



THE WORLD BANK

# The World Bank Legal Review

Volume 4

# Legal Innovation and Empowerment for Development

*EDITED BY*  
**HASSANE CISSÉ**  
**SAM MULLER**  
**CHANTAL THOMAS**  
*AND*  
**CHENGUANG WANG**



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*The World Bank Legal Review* is a publication for policy makers and their advisers, judges, attorneys, and other professionals engaged in the field of international development with a particular focus on law, justice, and development. It offers a combination of legal scholarship, lessons from experience, legal developments, and recent research on the many ways in which the application of the law and the improvement of justice systems promote poverty reduction, economic development, and the rule of law.

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*Hassane Cissé*

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Editors



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# The World Bank Legal Review

Volume 4

## Legal Innovation and Empowerment for Development

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# Legal Innovation for Development

## The OHADA Experience

MARC FRILET

In the years following the independence of the French African colonies, international investors and the African business community faced many difficulties in ascertaining the applicable principles of company law in the region.<sup>1</sup> At that time, company law was based on the French Company Act of 1867, which ceased to be in force in France in 1966. Interpretation of the law by local courts was often hazardous, and few reliable precedents existed. This uncertainty was the source of numerous disputes that triggered often unpredictable decisions by local courts, which in turn caused yet more uncertainty and discouraged international investment in these countries.

This volatile situation presented an opportunity for French law firms to develop a practice in Africa providing “authoritative interpretations” of company law. These interpretations were often based on documentation that was not available in Africa. The firms’ comparatively easy access to French case law gave them lucrative opportunities in Africa.<sup>2</sup>

It took years to figure out how to overcome this problem. In 1963, Professor René David, a leading scholar in comparative law, organized a conference with the ministries of justice of the former French African colonies to assess the need to harmonize the legal system in the interest of economic development. This meeting set the stage for the emergence of the Economic and Custom Union of West Africa in 1964 and the Economic Community of West African States in 1972. Subsequent enlargement of the scope of these organizations included their extension into the insurance sector during the African conference on insurance markets in 1972.

The African and Mauritius Office for Law Research and Studies (Bureau Africain et Maurisien de Recherches et d’Etudes Législatives, BAMREL) was created in 1975. The purpose of BAMREL was to help signatory states develop their legislation in a harmonized manner. Although BAMREL was not implemented due to a lack of funding,<sup>3</sup> its conception represents the true beginning of the harmonization of business law in the region.

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1 The OHADA region comprises 17 states: Benin, Burkina Faso, Cameroon, the Central African Republic, Chad, the Comoros, the Democratic Republic of Congo, the Republic of Congo, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Ivory Coast, Mali, Niger, Senegal, and Togo.

2 See also Georges Meissonnier & Jean-Claude Gautron, *Analyse de la législation africaine en matière de droit des sociétés*, 3 RJPIC 331 (1976).

3 See Alhousseini Mouloul, *Comprendre l’organisation pour l’harmonisation en Afrique du Droit des Affaires*, 2nd ed., Working Paper 17 (2008).

The desire of the business community (both in Africa and farther afield) to develop a secure legal system for economic transactions was increasingly expressed, particularly by private operators and the French Council for Investors in Africa (CIAN). In April 1991, during the conference of Ouagadougou (Burkina Faso), which included all the ministries of finance of the franc zone, the decision to progress toward the harmonization of African francophone countries was made. The ministries of finance gave a mandate to a high-level panel of seven members, made up of eminent jurists and specialists in business law, to propose an action plan. The panel was chaired by Keba Mbaye, a Senegalese judge and a former vice-chair of the International Court of Justice.

In October 1992, in a meeting of the heads of state in Libreville (Gabon), the report of the panel was presented and endorsed by President Abdou Diouf.<sup>4</sup> The next step was to appoint a *directoire*, made up of three members, to coordinate and prepare a treaty creating the Organisation pour l'Harmonisation en Afrique du Droit des Affaires (OHADA, also known as the Organization for the Harmonization of Business Law in Africa). The *directoire* was chaired by Mbaye and included Martin Kirsch, honorary counselor of the French Cour de Cassation, and Michel Gentot, chair of the dispute department of the French Conseil d'Etat.

