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**Building Legal Certainty Through
International Law: OHADA Law in Cameroon**

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*Building legal certainty through international law:
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Independent Study under the supervision of prof Karen J. Alter
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Abstract

This paper aims to understand how international legal harmonisation impacts legal certainty in countries where most of the economy is informal by examining how OHADA laws have been applied in Cameroon. It describes how the OHADA laws were developed internationally and applied locally and how the actors in two spheres collaborated with each other. The application of OHADA law in Cameroon showed that the international and regional partners' financial and organisational support is crucial for allowing motivated local legal actors to organize and collaborate to get the majority of the legal profession to join them in their reform efforts. The first lawyers to join the reform are more likely motivated by ideological reasons whereas those joining in later have potentially more material reasons. This study also shows that the mere existence of up-to-date and well-crafted business laws is not enough for enhancing legal certainty if application in courts remains uncertain. Hence for the OHADA legal harmonisation to have a wider impact on legal certainty, economic actors in OHADA member states need to have access to a more reliable justice system corresponding to certain technical standards.

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It is commonly understood that one of the main factors hindering economic development in Africa is the lack of appropriate legal systems. Without proper laws and a functioning judiciary contracts are harder to enforce and this leads to less confidence and reliability in society, which in turn are preconditions for investment and economic development. However legal reforms are not easy to pursue, especially in Africa.

Precisely this problem is addressed by the Organisation for Harmonising Business Laws in Africa (OHADA – *l'Organisation pour l'Harmonisation en Afrique du Droit des Affaires*). It strives to foster economic development by enacting contemporary uniform regional business laws developed and sanctioned regionally. However the low degree of rule of law and weak state institutions make it questionable whether a change through law can be successful. Studying how effective OHADA has been in creating legal certainty will help understand the advantages and difficulties of regional legal reforms in Africa and more broadly how internationally developed law becomes effective in countries with less formalized legal systems.

OHADA was created in 1993 with the aim of fostering economic development of its member states through up-to-date business laws. It joins 16 mainly francophone countries in West and Central Africa to common business legislation and institutions to provide stable uniform business law.² Creating a contemporary business law and reinforcing legal certainty are measures intended to facilitate business in the member states and within the region both by improving the environment for local actors and attracting more foreign investment. So far ten uniform acts that trump all national legislation have been enacted by the OHADA consensual legislative procedure.³ The international nature of this law, the fact that countries cannot change it on their own, and the ability to appeal legal rulings to an international court, whose decisions are authoritative for all the member states, are intended to increase legal certainty for all economic actors.

The preamble of the OHADA treaty mentions legal certainty as an objective that will finally create the conditions necessary for attracting investment and encouraging economic development.⁴ Legal certainty requires that laws are accessible, operable, legible, intelligible and up-to-date, and it can be seen as the inherent object of law itself defining law by its sought purpose.⁵ In essence legal certainty is a quality of the law connoting that legal subjects can ascertain what the law allows them to do, what it proscribes, and what is likely to happen as a result of their legal and illegal actions.⁶ Legal certainty pertains both to formal elements related

² The current members are: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Republic of Congo (Congo-Brazzaville), Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Niger, Senegal, Tchad and Togo. Currently negotiations are going on for the Democratic Republic of Congo (Congo-Kinshasha). In Equatorial Guinea the official languages are Spanish and French, in Guinea Bissau Portuguese is the only official language. Cameroon has a federal structure with Anglophone and Francophone regions. All the other countries are French-speaking.

³ OHADA Uniform Acts are available at UNIDA's website <http://www.ohada.com/textes.php> or in Issa-Sayegh, Joseph et al. (2011) *OHADA: Traités et Actes uniformes commentés et annotés*, Paris: Juriscope,

⁴ The preamble in French reads: "Conscients qu'il est essentiel que ce droit soit appliqué avec diligence, dans les conditions propres à garantir la sécurité juridique des activités économiques, afin de favoriser l'essor de celles-ci et d'encourager l'investissement"

⁵ Kerhuel, Anne-Julie and Raynouard, Arnaud. (2010) "Mesurer Le Droit à L'Aune De La Sécurité Juridique [Measuring the Law: Legal Certainty as a Watermark]", *Georgetown Law and Economics Research Paper*, No. 10-12, July 2010, p. 17. available online : http://scholarship.law.georgetown.edu/fwps_papers/131

⁶ A more full and detailed definition is given by Thomas Piazzon in *La sécurité juridique*: "The ideal of reliability of an accessible and intelligible law that allows for legal subjects to reasonably foresee the legal consequences of their acts and that respects the legitimate provisions already concluded by legal subjects" (translated from French: "Idéal de fiabilité d'un droit accessible et compréhensible, qui permet aux sujets de droit de prévoir raisonnablement les conséquences juridiques de leurs actes ou comportements, et qui respecte les prévisions légitimes déjà bâties par les sujets de droit dont il favorise la réalisation"). In Piazzon, Thomas. (2009) *La sécurité juridique*, LGDJ, no 48.

to the law (e.g its clarity and availability), and to judicial certainty, meaning the legitimate expectations of how judges are likely to interpret and apply the law in court decisions.⁷

OHADA countries rank amongst the most corrupt countries in the corruption perception index⁸ and in all of them the weak state authority and judicial systems have been unsuccessful in guaranteeing a stable legal environment. Furthermore in all OHADA member states, the informal sector controls a crucial part of the economy. According to World Bank almost half of the Gross National Income in OHADA countries comes from the informal sector.⁹ Given these conditions, it remains uncertain whether the member states have judicial systems and state authority robust enough to properly enforce OHADA law and create the necessary conditions for reinforcing legal certainty.

This study aims to understand how international law can become effective in these difficult conditions. The principal task is to understand how OHADA laws have impacted legal certainty in its member states. This study will provide an explication as to what role different actors have played in this process and through which mechanisms OHADA law has had impact.

The present analysis of the efficiency of the OHADA law in enhancing legal certainty is based on a case study of Cameroon. I chose Cameroon in particular because thanks to its relative political stability it is one of the OHADA member states most likely to have experienced positive change. This is important, because it increases the chances of seeing what mechanisms are at play. Also since Cameroon's legal system is modelled on the French system, it is fairly representative of OHADA countries in general.

In order to assess and understand how OHADA laws have influenced legal certainty, I conducted interviews with legal professionals in Cameroon. I used Anne-Julie Kerhuel and Arnaud Raynouard's approach of asking questions about predictability, stability and assurance of the legal system to make the abstract concept of legal certainty more tangible and measurable.¹⁰ Overall, I conducted 22 interviews with legal professionals in private practice (lawyers and notaries), Cameroonian state officials and specialists at the OHADA Permanent Secretariat and different international officials.

