The President of the Senate;

The Speaker of the National Assembly;

The President of the Constitutional Council;

The President of the Economic and Social Council;

The Prime Minister, Head of Government;

The Minister of State, Minister of Justice, Keeper of the Seals;

Distinguished Ministers;

Ministers Delegate and Secretaries of State;

The Lord Mayor of Yaounde;

Distinguished Judicial and Legal Officers;

The acting President of Cameroon Bar Association;

The President of the National Chamber of Notaries Public;

The President of the National Order of Sheriff/Bailiffs;

Distinguished members of the judicial family;

Distinguished guests, all protocol respected;

This solemn session is holding in a special context dominated by the covid-19 pandemic.

In a bid to respect the etiquette prescribed for this purpose, the Supreme Court has reduced this ceremony to its simplest form, with very few guests and a lot of moderation.

This solemn session is in compliance with the requirements of section 33 of Law No. 2006/16 of 29 December 2006 to lay down the organisation and functioning of the Supreme Court which provides:

"(1) At the start of each judicial year and on 28 February at the latest, a solemn reopening ceremony of the Supreme Court, attended by heads of appeal courts, lower administrative courts and lower audit courts in judicial robes, shall hold under the chairmanship of the [Chief Justice]."

(2) The President of the Republic may, at his request, attend the ceremony and deliver a speech, if need be."

Distinguished Guests, Ladies and Gentlemen,

The Supreme Court is honoured to welcome you to its premises and acknowledges you for enhancing the splendour of this ceremony with your presence.

In spite of the particular circumstances, the Supreme Court has undertaken to respect the tradition of sharing the following discourse with you on an increasingly worrying observation:

"***The difficult execution of court judgments in Cameroon***"

Generally, judicial activity has three phases: the conduct of the trial, the conclusion of the trial and the execution of the judgment.

Of course, the last phase is the most important [(1)].

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(1) Calbairac, ***l'exécution des décisions de Justice,*** Dalloz 1947, chr 85
Du Rusquec, ***Réflexions sur l'exécution des décisions de Justice*** Gaz-pal 1982 Doct.355

First, it is important to litigants interested only in the effective outcome of their proceedings.

Second, it is important for the credibility of the Judiciary which would be weakened if there is a failure in the execution of the judgments delivered.

Pascal in his time held that: **"*Force without Justice is tyrannical; and Justice without force is powerless. What is right must therefore be strong and what is strong must be fair.* "**[(2)]

In fact, a trial does not really end until after the judgment has been executed. PLATO held that **"*it is right to give every man his due*"**

In a bid to ensure a rapid and effective execution of court judgments[(3)], the Cameroon lawmaker and the OHADA lawmaker provided for a range of measures to overcome the resistance of debtors and losers. [(4)]

That is why **Marcel Schwob** rightly held that: **"*All court judgments that last without execution constitute injustice.*"**

Distinguished guests, Ladies and Gentlemen,

In the execution of court judgments strategy, the Cameroon lawmaker has drawn up a variety of legal instruments on the matter.

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(2) Pascal, ***les pensées, classique***

(3)Wandah Tchamba Armel Edith, ***La force exécutoire des décisions de justice en matières non répressives dans l'espace*** OHADA. Ph.D thesis in private law, university of Douala, 2020.

(4) Delay in the execution and the non-execution of court judgments henceforth constitute violation of Human Rights; the right to execution of a court judgment is henceforth considered a Human Right.

The non-execution of a court judgment that has become final is assimilated to justice denied. VAN CAMPERNOLLE, ***le Droit à l'exécution. Une nouvelle garantie du droit équitable***.

First, the Preamble to the amended Constitution of 18 January 1996 provides:**"*The law shall ensure the right of every person to a fair hearing before the courts.*"**[5]

This presupposes free access to justice, a fair trial and above all the execution as soon as possible, of the judgment delivered.

