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Implementing the Rule of Law in Sub-Saharan Africa: Appraisal of the OHADA Model after a Decade

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OHADA model

The OHADA model for promoting and implementing the rule of law through uniform business laws for two regions in Central and Western Africa with a civil law tradition (with the notable exception of Cameroon, which also has a common law tradition) is unique so far on our planet.

In Sub-Saharan Africa, like many other parts of the world where the informal economy remains very robust and where the capacity of the state to levy taxes and strengthen its institutional framework is too often paralysed by problems such as poor education and corruption, a real consensus within a particular state to initiate and promote legal reforms to develop the economy and secure investments in an open and transparent manner, at a speed necessary to promote sustainable growth and reduce poverty, had little chance of maturing.[1] In addition, because of the magnitude of the efforts and skills necessary to bring about a comprehensive reform of business laws in line with best international practice, without which the most needed international investors would remain at bay, it is realistic to say that

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1 R Masamba, in *Paris Place de Droit*, Ordre des Avocats de Paris (Lamy Publ, 2005), p 53.

no single African state (with very few exceptions) could afford to initiate and finance such an exercise.

In the late 1980s, a nucleus of senior African lawyers and judges led by a visionary African judge, the late Keba M'Baye, who spent part of his career as vice-chair of the International Court of Justice in The Hague, designed the footprint of a unique comprehensive model: the OHADA model. This model is entirely dedicated to the progressive development of the rule of law in African countries that have a promising future by many standards but a poor track record legally and is pragmatic and comprehensive. It is not limited to the creation of modern business laws adapted to the socio-economic needs of the society and to facilitating and securitising transactions but also includes a modern dispute resolution system (a common supreme court, the promotion of arbitration, the training of judges and court staff, etc).

Such ambitious goals could not be reached without an international treaty supported by the international community, *inter alia*, for securing the financing of the initial steps of the development of OHADA.

The OHADA Treaty, which was signed in Mauritius (Port Louis) on 13 October 1993 by 16 Sub-Saharan African countries,[2] is fully in line with the objective of its founding fathers.

The mechanics of the Treaty for the design and implementation of uniforms laws is of particular interest since the traditional law-making process by way of local state initiatives and through national parliaments is set aside by the Treaty.

In essence, the Council of Ministers of the OHADA countries[3] proposes an early harmonisation programme of business laws and requests the Permanent Secretary of OHADA to draft the Acts in cooperation with each member state's government. Since the OHADA Permanent Secretary (located in Yaoundé) has limited staff, his role in this respect is to appoint experts to draft Uniform Acts. Thereafter, the Permanent Secretary submits the draft to national committees set up in each member state. The draft is transmitted for advice to the OHADA Supreme Court and it is only then that the Council of Ministers of the member states must adopt it by unanimous vote. Once the draft has been adopted and published, it becomes a 'Uniform Act' applicable immediately in all member states and it supersedes any member state law or statute to the contrary.

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2 Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Congo Rep, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea Bissau, Mali, Niger, Senegal, Togo (Congo Rep Dem is in the process of accessing).

3 Each country is presented by its Minister of Justice and Minister of Finance.

To the surprise of sceptics, this uniform law-making process has so far produced a comprehensive and rather satisfactory set of 'Uniform Acts', at least up to the turn of the millennium.[4]

Since then, only one Act, relating to contracts for the carriage of goods by road, has been adopted (in 2003). Other drafts of varying importance are in the pipeline. Two of them (labour laws and contract laws) are currently before the national committees, and two others are in preparation (on consumer rights and telecoms).