The interviews revealed that whereas OHADA laws have enhanced textual legal certainty, their impact on judicial legal certainty has been small. Besides confirming that the business laws in vigour before OHADA were outdated, the interviews confirmed that previously there was overall very little knowledge and clarity as to which laws actually applied. The new laws are up-to-date and correspond better to business realities that have evolved since independence. Equally important, the access of legal community to the applying business laws has been greatly enhanced by training sessions and the distribution of materials. However the problematic part in creating legal certainty remains its judicial component. OHADA laws seem to have had little impact on judicial legal certainty as it depends essentially on the functioning of the national judicial system. Extralegal factors contribute to shaping national court decisions. The pervasiveness of corruption in the judiciary keeps OHADA law from having more impact. Overall, OHADA laws seem to have had the role of necessary but insufficient condition for creating legal certainty in that the

⁷ Tiger, Philippe. (2001) *Le droit des affaires en Afrique : OHADA*. Paris : Presses universitaires de France, Que sais-je ?, pp. 20-26.

⁸ See http://www.transparency.org/policy_research/surveys_indices/cpi/2010/results

⁹ See Schneider, Friedrich (July 2002) 'Size and Measurement of the Informal Economy in 110 Countries Around the World', p. 6 available at http://rru.worldbank.org/Documents/PapersLinks/informal_economy.pdf.

¹⁰ Kerhuel, Anne-Julie and Raynouard, Arnaud, *Op cit*.

legal texts provide the elementary and necessary basis that gains its force in a predictable and reliable application.

In order to understand and conceptualise these raw findings, I will compare them to existing literature on how international law becomes effective and can bring about institutional change. In the first section I will discuss what different theories would say about creating legal certainty through international law. Pierre Bourdieu's theory of juridical field provides a framework for analysing how legal certainty is created through a process of normalisation in which the rules as used by the legal profession are internalised by the society.¹¹ Terence Halliday's recursivity approach will provide a general framework for analysing the legal complex of OHADA law-making and implementation and Wade Jacoby's coalition mode of interaction will provide an understanding of how international and domestic actors might collaborate (I).¹² Drawing on the theoretical insights, the second section will describe the OHADA law-making as it has occurred on the international level and what type of relations have prevailed between international and regional actors (II). The laws developed internationally were implemented domestically through the legal field. The third section explains how lawyers, by applying the new OHADA legal rules, turned them effectively from legal rules into social rules that by their impact on formalisation of business practices have managed to enhance legal certainty (III). The fourth section brings the two levels together and shows how the change was made possible by the coalition between motivated domestic actors and convinced regional actors (IV). Finally, I will compare the results of the empirical case study with what theory suggests and make recommendations for further research (V).

I. THEORETICAL BACKGROUND FOR STUDYING HOW INTERNATIONAL LAW CAN BRING ABOUT CHANGE IN LEGAL CERTAINTY

What would different theories of effectiveness of law and especially international law predict about how legal certainty would be brought about? A theoretical analysis of the topic should take into account the regional nature of OHADA, the importance of different actors and try to explain the roles of all the actors and the interplay between them and their motivations for acting. Pierre Bourdieu's analysis of the juridical field will provide the central tenet for this analysis mainly because it explains how legal rules become socially embedded thanks to a process of normalisation where the juridical field plays a sort of an intermediary between the lawmakers and the society.¹³ Terence Halliday's recursivity of global norm-making approach can further the Bourdieusian analysis for the case of OHADA by providing a model explaining how law or norms that are produced on the international level are implemented by domestic actors.¹⁴ Terence Halliday's and Bruce Carruthers's study of the integration of global bankruptcy law into national

¹¹ Bourdieu, Pierre (1987, original 1986) "The Force of Law: Toward a Sociology of the Juridical Field", *The Hastings Law Journal*, vol. 38, July 1987, pp.805-853.

¹² Halliday, Terence C. (2009), "Recursivity of Global Normmaking: A Sociolegal Agenda", *Annu. Rev. Law Soc. Sci.* 2009, 5, pp. 263-89. Jacoby, Wade (2006), "Inspiration, Coalition and Substitution: External Influences on Postcommunist Transformations", *World Politics*, vol. 58, no. 4, pp. 623-651.

¹³ Bourdieu, Pierre. *Op cit.*

¹⁴ Halliday, Terence C. *Op cit.*

legislation are examples of this type of study.¹⁵ Karen Alter's study of the Eurolaw movement's role in expanding the rule of European law uses Bourdieu's framework of the juridical field to analyse the motivations of legal professionals in embracing the European law framework.¹⁶ Halliday's recursivity approach provides an institutional interaction framework and four mechanisms for describing the phenomena, but does not describe how groups of actors are formed in between the levels and how they function. I will use Wade Jacoby's coalition approach to predict how domestic and international actors collaborate in regional legal reform.¹⁷

Bourdieu's normalisation and juridical field provide a good canon for analyzing how legal norms become embedded in the society. Bourdieu is less concerned with the creation of the norms themselves. So to draw a predictive theoretical framework about how regional business regulation will change legal certainty in a country with low levels of rule of law, Halliday's recursivity approach will provide analysis for the law-making process and Bourdieu's analysis of the juridical field will provide an insight into how the regionally construed norms may become embedded in the society and hence have an impact on legal certainty.

Halliday's recursivity of law approach predicts that the institutional change will be brought about in three interacting cycles: global law-making, national law-making and the interaction between the two. For the purposes of studying OHADA law, the global cycle does not intend to produce global but regional regulation. The actors in the regional law-making cycle however will be more global with the participation of big international organisations like United Nations Development Programme (UNDP) and World Bank and regional organisations like African Union, Economic Community of West African States (ECOWAS), Economic Community of Central African States (CEMAC) and West African Economic and Monetary Union (UEMOA), representatives of foreign countries and governments like France, EU and China, business lobbies with special interest across the region or in some issue-area and international NGOs like the International Institute for the Unification of Private Law (UNIDROIT) and African Association for a Unified System of Business Laws (UNIDA), law professors and activists, supranational court represented by the CCJA. At this level the cycle of reform, according to Halliday should mainly be driven by four mechanisms: actor mismatch, diagnostic struggles, contradictions and indeterminacy. Actor mismatch should be determined under realist assumptions of power disparities. Diagnostic struggle will according to Halliday be won by an idea that already has some resonance in the destination society.¹⁸ The norms would be determined by institutional and ideological contradictions which in some ways reflect the actor mismatch and diagnostic struggles.¹⁹ The final settlement of the actors on some normative action is settled by the degree of determinacy. According to Carruthers and Halliday in the field of law and development, the dominant premise is that investors require certainty in markets that can be supplied by law.²⁰

¹⁵ Halliday, Terence C. and Carruthers, Bruce G. (2009) *Bankrupt: Global Lawmaking and Systemic Financial Crisis*. Palo Alto: Stanford University Press.