Second, section 11 of Law No. 2006/15 of 29 December 2006 on judicial organisation in Cameroon provides:

"***Copies of judgments and judicial warrants, together with engrossments and copies of contracts and all documents capable of enforcement shall bear the executory formula introduced as follows:***

"Republic of Cameroon

"In the name of the people of Cameroon" and close with the following words:

"Wherefore, the President of the Republic commands and enjoins all Bailiffs and Process Servers to enforce this judgment (or order, etc), the Procureurs General and the State Counsel to lend them support, and all Commanders and Officers of the Armed Forces and Police Forces to lend them assistance when so required by law."

Once it is affixed to a court judgment, the executory formula is a strong symbol, by which the President of the Republic, on behalf of the people of Cameroon, enjoins the different authorities (Bailiffs,

(5) Cf. Law No. 96/6 of18 January 1996 as amended and supplemented by Law No. 2008/1 of 14 April 2008. Special Issue of the Secretariat General of the National Assembly of Cameroon (November 2018)

Procureurs General, State Counsel and Judicial Police Officers) to ensure the execution of court judgments that have become final, enforceable or provisionally enforceable.

Third, **Article 1** of **Decree No. 79/488 of 5 November 1979**to lay down the status of Sheriff/Bailiffs and Process Servers as amended by **Decree No. 85/238 of 23 February 1985** and **Decree No. 98/170 of 27 August 1998** provides: ***"A Sheriff/Bailiff shall be a ministerial officer empowered to*:**

b) enforce court judgments and any other acts that may require forced execution."

Article 2 of the Decree referred to above provides: ***"A Sheriff/Bailiff may, in the discharge of his duties, be assisted by a Judicial Police Officer on the authorisation of the Legal Department."*** **(6)**

Where opposition to the execution of a court judgment includes violence or threats of grave violence, the Sheriff/Bailiff may request the assistance of law enforcement authorities and the application shall be addressed to the competent administrative authority and the State Counsel.**(7)**

Fourth, **Law No. 92/8 of 14 August 1992** to lay down some provisions on the execution of court judgments as amended by **Law**

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(6)DJOU ATANGANA, *La profession d'huissier au Cameroun*, postgraduate dissertation, University of Yaounde, 1986

(7) An application for assistance of a Judicial Police Officer who often witnesses rebellion is different from an application for assistance of a law enforcement officer.

No. 97/18 of 7 August 1997. It governs provisional execution, and stay of execution. **(8)**

Fifth, **Law No. 2007/1 of 19 April 2007** to institute the judge in charge of disputes on the execution of court judgments and to lay down the conditions for the execution of court judgments and foreign public acts, as well as foreign arbitrary awards in Cameroon. **(9)**

Sixth, Book V of **Law No. 2005/7 of 27 July 2005** on the Criminal Procedure Code which entered into force on 1 January 2007, is devoted to the execution of criminal judgments. It defines the regime of imprisonment, the terms and conditions of execution of pecuniary sentences and imprisonment in default of payment (section 545 and following of the Criminal Procedure Code).

In addition, there are the provisions of the **Penal Code of 2016** which lay down the terms and conditions of execution of the death penalty (sections 22 and 23 of the Penal Code) and the criminalisation of the refusal to execute a court judgment that has become final (section 181-1).

Furthermore, there is **Law No. 2003/5 of 21 April 2003** which lays down the duties, organisation and functioning of the Audit Bench of the Supreme Court.

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(8) Tjouen Alexandre Dieudonné, ***l'exécution provisoire en matière non répressive en Afrique : cas du Cameroun.*** R-J-I-C 1987

(9) Law No. 2007/1 of 19 April 2007 which institutes the judge in charge of disputes on the execution of court judgments has attracted a lot of criticism on the plurality of judges in charge of disputes and on the fact that the rulings of the Chief Justice of the Supreme Court or the Judge he designates in matter cannot be appealed against.
According to the CCJA, such is a violation of the principle of a second hearing.
CCJA Judgment No. 109/2014 of 4 November 2014; Judgment of 11 January 2016

This list is not exhaustive. It is obvious that the large number of legal instruments reveals the desire of the Cameroon lawmaker to see court judgments executed.

The same desire is shared by the OHADA lawmaker.

Martin Du Gard rightly held that ***"there is no true order without justice."***

Distinguished guests, Ladies and Gentlemen,

In the strategy of efficient execution of court judgments, the OHADA lawmaker took a number of measures into consideration.

