

Political Economy of the Harmonisation of Business Law in Africa

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Abstract

This paper examines the current dynamics of regulatory reforms in Africa and its implication on the continent. It analyses the highly political struggle for regulatory dominance of business law in Africa and how this interacts with the preferences and power of select international actors. It illustrates that the struggle between Francophone and Anglo-Saxon sections of society for OHADA to reflect their ideological stance is having a negative effect on the harmonisation process.

Keywords: harmonisation, political economy, business law in Africa, ohada regulation

1. Introduction

The business environment of Sub-Sahara Africa (SSA) has experienced considerable changes in the past two decades as a result of pressure both within and out of the country for better economic reforms. Poor performance of state-owned enterprises and accumulated debts by governments discredited the welfare state adopted by African governments after independence (Charreaux, 1997) especially after the continent suffered from a drop in world prices of its major exports of cocoa and coffee. This negatively affected international trade, which had grown to an average of 10 percent in 1985 (World Bank, 1994). African countries accepted they needed help and found themselves at the doorsteps of the World Bank and International Monetary Fund (IMF) (Kahler ed, 1986). The World Bank awarded loans to African countries based on their terms and conditions, the primary condition being the implementation of the Structural Adjustment Programme (SAP) (Williamson, 1990). The principal objective of the SAP is to attract foreign direct investment (FDI), which is anticipated to improve economic growth, and ultimately development. In order to facilitate transnational capital harmonisation, political, economic and legal reforms were recommended.

Implementation of the SAP based on the neo-liberal policy or Anglo-Saxon principles and the aggressive entrance of China as a commendable trading partner of Africa threatened the grip of France in Africa especially in Francophone countries where the French has a stronghold on economic and regulatory policies. A major effect of the presence of new economic actors in Africa is the slow eradication of the post-colonial regulatory order where former English colonies implement English legal principles while former French colonies apply French law. Introduction of Anglo-Saxon principles and ideology through the SAP throughout Africa means that both Anglophone and Francophone countries have to implement Anglo-Saxon principles if they intend to continue receiving support from the World Bank and IMF. African countries find themselves in a situation where they are subjected to the demands of donors or face the withdrawal of funds. Hence, these countries are being squeezed from different directions with particular economic and regulatory policies.

The struggle for economic and regulatory dominance by donors has turned Africa into a battleground for economic and regulatory ideologies. As a consequence, business regulation in Africa is a tussle between Anglo-Saxon legal principles advocated by the IMF and World Bank on the one hand and French legal principles endorsed by France, on the other hand with no visible legal input from Africa.

Hence, this paper examines the dichotomy that epitomises the dilemma faced by African countries as a result of the struggle for ideological and cultural dominance of regulatory reform of business law in Africa. In particular, it examines the OHADA Treaty on Business law in Africa and the struggle between the IMF and the World Bank on the one hand and France on the other hand for the law to reflect their legal system and ideology. This has had negative effects on the application of OHADA as this paper indicates.

2. OHADA Treaty and Its Objectives

The Organisation for the Harmonisation of Business law in Africa commonly referred to by its French acronym as OHADA is a regional legislation ratified by member states consisting of minimum requirements applicable to the signatory countries. The main aim of OHADA is to develop the African legal system by enacting enabling business regulation that will promote and facilitate business in Africa (Martor, Pilkington, Sellers and Thouvenot, 2002). The intention of OHADA is to serve as “a legal tool thought out and designed by and for Africa to serve the purpose of regional integration and economic growth on the continent (Akinbote, 2008:1).” Thus, it provides rules for the establishment, operation and dissolution of businesses. It also regulates merger and de-merger, accounting and audit of companies. Laws in different areas are enacted through Uniform Acts. So far, OHADA has enacted nine Uniform Acts; the most recent is the Uniform Act on Security, which came into effect on the 16th of May 2011.

