the public prosecutor immediately, unless the requirements of the investigation justify police custody for a maximum of 48 hours or longer with the authorisation of the public prosecutor[68] . During this procedure, police custody must be recorded in a report and the suspect has the right to be examined by a doctor. Men, women and children must be separated in sanitary conditions and monitored by the public prosecutor's office[69] . It should be noted here that, in its eleven years as a public institution, the Observatory has never arrested a suspected perpetrator of corruption. However, it

[64] Articles 47 to 49 of Order 78-289 of 3 July 1978 on the powers of judicial police officers in common law courts, *in the Official Journal of Zaire*, No. 15,[1]August 1978, p. 7.

[65] Articles 50 to 52 of Ordinance 78-289 of 3 July 1978 on the powers of judicial police officers in common law courts, *in the Official Journal of Zaire*, No. 15,[1]August 1978, p. 7.

[6666] Article 11 of Decree No. 25/15 of 9 April 2025 on the regime for declaring the assets of public officials and members of their immediate family in the Democratic Republic of Congo.

[67] Articles 60 to 61 of Order 78-289 of 3 July 1978 on the powers of judicial police officers in common law courts, *in the Official Journal of Zaire*, No. 15,[1]August 1978, p. 7.

[68] Articles 71 to 73 of Ordinance 78-289 of 3 July 1978 on the powers of judicial police officers in common law courts, *in the Official Journal of Zaire*, No. 15,[1]August 1978, p. 7.

[69] Articles 74 to 81 of Order 78-289 of 3 July 1978 on the powers of judicial police officers in common law courts, *in Official Journal of Zaire*, No. 15,[1]August 1978, p. 7.

should be emphasised that most of those involved in corrupt practices enjoy immunity from prosecution. This is why not recognising the official status of the perpetrator of a corruption offence or crime would strengthen the effectiveness of this regime.

Conclusion

In summary, following a teleological and systemic approach to the Observatory's statutory texts, supplemented by direct observation through interviews with the institution's staff, it can be said that despite its status as a public institution, a number of difficulties, such as the lack of a unit dedicated to scientific research, the limitation of its autonomy in practice, the failure of recruitment mechanisms based on expertise, and the dysfunction of its judicial police, are among the factors that justify the ineffectiveness of its mission to monitor corruption and professional ethics.

As it remains heavily dependent on and under the political influence of members of the government, parliament and senior civil servants, who are key perpetrators of high-level corruption, we believe that attaching it directly to the Prime Minister's Office would help to guarantee its autonomy. We also propose that the effective implementation of an admission competition to the Observatory would also strengthen its effectiveness. Seeking the OSCEP's prior approval on the morality of persons to be appointed as ministers and senior civil servants would strengthen integrity in the management of public affairs.

The OSCEP depends on the state budget and has no alternative sources of funding. We propose that the OSCEP be authorised to receive a special anti-corruption fund to finance its activities, as is the case with the Fund for the Fight against Organised Crime. It could also receive a 50% rebate on the administrative fees charged for issuing a certificate of compliance with the declaration of assets.

As a preventive measure, in order to promote ethical values, the Observatory should implement binding measures such as compulsory training programmes for public officials and education targeting young people, for example. It must also structure its internal policy in terms of planning, monitoring and evaluation, taking into account a balance between prevention, detection and enforcement activities. Finally, procedural legislation must comply with international commitments so that anti-corruption agencies, in particular the OSCEP, can enjoy special procedures such as direct referral to courts and tribunals.

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