The OHADA Uniform Act on the organization of simplified recovery procedures and measures of execution of **10 April 1998**, which entered into force on **10 July 1998**[(10)] provides:

"In the absence of voluntary enforcement, any creditor may, irrespective of the nature of his claim, under the conditions provided for by this Uniform Act, compel his defaulting debtor to perform his obligations towards him or may implement an interim measure for the protection of his rights. Unless it is a mortgage or preferential debt, enforcement measures shall first be applied against personal property, and where the personal property is insufficient to cover the debt, the creditor may proceed against the real estate."[(11)].

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(10) Official Gazette of OHADA of 1 June 1998, p. 1

(11) Wambo (Jéremie), ***La prévention et de recouvrement des impayés en Droit OHADA***. Editions Jerberas September 2018.

This uniform act provides for legal procedures enabling an unpaid creditor, either to carry out seizure and sale, or garnishment or even attachment. It distinguishes recovery by privileged or mortgage creditors from unsecured creditors.

These seizures are based on an enforceable order, the execution of which is requested.

Article 29of the Uniform Act provides: "***The State shall assist in the execution of judgments and other enforceable instruments.***

The executory formula entails direct requisition by the enforcement authority."

This community legal instrument must be combined with Article 2 of Decree No. 79/448 of 5 November 1979 on the enabling arrangements.

Distinguished guests, Ladies and Gentlemen,

With regard to all these national and community legal instruments, it is expected that their implementation results in an easy enforcement of court judgments.

Unfortunately, such is not the case in our country. In this regard, one author rightly holds that:

"Although it is difficult to have statistical data that can enable us to know the rate of achievement of the execution of court judgments, it

is, however, obvious that many court judgments remain "dead letters"; that is, without consequences." **(12)**

This situation stems from the existence of many obstacles, both legal and *de facto*, to the execution of court judgments.

With regard to legal obstacles, there is stay of execution which is a measure that suspends or delays execution until a judgment on the merits is delivered; the certificate of filing of the application is served on the winner to stay the execution, even started. **(13)**

Judgments of Courts of Appeal and judgments of the Administrative Courts delivered at the last instance, are judgments that have not become final, but enforceable. They can be paralyzed by the same procedures. **(14)**

In like manner, the different seizures carried out in the execution of judgments or enforceable orders in OHADA matters, may be challenged before the judge in charge of execution litigation or for attachments, before the competent High Court. **(15)**

The execution is stayed until the end of the disputes. And judgments delivered on the merits may legally be appealed against.

Quite often, enforcement is delayed by the need to strictly comply with the measures provided by the lawmaker to protect the debtor.

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(12) Wandah Tchamba Armel, thesis referred to above, page 1

(13) With respect to stay of execution, see Law No. 92/8 of 14 August 1992 as amended in1997.

(14) A stay of execution may be applied for against judgments of Administrative Courts delivered at the last instance.

(15) Anoukaha François, ***Le juge du contentieux de l'exécution provisoire : le législateur camerounais persiste et signe, l'erreur.*** juridis périodique No 70, page 33.

Judgments must be executed, but in compliance with legal provisions[16].It was even mistakenly believed that the OHADA Uniform Act on Simplified Recovery Procedures and Measures of Execution enshrined a "Christmas gift" for debtors [17]

In some cases, the execution of court judgments may be paralysed by the intervention of the Legal Department whereas all the legal conditions for execution have been fulfilled. [18]

In principle, in the executory formula provided for by **section 11 of Law No. 2006/15 of 29 December 2006**, the Legal Department is required to take the lead in ensuring the execution of court judgments in both criminal and civil matters[19]. It oversees the enforcement of regulations and court judgments (**section 29 of Law No. 2006/15 of 29 December 2006 referred to above**).

However, the Legal Department may take appropriate temporary measures to suspend or stay the execution of a court judgment, where there is a need to preserve public peace, protect ordinary or even economic public policy [20].The following two famous cases are often cited as examples:

- Couiteas case; C.E 30 November 1923; the Council of State acknowledged that litigants are entitled to rely on the State for

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(16) Tameghe Sylvain, ***La protection des débiteurs dans les procédures individuelles d'exécution***. L'harmattan 2005

(17) Debtors seemed to be more protected than before

(18)R.S. ***Le Ministère Public en matière civile. Le rôle du parquet dans l'exécution des décisions de Justice***.