In accordance with Article 10 of OHADA Treaty, the Uniform Acts are mandatory, irrespective of any conflict with national laws and states can only depart from applying them if the Act expressly states so. One of such departures is the case of companies wholly or partly owned by the state or local authorities where the Uniform Act on Commercial Companies and Economic Interest Groups provides that it will recognise special laws applied by member states in addition to OHADA. For instance, Ivory Coast enacted separate laws (Law No. 97-519 of 4 September 1997 and Law No. 97-520 of 4 September 1997) for state-owned and semi-state-owned enterprises, and companies with public finance participation, which gives the states certain rights over the corporation such as appointing board members. If not expressly stated, member states cannot depart from the provisions of the acts.

Currently, sixteen Africa countries are members of OHADA Treaty, fourteen of which are wholly French speaking countries applying the civil law. Cameroon has English and French as its national languages and applies both the civil and common law, while Equatorial Guinea speaks Portuguese and applies the civil law.

3. Actors with Regulatory Interest in Africa

Actors with interest in business regulation in Africa reorganised after the economic crisis of the 1980s and the introduction of World Bank and IMF Structural Adjustment Program (SAP). Before this period, international organisations play an insignificant role in regulatory amendments. This may have been so because regulation was mostly influenced by a country's colonial past with former British colonies applying the common law and former French colonies applying the civil law (La Porta, Lopez-De-Silanes, Shleifer and Vishny, 1997). However, corporate governance reforms designed by the World Bank and IMF instituted a new direction in regulatory policy in Africa and are slowing distorting the colonial origin pattern by introducing Anglo-Saxon business regulatory principles to all Sub-Saharan African countries implementing their adjustment programs. Nonetheless, France is equally strategic in regulatory reforms in Africa to ensure that harmonised business law reflects the French civil law. It should be noted that France has enormous economic interest in the continent especially in Francophone countries.

As a consequence of World Bank and IMF reforms and the French persistent grip on Africa especially Francophone Africa, OHADA is largely influenced by these two actors to the detriment of a common harmonised African business law reflecting African legal culture and practice. The following section examines the influence on OHADA of the World Bank and IMF representing Anglo-Saxon principles on the one hand and France representing French principles on the other. It illustrates the direct and indirect influence of these two actors on the nature of OHADA.

3.1 Anglo-Saxon (World Bank and IMF) Influence on OHADA

The World Bank and IMF influence on business regulation in Africa is as a result of their role as lenders and by designing and recommending policies to Africa. They are mostly involved in three areas: political governance, economic and social and institutional (legal) governance (Mette 2005, World Bank, 1994).

Through designing and recommending policies to Africa, the World Bank and IMF directly draft general guidelines for regulatory policies that African governments must implement. These policies are based on neo-liberal principles of free market, which is the main determinant of the nature of business regulation in Africa.

The neo-liberal policy imposed by the World Bank and IMF relies on the market through the price system to discipline market actors (Williamson, 2000). They argue that the market would take care of economic planning and therefore would channel resources where they are needed. The neo-liberals advocate for less state and public involvement in businesses and more market mechanisms (Easterly, 2006). They promote a global economy with

liberalisation, free market (Cheyne, Belgrave and O'Brien (1997) and little participation by other stakeholders such as trade unions and the local communities in business (Konings, 2003). This school of thought argues that services provided by the state would function more effectively if they were in private hands or in the hands of private organisations (Boston, 1995).

Based on the neo-liberal policy and philosophy recommended by the World Bank and IMF, African countries revised the welfare principle they adopted after independence in favour of liberal market principles as recommended by the World Bank and IMF (Easterly, 2006). OHADA Treaty follows this school of thought and drafts laws to reflect neo-liberal principles without due regard to other principles. Neo-liberal regulatory principles recommended by the World Bank and IMF to African countries acts as a normative ground for the reform of business law and the harmonisation process. It provided the ideological framework for the drafting of the Uniform Acts with the hope that it will improve foreign direct investment (Dickenson, 2005). By proposing a particular model, they rejected alternative regulatory models and restricted the consideration of other regulatory models (Ocampo, 2006).