After preparation of the draft treaty and several meetings with experts, judges, and specialists, 14 states<sup>5</sup> signed the treaty in Port Louis (Mauritius) on October 17, 1993;<sup>6</sup> the treaty was revised in Quebec (Canada) on October 17, 2008.<sup>7</sup>

Many of the exchanges were organized under the leadership of Keba Mbaye, especially during the conference in Abidjan in 1993, where techniques for preparing to harmonize business law were presented and tested (inter alia, through the organization of national committees in each country).

A key objective of OHADA, as reported by Seydou Bâ, former chair of the Senegalese Court de Cassation and former president of the OHADA regional supreme court (the Common Court of Justice and Arbitration, or CCJA), is

to progressively unify the legal framework in the area of business law and to organize a set of legal procedures promoting harmonized and sustainable development in all the Member States. Harmoniza-

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4 The final communiqué is as follows: The heads of states “approved the project of harmonization of business law elaborated by the Ministries of Finance of the Franc Zone, decided its immediate implementation, and requested to the Ministries of Finance and Justice of all interested States to treat this matter as a priority.” Henri Tchantchou, *La supranationalité judiciaire dans le cadre de l’OHADA: Etude à la lumière du système des communautés européennes* 22 (L’Harmattan 2009).

5 The 14 signatory states are Benin, Burkina Faso, Cameroon, the Central African Republic, Chad, the Comoros, Equatorial Guinea, Gabon, Ivory Coast, Mali, Niger, the Republic of Congo, Senegal, and Togo.

6 See <http://www.ohada.com/traite.html>.

7 See <http://www.ohada.com/traite-revise.html>.

tion of business law is a real trigger of growth and should facilitate the implementation of the rule of law.<sup>8</sup>

Legal integration is intended to mirror progress in economic integration at the regional level between Central African and Western African states. To this end, the OHADA member states designed a set of Uniform Acts on business law matters.<sup>9</sup> The nine OHADA Uniform Acts cover three broad areas:

- Commercial relationships and related transactions (general commercial law, security law, transport of goods by roads)
- Establishment and operation of commercial entities (company law and economic interested groups, accounting law)
- Settlement of disputes and regulation of commercial default (arbitration, bankruptcy law, recovery procedures)

Additional acts are in the pipeline for contract law and labor law.

The acts are currently under review on the basis of a reform program organized by the World Bank Group's multidonor Investment Climate Advisory Service (FIAS). The overall project objective is to improve the quality and effectiveness of the legal and institutional framework created by OHADA and therefore help the 17 member countries increase their attractiveness for domestic and foreign private investment.<sup>10</sup>

OHADA is a major legal innovation, unique in the modern world. There is much to be learned by assessing it. This chapter looks at its impact from a private sector perspective.

### The Positive Features of OHADA

Several OHADA Uniform Acts replaced old business regulations in participating countries. This move has generally been welcomed by international and local businesses that wish to develop their operations in a secure framework and with good governance. The best features of OHADA include the following:

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8 Seydou Bâ, speech, in *Fourth International Conference on Law and Economy: La convergence du droit* 48–50 (Ordre des avocats de Paris, Edition Lamy Nov. 2005).

9 The Uniform Acts relate to general commercial law, commercial companies and economic interest groups, securities, recovery procedures and measures of execution, proceedings for wiping out debts, arbitration, undertakings' accounting systems in the signatory states to OHADA, carriage of goods by road, and cooperative credit banks.

10 The reform's program has three components: 1, institutional strengthening of the OHADA Secretariat and project implementation support: to strengthen the institutional capacity of the Permanent Secretariat; 2, institutional strengthening of the Joint Court of Justice and Arbitration (CCJA) and the regional superior magistrate school (ERSUMA); 3, improving corporate financial reporting: to improve and strengthen corporate financial reporting, accounting standards, professional standards and practices, regional professional qualifications, and so on.

- The process of drafting, developing, and promulgating the Uniform Acts is efficient by all modern standards.
- Problems often found in other countries or regions for drafting and adopting new pieces of legislation are minimized in the OHADA countries.
- The problem of striking an appropriate balance between general principles and concepts and specific language is satisfactorily resolved. The Uniform Acts are worded in plain language that is easy to understand, with a minimum of cross-references and definitions. Credit must be given in this respect to the innovative method for the initial drafting of the Uniform Act, which was to invite international law firms to participate.
- The Uniform Acts are limited to key areas of business laws and as such are not particularly politically sensitive. For instance, the Uniform Acts do not cover areas that are often considered sovereign privileges, such as mining, taxation, and criminal penalties.