(19) Section 29 of Law No. 2006/15 of 29 December 2006 on judicial organisation.

(20) The famous Couitéas case inFrance in 1923, C.E 30 November 1923, Part III, P.57.

- In the matter between SACIA and SOAM and SCCE in Cameroon,1972.

the execution of their judgments. But that the State can legally refuse such assistance where it considers that such execution is a danger to public order and security.

- In the matter between SACIA and SOAEM and SCCE in Cameroon. In 1972, the defendant companies who were convicted and ordered to paya fine of CFAF200,000,000 to SACIA threatened to lay off one thousand Cameroonian employees. It was in a bid to avoid such scandal that the execution of the decision was stayed in spite of the fact that judgments delivered by the Court of Appeal are enforceable.

The Legal Department can also stay the execution of a court judgment to enforce the immunity from execution resulting from a headquarters agreement with international organisations or even from a domestic law. [(21)].

In all of the above cases, the execution of court judgments is suspended or stayed by legal arguments provided for by law.

Distinguished Guests, Ladies and Gentlemen,

In our country, unfortunately, there are unacceptable methods of staying the execution of court judgments.

Some examples are as follows: In matters of stay execution, there is an increasing number of new applications after a ruling to disallow the original application delivered by the President of a Court of Appeal or

(21) Article 30 of AUVE: "Enforcement and precautionary measures shall not be applicable to persons covered by immunity from execution."

the Chief Justice of the Supreme Court, with the aim of obtain other certificates of deposit to stay the execution.

The computerisation of Courts of Appeal and the Supreme Court now makes it possible to track down such unhealthy and bad practices. Such practices have no legal basis.

One can highlight the enormous difficulties Sheriff/Bailiffs experience in the discharge of their duties especially in matters of expulsion, eviction, seizures or even simple service of processes.

Persons convicted and sentenced do not hesitate to constitute a real rebellion against the Sheriff/Bailiff and sometimes against the requisitioned force of law and order.

In matters of garnishee proceedings, third-party debtors, generally financial institutions, refuse without reason to release the objects of the seizure, even though the certificate of end of dispute has been served on them. Sometimes the creditor is obliged to personally sue the third-party debtors.

In criminal matters, the entry into force of the Criminal Procedure Code on 1 January 2007 raised a lot of hope regarding the enforcement of pecuniary sentences; that is, fines and court costs.

Of course, the provisions of sections 545 and following **(22)** of the Criminal Procedure Code were applied with rigour and efficiency during the first years of its enforcement. In recent years, there have

(22) If all the authorities combine their efforts, pecuniary sentences may effectively be executed.

been numerous obstacles to the enforcement of imprisonment in default of payment, both at the level of the courts and that of Judicial Police Officers. The steady increase of unsuccessful research on convicts illustrates the unwillingness of payments or imprisonment **(23)**.

The non-execution of imprisonment in default of payment seems only to be the principle and execution the exception.

In practice, it is more and more difficult to witness an immediate execution of imprisonment in default of payment.

In matters of misappropriation of public property, there is no balance between the execution of imprisonment sentences and the recovery of pecuniary awards **(24)**. Confiscations of property and the freezing of accounts do not always lead to the recovery of pecuniary award sordered in favour of the State. The execution still seems unfinished in such matters.

At the level of the Supreme Court, failure to submit and the late submission of a statement of claim are sanctioned by forfeiture of the appeal by the appellant and the conviction of his counsel to a civil fine of CFAF50,000 in accordance with the provisions of section 55 (2) of Law No. 2006/16 of 29 December 2006 to lay down the organisation and functioning of the Supreme Court**(25)**.

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(23) In the courts, once the detainee has been found guilty and the matter adjourned for judgment, he no longer appears before the court and escapes from imprisonment in default of payment.

(24) The recovery of pecuniary awards in favour of the State seems ineffective.