The content of the Acts, which currently amount to a total of 2,281 articles, has given rise to many comments not only from the civil law but also the common law community. An initial series of queries, relating to their intrinsic quality and usefulness both in the national and international context posed by existing and potential users from the legal community, was answered as early as December 1999 in a landmark IBA conference held in Yaoundé (Cameroon). This conference[5] was preceded by two reports, one from the Paris Bar, and the other from a team of 30 US lawyers, law professors and judges from the Section of International Law and Practice of the ABA and from the International and Judicial Relations Committee of the United States Judicial Conference. Those reports and the speeches of some of the most prominent African and European lawyers and law professors permitted the reaching of a consensus conclusion on the substance for their 'well-earned reputation for innovation and the encouragement of foreign investment'.[6]

Other features were emphasised, such as the benefit of having the Acts drafted in a simple and readable form, leading to a legal framework that is easy to understand for the lay person. An interest for some of the Acts, such as the Companies Act, to contain a number of 'public order' provisions was also highlighted, since those rules must also assume an 'educative role' essential in developing economies. Indeed the objective widely shared by practitioners is focused on having robust company law foundations that are well accepted by all players, rather than having, for instance, complex sets of provisions aiming at regulating sophisticated M&A transactions.

4 Uniform Act on General Commercial Law (1997); Uniform Act on Commercial Companies and Economic Interest Group (1997); Uniform Act Organising Secured Rights (1997); Uniform Act Organising Simplified Recovery Procedures and Enforcement Measures (1998); Uniform Act Organising Collective Proceedings for Liquidating Debts (1998); Uniform Act on Arbitration Law Within the Framework of OHADA Treaty (1999); Uniform Act Organising and Harmonising Company Accounting Systems (2000); Uniform Act on Contracts for the Carriage of Goods by Road (2003).

5 See the Conference Report in M Frilet, 'Uniform Commercial Laws, Infrastructure and Project Finance in Africa', *International Business Lawyer*, May 2000, p 213.

6 Introduction to the Executive Summary, William Hannoy, OHADA Project Chair, and past Chair of the Section of International Law and Practice of the ABA, *ibid*, n 5, p 215.

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However, it was also recognised that much effort had to be developed in many directions in order to disseminate the knowledge and thereafter the good practice of the Acts. The Minister of Justice of Cameroon, Laurent Esso, summarised the challenges in a premonitory manner, since most of his remarks, including the need for better translations of the OHADA Acts from French to English, remain to a large extent valid to date.[7] Those conclusions on the intrinsic value of the OHADA Acts are widely shared by the African and international business community, and in particular by various institutions gathering international investors in Sub-Saharan Africa, such as CIAN.[8]

This conference and the subsequent articles and conference papers[9] also identified, Act by Act, several possible improvements in the substance, some being more important than others, for practitioners and the business community; but that I have no place to develop here.

As already indicated, the OHADA is a comprehensive attempt at 'harmonisation of business laws in the Contracting States by the elaboration and adoption of simple modern common rules adapted to their economies,

7 Laurent Esso: 'several practical aspects of the implementation should not be overlooked, such as the training of the legal community and judges and the implementation of one of the key instruments of OHADA – the commercial and movable credit register. … the mere translation of the OHADA Uniform Acts into English for use in the anglophone provinces of Cameroon is insufficient. A strong comparative expertise is necessary in order to implement and/or adapt the OHADA procedures in provinces of common law origin. … Cameroon could be a testing ground for facilitating the implementation of the OHADA laws in an appropriate manner due to its civil and common law background and … international lending agencies should participate in the implementation efforts', *ibid*, n 5, p 215.

8 French Council of Investors in Africa. See *La Lettre CIAN*, June 2007, p 3. A Bouthelier, CIAN Deputy Director, in *Paris Place de Droit*, n 1 above, at 51 ('OHADA's main benefit has been to put an end to legal uncertainty in member states. It has satisfied to perfection the expectations of companies in that regard. Additionally, the evolution of the rule of law has been entrusted with reliable regional institutions, which has improved visibility for investors' – translated from French by the author).

9 M Frilet, 'L'OHADA ou l'harmonisation du droit des affaires en Afrique: Une expérience unique et une réalité prometteuse', *International Law FORUM du droit international*, Volume 3, No 3, March 2001, pp 163-171; C Moore Dickerson, 'A Comparative Analysis of OHADA's Uniform Business Laws in Africa: A French Civilian Structure's Impact on Economic Development', George Washington University Law School, Washington DC, Working Paper No 119, 29 October 2004, p 6, available at http://ssrn.com/abstract=630623; G Kenfack Douajni and C Imhoos, 'L'Acte uniforme relatif au droit de l'arbitrage dans le cadre du traité OHADA', *Revue Camerounaise de l'Arbitrage*, April-May-June 1999; J Issa-Sayegh, 'Réflexions et suggestions sur la mise en conformité du droit interne des Etats parties avec les actes uniformes de l'OHADA', *Penant*, January/March 2005, pp 6-21, Ohadata D-04-12; R Masamba Makela, 'La perspective d'adhésion de la RDC à l'OHADA et le rapprochement avec les pays anglophones', http://congolegal.cd/article.php3?id_article=12 (last visited 10 July 2007).