Further more, the World Bank and IMF directly recommended certain provisions of OHADA. For instance, in 2006, IMF recommended that African countries should strengthen the accounting framework for large companies and make it uniform with International Financial Reporting Standards (IFRS) (Standard Report Cameroon 2009), which is in line with their neo-liberal policy on the grounds that it promotes good governance, transparency and accountability (IMF, 2003). As a result of their recommendation for the harmonisation of accounting laws with IFRS, part 2 or Article 74-102 of the OHADA Uniform Act on Accounting (UAA), codifies important provisions of IFRS by inserting these provisions into the UAA (Sambe and Diallo, 2003; Trotman 1999).

Pressure from the IMF for the use of IFRS resulted in the incorporate of aspects of the IFRS into the UAA.

3.2 French Influence

French involvement in business regulation in Africa is through heavy donations and loan. Sixty percent of France's total development aid goes to Sub-Saharan Africa especially francophone Africa (IRIN). It therefore would come as no surprise that France was the main sponsor of the OHADA Treaty and active in the drafting of the Uniform Acts. France provided the initial capital of Eur. 6.1 million for its inception and was funding the organisation until 2005 when the member states took over (France-Diplomatie, 2008). Kéba Mbaya one of the members of the drafting committee and the initiator of OHADA and also its first president in reply to the question whether OHADA would have been born without France was explicit:

Il faut distinguer deux choses : l'idée est africaine. ... Mais vous connaissez nos pays. Ils n'ont pas de grands moyens. Il fallait d'abord, pour approfondir le diagnostic et trouver le remède au mal, accomplir un long chemin exigeant une certaine continuité dans l'effort, principalement dans l'effort financier, qui était considérable. Seule la France pouvait aider les pays africains à le faire. C'est donc dans le cadre de la politique d'aide que la France est intervenue Pour répondre plus directement à votre question, si la France n'avait pas donné les moyens matériels et financiers pour arriver à ce résultat, on ne l'aurait jamais atteint (L'autre Afrique, 2010).

(Two issues should be distinguished: the idea is from Africa.... But you know African countries. We do not have the means. We need to consider the financial aspect to be able to accomplish such an idea. Only France can help African countries. If France did not provide the financial support, it would never have been achieved – my translation).

With France providing the initial capital for the institution of OHADA, it was therefore not very difficult for the country to convince African leaders that the law should be based on French civil law.

Though Mbaye's explains that the idea is from Africa, there are no justifications and it is difficult to see how such is the case, especially so because Mbaye explains how he was contacted on numerous occasions when he was working at the International Court of Justice in Hague by Paul Bayzelon, a French official from the ministry of cooperation to put the proposal of OHADA to Francophone presidents (L'autre Afrique, 2010). He mentioned that he refused on several occasions but the French official was very resolute and he finally accepted his proposal. He later received a letter signed by three French ministers; the minister of Justice, Finance and cooperation informing him that France has been delegated the responsibility of setting up OHADA to improve investment in Africa (L'autre Afrique, 2010).

The first meeting to discuss the OHADA framework was held in Paris in 1992 comprising of eight members, a mix of Africans and Frenchmen (L'autre Afrique, 2010). The committee that decided the areas that will be harmonised was made up of three persons referred to as 'directoires'. They drafted the first six OHADA

Uniform Acts, which are based on French law. Predictably, Justice Mbaye was one of the 'directoires' together with two Frenchmen (Janto and Martin Kirsch) (L'autre Afrique, 2010).

Since it was intended that the law should apply to all of Africa, the committee was asked why they did not involve any Anglo-Saxon countries such as Nigeria and Ghana, which are emerging economies in Africa. Mbaye's reply was that the aim was to start with few countries and then expand to other countries because it would be easier than starting with a grand project that is less likely to succeed. Though Mbaye's response is plausible, it is also conceivable that Mbaye is aware that it would have been difficult to convince Anglo-Saxon countries to accept purely French civil law as the foundation of the OHADA Treaty especially as it applies directly to states without passing through national parliament and with limited possibilities of modifications. Even the US was reluctant to accept OHADA from Mbaye's interview and some have described OHADA as neo-colonialist and reluctant to provide funding for it (Dickinson, 2005).

French involvement in OHADA as well as the World Bank and IMF involvement in the drafting of the Act has had tremendous effect on recognition and application of the law as discussed below.

