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An Evaluation of the Prospects for the Harmonization of Business Laws in West Africa

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Abstract
Globalization of trade has led to the building of economic alliances among States in which geographical boundaries and vestiges of sovereignty no longer have any significant political meaning. Africa, especially the West African sub-region is not left out of this global trend. To however achieve full economic and regional integration, there is the need to harmonize business laws in the Sub-Region and this idea has received tremendous support from legal and industry experts as a veritable instrument towards the achievement of economic integration of member States. Using the doctrinal research methodology, this paper appraised the advantages and prospects of a harmonized business law regime in the ECOWAS sub-region, especially in terms of the certainty and uniformity it offers and how it impacts the seamless and effective implementation of the West African economic master plan. This paper also examined the factors inhibiting the harmonizing of business laws in West Africa, and the adverse effect of fragmented business laws on economic integration and growth agenda of the region. This paper recommended that the harmonization of business laws in West Africa should be drawn from other climes with harmonized business laws like OHADA. This paper also reviewed the strengths and weaknesses of the OHADA regulatory framework and suggested ways in which the development of a harmonized set of business laws can be achieved.

Keywords: Prospects, Harmonization, Business, Laws, West Africa

1. Introduction

The harmonization of business laws and regulations among States has been the basic concern of international commerce. In cross boarder business relations, the parties to the transactions have a vital interest in reliably knowing their mutual rights and obligations, as a contract by itself, does not necessarily settle all contentious issues which may give rise to controversies and litigation.[1] Scholars have however posited that the presence of harmonized rules will certainly help dispense with the need for parties to ascertain a forehand the particularities of laws of the Countries they intend to invest, which in turn inhibits seamless economic integration.

Over the years, the steady growth witnessed in commercial transactions induced by trade globalization and liberalization across the globe has stirred some pertinent questions regarding the regulation of all the different challenges that were encountered as a result of fragmented, inadequate or total lack of legislation regulating international business relations and lack of international rules. This led to the establishment of the 'International Institute for the Unification of Private Law' (UNIDROIT)[2] in 1926[3], with the primary mandate to study needs and methods for the modernization, harmonization and coordination of private and in particular commercial law as between States and groups of States and to formulate uniform law instruments, principles and rules to achieve those objectives.[4]The yearning need for a harmonized system of business laws in the world is an agitation that has been raging for several decades and in response to this need through the effort of UNIDROIT in 1926, the United Nations Commission on International Trade Law (UNCITRAL) was established in 1966.[4] UNCITRAL is one of the public trade law

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[1] M Herdegen, 'Principles of International Economic Law'

[2] UNIDROIT is an independent intergovernmental Organisation with its seat in the Villa Aldobrandini in Rome. <https://www.unidroit.org/> accessed 15February 2024.

[3] M. J. Bonell, The Use of the Unidroit Principles in Practice (Leiden - Boston: Martinus Nijhoff Publishers, 2010), 263.

[4] UNCITRAL is acknowledged as the central legal body of the UN in the area of international trade law. Its goal is the harmonization of rules on international commercial transactions by formulating harmonized rules that include: Legal and legislative guides, information on case law and enactments of uniform commercial law, assistance in law reform projects as well as different meetings to discuss the uniformity of commercial law. Located at the UN, UNCITRAL meets annually and works on the following topics: Micro, Small and Medium-sized Enterprises, Arbitration and Conciliation, Online Dispute Resolution, Electronic Commerce, Insolvency Law and Security Interests. See

harmonization experiments aimed at increasing new opportunities through commerce in order to achieve higher living standards, by formulating modern, fair, and harmonized rules on commercial transactions setup by the United Nations.

Apart from UNICITRAL, other bodies have been formed with the aim of harmonizing different aspects of law, such as the Hague Conference on Private International Law (HCCH);[5] the International Chamber of Commerce (ICC);[6] to mention a few of these experiments. It is thus clear that because of the pivotal role law plays in regulating business, the need for harmonization of business laws across the globe and regionally has been an ongoing debate.