The Uniform Acts are conducive to good governance and economic development. In this respect, some were designed to educate the users (members of the business community, especially the local business community). This is particularly relevant for the OHADA company law system. As noted by Professor Guyon, the OHADA company law system—as is the case in many civil law countries—is more institutional than contractual in character.<sup>11</sup> He reminded his audience that a role of law is to protect third parties, and the Uniform Act Relating to Commercial Companies and Economic Interest Groups does just that. In his view, OHADA company law could become more contractual in the future as the economy and the capacity of the players develop.

Article 2 of the Uniform Act Relating to Commercial Companies and Economic Interest Groups states: “The provisions of this Uniform Act are mandatory, except in cases where the Act explicitly authorizes a sole partner or the partners of a company to substitute contractual provisions between them for those of this Uniform Act or to supplement the provisions of this Uniform Act with their own provisions.”<sup>12</sup>

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11 IBA Conference on OHADA, Yaoundé (Cameroon), December 1999.

12 Some international experts and scholars who view this act more from a common law perspective may consider it too rigid and not conducive to the facilitation of business activities. If this is true for some sophisticated players, it is not the case for most of the African businesses that need strong guidance and strict boundaries to develop their businesses with legal certainty before reaching the stage of sophisticated techniques. This is an important point to take into account in a “doing business exercise” sponsored by the World Bank. For instance, the obligation to have articles of association drafted or recorded with a public notary has raised debate. For most of the new players in the OHADA region, this obligation is perceived as an element of facilitation of business and governance, and in particular legal certainty for third parties. For some others, it may be considered an unnecessary hurdle limiting the possibility of easily creating a company.

Another debate has been raised concerning the benefits or pitfalls of having a minimum paid-up capital as provided for in the OHADA Uniform Acts. In the OHADA region, this provision is perceived less as a constraint to creating business than as a facilitation of sus-

Some Uniform Acts induce the informal sector of the economy to develop activities in the formal sector by providing for the following:

- Registration of commerce and movable credit (RCCM)
- Disclosure of corporate documentation
- Accounting: The Uniform Act on accounting is generally recognized as a compromise in this respect, taking into account the real situation in the region<sup>13</sup>
- Progressive access to lines of credit through mortgages and pledges
- Simplified forms of company structure, including mandatory provisions for their organization and operation

The response of the business community in Africa to OHADA has generally been positive.<sup>14</sup> The international legal community also has responded positively. An American Bar Association panel made a thorough evaluation of the Uniform Acts and in 1999 proposed useful guidance in various areas.<sup>15</sup>

### The Implementation Challenges of OHADA

As with any new legal system, understanding of and compliance with the new regime can be a challenge, especially in Africa because of the overall low level of income, the poor state of the judiciary, the size of the informal sector, and deficiencies in governance. This section discusses some key implementation challenges of OHADA for the business community and for investors.

The interpretation and enforcement of the Uniform Acts by the region's judiciaries is and will remain a significant problem. At the highest level, the CCJA renders authoritative judgments concerning the interpretation of the Uniform Acts<sup>16</sup> and has an impressive track record. However, many decisions concern procedure and jurisdiction, and relatively few concern the substance

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tainable business activities, because there is no sophisticated banking system and traditional security is difficult to organize and implement.

- 13 Professor Pérochon, famous for his manual assisting small businesses and owner-managers, was the author of this act. He was a practitioner of both the French system of accounting rules and international accounting standards.
- 14 The IFEJI/UBIFRANCE survey was conducted in 2003 with the support of the local business community, Conférence Permanente des Chambres Consulaires Africaines et Francophones (CPCCAF), and the Syndicat des Entrepreneurs Français à l'International (SEFI). The answers to the 30 survey questions are a useful reference for appraising issues faced by the business community and proposed actions.
- 15 A team of US lawyers and judges had reviewed each Uniform Act (four to eight experts for each Uniform Act). Other reviews were prepared by members of the section of International Law and Practice of the American Bar Association (ABA) and the International Judicial Relations Committee of the United States Judicial Conference under the leadership of William Hannay (OHADA project chair and chairman of the section of International Law and Practice of the ABA), together with two rapporteurs.
- 16 Paul Gerard Pougoué & Sylvain Sorel Kuate Tameghe, *Les grandes décisions de la cour commune de justice et d'arbitrage de l'OHADA* (L'harmattan 2010).

of the law. The CCJA also provides advice to national governments and judiciaries that is authoritative but limited.