¹⁶ Alter, Karen J. (2009), "Jurist Advocacy Movements in Europe: The Role of Euro-Law Associations in European Integration (1953-1975)", *European Court's Political Power*, Oxford: OUP, pp. 63-91.

¹⁷ Jacoby, Wade (2006), *Op cit*.

¹⁸ *Ibid.* p. 279.

¹⁹ Halliday, Terence C. (2009), "Recursivity of Global Normmaking: A Sociolegal Agenda", *Annu. Rev. Law Soc. Sci.* 2009, 5, pp. 278-282.

²⁰ Carruthers, Bruce G. and Halliday, Terence C. (2007). "Law, economy and globalization: Max Weber and how international financial institutions understand law." In *On Capitalism*, ed. V Nee, R Swedberg, pp. 128-151. Palo Alto, CA: Stanford Univ. Press.

The norms that would be created at the regional level will then find their way into application at the national level. The national lawmaking will signify here the application of OHADA laws within the realm of a member state. As OHADA uniform acts need no acts of transposition and are directly effective, the role of the national level should consist mainly of accommodating the existing legal system to the new laws. The ways in which the previous legislation will be eradicated and how national legislator and judges will interpret OHADA norms conflicting with national laws will again be determined by actor mismatch, diagnostic struggles, contradictions and indeterminacy. In the national level these contestations will find place within the juridical field, which translates the legal norms into the society.

Bourdieu's juridical field will become key to the enhancement of legal certainty through this supranational law. Because of the monopoly it holds over interpreting norms in the judicial space the juridical field will determine how juridical norms are translated into the society. According to Pierre Bourdieu, "the practical meaning of the law is really only determined in the confrontation between different bodies (e.g. judges, lawyers, solicitors) moved by divergent specific interests."²¹ The legal profession is motivated to keep their monopoly of the application of law, because it keeps their social standing and the overall societal configuration and distribution of social capital. The actions of the representatives of legal professions in applying the norm in and out of court will determine how the norm is perceived in society. Moreover, by applying the legal norms repeatedly the legal norms become social or factual norms in a process dubbed *normalisation effect* by Bourdieu. Even though Bourdieu never refers to legal certainty, his framework is very useful for analysing the creation of legal certainty, as the normalisation effect is a crucial way of creating legal certainty. Furthermore legal certainty can be seen as an indicator of the success of the juridical field in permeating their authority in the society as the social status of the legal profession relies on their created monopoly in defining norms.²²

Bourdieu's framework is of course based on an empirical analysis of the French legal field and is probably not intended to apply globally. It can apply to other societies where the legal field has similar symbolic importance and power. Given the relatively smaller importance of law in the Cameroonian society, the impact of the legal field on the society as a whole is probably also more limited. However the mechanisms in which this impact would come about are probably similar to the ones observable in France considering that the Cameroonian legal system is based on the French legal system and that the French culture still continues to be a major influence and that many lawyers are trained in France and that Cameroonian lawyers follow contemporary French jurisprudence. For Bourdieu different fields of law have varying degrees of prestige and thereby contribute to varying degrees to keeping up the social order.²³ In this vein, lawyers practising both business law and international law deal with prominent and richer groups of society and should hence have a greater potential in keeping up the social order. Therefore practitioners of business law in Cameroon should be eager to support and start using OHADA laws, because it both helps them to reinforce their societal position and gives them an opportunity to increase legal demand. Hence applying Bourdieu's framework by analogy to the case of OHADA law in

²¹ Bourdieu, Pierre, *Op cit.* p. 821.

²² Bourdieu, Pierre, *Op cit.* p. 838.

²³ Bourdieu notes the persistent prestige of civil law and business law as compared to social welfare law in France on p. 850.

Cameroon, OHADA should prove successful, because it provides the legal field with a potential tool for reinforcing their social position.

To sum up, the application of Bourdieu's framework of the legal field to OHADA's impact in Cameroon, predicts that business lawyers should be motivated to embrace OHADA law as it allows them to reinforce their social standing. Furthermore, it would help to increase legal demand and thereby reinforce the overall societal importance of the legal profession. This in turn should cause legal norms to become more embedded in society and lead to greater correspondence between legal norms and the societal perception thereof, which eventually should lead to more legal certainty.

The battle within the judicial field over the norms will most likely lie in the intersections between global norm-making, regional lawmaking and national application cycles of the modified Halliday's recursivity approach. Being primarily concerned with the change in legal certainty in Cameroon, it is important here to study how international actors manage to convince the actors in the national juridical field to apply the new regional norms. Karen Alter's study of jurist advocacy movements' role in EU integration suggests that both material and ideational reasons matter for creating support.²⁴ Wade Jacoby's coalition approach offers a further explanation to how international actors can bind together domestic actors that share their views. According to these theoretical insights, international actors should be major players in influencing Cameroonian lawyers to apply OHADA law. They could have do so either from within the juridical field if they belong to the legal profession or from the outside if their influence comes in the form of professional experience in other organisations.

Hence an analysis of how OHADA law became effective will look, first, into the mechanisms at play on the international level to understand how the OHADA laws are made and passed to the national level (II). The reaction within the Cameroonian juridical field will show how these internationally created laws entered the domestic legal realm and came to impact the society through the legal field (III). Lastly, it is necessary to explain which roles were played by the domestic and which by the international actors and how the two interacted (IV).

II. REGIONAL DEVELOPMENT OF OHADA LAW

A governing consensus on the necessity of modern and simple business laws for enhancing legal certainty and economic development has guided the creation of OHADA norms. The interviews confirmed what others have also observed; there was very little legal certainty in Cameroon and other OHADA states in early 1990s.²⁵ Business laws were outdated, hard to access and misapplied. There was a general confusion as to which texts should apply and the texts themselves were so scarce that often not even judges lacked access to them. According to one lawyer, the situation was so bad that judges - lacking the correct textual reference - simply cited written reason (*la raison écrite*) in their decisions to refer to the legal norms that they could not

²⁴ Alter, Karen. *Op cit.* p. 91.