Africa as a continent is full of potentials for economic growth, investment and development opportunities which is enhanced by its vast human capital, abundant natural resources and yarning infrastructural gaps.[7] To achieve this however, there is the need to have a secure legal and commercial environment that will protect private property and contractual rights on one hand and, on the other hand, have a strong and independent court system that can ensure the proper application of the law and the efficient settlement of disputes.[8]

To achieve full economic integration in the West Africa sub-region, it is therefore necessary for member States to cooperate amongst themselves and have a harmonized legal framework throughout the sub-region that gives investors the necessary level of comfort, stability, predictability and the ease of doing business in any part of West Africa. It is time to do away with fragmented, obsolete or incomplete legal systems, which varied from one country to another with lots of uncertainties that, in turn, create disincentive to investment in West Africa.

Against this background, a number of African States have grown increasingly aware of the prospects embedded in the creation of a modern, harmonized and easily accessible system of business law. In West and Central Africa for instance, there is now a harmony of business laws through the Organization for the Harmonization of Business Law in Africa.[9] Harmonization of Business Laws has occurred in other places and is working effectively in places such as European Communities, Caribbean Communities, etc.

2. What is Business Law?

Business law is the body of enforceable principles, rules, regulations and practices that governs the various interactions between parties to a commercial transaction. In other words, business law is the legal framework through which economic and business activities are conducted and regulated.

Doing business could be in the form of owing a business or investing in one. Whatever form it takes, a business owner or investor undertakes several commercial activities such as manufacturing, employment related matters, insurance, transportation, capital market, banking, communication, etc. Each of these activities is regulated by laws that sets or lay down the legal framework that govern their operations. These laws are made by each States in the manner best suitable for it, without taking into account the need

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UNCITRAL. "United Nations Commission on International Trade Law." <https://www.uncitral.org/uncitral/en/index.html>. Accessed 15th February 2024

[5] The HCCH is represented by 78 members including the EU and is a global organization that drafts instruments of the law including commercial transactions that can be affected between different legal systems. It aims to build a progressive unification of rules of private international laws by recognizing judgments in many areas of the law. Some of the Conventions related to International Commercial and Finance Law are within the topics of Contracts, Torts, Securities, Trusts and Recognition of Companies. See HCCH, "Areas of Private International Law," <http://www.hcch.net/index_en.php?act=text.display&tid=10#commerce>.

[6] The ICC focuses on the development of international trade, services, and investment. It does that by the promotion of a market economy based on the free trade and fair competition principles. It aims at eliminating obstacles that impedes the normal flow of international commerce

[7] B. Martor, et al - 'Business Law in Africa: OHADA and the Harmonization Process' 2nd Edition

[8] Ibid

[9] L'Organisation pour l'Harmonisationen Afrique du Droit des Affaires (OHADA)

of a neighboring State, it therefore means a Nigerian investor willing to invest in Cameroon, would be need to learn and acquaint himself with the various legal regimes that govern the business sector he wants to invest in. This certainly can discourage investors from striding outside their comfort zones where they are familiar with the legal regimes to other countries to promote trade and investment.

2.1 The Concept of Harmonization of Business Laws

In general, harmonization aims to create consistency in the law and seeks to reduce regulatory measures for businesses in the area, both at an international and a national level and constitutes a form of limited regulatory intervention.[10] The globalization of the economy has triggered the need for harmonization between States in order to ensure effectiveness in commercial transactions[11] and to lower trade and investment barriers that may serve as impediments for the normal flow of the economy.