The greatest challenges facing the CCJA are its location, resources, and relationship with national judiciaries. Because of its location in Abidjan and its limited resources, the CCJA cannot perform its functions in an optimum manner. The problem of distance is a major issue for most of the OHADA states, and one that is negatively seen by practitioners in various countries and the international community. The superior courts in member states have resisted acknowledging that the CCJA possesses ultimate jurisdiction. Furthermore, many judges have only limited knowledge of OHADA.

OHADA also includes a comprehensive and unique system of arbitration. Yet, the CCJA also has the authority to conduct arbitration and to rule on administrative issues. However, because this function is not well understood by the private sector and is underused, the number of authoritative awards is limited.

The OHADA arbitration rules are modern and in accord with international standards, but they need to be implemented by administrative services provided by the secretary of the arbitration court. So far, the track record of implementation is limited. Promoting the arbitration system has proved to be a challenge. The system requires improvement in several aspects.<sup>17</sup>

Another challenge relates to the enforcement of the Uniform Acts in terms of criminal sanctions. Without appropriate criminal sanctions, compliance with legislative provisions is haphazard. The OHADA approach to criminal penalties is interesting in this respect. Article 5, paragraph 2, of the treaty provides that “[t]he Uniform Acts may include provisions to give rise to criminal liabilities.” Article 10 provides that “Uniform Acts are directly applicable and overriding in the Contracting States notwithstanding any conflict they may give rise to in respect of previous or subsequent enactment of municipal laws.”

Because the Uniform Acts are directly enforceable in each member state, criminal offenses should also directly be sanctioned in each member state. However, Article 5, paragraph 3, provides that “Contracting States commit themselves to enforce sentences of offences.” Thus, the sanction for criminal offenses is in fact determined by each state. This situation entails enforcement problems and discrimination, because the member states are not harmonizing penalties. This conundrum occurs not only with prison sentences and fines but also with surety provisions and other procedures for enforcement.<sup>18</sup>

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17 Improvements could include, for instance, the introduction of more prescriptive procedural rules and guidelines governing the appointment and performance of the arbitrators, clarification of foreseeable costs depending on various procedural aspects and organization of the proceedings, and decentralization of the arbitration’s administration.

18 Aude-Marie Cartron & Boris Martor, *Eclairage sur la révision du Traité de l’OHADA*, 36 Cahier du Droit de l’Entreprise no. 1 (Jan.–Feb. 2010).

This situation is compounded by the fact that it is not always easy to identify in the Uniform Acts the definition and scope of a criminal offense. Some of the acts, such as the Uniform Act on Recovery Procedures and Measures of Execution, are particularly complex in this regard.<sup>19</sup>

### Legal or Regulatory Areas Not Regulated

Many key areas of interest to investors are not covered by the OHADA Uniform Acts, including

- Taxation and issues of tax certainty and conditions of implementation
- Parafiscality<sup>20</sup>
- Customs and related tariffs
- Exchange control and currency fluctuation issues
- Private contract law content and interpretation<sup>21</sup>
- Public contract law content and interpretation
- Permitting risks (risks deriving from governmental or bureaucracy attitude for clearances, nonobjection, approval, and other permits)
- Land availability and land use risks, including the expropriation process and related issues
- Environmental impact studies and related permits
- Administrative or judicial review of adverse bureaucratic decisions
- Public-private partnership issues
- Employment law risks

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19 Michel Mahouve, *Le système pénal OHADA ou l'uniformisation à mi chemin*, Recueil Penant 87–94 (Jan.–Mar. 2004).

20 Parafiscality is recognized as a major risk for the business community and investors. It is broadly defined as the fees, royalties, local and sundry taxes, and levies not directly listed and not defined in tax code or legislation, mostly payable at the local level or with line ministry organizations, for supporting particular activities or services of such administration and/or public bodies. In most states, parafiscality charges are numerous and in constant development.