by setting up appropriate judicial procedures, and by encouraging arbitration for the settlement of contractual disputes' (Article 1 of the OHADA Treaty). The member states were well aware that such a goal could not be reached without a dramatically improved business dispute resolution process. To this end, the Treaty created a key institution: the OHADA Common Supreme Court, located in Abidjan (the Common Court of Justice and Arbitration – CCJA). This court has ultimate power to interpret the Acts after the appellate member states' courts. The CCJA is also entrusted with an advisory role on the drafting of the Acts and on their interpretation at the request of the member states, the Council of Ministers or the national courts. Furthermore, owing to the poor accountability of the judiciary in the member states, the OHADA Acts have aggressively promoted arbitration in various ways, one of them being to vest the CCJA with the role of an administrative centre for arbitration carried out under the OHADA arbitration rules.

However, since the OHADA model is very much 'result-oriented', it was felt that a particular effort was needed to improve the quality and accountability of the judiciary. An ad hoc training centre for judges and court staff, based on an ambitious training programme, has been created. This school, called ERSUMA,[10] is located in Porto Novo (Benin).

Implementation of OHADA: the current situation

What are the results of the OHADA model a decade after the publication of the first three Acts?[11]

In our modern world, there is a tendency to measure the result of legal reforms by way of indicators generally proposed by economists rather than by sociologists, or by the legal or business community. Some results of such research are widely publicised, such as the famous and somewhat controversial Doing Business reports ranking the purported capacity of a country's legal system to be business-friendly and published under the auspices of leading economists of the World Bank group.

The Doing Business rankings of OHADA countries remain extremely low.[12] It has been contended in some circles that OHADA has failed altogether and that it should not be further promoted. A polemic started some months

10 Ecole Régionale Supérieure de la Magistrature (Magistrates Regional Superior School).

11 Dated 7 April 1997: general commercial activities, company and GIE (Groupement d'intérêt économique) laws, securities.

12 Ranking out of 175 countries in 2006 and 2007: Gabon (129/132), Benin (139/137), Côte d'Ivoire (156/141), Comoros (141/144), Senegal (152/146), Equatorial Guinea (157/150), Togo (154/151), Cameroon (147/152), Mali (166/155), Guinea (149/157), Niger (170/160), Burkina Faso (171/163), Central African Republic (162/167), Congo Rep (169/171), Chad (172/172), Guinea-Bissau (173/173), Congo Dem Rep (175/175).

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ago, which was quickly defused. To the author's knowledge, the promoters of Doing Business, and in particular Michael Klein, who addressed the OHADA model on several occasions and recently at a major international conference appraising OHADA organised by the Paris Bar in the presence of leading African and international specialists, are of the opinion that the OHADA effort is a positive move that should be broadly encouraged (even if much remains to be done).[13]

It is important to keep in mind that OHADA is a comprehensive but progressive exercise and that many rules deriving either from codes and other regulations or case law, which have an impact on day-to-day business activities in the OHADA countries, have not (yet) been addressed by OHADA. The question of the real priorities and guidelines for the desired content of future Acts, as well as a timescale for efficient design and implementation, remains to some extent to be addressed by a consultation system taking into account many factors. Real impact studies are likely to become a prerequisite for future Acts. The methodology developed by the European Union in order to issue European directives is full of lessons in this respect. The fact that the final decision to draft the Uniform Acts is made on a yearly basis by the OHADA Council of Ministers, and that the OHADA Permanent Secretary must implement the decision and call on the international community to finance the exercise, does not prevent more organised early thinking with an assessment programme, which, the international community should, in the author's opinion, finance as a top priority. The better the programme and its results, the more chance the Council of Ministers will have of making decisions in compliance with its mandate provided in Article 1 of the Treaty.