²⁵ Tiger, Philippe. *Op cit.* pp. 18-19; Kirsch, Martin (1998) "Historique de l'OHADA", *Recueil Penant*, n° 827, 1998, p. 129 et s.

access.²⁶ There seems to have been a general ruling consensus that existing business laws were outdated. In the preliminary report on the feasibility and necessity of legal harmonisation in business laws presented at the Abidjan meeting, Kéba Mbaye concludes his consultations with different national experts: “In effect, everybody agrees that the business laws in effect do not anymore correspond to the reality.”²⁷ This statement summarizes the diagnostic consensus as to the existing situation before the creation of OHADA.

The second part to the ruling diagnostic consensus is the perception that new up-to-date business laws would lead to more legal certainty and more legal certainty in turn would lead to more economic growth. In the situation where most of the economy is informal the consensus would seem to have been about how enhanced legislation would help bring economic actors into the formal economy.²⁸ However it is not sure to what degree the informal sector was addressed. OHADA has attempted creating legal structures for small operators in the informal economy. Yet, the OHADA officials admit that these efforts have not really had the sought impact of enlarging the scope of the formal sector.²⁹ The smaller actors in the informal sector have had little reason to obtain an official legal status as it brings them little advantage. Claire Dickerson’s research also shows that these actors do not see that ‘going official’ might bring advantages, and they also simply do not know that OHADA provides a way to register, and therefore formalize, their business.³⁰ While OHADA seemingly offers governments an attractive prospect of expanding the formal economy, officials behind the development of OHADA laws acknowledged that enlarging of the formal economy was never a primary goal for OHADA.³¹ Moreover they recognize that the smallest economic actors are unlikely to leave the informal economy, if only because these actors would have little to gain from doing so and because expanding the formal economy to the smallest economic actors would be very expensive.³² Most legal professionals interviewed agreed that OHADA laws are mainly intended for big multinational companies and perhaps medium-sized local companies. So the consensus that has ruled is rather about the positive impact of adequate business laws for the bigger businesses and in attracting foreign investment.

In the legal complex in which OHADA laws were created it seems that the most influential actors can be divided into three main categories: i) OHADA institutions (both in the sense of temporary institutions created for constructing OHADA and its legislation and the permanent official institutions mounted after the creation of OHADA); ii) international interest groups including voluntary lawyers’ networks like UNIDA that promote the usage of OHADA law, international NGOs proposing model legislation in a specific field – UNIDROIT for business laws in general and United Nations Commission on International Trade Law (UNCITRAL) model law for arbitration³³; iii) big international institutions and developed countries. In more

²⁶ Interview with a business lawyer (lawyer3) in Douala 21 March 2011

²⁷ quoted in Mouloul, Alhousseini. *Comprendre l’Organisation pour l’Harmonisation en Afrique du Droit des Affaires*, 2001, 2nd édition.

²⁸ Claire Dickerson represents this view: “The informal economy is significant in the OHADA territory, too, which underscores OHADA’s potential: a commercial law that integrates the region’s informal economy into the formal one can help put to work the informal economy’s existing capital” in Dickerson, Claire Moore (2005), “Harmonizing Business Laws in Africa: OHADA Calls the Tune”, *Columbia Journal of Transnational Law*, p. 30.

²⁹ Interviews with various officials in Cameroon in March 2011.

³⁰ Dickerson, Claire Moore (2011). “Promises of Future Performance and Informal-Sector Transfers of Personal Property: The Example of Anglophone Cameroon”, *Acta Juridica*, forthcoming.

³¹ Interviews with various OHADA officials in March 2011.

³² *Ibid.*

³³ Even though UNCITRAL is actually a United Nations body, functionally it acts in a similar way to UNIDROIT in proposing model legislation.

recent development other regional bodies like ECOWAS, UEMOA and CEMAC have also gained more importance; however, their direct impact on OHADA legislation remains limited. I will briefly explain the role of each of the most important groups of actors, describe the setting and mechanisms at play in elaborating OHADA norms and finally state how this has led to the particular outcomes that have been reached. Here is a list of the main groups of international actors that are at play in the international lawmaking cycle for OHADA:

1) Big international institutions and developed nations

Most active international organisations include UNDP, World Bank Group and Organisation Internationale de la Francophonie. Most influential developed country has been France, but technical and financial support has also come from the EU, Belgium, Switzerland, Canada and Japan.³⁴ Actors in this group have provided different OHADA and national institutions with financial and technical assistance. The creation and initial working of the OHADA institutions was made possible thanks to this financial support. At times these big institutional supporters have also been more proactive in initiating projects themselves.

2) Epistemic communities and legacy networks

The most influential group in this category is UNIDA. It is an association composed of people dedicated to promoting OHADA law within the member states and beyond. Other transnational NGOs and professional groups that partake in the creation and promotion of OHADA norms include employers' unions and chambers of commerce and different networks of academics, as well as advocacy groups for legal harmonisation worldwide like UNIDROIT. Especially UNIDA but also the other voluntary organisations have provided a place for professionals interested in OHADA to meet and organise. They have also promoted OHADA to the legal profession by organising seminars and publishing books and prospectuses. These organisations have equally played an important role in the organisation of training sessions and seminars about OHADA law.

3) OHADA institutions

OHADA institutions once put in place have been in charge of organising the redaction of new Uniform Acts and modifications of the existing ones. The Council of Ministers reuniting the ministers of finance and justice of the member states is the general guiding organ of OHADA. It adopts the uniform acts and their modifications, votes the budget and decides the means of contribution and elects officials for the other institutions. The preparation and revision of uniform acts is the responsibility of the Permanent Secretariat, which also manages the daily functioning of the organisation. It is the central institution that executes the budget and coordinates the functioning of OHADA in between sessions of Council of Ministers. It is also directly in contact with the various international and regional partners. The supranational OHADA court CCJA acts as the court of appeals of last resort for OHADA cases and thereby determines authoritative interpretations of OHADA law that are binding for all national legal orders. The OHADA school, ERSUMA, is responsible for training judges and lawyers specialised

³⁴ OHADA (2009), *Table ronde OHADA et Partenaires techniques et financiers*, Ndjaména available online: <http://www.ohada.org/offres-emplois-sp/fr/download/file/0,0/73,programme-pluriannuel-ohada-2010-2015.pdf.html>

in OHADA law. In its role as a trainer, ERSUMA is also more in contact with various international partners that provide direct material support.