21 Several drafts of Uniform Acts are in circulation, but little progress has been made on an *avant-projet* of Uniform Acts since February 2008. One reason is that this *avant-projet* is too close to the UNIDROIT principles. Various meetings have been held on the subject since September 2012, including exchanges between the French Institute of International legal Experts (IFEJI) and the African professors Issah-Saygeh, Pougoué, and Sawadogo on September 2008 (as part of the activities of the international working group set forth by IFEJI with the support of the World Bank and various stakeholders in March 2005: “Legal reform in developing countries—evaluation of the OHADA model”). A comparative analysis has been made on the drafting process and through benchmarking with the European Union effort to assess the benefits of a common European contract law. In Europe, this uniform contract law is progressively taking shape after the publication of a common frame of reference for its harmonization and a tentative draft of an optional legal instrument for international sales published in 2011.

At this point, large international investment projects can realize only limited benefits of OHADA because OHADA does not regulate most major risks.<sup>22</sup> Yet these kinds of projects are essential for development in areas such as infrastructure, public utilities, and mining.

### Business Community Expectations

The business community expects that OHADA will contribute to the legal formalization of day-to-day activities, including relationships with states, ministries, public entities, subsovereign entities, and the like. This business community is represented at different levels, particularly with the chambers of commerce.<sup>23</sup>

French investors, who are very active in francophone Africa, have developed a French business community in Africa, represented by the Conseil Français des Investisseurs en Afrique (CIAN) and the Mouvement des Entreprises de France (MEDEF). Members of these organizations are in close contact with African and international lawyers.<sup>24</sup>

In the eyes of the international business community, better and more efficient implementation of the existing Uniform Acts is needed. Three tasks need particular attention:

- Reinforce the program run by the ERSUMA school in Benin (see below) to train the judiciary.
- Design a user-friendly system that encompasses the issues of a particular region and the capacity of the players and then promote arbitration through this system. This means, *inter alia*, doing the following:
  - Guarantee the appointment of an arbitration tribunal that is independent, professional, and efficient.
  - Guarantee simple and well-understood proceedings in line with local traditions for dispute resolutions.
  - Guarantee a fair and enforceable award within a reasonable time.

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22 In areas that necessitate major up-front investments and with a very long recovery capacity (often over several decades), it is interesting to analyze the risk matrix developed by the industry leaders and that led to a due diligence ending at limiting the risks at a reasonable level to finance the project. For instance, in large mining projects, the risk matrix identifies 10 to 20 key chapters in which several key issues are generally identified. Some chapters can be well appraised in appropriate regulations, procedures, and reasonable perspectives of good implementation. Examples are expropriation, land use, compensation, resettlement, environmental permits and environmental and social management plans, and sovereign interference.

23 Several chambers have developed an integrated system of exchanges and created entities such as the Conférence Permanente des Chambres Consulaires Africaines et Francophones (CPCCAF).

24 In particular, the French Institute of International Legal Experts (IFEJI), created by the Paris Bar, and the French Ministry of Foreign Affairs select French practitioners (on average, 120 practitioners) with day-to-day expertise in international business law matters.

- Guarantee an arbitration administration center that is efficient, responsive, fair, and cheap.
- Allow the possibility of evaluating in advance costs and duration of proceedings.
- Promote the development of uniform “implementing regulations,” guidelines, and procedures for the Uniform Acts.

In considering additional Uniform Acts, two actions may do most to help foster international investments in Africa:

- Design an institutional framework that will facilitate long-term public-private relationships in the core public service sector with appropriate guarantees for the stakeholders and a limited impact on state budgets and development aid.
- Design principles of public contract law and procedures that facilitate transactions involving the public sector. These should include improvement in the procurement of public contracts of all kinds and the provision of reasonable guarantees of fair implementation of the various types of contracts between the private and the public sectors, together with efficient procedures in areas such as mining contracts, urban development, forestry, lease of public land, and agriculture projects.

### Capacity Building and Empowerment Issues

The international community has been actively building capacity in the OHADA region. For example, the ERSUMA school in Porto-Novo (Benin), which conducts training for the judiciary,<sup>25</sup> provides support to OHADA institutions such as the OHADA national committees. Yet, it is clear that much remains to be done in terms of capacity building and empowerment in regard to OHADA.

The OHADA model has been assessed with a view to further improving the lawmaking process and the legal certainty for the business community. Several international working groups with that focus were established in the mid-2000s, particularly in the wake of two conferences organized by the Paris Bar inviting African experts and practitioners, as well as World Bank specialists, in Washington (2004) and in Paris (2005).<sup>26</sup> These exchanges led to the creation of a joint working group on legal reforms in developing countries, which has as its objectives the evaluation of OHADA and the dissemination of lessons learnt.