4. Implications of World Bank/ IMF and French influence on Harmonisation of Business Law in Africa

Regulators and policy makers have to be cautious when designing laws in a multicultural system like Africa. The continent is still in a transitional economic and socio-political phase, seeking to adjust to capitalism and democracy after more than forty years of welfarism and dictatorship after independence. Africa has also often complained of foreign intervention and organisations such as the New Partnership for African Development (NEPAD) are seeking to develop an African approach to solving African economic problems. It is therefore evident that OHADA destined for Africa yet largely influenced by external actors is bound to cause discontent in the continent. Even more so, application of a law that is foreign to the continent is bound to create some difficulties.

Thus, this section examines the implication of World Bank/IMF and French influence on OHADA. It seeks to answer questions such as, how has Africa countries received the Treaty, what are the reactions to the fact that the laws are largely tailored on the French civil law system with French as the working language? How has external influence affected application of the law?

The section therefore deals with the legal and socio-political implications of OHADA as an instrument for harmonisation. It argues that, instead of harmonising laws in the continent, the Treaty has deluded trust from Anglophone countries in Africa on the effectiveness and sincerity of the initiative. On the contrary, it has created feelings of legal and social exclusion, lack of legitimisation and legal pluralism as discussed below.

4.1 Legal Exclusion

Since OHADA regulation is based on French law with minimum input from other jurisdictions in Africa, it reflects many aspects of the French and World Bank legal philosophy and ideology and reflects very little of the African legal system. Consequently, it excludes pivotal issues that an African legal system symbolises. In view of the fact that the civil law system that the Treaty adopts does not reflect the multi-jural and multi-cultural nature of the continent, it excludes these vital issues that are peculiar to Africa.

Similarly, there are numerous discrepancies and uncertainties in the interpretation and application of certain provisions of the Uniform Acts, as a result of the fact that it is foreign to Africa. A case in point is the publication of a social balance sheet referred to as 'bilan social' in the OHADA Uniform Act on Commercial Companies and Economic Interest Groups. Publication of a social balance sheet is a French concept based on French philosophy in corporate accountability introduced by President Giscard, developed by Pierre Sudreau and implemented by the Law No. 77-769 of 12 July 1977 and related decrees of 8 December 1977 (Elad and Tumnde, 2009). It is currently a requirement under the French law for companies employing more than 300 workers to disclose a social balance sheet (Elad and Tumnde, 2009). In Africa the concept is foreign and has left companies wondering whether it is applicable. In accordance with Article 71 of the OHADA Uniform Act on Accounting, large companies are required to publish a social balance sheet or face criminal charges in accordance with Article 111 of the same Art. But companies have so far not complied with this section and no one has been prosecuted (Elad and Tumnde, 2009). According to Elad and Tumnde, (2009), many Anglophone accountants and lawyers do not know what it means.

The feeling of legal exclusion is especially strong in Anglophone Africa as evident in their reluctance to be members of the OHADA treaty because it excludes the common law. Though Article 42 that stipulated that French is the official language of OHADA has been repelled and English, French, Portuguese and Spanish are now the four official languages, the fact that the law is highly based on French law and French is the working language is viewed as a form of domination of Francophone countries to the detriment of Anglophone countries.

This can explain why thus far, no common law country (except Cameroon which applies both the civil and common law) is a member of OHADA.

Harmonisation of business law in Africa was meant to facilitate trade, attract foreign direct investment and aid trans-national business transactions between member states. For this to be possible, harmonised laws must reflect the legal culture of Africa by developing a common system that would work with the institutions of the continent. If the law does not reflect the legal culture of the society to which it is applicable, it turns to be burdensome and costly instead of facilitating business in the continent (Sternberg, 2004).

4.2 Social Exclusion

For OHADA legislation to be acceptable by a cross section of Africa, it has to reflect the nature of corporations in the region. Traditionally, corporations in Africa serve three functions. Firstly, they are utilised to reallocate wealth. To this end, corporations are subsidised by the state in order to enable everyone to afford basic utilities such as electricity and water. Secondly, corporations are used to achieve a balance in development and employment between different regions of a country. Thus, the state targets underdeveloped communities to benefit from corporations located in their locality. Usually, the local communities raise part of the finance or donate land, while the government provides the rest of the capital. Thirdly, corporations are viewed as profit making enterprises, generating wealth for all stakeholders and not just profit for shareholders.