Harmonization of business laws has also been described as the process of creating common standards across the internal markets. It also generally refers to the replacement in varying degrees of the existing national laws with common rules across continents or sub-regions. This is necessary to provide greater legal certainty and reduce transactional costs typically associated with operating under diverse legal systems."[12] Harmonization of Business Law follows a phenomenon of globalization of laws which means a weakening of state sovereignty through the reinforcement of the facilities of establishment, movement of persons, goods, services and factors of production. More or less a clear similarity in legal regimes applicable to economic activities, irrespective of the place of accomplishment. A set of rights and duties common to all economic actors, wherever they perform their activities (Code of Conduct for Business). A very clear and constant trend towards the denationalization of the settlement of economic disputes (arbitration and non-judicial procedures).[13]

The existence of different legal and regulatory regimes in the ECOWAS ecosystem is one of the obstacles in doing business in the region. While nine (9) French- speaking states of ECOWAS (Benin, Burkina Faso, Cote d'Ivoire, Guinea, Guinea Bissau, Mali, Niger, Senegal, Togo), operating within the framework of OHADA, have harmonized the framework of business and commercial law, the other 6-member states (Cape Verde, Gambia, Ghana, Liberia, Nigeria, Sierra Leone) apply different regimes according to the principles of English common Law.

This situation generates different contractual systems as well as different commercial principles and practices which induce compartmentalization of the region's economic space by legal regulatory barriers in different member states. The region's competitiveness for foreign direct investment and trade is negatively impacted as investors feel that they are deprived of economics of scale from which they would have benefited in a harmonized legal and contractual environment.[14]This legal balkanization of West Africa has created a legal environment of uncertainty which has resulted in many challenges in doing business in the region. This paper will discuss some of these challenges.

Harmonization and Unification Distinguished Even though the scope of this paper is on harmonization of business law, an attempt is made to draw a parallel between harmonization and unification of business

[10] T Gr Papadopoulos, Eu Law and the Harmonization of Takeovers in the Internal Market, (Alphen aan den Rijn: Kluwer, 2010), 33 < https://lawcat.berkeley.edu/record/390323?ln=en>

[11] Nakagawa, 'International Harmonization of Economic Regulation', 110. <https://www.amazon.com/International-Harmonization-Economic-Regulation-Law/dp/0199604665>)

[12] Support to the promotion of business law harmonization in West Africa- final study report by Paul Kuruk and Dominique Fifatin <https://www.icr_facility.eu/fileadmin/files/downloads/different_documents/final_study_report_icr_facility_fewacci_english.pdf> accessed on 16February 2024 at 10:01 am

[13] J ISSA-SAYEGH and J. LOHOUES-OBLE – 'OHADA-Harmonisation du droit des affaires, Ed. BRUYLANT-JURISCOPE, 2002, p. 5 and 6 quoted from The Harmonisation of Business Laws in Africa and its Impact on investors Published by Trinity International LLP @ trinityllp.com (assessed on 16th February 2024 at 11:00am).

[14] Ibid

laws. Harmonization differs from Unification in that the latter attempts to substitute several legal systems with one single system, while Harmonization on the other hand seeks to eliminate the differences, coordinate and create uniform standards between different legislations,[15] and to emphasize the voluntary participation of the stakeholders keeping an order based on the respect of the members' legal traditions.[16] Harmonization does not implement legal solutions but it strives to approximate the different legal frameworks. Unification, on the other hand, replaces the existing legal system with the new legal order.[17]

Types of Harmonization Harmonization in the field of Corporate Law, is divided into optional harmonization and minimal harmonization.[20] For Scholars who hold this view, Optional harmonization to them, allows parties to apply their national norms and to exclude dispositions via directives with two sets of rules, one for the domestic market and the other for the intra-community trade. On the other hand, minimal harmonization makes use of a central mandatory minimum use of uniform rules that should be implemented that guarantees a common framework for member states.

2.2 Prospects for the Harmonization of Business Laws in West Africa

Harmonization of business laws throw up a lot of prospects among member States, leading to economic and regional integration. Some of the prospects or advantages are: Catalyst for economic growth and development. Globalization has led to increased International trade and businesses on a global scale,[18] commercial transactions around the world and West Africa in particular has witnessed tremendous growth in the last decades that brings forward national industries to an international level where competition with other industries creates an impact to both companies and consumers. Harmonization of business laws in West Africa will help attract foreign investment into the sub-region, thereby facilitating free trade and the protection of its citizens. It will also facilitate regional and economic integration amongst member States.