The World Bank Group is playing an important role in funding programs to evaluate the content and implementation of the Uniform Acts through the World Bank Group’s multidonor Investment Climate Advisory Service

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25 See <http://web.ohada.org/ersuma.html>.

26 The World Bank was represented by Robert Danino, senior vice president and general counsel of the World Bank, and Michael Klein, chief economist of the IFC (World Bank).

(FIAS). This effort has resulted in a useful revision and improvement of some Uniform Acts (relating to securities and general commercial law), and other acts are in the pipeline (relating to competition law, banking law, intellectual property law, civil societies law, and evidence).<sup>27</sup> The international donor community is also supporting the OHADA institutions.

More work is needed to build capacity in OHADA institutions and to implement provisions on the ground. Specific areas that require attention include

- The efficient implementation of the Trade and Personal Property Credit Register, an instrument for securing transactions and developing the economy
- The organization and selection of the judiciary
- The organization of efficient and user-friendly arbitration centers
- The process of designing and implementing in various states regulations that further develop and adapt the OHADA Uniform Acts at various levels, including the clear abrogation of national regulations that conflict with the Uniform Acts

Josette Nguebou, professor of law at the University of Yaoundé (Cameroon), explored the sensitive relationships between the Uniform Acts and the national laws of the member states. She found that “although national law not conflicting with the Acts remained applicable, nothing prevents the Member States from maintaining and expending regulations which could narrow down its scope or even prevent its effective implementation.”<sup>28</sup>

Capacity building and empowerment should also be oriented toward

- Fostering exchanges between scholars and practitioners on the implementation of the Uniform Acts and authoritative case law.
- Training the legal profession in the international business law system.
- Training senior civil servants to engage with the international business community in order to permit them to be on an equal footing with experienced international players when negotiating, implementing, and monitoring their relationships. This would apply, for example, to projects in the oil and gas sector, the mining sector, the infrastructure sector, the utility sector, the agricultural sector, and the forestry sector.
- Enabling more extensive exchanges between the local administrations and the administrations of other countries and regions.
- Implementing more proactive programs in e-learning. Well-prepared programs of e-learning, including appropriate documentation transmitted in

27 See the harmonization agenda adopted by the Council of Ministers of the OHADA region during the Bangui meeting of March 2001.

28 See OHADA Treaty, *Les actes uniformes commentés et annotés*, Juriscope 249 (1999). On this matter, see also Marc Frilet, *Implementing the Rule of Law in Sub-Saharan Africa: Appraisal of the OHADA after a Decade*, 8(3) *Bus. L. Intl.*, 254–67 (Nov. 2007).

advance by electronic means and used as background material for workshops or specialized classes, can be effective at building capacity. The programs should be monitored by teachers or facilitators who have been trained to teach in an e-learning manner, including, when appropriate, direct online contact with authoritative scholars in other countries.<sup>29</sup>

- Fostering new relationships between the public and private sectors to ease the transfer of investment. This was identified as a top priority by multilaterals and by the G20 Business Summit in Cannes (also referred to as the B20 of Cannes) in November 2011. Infrastructure development is seen as essential to achieving the Millennium Development Goals, and to that end the business community has been urged to develop a framework for better projects.<sup>30</sup> Proposals have been made to design a new act on PPP; in June 2011, the council of ministers of OHADA decided to explore that option.

Perfecting a system of equitable public contract law based on concepts and case law should be a priority, especially because some OHADA countries have started to experience the benefits of equitable public contract law for both the private sector and the public sector in landmark and long-term public infrastructure and utility projects.

## Conclusions

OHADA has many positive features, and lessons learned from its implementation can be instructional for organizations considering business activities not only in that region but also in other regions of the world.

Improved understanding of the Uniform Acts will help strengthen the investment climate and make it easier to do business in the region. Particular attention should be given to a clearer definition of criminal offenses (including the nature and scope of the criminal penalties). One solution might be to promulgate a Uniform Act on this matter.<sup>31</sup>

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29 E-learning conducted by faculties of law deserves to be taken into account; *see*, for instance, development of e-learning under the auspices of the International Bar Association (IBA).