OHADA does not reflect these social objectives of corporations in Africa. The Treaty adopts a capitalist approach as oppose to a welfarian approach advocated by scholars as most effective for African countries and suited for their economies at this stage of development (Becker 2009:15; Hancke, 2009). The capitalist approach it adopts as oppose to a welfare approach practiced by Africa is largely due to the desire to fulfill the World Bank and IMF neo-liberal principle imposed by the SAP (Bangura and Beckman 1993; Adesina, 1995; World Bank, 1995). According to the World Bank/IMF, neo-liberal policies would provide more freedom in the market, which will improve investment and economic growth. In line with this principle, OHADA is pro capitalist, in a way that would protect shareholders and reduce other stakeholders' participation in the market. As Mbaye explains, the main aim of the law is to attract foreign direct investment and creating an environment favourable for investment and not necessarily an environment favourable for all stakeholders (L'autre Afrique, 2010).

Experience in Continental Europe and Japan demonstrates that a welfare approach is equally efficient and can be more beneficial in the long run. In fact it is necessary in some countries to preserve social peace (Roe, 2003). Countries such as Germany and Japan that prefer a welfare approach to a capitalist approach are equally successful economies with stable corporations (Takeo and Scharfstein, 1990; Kang and Shivdasani, 1997; Ramseyer, 1994; Charkham, 1994).

Contrary to the World Bank philosophy of economic growth and poverty reduction through a capitalist system; the approach has not reduced poverty in Africa. On the contrary, as in a typical capitalist system income inequality has increased (Fambon and Menjo, 2002).

In an attempt to implement IMF and World Bank capitalist policy, OHADA Treaty does not integrate welfare principles that reflect the three objectives of corporations in Africa.

More so, capitalist approach excludes other stakeholders such as employees and the local community in corporate decision-making. Several studies on Africa highlight the consensus nature of decision-making in the continent, commonly referred to as the African 'Ubuntu' spirits and the importance for policies and laws to reflect this approach (Adebayor, 1993). Emerson (1960) argues that in Africa and Asia, the winner takes it all approach of democracy practiced in the West where the majority is entitled to make all the decisions to the exclusion of the minority is foreign. Lijphart equally argues that non-western cultures practice of democracy is much more consensual than majoritarian. Decisions are reached through gradual and extensive deliberation to find a common ground of agreement instead of an adversary system where the majority wins. According to Adebayor, "Africans are past masters in consultation, consensus and consent" (Adebayor, 1992:126; Lijphart, 1999). Manglapus (1987) also argues that non-western cultures are also much consensus than majoritarian and have strong concern for harmony.

Therefore, Africa is more suited for a welfare system where corporate decisions are made by and for the benefit of all stakeholders to avoid conflict and discord, as is often the case in Africa than a capitalist system where decisions are made by and for the benefit of shareholders.

Failure of the treaty to adopt an inclusive approach, which reflects African welfare principle of corporation as both a vehicle for profit maximisation and for enhancing the welfare of the whole country amounts to social exclusion.

4.3 Regulatory Pluralisation

Failure of the treaty to reflect the legal and social reality of Africa has given rise to several laws being applied to the same factual case due to multiple interpretations or what is commonly referred to as regulatory pluralisation. As a result of difficulties in interpreting certain sections of the Uniform Acts, uniformity in the application of certain provisions has been put in jeopardy. This is particularly so because the French system has a history of drafting laws that are imprecise and vague, leaving room for multiple interpretations or laws that are never applied (Scheid and Walton, 1992). As an illustration, Article 11 and 12 of the French Ordinance de Commerce, which prescribes a criminal sanction for breach of bookkeeping requirements, are hardly implemented. Accountants are rarely prosecuted for the violation of this section and it is unlikely that the provision will ever be applied. OHADA Uniform Act contains a similar provision. Article 111 of the Uniform Act on Accounting, prescribes a criminal offence for failure by large companies to publish a social balance sheet in accordance with Article 71 of the same Act. Analogous to its counterpart in France, no one has been prosecuted for failure to publish a social balance sheet (Elad and Tumnde, 2009).