A real appraisal of the current status of OHADA, and of its contribution to the development of the rule of law in the OHADA African states, necessitates in fact various surveys organised in a professional manner and carried out by organisations and experts who fully understand both the objectives of OHADA and the African situation and practice, and the requirement of the international community in terms of governance. This may only be successful if they also have sufficient knowledge of the criteria that serious international investors take into account when considering investments in a particular region over another.

13 Michael Klein, Chief Economist, International Finance Corporation, Vice President of Private Sector Development, World Bank: 'The general view of the World Bank is that OHADA represents progress compared to the previous situation even though implementation has been uneven and significant questions about the Treaty's legitimacy and credibility remain unresolved', in *Paris Place de Droit*, n 1 above, at 67.

It is fair to say that so far no such comprehensive survey has been proposed and commissioned, mainly for financial reasons. However, the author feels that such a survey remains essential and that if the terms of reference are well designed (and this may be the most difficult part), the financing of such a survey by the multilaterals should not create real problems. In spite of this situation, several organisations have carried out some surveys of variable quality on a sectorial basis and various information can also be gathered from statistics coming from the OHADA organisation itself.

A team of African and French lawyers mostly from the Paris Bar, and including African industry representatives, coordinated by the French Institute of International Legal Experts (IFEJI), has devoted particular attention to the matter for more than two years and the group has been at the origin of the November 2005 Conference, gathering on this topic in Paris, the African and international legal community, the business community and some leading representatives of the multilaterals interested in OHADA.

The World Bank has from its side commissioned some studies to evaluate OHADA and has also commissioned a 'gap analysis' between OHADA and some state legislation and it is hoped that the results will be published soon.

Based on the above and on the author's practice of more than 30 years in many projects in the OHADA countries, it is possible to draw some conclusions on the actual level of implementation. This article will limit itself to three points: (1) the perception of OHADA in member states; (2) some 'legal issues'; and (3) some 'factual issues'.

Perception of OHADA in member states

Even if existing Uniform Acts are broadly recognised as being of good quality, some of their provisions have been perceived as constraints by some parts of the business community or by some investors, *inter alia*, because they sometimes limit their transactional freedom. In addition, when enforced by local courts, some provisions relating, for instance, to summary debt recovery or enforcement procedures, may not be well implemented and some arbitrary or abusive seizure has been noticed.

On average, lawyers from the OHADA region have been taking OHADA law very seriously.[14]

14 C Moore Dickerson, in *Paris Place de Droit*, n 1 above, at 50-51. A Muna, *ibid*, at 55 ('The application of OHADA depends heavily on the ingenuity of the legal experts concerned and the training which is provided to those who have to apply supra-national legislation. At present, many magistrates lack the level of knowledge required to make a success of this system'). Also in M Tumnde, *ibid*, at 62.

In order to effect a more scientific analysis of the efficiency and popularity of OHADA from a business perspective, an on-site survey was organised among hundreds of entrepreneurs and legal counsel in 2006 by a team including IFEJI, UBIFRANCE and the Permanent Conference of African and Francophone Consular Chambers (CPCCAF), with 44 comprehensive answers gathered.[15] Generally speaking, the survey confirms without ambiguity that the OHADA Treaty and Uniform Acts have brought major improvements in terms of legal certainty and security in the region, and that among companies operating in the formal sector in OHADA member states, a vast majority is aware of OHADA Uniform Acts, and has made use of them.[16]

The survey shows that OHADA Uniform Acts are known by business stakeholders (68 per cent of companies owning an OHADA Code or 'Green Code').

In-house counsel admit some difficulties in understanding, enforcing and/or interpreting uniform provisions. On the other hand, they also acknowledge the quality of the provisions and the simplification they have secured.

However, practical information and comments on the use of Uniform Acts are usually considered insufficient, particularly in cases where the Uniform Acts are unclear or ambiguous (eg provisions relating to guarantees, debt recovery, exequatur of arbitral awards).