30 *See* G20/B20, *Final Report of the Business Summit in Cannes*, 8 (Nov. 2011). In relation to public-private partnerships, the G20 report (p. A-71) says, “without appropriate institutional and legal framework, most of the public-private partnership (PPP) projects proposed for developing countries have a high likelihood of failure.” An international working group made of international lawyers with expertise in concession and other PPPs worldwide and representatives of the construction industry has been working on the matter with various agencies for a few years. This group, after reviewing many projects with governments and local authorities, identified 30 issues that need to be addressed in an inclusive manner for the success of long-term concessions and other PPP projects. The publication of a handbook on the conditions of success of concessions and other PPPs, together with an evaluation matrix for concession on other PPP projects, individually or at an institutional, regulatory, or contractual level, is expected in 2012. *See* CICA website, <http://www.cicanet.com/>.

31 *See* Achille Ngwanza, *OHADA, Entre adolescence et âge adulte, une crise existentielle, Rapport général de l’université d’été de cercle horizon, club OHADA d’Orléans* (Jul. 1–3 2008).

The greater problem is that regulatory sectors essential for the economic development of Africa, which are not well controlled by national laws or regional organizations, are not yet regulated by Uniform Acts. Looking ahead, it is important to consider new Uniform Acts in key areas where a good regulatory framework already exists. It is also essential to launch an innovative process of capacity building and empowerment in the various directions outlined above, such as developing exchanges between scholars and practitioners, and training members of the legal profession and senior civil servants. Greater participation of legal practitioners experienced in providing advice in Africa may be the key to this process.<sup>32</sup>

Laurent Ezzo, minister of justice of Cameroon and president of OHADA, reported on the collateral benefit of OHADA in terms of legal innovation. In his view, OHADA is a conduit for convergence between civil law and common law in business law matters. He believes that Cameroon could be a laboratory for facilitating the implementation and interpretation of the OHADA Uniform Acts due to its unique civil law / common law regimes.<sup>33</sup> Professor Barthélemy Mercadal, a specialist in international business law, followed this path by promoting convergence in the interpretation of legal concepts worldwide (inter alia, between the civil law and the common law worlds) based on the same or similar legal provisions and using the OHADA Uniform Acts as a background. Mercadal's extraordinary effort, which led to a publication of *Code IDEF annoté de l'OHADA*,<sup>34</sup> will contribute to encouraging business players at both the national and the international levels to use the Uniform Acts on a regular basis.<sup>35</sup>

OHADA is an advanced and inclusive example of legal innovation for development. As such, the OHADA Uniform Acts are an excellent ground on which to test the benefits of an emerging field focusing on the optimization of legal frameworks and products. Although the contribution of OHADA to this field is already significant, much more can be done to apply lessons for further legal innovation.<sup>36</sup>

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32 Business community and legal practitioners active in this area include UNIDA, CIAN, MEDEF, IFEJI, and IBA, which have conducted several conferences.

33 *Uniform Commercial Law Infrastructure and Project Finance in Africa*, 215 Intl. Bus. L. (May 2000).

34 <http://www.institut-idef.org/-Code-OHADA-annoté-.html>.

35 See also Marc Frilet, *Le raisonnement juridique du monde anglo-saxon: Quelques considérations élémentaires et quelques recettes pour éviter les malentendus contractuels*, in *La revue des entreprises* (MEDEF Jan. 2000).

36 For information on this emerging field, known as *l'art de la légistique*, see Carine Gilberg, *L'art de la légistique*, *Gazette de Palais* 8–10 (Jan. 6–7, 2010); Alexander Flückiger & Christine Guy-Ecabert, *Guider les parlements et les gouvernements pour mieux légiférer—le rôle des guides de légistique* (Schulthess 2008); *Guide pour l'élaboration des textes législatifs et réglementaire*, available at [http://www.legifrance.gouv.fr/html/Guide\\_legistique\\_2/accueil\\_guide\\_leg.htm](http://www.legifrance.gouv.fr/html/Guide_legistique_2/accueil_guide_leg.htm); Catherine Bergeal, *Savoir rédiger un texte normatif* (Berger-Levrault 2004); Marc Frilet, *Le code civil, une source d'inspiration inégalée pour améliorer la sécurité juridique en matière internationale*, 87 *Revue de l'Avocat Conseil d'Entreprise* (Dec. 2003).