(25) Section 55 (2): "*When pronouncing the foreclosure decision, the Supreme Court shall sentence the assigned or briefed Counsel to pay a fine of CFAF50,000 (fifty thousand).Such fine shall be collected in accordance with the procedure provided for by general tax code*."

Although the convicted lawyers are legal professionals, they do not pay their fines spontaneously. Nevertheless, the fine punishes if not the fault, at least a proven negligence on the part of the Lawyer and the aim of the fine is to push him to be more responsible towards his clients.

The Supreme Court must work in collaboration with the Bar Association and the tax administration to consider techniques for the smooth recovery of such civil fines. There is need to consider ways and means of curbing unpaid bills.

In terms of accounts, several hundred final judgments were sent to the administrations concerned by the Legal Department for execution. But very few decisions have effectively been executed.

In fact, provisional orders provoke reactions, but judgments that have become final do not result in the expected recovery.

In land matters, the execution of judgments, rulings, judgments of Courts of Appeal and even judgments of the Supreme Court is hampered by the circulars of the Minister of State Property, Surveys and Land Tenure, instructing all his collaborators to await for his prior agreement before the execution of any court judgment.

Circular No. 219-L of 10 August 2004 relating to the execution of court judgments reads as follows: “I wish to remind you that following practices which consist in directly executing court judgments at the level of the provincial services of State Property, any

court judgment must first have the agreement of the Minister of Town Planning and Housing before its execution."

More recently, Circular No. 7/CAB of 2 March 2020 of the Minister of State Property, Surveys and Land Tenure, with more undertone, gives the same instructions by stating that: "In a bid to curb threats of disturbance of public order within the framework of the execution of court judgments and orders in land matters, you are hereby required to systematically forward to the Minister all court judgments served on you for execution and relating to the matters listed below, for prior verification of their authenticity, and whether they have become final and enforceable forthwith."

The caution inherent in the circulars can be understood and the will to oversee the execution of court judgments and avoid any premature judgment prejudicial to the loser can be detected in same. However, it should be emphasised that prenotation of charge, provisional registration of mortgage, discharge of mortgage, registration of a final auction sales after striking off the registered mortgage, cancellation of a land title, and suspension of a land title constitute immediate measures of execution and any delay may have irreparable consequences.

In addition, once court judgments have become final or enforceable, no other institution may and should establish itself as another court **(26)**. Article 38 of the amended Constitution of 18 January 1996

(26) Judgments of the Supreme Court, Courts of Appeal and enforceable judgments and rulings of trial courts are binding on every person.

provides: ***"The Supreme Court shall be the highest court of the State in legal and administrative matters as well as in the appraisal of accounts."*** And the executory formula affixed to such court judgments does not contain any reservations. LOUIS XIV in his memoirs held, a long time ago, that: ***"It obviously takes resilience to always keep the scales of justice upright between so many people who are relentlessly trying to tip it on their side."*** And Mr. François Andrieux more recently echoed that: ***"the execution of court decisions by Sheriff/Bailiffs is part of the continuity of the action of public policy."***

Distinguished Guests, Ladies and Gentlemen,

Obstacles to the execution of court judgments have prompted the Cameroon criminal lawmaker to maintain certain qualifications and define new offences in **Law No. 2016/7 of 12 July 2016 on the Penal Code**.

Section 181 of the Penal Code entitled Wilful Insolvency provides: ***"Whoever after the decision of any Court, final or otherwise, ordering payment of a sum of money, contrives to be insolvent shall be punished with imprisonment for from 1 (one) to 5 (five) years."***

Section 181-1 entitled **Refusal to enforce a court judgment that has become final** provides:***"(1) Whoever refuses to enforce a court judgment that has become final shall be punished with imprisonment for from 1 (one) to 5 (five) years.***

"(2) Whoever obstructs the enforcement of a court judgment that has become final without referring to the judge in charge of enforcing court judgments shall be punished as provided for in Subsection (1) above.

Where the offender is a public servant as defined by Section 131 of this Code, criminal prosecution shall not bar disciplinary proceedings.