Institutions such as the CCJA are well known but not unanimously praised. The CCJA is often perceived as too expensive for companies and lawyers based in other member states. The ERSUMA, the school for training judges, is the least known among business actors.

Adaptation to local needs is more of an issue than some had anticipated. Harmonisation problems and discrepancies with national legislation when Uniform Acts have been drafted outside the OHADA region are underlined. In addition, problems more specifically related to secured rights and mortgages are emphasised. Mortgage registration is particularly slow and difficult for stakeholders, with regard to illiteracy among guarantors, the cost of obtaining a title deed required to register a mortgage, etc.

Finally, arbitration provisions, although essential to secure many business transactions at least pending a long period of improvement of the judiciary,

15 Results from the survey are available in French at www.ifeji.org.

16 Actual use of the Uniform Acts is by decreasing order: General Commercial Law, Commercial Companies and Economic Interest Group, Simplified Recovery Procedures and Enforcement Measures, Harmonised Accounting Systems, Secured Rights, Arbitration, Collective Proceedings for Liquidating Debts and Transport.

are not well known in the business community in the OHADA region. However, more and more companies are including arbitration clauses in their contracts.[17]

'Legal issues' and OHADA implementation

Among the list of legal and related issues impairing implementation, the lack of implementing provisions and the question of direct applicability and criminal sanctions for non-implementation are of particular interest, and this article will limit its comment to these issues.

Professor Joseph Issa-Sayegh, who is one of the leading OHADA scholars, is of the opinion that one of the most salient issues in implementing OHADA provisions is the lack of any domestic procedure actually formalising the enforcement, by operation of the OHADA Treaty.[18]

This deserves some development since many OHADA observers consider that the legal tools in force are adequate (direct applicability and the effect of Uniform Acts, *res judicata* and the enforceability of the decisions of the CCJA). However, as also mentioned by a leading figure of OHADA, Professor Sawadogo, the issue of effective control over the actual implementation of the harmonised rules is in practice a genuine problem.[19]

In some instances, former domestic provisions and normally applicable OHADA provisions coexist, creating difficult situations in which domestic courts apply domestic provisions, even though a uniform provision should be enforced. It is also sometimes very difficult to determine in a particular situation whether Uniform Acts repeal and replace domestic provisions for the entire scope of the Uniform Act, or only inasmuch as domestic laws set forth contrary or incompatible provisions. The Advisory Opinion rendered by the CCJA on 30 April 2001 has temporarily clarified that position, in that domestic provisions 'not contrary' to Uniform Acts may be enforced.[20] In practice, this leads to a 'cherry-picking' exercise, which should not be underestimated.

17 A Dieng, 'L'OHADA, Attentes, frustrations et espérances', *Barreau Autour du Monde – L'action internationale du Barreau de Paris*, No 3, June 2007, p 16, at www.avocatparis.org/AvocatParis/BAM/pdf/2007/Bulletin_n_3_2007.pdf (last visited 10 July 2007).

18 J Issa Sayegh, 'Réflexions et suggestions sur la mise en conformité du droit interne des Etats parties avec les actes uniformes de l'OHADA et réciproquement', n 9 above.

19 F M Sawadogo and L M Ibriga, 'L'application des droits communautaires UEMOA et OHADA par le juge national', 2003, http://droit.francophonie.org/df-web/displayDocument.do?id=11266 (last visited 10 July 2007).

20 Advisory Opinion No 001/2001/EP.

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205, p 19, at 28.

In some cases, even though uniform provisions expressly abrogate any applicable domestic provisions, former rules are still being enforced. This is the case, for instance, in Burkina Faso where the local Judicial Procedure Code sets forth, eg, a court deposit that has not been contemplated in the Uniform Act on Debt Recovery,[21] or when the Uniform Act on Company Law does not contemplate certain procedures such as, eg, agreement from the Prime Minister to create a company in Equatorial Guinea.[22]

In order to identify and deal with those issues, local institutions have been put in place to promote a uniform and harmonised implementation of OHADA rules: OHADA clubs have been created in most member states. They oversee implementation in their respective countries. Ultimately, the CCJA holds supremacy in relation to controlling the enforcement of OHADA provisions in the region, with the limit that only enforcement issues related to a dispute may be subject to control.