One of the major setbacks in the attainment of economic integration is lack of trust. Harmonized business laws can help remove this barrier. In some countries where this has happened, they have enjoyed greater economic relations. For instance, the harmonization of Intellectual Property Law, Consumer Protection, Restrictive Trade Practices Law, among others, between countries like Australia and New Zealand has been said to have helped business stakeholders from these two countries minimize the commercial risk and promote investment in these areas of harmony.[19]

Trusted and fair legal environment in region allowing the parties to use a common set of rules that will apply to the commercial transactions in the sub-region will led to a trusted and fair business environment where the parties can trade their products and services with ease under a controlled legal framework.[20]

Promotes certainty of business law, reduce legal risks and transaction hazards. Harmonization allows commercial activities to be part of a clear legal framework with predictable consequences; this will no doubt enhance trade and investment in West Africa.[21] Harmonization helps promote compatibility of practices by reducing the differences in order to achieve a level of similarity between systems, notwithstanding the fact that some differences may remain. In a globalized world and with the rapid

[15] Peter De Cruz, Comparative Law in a Changing World, 3rd ed. ed. (London: Routledge-Cavendish, 2008), 43
[16] Porcelli and Zhai, "The Challenge for the Harmonization of Law," 451
[17] F. Gomez and J. J. Ganuza, "How to Build European Private Law: An Economic Analysis of the Lawmaking and Harmonization Dimensions in European Private Law," Eur. J. Law Econ. 33, no. 3 (2012): 8 [20]Papadopoulos, Eu Law and the Harmonization of Takeovers in the Internal Market, 332.
[18] S. Menon, "Transnational Commercial Law: Realities, Challenges and a Call for Meaningful Convergence," Singapore Journal of Legal Studies (2013): 232.
[19] J Farrar, 'Harmonisation of Business Law between Australia and New Zealand,' (1989) 19 (4) *Victoria University of Wellington Law Review*,438.
[20] P Catriona and J Nicholas, 'Harmonisation of Company Law; Lessons from Scottish and English Legal History,' (2004) 42 (8) *Management Decision*, 1037.
[21] P Stephan, "The Futility of Unification and Harmonization in International Commercial Law.(Unity and Harmonization in International Commercial Law)," Virginia Journal of International Law 39, no. 3 (1999): 746.

development of international trade and commercial transactions, it is necessary to find a common framework that regulates the possible outcomes and reduces the level of uncertainty.[22]

Harmonization will also create a positive environment for the parties interested in trading their products and services to thrive, thereby encouraging competition and innovation, which benefits the parties involved as well as in the society with the availability of more quality products and services to choose from.

Dispute resolution mechanisms are fairly predictable and enforceable throughout member States. Disputes are an inevitable part of human existence. The Singaporean Prime Minister, Lee Hsien Loong succinctly opined in his opening remarks at the unveiling of the Singapore Convention in Singapore that disputes "disrupt normal business operations. They damage reputations, hurt share prices and make it harder for companies to raise capital. They also dampen the confidence and morale of employees, shareholders and other stakeholders…."[23] It is the effective and timely resolution of these disputes that keep businesses going.

A unified legal dispute resolution system will no doubt increase the volume of trade and investment in West Africa. Where parties know the rules that regulate how their disputes will be resolved, irrespective of where the contract is entered or executed will promote cross border trade and investment.

Free Flow of Market Economy and Harmonization of Business Laws in West Africa, will promote a market economy based on the free trade and fair competition principles, eliminate and lower trade barriers that impede the normal flow of international commerce, ease commercial transactions and provide a self-regulation framework that enhances transnational economic governance.