In contrast, Article 899 of the Uniform Act on Commercial Companies and Economic Interest Groups, which prescribes criminal sanctions for auditors who knowingly give or certify false information on the company's financial position or fail to report any breach of the law discovered during an audit to the state prosecution as required under Article 716 is said to be applicable (Mure, 2006). This provision is similar in France but not applied. But in the Case of *Crédit Foncier du Cameroun*, two partners of PricewaterhouseCoopers in Cameroon were arrested for breaching the above two sections. ONECCA the accounting body in Cameroon was of the opinion that the Article is impracticable and not applicable as such Articles are usually not implemented in France. Mure (2006), an accountant who participated in the drafting of OHADA stressed that Article 899 was not to be interpreted in the same manner as its equivalent in France and was meant to impose real criminal sanctions.

A law that is based on a common African legal practice and ideology would reduce contradictions in the interpretation and implementation of the law and reduce uncertainties.

4.4 Lack of Domestic Legitimation

Domestic legitimacy is the belief that a legislation accord with the norms, values, beliefs, practices and procedures accepted by a society (Zelditch, 2001). It gives rise to citizen's support of legal rules and system (Linz, 1978).

Due to the fact that the treaty is based on a foreign legal system with many concepts not reflecting African legal practice, non civil law countries are reluctant to be part of the treaty. Even in certain countries where the Treaty is applicable, the legality of the treaty has been raised which indicates a disapproval of its application. For instance in Anglophone Cameroon where the issue of legality of the treaty has raised controversy, the treaty is applied grudgingly by the common law section of the country to the extent that some judges reject the treaty. Such was the case in *Sebastian Achiangan v. Joseph Foto and others* where the judge refused to apply OHADA on the grounds of self-exclusion (Suit No. HCK/3/96 of January 2000).

Refusal to implement the treaty in some member states and the fact that common law countries have rejected and criticised the treaty is an indication of their disapproval of the treaty.

The above weaknesses of OHADA treaty indicate that the treaty needs to be improved for it to be acceptable by African countries. The harmonisation process was dominated by foreign influence and ignored the African reality and as a consequence, the law has not achieved the aim of unifying laws in Africa to improve business. For the regulatory system to be improved to enhance investment, it has to reflect the African legal system, culture and economy. The words of Montesquieu are true today as they were in 1748. He states that:

les lois politique et civiles de chaque nation ...doivent être tellement propres au peuple pour lequel elles sont faites, que c'est un grand hazard si celles d'une nation peuvent convenir à une autre (Montesquieu, 1748).

In the above passage Montesquieu observes that the political and civil laws of a country should be so closely tailored for the people to whom they are made, because it is by chance that the laws of one country would meet the needs of the people in another country. Ewald (1995) is of the same opinion.

It is on this backdrop that the next section of this paper provides some recommendations for effective harmonisation of business law in Africa.

5. The Way Forward for Effective Harmonisation of Business Law in Africa

Creating a common legal system in Africa is an uphill task because the continent consists of many countries with different legal systems. Apart from the civil and common law, there are hundreds of native laws and customs applicable in the continent. However, African countries share a common culture and ideology. For instance, as mentioned above, African culture is more consensus in nature and based on consultation, than majoritarian. Therefore, representation of the different legal systems in Africa is pivotal in the drafting of the Uniform Acts because it is vital for a law to reflect the thoughts and philosophy of the lawmakers (Fombad, 1991). Consequently, a homogeneous legal system that represents the social and economic aspirations of the continent is essential for effective legitimacy and effective implementation of the law. This is achievable through consultation with other jurisdiction in Africa and the involvement of targeted interest groups from different backgrounds. An illustration can be drawn from the German Code Civil. In 1848 there were about 56 different legal systems in Germany (Backhaus, 1997). In 1874 the pre-commission of five members later increased to seven was created to harmonise the German Law (Backhaus, 1997). The draft of the law was issued for discussion in 1887 and 1889. Leading economists and jurists establish that the draft was impractical and does not reflect the economic and legal practice. Based on these suggestions, the second commission of 1890 was able to improve on the initial draft (Backhaus, 1997). As Backhaus comments;

Had economic professionals not intervened, legislation would probably have been imposed that would have burdened the German economy with high and persistent transaction costs.