Another limit to OHADA's enforcement is the fact that criminal sanctions remain generally outside the scope of the OHADA Treaty and the Uniform Acts, and remain within the authority of member states. That is, *inter alia*, the case for illegal business activities, which are also the seed for corruption. Although some provisions relating to sanctions are found in some Acts (eg winding up companies), it is however generally acknowledged that lack of criminal sanctions is a major impediment to ensuring proper enforcement of the OHADA Treaty. For instance, so far, only Senegal has implemented criminal sanctions by a national Act regarding the Uniform Act on Company Law.

'Factual issues' and OHADA implementation

The factual situation in terms of case law and arbitration is a good measure of OHADA implementation. However, some additional facts deserve comment.

OHADA case law and arbitration

To date, statistics of domestic decisions applying OHADA Acts have not been published. They would shed an interesting light on the scattered information regarding the enforcement of uniform rules in the region. Such a task would be interesting for the national commissions in each OHADA country to conduct.

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21 H Sawadogo, 'L'application des Actes uniformes OHADA par les juridictions nationales du Burkina Faso', *Penant*, January-March 2005, pp 71-80, at 72.

22 J Paillusseau, 'L'Acte Uniforme sur le droit des sociétés', *Petites Affiches*, October 2004, No 205, p 19, at 28.

Decisions by the CCJA and their evolution have not been conducted either. Disputes regarding enforcement of OHADA rules are very relevant in determining the penetration rate of OHADA law. As of 1 June 2007, 558 cases have been submitted to the CCJA; 203 decisions and 32 orders have been rendered.[23] It is also worth mentioning an interesting study by Felix Onana Etoundi, legal consultant at the CCJA, who assessed that as of 31 December 2005, out of 138 decisions, a ratio of 37 rejection decisions for 43 reversals had been evidenced.[24] Such statistics show that the rate of improper application of OHADA law appearing before the CCJA is still relatively high.

With regard to arbitration, as of 1 June 2007, 25 requests have been presented, four awards rendered (including two dismissals) and five arbitral cases are pending.[25]

It is, however, to be noted that domestic courts, particularly supreme courts, in the absence of any genuine sanctions for improper enforcement of OHADA provisions, are sometimes reluctant to surrender to the OHADA process in that it may be perceived as a loss of sovereignty on their part.

Other issues

Many other issues could be addressed but there is only room for a glance at two more issues:

(1) The issue of language, raised for bilingual Cameroon,[26] is currently being remedied. The English-speaking part of Cameroon has sometimes shown resistance to implementing OHADA.[27] In addition, the English translation, criticised, among others, by the IBA OHADA

23 K Boutora-Takpa, 'OHADA, 10 ans après', Closing Speech, UBIFRANCE Conference, Paris, 6 June 2007.

24 F Onana Etoundi, 'Le rôle de la Cour Commune de Justice et d'Arbitrage de l'OHADA dans la sécurisation juridique et judiciaire de l'environnement des affaires en Afrique', Journée OHADA/Club OHADA du Caire, Egypte, www.ohada.com/affichepdf.php?type=infohada&pdf=736 (last visited 10 July 2007).

25 K Boutora-Takpa, 6 June 2007.

26 See A Muna, in *Paris Place de Droit*, n 1 above, at 55; M Tumnde, *ibid*, at 58 and 60 ('The OHADA Treaty has been considered revolutionary and controversial in Anglophone Cameroon … most of the consternation expressed related to the way and manner in which the treaty was thrust upon the business and legal environment in Cameroon without any consideration for national peculiarities and without much concertation, consultation and discussion with stakeholders and potential users of this law. There was insufficient national participation in the law-making process.' 'In the English-speaking provinces of Cameroon, the Treaty was seen as an instrument of French neo-colonialism since it ignored the bilingual and bi-jural nature of the country').

27 M-A Ngwe, 'L'application des actes uniformes de l'OHADA au Cameroun', *Penant*, January-March 2005, pp 81-95, at 81. Also www.state.gov/e/eeb/ifd/2007/80687.htm (last visited 10 July 2007).