Scholars have argued that harmonization is better achieved where member states share common language and cultural background. However, South America like Africa do not share monoculture or language, yet the harmonization experiment is working for them. South America is majorly made up of two (2) major languages – Spanish and Portuguese (just like West Africa) and with the creation of MERCOSUR, [29] several countries in South America have started the harmonization of commercial laws in that region.[30] Different Integration goals. Lack of Harmony in the goals of many member states also rubs off on the attainment of harmonized business laws in West Africa.

3. Challenges of Doing Business in ECOWAS Region

In general, doing business in the ECOWAS region is challenging. According to the World Bank's Doing Business 2020 report, the ECOWAS economies are ranked in the bottom 100 of the 190 economies considered in the analysis.[31]In spite of these achievements, a lot is still left to be done especially with regard to the differences in the legal systems, currencies, tax structures and the economic and financial systems of member states.[24]

The failure of states in the ECOWAS region to complete the harmonization process through the adoption and implementation of binding supplementary acts can be attributed to factors including:

a. Lack of political will to break down the psychological barriers created by idiosyncratic attachment to either the common law or civil law systems.

b. Inability to agree on the effective methodology for dealing with the differences between the common law and the civil law systems- some of which have been characterized by stakeholders as largely semantic in nature or devoid of legal substance.

[22] D Kelly, International Chamber of Commerce (Leiden - Boston: Martinus Nijhoff Publishers, 2010), 148
[23] PM Lee Hsien Loong, 'Welcoming speech' (Speech delivered at the Singapore Convention Signing Ceremony and Conference, Singapore, 7 August 2019) <https://www.singaporeconvention.org/scm-2019/> accessed 16 February 2024
[24] Ibid, P 14.

c. Reluctance to commit to new norms or obligations because they are unknown to the customs and usages of one's jurisdiction.

d. Lack of structured institutional framework which brings together key stakeholders to ensure coordination and monitoring of the harmonization process.

e. General implementation bottlenecks within the ECOWAS system.

f. Lack of a system for adopting community wide rules that are automatically binding on all ECOWAS member states.

g. Lack of Trust among member States: One of the impediments that slows down international trade is the lack of trust between the participants of the economy. Trust is critical in maintaining the legal order of international commercial transactions. Legal frameworks can help to improve the safety net provided to the parties to strengthen trade and provide a common standard of conduct.[25] It is very important to maintain this trust in order to have a proper balance of the commercial transactions, as the parties will feel confident to engage in business. It also plays an important role in the process of interpretation and integration of international and national laws.[34]

Be that as it may, the harmonization of business laws in West Africa is not only necessary but imperative. The critical question, however is to determine how best this it to be achieved. The obvious starting point is to review the attempts on harmonization of business law elsewhere to see what lessons can be learned.

4. The OHADA Legal Regime

L'Organisation pour l'Harmonisationen Afrique du Droit des Affaires (OHADA) (Organisatoion for the Harmonisation of Business Laws in Africa) was established under a treaty adopted in Port- Louis, Mauritius on October 17, 1993 by 14 African States. The purpose of the treaty is to strengthen the African legal system by providing a secure legal framework for the conduct of business in Africa, through the harmonization of business laws in the region.[26]

The idea of harmonizing the law was first proposed by the Ministers of Finance of the Franc Zone at a meeting in Ouagadougou, where they voiced their awareness that the situation as it existed at that time was one of legal and judicial uncertainty that was hardly conducive to investment. As a result, they decided in 1991 to appoint a high level working group to try to find a solution to the problem[27], this culminated in the 1993 OHADA Treaty.

OHADA currently has 17-member states- Benin, Burkina Faso, Cameroon, Central African Republic, Comoros, Congo, Democratic Republic of Congo, Ivory Coast, Gabon, Guinea, Equatorial Guinea, Guinea Bissau, Mali, Niger, Senegal, Chad and Togo.