The modes in which the different international and regional actors have confronted each other in their power mismatch and in diagnostic struggles can be divided into two periods of time: an initial time when the OHADA institutions and legislation were created (a) and the succeeding lawmaking on the international level (b).

a. The creation phase

In the initial phase of institution building and legislation, the non-regional international actors played a vital role. The idea of legal unification had been discussed at conferences already since 1970s.³⁵ In 1975, the African and Mauritian Bureau of Legislative Studies (BAMREL - *Bureau Africain et Malgache de Recherches et d'Etudes Législatives*) was created under the guidance of Justice Kéba Mbaye. However this project failed, because of lack of interest and material resources.³⁶ What made it possible for OHADA to take off and start the actual harmonisation were the sustained efforts of French ministry of cooperation in the early 1990s. It was decided at a 1991 meeting of finance ministers of countries belonging to the CFA franc zone that France would convene and finance a study on the feasibility of the project. The importance of French support is summarised from an insider's point of view by Justice Mbaye how was responsible for the initial study mission and later president of UNIDA:

„One must distinguish two things. The idea is African. It was the ministers of finance and economy, who at their meeting in Ougadougou in October 1991 diagnosed the situation and considered that a remedy was absolutely needed. But you know our countries. Their means are limited. In order to improve the diagnosis and find a remedy, a long route demanding continuity, especially for the considerable financial effort, was necessary. Only France could help African countries in this matter. (...) If France had not provided material and financial means, we would have never achieved what we have today.“³⁷

According to this view the French support was mainly instrumental in only providing financing for a project with the actual ideas coming from Africa. However in another article, Justice Mbaye also acknowledges the importance of French diplomacy also on the ideational side of the project:

³⁵ Istituto italo-africano (1974), *L'harmonisation du droit en Afrique - The harmonisation of African law - L'armonizzazione del diritto in Africa : atti del Convegno su problemi della armonizzazione del diritto privato e del diritto internazionale privato nelle relazioni commerciali in Africa, tenuto a Rome dal 4 al 6 dicembre 1972*, Milano : Giuffrè.

³⁶ Tiger, Philippe. *Op cit.* p. 7.

³⁷ Mbaye, Kéba in an interview by Katendi, François and Placca, Jean-Baptiste, "Savoir accepter la pauvreté", *L'Autre Afrique*, retrieved from <http://www.afrology.com/eco/kebam.html> ; translated by Gustav Kálm

„The most important factor for launching the project was the French Cooperation Ministry’s policy of „integration in Africa“ oriented towards creating an economic union and one big market. This policy is clear in the letter wrote to me by the French Minister of Economy, Finance and Budget and Minister of Justice and Minister of Cooperation and Development to ask me to direct the mission. In effect, the letter reads: „The chosen approach privileges the harmonisation of rules and consolidating the juridico-economic environments which seem to constitute necessary preconditions for progressively transforming the CFA zone monetary union into a veritable economic union and one big market“.³⁸

The beginning of OHADA was thus made possible thanks to the French plan for fostering regional economic integration in Africa and financing provided by France for the works of the initial high level commission on the feasibility of the project. The context in which the enactment of OHADA was decided is equally telling of French influence. At a meeting of the heads of state of the African countries and France in Libreville in October 1992, the report on feasibility was accepted and a further mission (called the *directoire*) convened to put the project into practice. The fact that the *directoire* was composed of the Senegalese Justice Kéba Mbaye and two French court legal clerks is telling of the continued importance of France.

The question still remains what made the French government pursue this mission of economic integration and why did the African governments agree. The case of the African governments seems somewhat easier. Besides giving up some sovereignty, they had little to lose and possibly something to gain in accepting the project. Also, already being part of regional monetary unions, they were used to conducting common economic policy. Both the economic unions and OHADA reflect a broader effort of the French government to foster economic integration in the region. So what convinced the French government to pursue this policy of broader economic integration in Africa? The French government had to have something to gain from the project to justify the financial commitment. There needs to be a reason that pushed the French government to pursue the project exactly at this time and not at an earlier time, because the French business interests and willingness to provide development aid to its former colonies were equally present earlier.

It seems that individual norm entrepreneurs played a crucial role. Most historical accounts point to the figures of Paul Bayzelon from the French ministry of cooperation and Justice Kéba Mbaye who at the time was about to retire from the International Court of Justice.³⁹ Kéba Mbaye was an internationally acknowledged African legal scholar. His reputation and authority as an African who had been successful internationally helped him win the confidence of African leaders who might have otherwise opposed a top-down French-led reform. His international credentials also reassured France and other international partners that their money would be well used. Most importantly it was personal conviction in the idea of legal harmonization that allowed him to take full advantage of the trust and financing bestowed upon the project. He was behind the earlier efforts to harmonise business laws in Africa already in the 1970s and continued to actively promote OHADA through UNIDA after disengaging from the official institutions. Mbaye recounts how despite his initial reluctance due to failed similar projects in the past, he

³⁸ Mbaye, Kéba. (2004) „L’histoire et les objectifs de l’Ohada“, *Petites affiches*, 13 octobre 2004 n° 205, p. 5. translated by Gustav Kalm.

³⁹ Kirsch, Martin. (1998) „Historique de l’OHADA“, *Revue Penant numéro spécial OHADA*, n° 827 and Tiger, Philippe. *Op cit.* both refer to the crucial role of the above-mentioned people.

accepted to participate in the creation of OHADA, because of the conviction of Paul Bayzelon.⁴⁰ When Mbaye seems to have been the crucial figure in finding support for the project internationally, Paul Bayzelon seems to have been the motor behind the project in the relevant French agencies. According to Justice Mbaye one of the factors that convinced actors to react in France and possibly also in the African countries, was the diminution of foreign investment into the franc zone countries.⁴¹ However neither the norm entrepreneur nor the African economic hardship argument shows a tangible gain France could have made in pursuing legal harmonisation in Africa. It seems credible that the economic hardship made the arguments of norm entrepreneurs more convincing to people in the French government and made them decide for the OHADA agenda with an initial study mission as a precautionary guarantee though.

b. Succeeding lawmaking within the created organisation

Once the organisation was created, the international influence from France and big international institutions came in the form of financial aid and technical support. The initial build-up of the institution was possible thanks to a capitalisation fund financed by OHADA member states, France and the UNDP.⁴² The fund was administered by UNDP until it exhausted its resources in 2004.⁴³ However the capitalisation fund has not been the only source of foreign aid provided to OHADA. Different countries and international institutions have had project-specific financing. Some of it has gone through OHADA institutions, some has been directly financed by states and some has gone through UNIDA.⁴⁴ The international financial support has been essential for keeping the organisation running as in the beginning the rare and scattered contributions alone would not have been sufficient to fully finance the functioning of the organisation. The initial capitalisation fund was crucial because it served for all various expenses related to the setup of a new organisation at a stage where financing from member states was insufficient.⁴⁵ Later on, finances from international sources have been used for various purposes. For example, France has supported the everyday functioning of ERSUMA, Canada endowed the preparatory works for a new uniform act on transportation and Belgium has funded publishing several books on OHADA.⁴⁶