The above example indicates that participation by different interest groups such as lawyers, professors, trade unions, accountants would not only improve the practicality and implementation of the law, it will also align the legislation with the development plans.

A law that purport to represent Africa and yet does not correspond with the legal culture, nature of corporations, aspirations and stage of development of the continent would not effectively develop the legal system nor improve business. This has been the case in countries where laws had been transplanted without regards to cultural differences in the receiving country (Salim and Lawton, 2008; Khan, 1998).

Another aspect of the regulation that has not been achieved is regional integration. Legal and business integration with the rest of the World will work better when there is first of all regional integration. Regulation has to be harmonised internally in the continent before they are harmonised with those of the World. Africa has to avoid conflict between regional regulations before seeking to integrate into a bigger framework of legal harmonisation. Regulatory intervention involves identifying the economic, political, cultural and historical sources of disorder that needs to be constantly managed or domesticated (Roitman, 2004). Wade argues that economic development of a nation is more about internal integration than external integration. He holds that integration into the world economy is not always better; it must be combined with internal integration. External integration per se does not generate growth unless it is properly blended with internal integration. If this is not the case, external integration may undermine internal integration (Wade, 1990).

OHADA is more focused on external integration and neglected internal integration. Africa must first seek internal integration of laws before seeking external integration. The law should first seek a common framework that works within the legal institutions in Africa and promote domestic investment and good governance, before seeking to expand to external norms and practices.

A uniform law that incorporates all the legal system in Africa would have several advantages. Firstly, laws that are akin to the legal culture of the region would be easily understood and implemented than laws transplanted from foreign systems (Armour, Deakin, Sarkar and Siems, 2009). Secondly, it would readily be acceptable by the population as they are the pioneers of the law and would want to ensure its success. Thirdly, it would improve implementation of the law and would reduce the problem of interpretation and applicability of certain Articles such as Article 71 of the Uniform Act on Accounting and Article 111 of the Uniform Act on Commercial Companies and Economic Interest Groups.

6. Conclusion

Understanding the social, legal, economic and political implications of OHADA is important for future evolution of the harmonisation and integration process especially at this early stage of the regulatory process. This paper provides policy makers with an insight of the difficulties faced by African countries in choosing and harmonising business law.

Africa in particular is already a vulnerable region prone to ethnic conflicts and political unrest. Policies and laws that do not reflect the internal norms of the nation may lead to division and secessionist attitudes as is the case in Cameroon.

However, there are some improvements in the right direction as the Uniform Act on Contract law suggest. The Uniform Act on Contract law did not follow the trend of the other Acts by copying French civil law. The Act was drafted with collaboration of the International Institute for the Unification of Private Law (UNIDROIT). The legislation is based on the UNIDROIT Principles of International Commercial Contracts, which states that:

The UNIDROIT principles were designed as a body of general rules of contract law that would find favour with the legal community beyond the legal particularities of each legal system and are tailored to apply in a contemporary international environment. They espouse solutions common to all systems, or else borrow from a given system when that system's rules are deemed the most suitable.

OHADA per se is a good initiative. Effective harmonisation of laws would improve the legal environment for better economic integration in Africa. But for this to happen, the continent must involve all countries and interests groups in the process. Independence from Financial institutions and donor countries must be established and an African approach adopted.

Africa must learn to work together to create an effective legal system that would reflect the common shared values and economic aspirations of the continent. As Professor Akinbote remarks:

African countries need better legal cooperation to bring about certainty in the business law among African nations and that cooperation does not necessarily create a loss of sovereignty or a situation where one of the contrasting states becomes helpless. (Akinbote, 2008:2).

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