Furthermore, Article 53 of the OHADA Treaty provides that any member state of the African Union may become a member.[28]

The objective of OHADA, according to Article 1 of the Treaty is the "harmonization of business laws in the contracting states by the elaboration and adoption of simple modern common rules adapted to their economies, by setting up appropriate judicial procedures, and by encouraging arbitration for the settlement of disputes."[29] The scope of business laws to be covered by the uniform acts is defined in

[25] E. O. O'Connor, "The Limits of Contract Law Harmonization," Eur. J. Law Econ. 33, no. 3 (2012): 516. [34] Porcelli and Zhai, "The Challenge for the Harmonization of Law," 435.
[26] The Harmonisation of Business Laws in Africa And Its Impact on Investors Published by Trinity International LLP on trinityllp.com Assessed on 17th February 2024 at 11:00am
[27] B. Martor, et al - 'Business Law in Africa: OHADA and the Harmonization Process' 2nd Edition
[28] The Harmonisation of Business Laws in Africa and its Impact on Investors Published by Trinity International LLP on trinityllp.com. Assessed on 17th February 2024 at 11:00am
[29] OHADA English site https://www.ohadalegis.com/anglais/about_ohada.htm

Article 2, but the Council of Ministers is given the power to include any other matters falling within the definition of business laws.

The institutions of OHADA, after the revision of the treaty in Quebec on 17 October 2008, are:

1. The Conference of Heads of State and Government:The Quebec amendment introduced the Conference of Heads of State and Government as the supreme institution of OHADA. It has jurisdiction in all matters relating to the treaty, and its meetings, chaired by the head of state and government whose country chairs the Council of Ministers are organized at the initiative of its president or at the initiative of two-thirds of the member states.

2. The Council of Ministers: which must meet at least, once a year, plays an important role in the workings of OHADA. It is composed of the ministers of justice and finance of member states. The functions conferred on the Council of Ministers by the treaty are broad, and have administrative and legislative character, including the adoption and amendment of uniform acts, the determination of the area of business law for harmonization, the election of members of the CCJA, and the approval of annual programme for the harmonization of business law.

3. The Permanent Secretariat: acts as the executive body. It is headed by a permanent secretary. It mainly functions to assess the main areas where the harmonization of laws is necessary, proposing to the Council of Ministers the annual programme of harmonization and coordination the work of the experts who usually draft the uniform acts.[30]

4. The Common Court of Justice and Arbitration (CCJA): consists of 9 judges elected for a non-renewable period of 7 years. According to Article 14 of the OHADA Treaty, the CCJA is required to ensure the uniform interpretation and application of the treaty and the regulations promulgated for its implementation- the uniform acts and other actions. It is primarily vested with judicial and advisory powers and may intervene in arbitration proceedings. It acts as the final court of appeal for all disputes relating to the interpretation of any laws adopted under the OHADA regime.

5. The Regional Training Centre for Legal Officers: According to Article 41 of the treaty, this acts as an institution for training, improvement, and research in business law. It operates as a documentation centre on legal and judicial matters and is supposed to promote research in the harmonization of business and African laws.

The OHADA framework currently regulates 9 areas of business law which are: commercial law, corporate law, security, debt recovery and enforcement, bankruptcy, arbitration, accounting, the law regulating contracts for the carriage of goods by road, and cooperatives. There are plans Underway to harmonise other areas, including competition law, intellectual property law, banking law, evidence law and contract law.[31]

4.1 How does OHADA Law Impact on Investors?

In many African countries, the national laws are obsolete, uncertain and in some cases, unpublished. This provides a major obstacle for investors wishing to do business in these countries. OHADA has remedied this situation in 3 main areas:

Harmonization of legal rules: The harmonization of the laws relating to commercial contracts provides a clear and certain framework for investors. Furthermore, the debt recovery and enforcement law sets out procedures in the event that an investor needs to force a debtor to meet his commitments, including a quick, inexpensive and efficient method of debt collection.[41]

[30] Charles Manga Fombal: Some reflections on the prospects for the harmonization of international business laws in Africa: OHADA and beyond; See Articles 6,7,11,29,40 and 61 of the OHADA treaty
[31]Ibid