The content of OHADA laws is also reflective of the international influences. Most importantly the biggest influence to the OHADA laws are French business laws. According to Paul-Gérard Pougue and Yvette Kalieu-Elongo, it was contemporary French business laws, previous French business laws and contemporary French jurisprudence and legal doctrine that influenced OHADA legislators.⁴⁷ The influence of French business laws was certainly remarkable. One of the lawyers who had previously practiced in Paris and returned to Cameroon

⁴⁰ Mbaye, Kéba (year unknown) in an interview by Katendi, François and Placca, Jean-Baptiste, "Savoir accepter la pauvreté", *L'Autre Afrique*, retrieved from <http://www.afrology.com/eco/kebam.html>

⁴¹ Mbaye, Kéba. (2004), *Op cit.* p. 5.

⁴² The total amount of the fund was 12 billion francs CFA. Half of it was given by France and UNDP. Belgium and Japan also contributed to the fund through UNDP. The other half was supposed to be given by OHADA member states, but it is not clear to which degree the member states actually contributed financially to date.

⁴³ Mouloul, Alhousseini, (2009) *Comprendre l'Organisation pour l'Harmonisation en Afrique du Droit des Affaires (O.H.A.D.A.)*. 2nd ed. Manuscript disseminated by the managers of the website www.ohada.com, Paris.

⁴⁴ Interview with OHADA financial director Godefroy Epanya Moukeke 17 March 2011.

⁴⁵ *Ibid.*

⁴⁶ OHADA (2009), *Table ronde OHADA et Partenaires techniques et financiers*, Ndjaména available online: <http://www.ohada.org/offres-emplois-sp/fr/download/file/0,0/73,programme-pluriannuel-ohada-2010-2015.pdf.html>

⁴⁷ Pougue, Paul-Gérard and Kalieu Elongo, Yvette Rachel (2008), *Introduction critique à OHADA*. Yaoundé: Presses Universitaires d'Afrique, pp. 115-117.

just when OHADA laws had entered into force noted that the OHADA business laws were often a word-to-word copy of the French business laws even to the point of including the same grammar mistakes.⁴⁸

The importance paid to arbitration in the OHADA system is also reflective of influences coming outside the OHADA member states. In contrast to the quasi-nonexistent use of arbitration in OHADA countries before legal harmonisation, the OHADA treaty preamble lists the encouragement of the use of arbitration as a conflict resolution method. This is probably motivated by the interests of foreign investors who, distrustful of the domestic judicial systems, wanted to create an alternative to have access to a fairer trial. The Uniform Act on Arbitration bears large influences of the international model laws developed by UNCITRAL.⁴⁹

A major player on the international level in the later phases has been UNIDA. It is an NGO created by the people who were key actors involved in creating OHADA to support the organisation in its further functioning. UNIDA has actively promoted OHADA by organising seminars and training sessions and publishing legal doctrinal work and original decisions of OHADA. It holds the biggest online database on OHADA law – ohada.com - and it has collaborated on the international level with different state and institutional actors in publishing materials on OHADA.

The importance of the OHADA institutions has increased over time and especially so in the past few years. The new autonomous financing system put in place in 2003 whereby states automatically send funds to OHADA from a 0,05% tax levied at customs shows a growing commitment on the behalf of the member states.⁵⁰ Furthermore the fact that since January 2011 UEMOA is responsible for collecting and sending the membership fees collectively for its members, shows a high degree of regional collaboration.⁵¹ Consultations for a similar agreement with CEMAC are ongoing but have not yet yielded results.⁵² However the increase in regional collaboration does not mean that the international community has ceased to be important. On the contrary new efforts of collaboration between the international community and local and regional players seem to be happening. A good example of this are the currently ongoing revisions of Uniform Acts financed and managed by World Bank but executed by OHADA legal professionals, though with the expertise and advice of foreign counsellors.

Hence since the creation, collaboration on the international level has become more complex. Slowly but steadily OHADA institutions have grown in importance. Parallel to this, the UNIDA network further complicates the picture. Although UNIDA was erected to help OHADA's work and promote its law, an overlap between the official OHADA institutions and UNIDA has created frictions on the international level.⁵³ The growing importance of OHADA's own institutions and other regional players does not mean, though, that other actors have retreated. With the progressive acceptance of OHADA law within the national juridical fields OHADA also attracts more attention from the big international institutions. For example, the World Bank Group that was initially dubious and reluctant to support OHADA is now giving OHADA

⁴⁸ Interview with a business lawyer (lawyer10) in Douala 23 March 2011.

⁴⁹ Pougue, Paul-Gérard and Kalieu Elongo, Yvette Rachel (2008), *Op cit.* p. 118.

⁵⁰ Interview with OHADA financial director Godefroy Epanya Moukeke 17 March 2011.

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ Interviews with OHADA and international officials, Yaoundé, March 2011

support in revising the uniform acts, in computerizing the companies and secured transactions registries and in communication.⁵⁴

III. THE APPLICATION OF OHADA LAWS DOMESTICALLY AND THE CREATION OF LEGAL CERTAINTY

On the national level, focus needs to turn to the Cameroonian legal field and its interaction with the rest of the society. An explanation of how this internationally developed law entered the domestic legal realm and enhanced legal certainty will start with an explanation of how OHADA laws were received within the legal profession. Both the questions how and why the Cameroonian legal profession embraced the OHADA laws need to be answered. It is important to understand how the Cameroonian legal profession became informed of OHADA laws because of the overall difficulty in obtaining access to legal texts in Cameroon. The motivations that led them to do so also need to be further clarified. Having looked and explained the side of the legal field, the mechanisms through which OHADA laws came to have an impact domestically need to be clarified.

a. How lawyers have embraced OHADA law

In a context of high legal uncertainty like in Cameroon, all legal reforms are harder to conduct. As explained in section two, in all OHADA countries there was a great confusion as to which norms exactly were applying in the field of business law and Cameroon is no exception in this respect. There was a general confusion as to which texts should apply and the written texts themselves were so scarce that often not even judges had access to them. Hence any possible legal reform that actually wanted to have a societal impact had to tackle the issue of informing and training the legal profession about new norms. Dissemination of knowledge about OHADA norms came mostly in three forms: training of lawyers in OHADA law through training sessions and new university curriculums; publishing material on OHADA laws; and finally, the various efforts of voluntary professional associations to propagate OHADA law. I will briefly explain the role of each of these and the reasons that motivated the Cameroonian lawyers to acquaint themselves with the new law.