Working Group, is currently being revised and should be published shortly, along with a Spanish and lusophone version.

(2) Another issue raising difficulties with regard to enforcement is the limits to legal information available to practitioners and their training. It is true to say that so far from the African perspective, the internet remains 'unreliable and prohibitively expensive'.[28]

Conclusion: participation of OHADA in the promotion of the rule of law – the way forward

It is obvious for international practitioners, who have the opportunity to develop their practices in various regions in the world, that the OHADA effort, which is unprecedented in modern times, has already shown positive results even if these results cannot currently be measured by recent empiric tools such as Doing Business.

The state of the economic and political development of the societies belonging to the OHADA zone and their legal culture are such that the optimisation of the methodology of the improvement of business laws could not really be better organised than through the OHADA Treaty. However, the choice of the Uniform Acts to be proposed, the conditions of their drafting and the key factors leading to their actual implementation could be improved.

The lessons of ten years of practice and of the recent trends in relation to governance and globalisation are driving the exercise towards various directions. One of the key factors is to concentrate on the benefits of written laws in developing economies, since nothing could play a better role in securing quickly and efficiently the training of the legal and business community towards better transactions.[29]

OHADA should in the near future pay more attention to the additional regulations necessary either on a global or on a country basis to facilitate implementation of the Acts. A lot remains to be done in this respect, *inter alia*, in disseminating the knowledge in a well-organised manner at all levels of society, ie business community, universities, legal profession, judges, senior civil servants, etc.

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28 C Moore Dickerson, n 9 above, at 5.

29 As evidenced by Professor Moore Dickerson, civil law is not detrimental to the development of poorer regions such as Sub-Saharan Francophone Africa: C Moore Dickerson, 'Harmonising Business Laws in Africa: OHADA Calls the Tune', *Columbia Journal of Transnational Law*, 2005-2006, No 44, pp 17-73.

This necessitates comprehensive and well-organised programmes, which, in the author's opinion, should be a top priority on the agenda of multilaterals and development agencies. Development of the rule of law starts by an actual knowledge of the law.

Of course, this is not sufficient since knowledge of the law without sanctions in case of infringement does not help the cause of the rule of law.

In this respect, another priority for OHADA should be to assess and promote the most appropriate sanctions in case of infringement, not only from a criminal standpoint but also administrative sanctions from various angles, such as prohibition to run a business, to secure a mortgage, etc.

This, in turn, will only bear fruit if a dramatic improvement in the organisation of the judiciary is effective. In spite of the ERSUMA effort, much remains to be done in this respect and the question will not be resolved overnight. In any case, the question of accountability of the judiciary in OHADA countries is an issue to which a lot of effort has been directed. It is high time, in this author's opinion, to promote, with the help of multilaterals, a more comprehensive programme, taking into account the daily financial issues that a local tribunal has to face as well as the status of judges, the actual sanctions, etc.

The CCJA and its role should be promoted much more than is currently done. The judges of the CCJA have proved to have an amazing professionalism and knowledge by all standards. However, it is also obvious that the CCJA should be decentralised in one way or another, failing which, it will be out of the reach of most litigants and this will be a disaster for OHADA implementation.

Lastly, OHADA should consider Uniform Acts in several areas that are currently essential for improving the investment climate, taking into account the whole range of economic activities. OHADA could, *inter alia*, sow the seed for regulating the most popular public–private projects and certainly rule directly and indirectly in the anti-corruption, corporate social responsibility and governance scene.

This explains why OHADA is at the same time a very valuable asset and why a lot remains to be done in order to permit real improvement of the rule of law through the OHADA effort.

As this article shows, in the OHADA experience, the improvement of the rule of law in Sub-Saharan Africa will largely depend on the capacity of the international community to direct aid and other similar programmes towards the infrastructure, and in our particular case, towards 'legal infrastructure', rather than being directed too quickly through projects, which, without such legal infrastructure, have serious chances of derailing.

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Contrary to common belief, the question is not a shortage of aid money, but more a question of limited reallocation of current aid money for which the international legal community could certainly help governments and international institutions. This may be one of the interesting challenges for IBA members interested in the promotion of the rule of law in Sub-Saharan Africa.