Recourse to arbitration: Historically, arbitration culture has been poor in Africa and recourse to arbitration has not always been sufficient to protect the interests of international investors. OHADA has sought to address investor confidence by introducing a uniform arbitration law which sets out principles and stages of arbitration, including methods of recourse.[32]

Supreme Court: Given that investors are often wary with regard to national judicial systems, OHADA has created a common Court of Justice and Arbitration (CCJA) which has exclusive jurisdiction to rule upon disputes relating to the application and interpretation of the uniform acts, thereby providing certain stability to the national judicial systems. The CCJA also operates as a Supreme Court for all decisions handed down by the National Courts of Appeal relating to OHADA texts, which has effectively placed the national courts under the direct control of the CCJA, as well as reducing the backlogs of national courts.[33]

In spite of its achievements, the biggest challenge of OHADA today is to extend its membership to Anglophone Africa, but it has nevertheless laid down the foundation for the eventual emergence of harmonized international business laws, for uniting all African countries. The prospects for this to happen depend on how it can overcome many of its weaknesses.[34]

4.2 Some of OHADA's limitations include:

Firstly, the Legitimacy of OHADA, which goes, not only to how it originated but also to how it operates and its goals. Influential international institutions and countries were instrumental in its creation, but the main actor was France, which provided not only most of the funds but also the ideas.[35]

It is therefore no surprise that the most significant influence on the OHADA Acts is French Law. Probably because of this foreign influence on the regime's creation, two critical factors reflective of the African economic reality was ignored or glossed over. One of these is that the regime pays more attention to regulating transactions involving big businesses and international corporations than it does to regulating transactions involving smaller businesses or even the informal economy, which is the driving force of African economies in the region. The other is that it does little to promote intra-African trade, which is of fundamental importance to economic recovery and growth of the continent.[36]

Closely linked to the identity problem is the question of whether OHADA was ever intended to expand beyond the Francophone world. All the original and subsequent members have legal systems that are based on or closely associated with the French legal system. Both the Spanish system which operates in Equatorial Guinea, and the Portuguese Legal system, which operates in Guinea Bissau, can be traced back to the French Legal system.[37] Except from the language problem, which has now been solved with the amendment of Article 42 of the Treaty to include English, Spanish and Portuguese as OHADA's working languages, the regime operates among and within states that share a common legal tradition. The only exception is Cameroon, where, though the legal system is predominantly based on French law, English law or remnants of it continue to apply in the two English-speaking regions of the country.[38] Although Cameroon has been put forward as an example of how OHADA can work in anglophone Africa, many nagging issues still persist. First, the OHADA regime was imposed on anglophone Cameroonians without warning, consultation or discussion. English common law principles of business law were swept aside

[32] Ibid
[33] Ibid
[34] C Manga Fombal: Some reflections on the prospects for the harmonization of international business laws in Africa: OHADA and beyond
[35] Ibid
[36] Ibid
[37] La Porta et al (1988) quoted from Charles Manga Fombal: Some reflections on the prospects for the harmonization of international business laws in Africa: OHADA and beyond
[38] C Manga Fombal: Some reflections on the prospects for the harmonization of international business laws in Africa: OHADA and beyond

overnight and replaced with OHADA. As a result, some judges initially refused to apply the OHADA Acts and gave in only under pressure from the minister of justice.[39]

Added to this is that Anglophone judges have had great difficulties in interpreting Cameroonian harmonized laws drawn largely from French laws in a manner that is consistent with Francophone judges, mainly because of the differences in rules of interpretation and other English law procedural rules used. It would therefore be even more difficult to expect them to interpret and apply OHADA texts in a manner that would be consistent with interpretations by francophone judges, especially those at the CCJA.[40]

On the whole, OHADA bears signs of adverse effects of legal transplantation, in that it constituted a major and sudden overhaul involving some elements that were not particularly useful in the local context. OHADA also seemed to ignore local practices and instead, emphasized uniformity and conformity with national and international standards.[41]