1. Training sessions

For younger lawyers, who have entered university after the entry into force of OHADA laws, OHADA laws have already been part of the general private law curriculum. However most of the lawyers currently practicing in Cameroon completed their studies before. For them the most important way of gaining knowledge about OHADA laws have been training sessions. Overall the

⁵⁴ Interview with technical assistant for OHADA-IFC project Andre-Franck Ahoyo, Yaoundé 18 March 2011. For more details about the World Bank Group aid to OHADA see FIAS, OHADA Project : Economic Development through Regional Integration and Commercial Law Reform. October 2009. See: [http://www.ifc.org/ifcext/fias.nsf/AttachmentsByTitle/DonnorMeeting2009OHADA/\\$FILE/OHADAProject.pdf](http://www.ifc.org/ifcext/fias.nsf/AttachmentsByTitle/DonnorMeeting2009OHADA/$FILE/OHADAProject.pdf)

interviewed lawyers praised the training sessions for having raised awareness about OHADA norms, but also complained about the limited number of training sessions available.⁵⁵

In the years following the adoption of the first uniform acts, it seems that the prevalent form of training sessions have been trainings for trainers. The training sessions for trainers were organised by the OHADA school ERSUMA in Benin. These sessions served as a jumping board for training a group of motivated lawyers who then used their acquired knowledge to hold training sessions in Cameroon. The prestige associated with these sessions and the visible pride of those who had completed the programme speaks to the great societal importance of these sessions. Several lawyers that I met during the interviews were very proud to have assisted in the initial training sessions. One of the lawyers interviewed in Yaoundé had a framed ESRUMA training for trainers diploma hanging on the wall across his desk. He was very content to have used the knowledge gained in training for trainers at ERSUMA to train legal professionals in his natal province in the remote and poorer Northern Cameroon.⁵⁶

It seems though that the ERSUMA training sessions were mainly important in the initial phases of development of OHADA. The majority of the actual training sessions in Cameroon have been organised either by UNIDA or by the OHADA Permanent Secretariat. These sessions are still held today, but their focus has shifted towards legal reforms. Most lawyers complained about a decrease in the number of training sessions and the aging of the knowledge on OHADA law that it creates.⁵⁷ The fact that lawyers were complaining about the lack of opportunities to renew one's knowledge of OHADA law shows that most lawyers know about OHADA law and use it in their work and they only need complementary training to renew and improve their knowledge.

The training sessions were completely voluntary and lawyers in Cameroon were not obliged to be formally qualified, or to sit any exams, in order to include OHADA law in their practice. Hence the pursuit of knowledge about OHADA laws has been on a voluntary basis. There are a few other factors that could have motivated the lawyers to participate in these training sessions. First of all, their professional duty and curiosity should guide them to have an up to date knowledge of laws applying in their field. Probably not in the initial stages of OHADA laws, but later on the knowledge of OHADA norms was proven necessary to practice business law. One of the lawyers interviewed endorsed this vision:

“OHADA law is the only business law that applies in our land. There is no question what law to apply and every lawyer who wants to practice business law in Cameroon simply needs to be familiar with the provisions included in OHADA uniform acts.”⁵⁸

This vision seems slightly exaggerated knowing that in more rural areas knowledge of OHADA laws was in general weaker and contracts could be made without conforming to OHADA law.

Another reason that seems to have motivated lawyers to participate in these training sessions is the pride and prestige that is associated with being up to date and knowledgeable. Participation in training sessions sends a signal to one's colleagues and clients about the lawyer's

⁵⁵ Interviews with business lawyers lawyer1 in Yaoundé 18 March 2011 and lawyer8 in Yaoundé 24 March 2011.

⁵⁶ Interview with a business lawyer (lawyer2) in Yaoundé 25 March 2011.

⁵⁷ Interviews with business lawyers (especially lawyer2, lawyer4, lawyer7 and lawyer10) in Yaoundé and Douala in March 2011.

⁵⁸ Interview with a business lawyer (lawyer3) in Douala 21 March 2011.

motivation and seriousness. It helps to build one's symbolic capital within the profession. The importance the lawyers paid to the qualifications and training session diplomas shows the relevance of them for their professional prestige. They are also a proof of competence for lawyers' clients.

Cost was one of the main factors deterring participation in training sessions. The issue is somewhat easier for civil servants whose participation costs were covered by the state.⁵⁹ By contrast lawyers have had to cover their own participation costs.⁶⁰ If the state could cover the participation fees for regular civil servants, the fees of participation could possibly not have been too high for lawyers either, especially considering that they have higher incomes in general.⁶¹ But many lawyers deemed the sessions to be too expensive to pay themselves. The reluctance and complaints about the high cost of participation can be indicative of two things. First, a better and more nuanced knowledge of OHADA norms might simply not pay off because it does not help to attract clients. However, the desire of lawyers to participate in these sessions shows that the complaints about the cost of training originate elsewhere. A more credible explanation is that in Cameroon people are used to having access to education for free, therefore paying for complementary new trainings, even though participation might pay off, is contrary to the general understanding of how education should be provided.

2. *Publications on OHADA*

The other mechanism through which knowledge about OHADA laws has been disseminated is active publishing of books, manuals and brochures on OHADA laws. Even though there are requirements for OHADA laws to be published in national official journals, many countries have failed to do so.⁶² A range of academic and practice-orientated works on OHADA have been published. Even though both workers in the OHADA Permanent Secretariat and practicing lawyers deemed the overall number of these publications still to be too low⁶³, probably no other field of law in Cameroon has enjoyed such a flourishing of publications.⁶⁴ Previous court rulings are hard to obtain in Cameroon, because they are not officially published. However, in the case of OHADA laws, many though not all CCJA rulings are available online at the UNIDA website www.ohada.com and compendiums with decisions from different countries' supreme courts have been printed. Also a couple of private journals publish selections of Cameroonian court decisions they find interesting.⁶⁵ Even though the coverage of judicial decision-making is far from complete, the publication of case law is better than what is available for other domains of law in Cameroon.⁶⁶

It is questionable, though, how widely this body of publications is consulted. Contrary to the participation in training sessions, the consultation of legal texts is a private act that can greatly further one's understanding of the law, but does not send visible external signals. Hence

⁵⁹ Interview with deputy director of civil, commercial, social and traditional legislation at the ministry of Justice of Cameroon Dr Gaston Kenfack in Yaoundé 24 March 2011.