"(3) Where the offender is a corporate body, as defined in Section 74-1 of this Code, the penalty shall be a fine of from CFAF 200 000 (two hundred thousand} to CFAF 10 000 000 (ten million)."

The provisions of the Penal Code referred to above provide for severe sanctions to discipline those who refuse or hinder the execution of court judgments that have become final.

They specify that the only way to challenge the execution of court judgments is to refer the matter to the judge in charge of enforcing court judgments. Any other method or means used constitutes an offence.

Section 181-1 is applicable to public servants who obstruct the execution of court judgments and criminal proceedings against them may not bar disciplinary proceedings.

In addition, the offender can be a natural person or a corporate body.

It is obvious that in order to smooth out obstacles to the execution of court judgments, the lawmaker has considered adding more power to

Criminal Law so as to overcome the resistance of debtors and recalcitrant losers, their co-authors or accomplices, as well as all civil servants who misuse their power to prevent the execution of court judgments.

However, is it possible that this section be applicable in the execution of judgments in OHADA matters?

Article 10 of OHADA Treaty implicitly gives us a negative answer as it provides: « ***The uniform Acts shall be directly applicable and binding in the States Parties notwithstanding any contrary provision of previous or subsequent national legislation*** ».[(27)]

These subsequent provisions to the Uniform Act seem to be contrary to the philosophy of the OHADA lawmaker who never intended to use prison sentences to establish the execution of enforcement orders. It lays more emphasis on guarantees and sureties.

Distinguished Guests, Ladies and Gentlemen,

Many obstacles block or delay the execution of court judgments there by discrediting the image of judicial institutions in Cameroon.

The time has come to put an end to this carelessness by choosing new directions in this area.

The role of Ministerial Officer in charge of executing court judgments must necessarily be restored to Sheriff/Bailiffs. It is a difficult and

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(27) Kenfack Douajni Gaston, ***L'abandon de souveraineté dans le traité OHADA***, Penant 1999, p.125
Kodo Jimmy, ***Aperçu de l'application des actes uniformes OHADA***, RDUA, 2010 No. 4 P.9

exalting duty that can only be discharged with the guidance of the Legal Department.

It is proper to raise the awareness of the Legal Department on the need to support Sheriff/Bailiffs in the execution of court judgments, even if sometimes it can take time-delay measures.

Conversely, Sheriff/Bailiffs should make a wake-up call and conduct self-criticism. It is not necessary to recall that some Sheriff/Bailiffs act and work outside the law. They do not, for example, execute court judgments, but extracts of the minute-book. This is a serious breach of the duties of their office. Some excel in out-of-order service of processes. But the majority of them work in compliance with the law.

It is relevant that the contents of the executory formula be known to all and such knowledge can wipe out any thought of resistance to the execution of court judgments.

It is necessary to resume the rigorous application of the provisions of the Criminal Procedure Code on the execution of criminal convictions in general and pecuniary sentences in particular.

Enforcement litigation should not get bogged down, at the risk of paralysing enforcement orders.

Third-party debtors should be reminded on the need for their neutrality in proceedings on attachment or protective attachment of receivables.

We must hope for an effective execution by the administrations concerned, of the final judgments of the Audit Bench of the Supreme Court. The Public Treasury must be bailed out by the execution of such final judgments.

It is therefore imperative that all the stakeholders in the enforcement chain (Judicial and Legal Officers, Sheriff/Bailiffs, Lawyers, Administrative Authorities, Prison Administration Staff, Judicial Police Officers) turn a new page in the execution of court judgments in Cameroon. .

It is only in this way and in this way only that our Judiciary will remain strong and consolidate Rule of Law in our country. The effective execution of court judgments is now an indicator of the Rule of Law. That is why Professor Claude Fournier affirms that:

"Without the execution of court judgments, justice rendered loses its meaning a priori and no longer meets its goal. Therefore, it is the very essence of the Rule of Law that is undermined."

There is the need to safeguard and even consolidate the Rule of Law in Cameroon. That is why the enforcement of court decisions must become imperative. **(28)**

I thank you for your kind attention.

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(28) Claude Fournier, ***XIIème journée d'étude sur l'exécution des décisions de justice*** .Universityof PAU