5. Key Findings

1. Harmonization of business laws in West Africa is the catalyst for economic growth and integration.
2. The lack of a harmonised regulatory framework among member states has impeded major actions across the region. Harmonisation of regulatory framework amongst ECOWAS countries is a matter of exigency. This common framework will enhance successful trade integration among member states which will in turn boost investors' confidence.
3. The challenges of doing business in ECOWAS region are enormous as a result of the uncertainty and fragmentation of business laws across the region.
4. In the course of this research work, findings showed that the lethargic harmonisation of decisions or resolutions especially in the area of investment incentives by West African States at the national and regional levels affects the implementation of decisions/resolutions. Discrepancies between the regional regulations and national legislations are created.
5. One of the greatest challenges for investors wishing to do business in Africa is the lack of legal certainty and rule of law which exists in many countries. The absence of an independent functioning legal system which guarantees the independence of the judiciary both within the member states and at the regional level as well as various political and economic crises have affected investment credibility and deterred potential investors.
6. Tour findings further showed that there is need to enhance common legal machinery for the enforcement of decisions/resolutions of regional courts. These judgements are of little or no significance if they are not obeyed by those it is supposed to regulate.
7. An investment in the area of infrastructure: Information and Communication Technology (ICT), good roads, highways, security and bridges should be spurred by a negotiation and agreement of member states.
8. Other factors that affect harmonization efforts as revealed by our findings in the ECOWAS region include; limited access to credit and payment system, lack of respect for Treaties and Conventions entered into by Member States (pacta sunt servanda), language barrier within the Anglophone and Francophone zones, lack of implementation of regional protocols such as the

[39] Ibid
[40] Ibid
[41] R Beauchard: OHADA Nears the Twenty-Year Mark: An Assessment'<https://elibrary.worldbank.org/doi/10.1596/9780821395066_CH18> accessed 11 February 2023 at 1:00 pm

ECOWAS trade and liberalisation Scheme (ETLS), lack of effective and efficient trade dispute settlement mechanisms, lack of implementation of a common currency across the region, lack of regulatory framework on the emerging field of e-commerce and unstable political history.

9. OHADA has paved the way for legal and judicial certainty in its member states. However, there remain several obstacles to its success such as linguistic and cultural barriers as well as finding a balance between the flexibility of the common law approach and the civil system, which favours a structured approach of rules and regulations.

6. Conclusion and Recommendations

For West Africa to be fully integrated into the global economy and lay down a solid foundation for economic recovery and growth, it needs to catch up quickly with the process of harmonization of business laws within the sub- region. In this regard, the West African sub- region is faced with a decision whether to proceed by adopting OHADA or by creating within the ECOWAS, a special commission to pursue this goal. In any case, if the project of harmonizing business laws in West Africa is to succeed, then the following recommendations must be noted:

First, OHADA has so far succeeded in doing no more than modernizing and unifying disparate national laws from countries operating more or less, within the same legal system – the French civil-law system. To accommodate new members from a different legal culture, OHADA will have to change its approach to harmonization to reflect the legal diversity of the African continent.

Again, a crucial element in harmonization is the ability of legal experts and politicians to overcome their fear of the unknown, be open- minded and be ready to consider legal rules that have worked well else-where.The harmonization exercise requires cooperation, understanding and compromise.[42]

Furthermore, while many countries in the ECOWAS region have had no difficulties ratifying treaties, the domestic implementation of these treaties has always been a problem. This can be overcome by making such treaties automatically binding and applicable in the territory of member states without the need for enabling legislation.

Finally, the experiences of other continental legal systems, especially the efforts at harmonizing laws within the European Union will continue to provide invaluable insights on how to approach these issues in West Africa. It must now be realized in West Africa that the harmonization of business laws in the face of globalized and liberalized economic situation of today is inevitable.

[42] C Manga, Fombal: Some reflections on the prospects for the harmonization of international business laws in Africa: OHADA and beyond'