⁶⁰ *Ibid.*

⁶¹ Interview with a notary (lawyer9) in Douala 22 March 2011.

⁶² Interview with the managing director of OHADA Permanent Secretariat Robert K. Bagna 24 March 2011.

⁶³ Interview with a business lawyer (lawyer10) in Douala 23 March 2011.

⁶⁴ Interview with deputy director of civil, commercial, social and traditional legislation at the ministry of Justice of Cameroon Dr Gaston Kenfack in Yaoundé 24 March 2011.

⁶⁵ Interview with a business lawyer (lawyer1) in Yaoundé 18 March 2011.

⁶⁶ *Ibid.*

motivation to consult the legal texts comes rather from necessity to know the norms or from a professional duty or from simple curiosity rather than prestige. The interviews revealed that even though a thorough knowledge of the legal provisions of OHADA is probably not always required, all the higher ranked lawyers had an advanced knowledge of OHADA provisions. The interviewed lawyers were mostly at the top of their field and often dealt with high profile cases. All of them had several publications and were more or less up to date about newer case law concerning OHADA. However some lawyers still seemed to be less familiar with ways for acquiring information about jurisprudence. For example, one of the interviewed lawyers did not know that CCJA rulings could be found online on www.ohada.com. Instead he and some of his colleagues sent each other emails with CCJA case law they find. It seems that a large proportion of the legal profession does not keep themselves up to date with newer developments in OHADA law. Apparently books on OHADA law are hard to sell despite the fact that thanks to subsidies they often cost far less than their actual printing price.⁶⁷ Hence it seems that despite the efforts done by OHADA, UNIDA and different international and regional partners to publish materials on OHADA, the training sessions still remained a more efficacious way in dispersing knowledge about OHADA norms to Cameroonian lawyers.

3. UNIDA clubs

One distinct way, through which lawyers, other legal professionals and business representatives have obtained knowledge about OHADA laws, have been UNIDA OHADA clubs. Besides organising training sessions, publishing decisions on their website and having participated in publishing different books on OHADA, UNIDA is a grouping of voluntary clubs which reunite OHADA enthusiasts to coordinate activities to promote OHADA law. These clubs have worked essentially as a network for enthusiasts to meet and coordinate their promotion efforts. The reasons for joining these clubs are likely motivated by prestige and pride associated with OHADA law and its promotion within the profession. Members of these clubs must have a high degree of conviction, as membership does not bring much direct material benefits other than networking.

4. Reasons to embrace OHADA law

So far I have described the ways in which lawyers gained knowledge about OHADA laws. For a full understanding of the process, it is necessary to specifically recap the reasons that motivated the lawyers to take part in these different activities. These reasons are especially important, because in the environment of a highly corrupt judiciary the precise knowledge of laws is less important for success. It seems that essentially two types of motivations were at play – ideological and material.

According to Tom Tyler one of the main reasons why people follow the law is the belief in legitimacy of law and legal actors.⁶⁸ This is manifest in the high degree of membership and

⁶⁷ Interview with French technical assistant to OHADA Ferdinand Aho 17 March 2011.

⁶⁸ Tyler, Tom R. (1990) *Why People Obey the Law*. New Haven, Yale University Press.

activity of UNIDA, which show that lawyers are convinced that OHADA laws are legitimate and good for the economic development of Africa. The actions undertaken by lawyers belonging to UNIDA must have been at least partially motivated by a belief in the legitimacy of the institution.

The lawyers' willingness to use OHADA law has also been grounded in their material interests to be part of the prestigious new international law club and thereby reinforce their social capital as well as raise their revenues. Overall the interviews suggested that lawyers want to embrace OHADA laws because of pride and prestige that are associated with OHADA more precisely and business law and international law in general. This prestige originates partially in ideological reasons that contribute also directly to the embracing of OHADA law by legal professionals like believing in the virtue of legal reform or African economic integration.

First, OHADA law enjoys special prestige as a promised measure that will bring about great economic development. Learning its norms or taking part in the activities of the UNIDA clubs makes one part of that prestigious undertaking. According to Paul-Gérard Pougoue and Yvette Kalieu Elongo: "OHADA law is meant to be attractive and had been given the means to be so."⁶⁹ Likewise Cameroonian government has often promoted and talked about OHADA as a panacea. Working with OHADA entails hence the prestige of doing something especially important for the country. When interviewing lawyers I noted a certain pride in the accomplishments of OHADA and also in the lawyers' participation in the project. This prestige derives partially also from the simple fact that it is international. Like all things international and cosmopolitan, it seems more special. Participating in OHADA seminars gives lawyers the feeling of participating in this international endeavour.

Secondly, applying OHADA law has the potential for increasing lawyers' revenue. A better knowledge of OHADA law allows lawyers to have access to higher profile cases that are potentially also more lucrative. Since OHADA law is applied in several countries, knowing OHADA law provisions allows lawyers to litigate and counsel international business dealings, which are possibly better remunerated than similar domestic cases. Finally because OHADA laws are better codified and corresponding to the business realities, they have the potential to formalise more business relations and thereby generate demand and thus revenue for lawyers knowing OHADA norms.

b. How lawyers have propagated OHADA law

Even though there have also been publications and training sessions that are not catered towards legal professionals, OHADA norms have been propagated to the rest of the society essentially through the intermediary of the legal profession. The mechanisms through which lawyers have brought the changes of OHADA law to the society have to do with the regular application of law – namely through consulting clients in their contractual relations and through preparing court cases based on OHADA law. Finally both of these have led to a general formalisation of business relations that entails an increase in legal certainty.

⁶⁹ Pougoue and Kalieu Elongo, *Op cit.* p. 173.

The most elementary way in which the new OHADA regulations have changed business practices in Cameroon and become part of the societal business norms is through the impact OHADA laws have had on contractual relations. Lawyers trained in OHADA laws have counselled their clients to form different contracts and with the usage and enforcement of these contracts in practice they have changed business practices in Cameroon. These changes did not come overnight though. Several lawyers admitted that they were initially not convinced by the solutions offered by OHADA law, but have come to appreciate them after having seen their virtues in practice. One major change that most lawyers mentioned was the increased protection of the debtor. Loan contracts are a very common part of business lawyers' practice and so the application of the new rules has had a wide societal impact. One of the interviewed lawyers explained his view on how the new regulation modified the balance between creditor and debtor:

“When the texts arrived they did not seem to be adapted to local realities. For example, when we proceeded to the right of recourse, between the instant the procedure is launched and when selling starts time passes. Meanwhile the debtor is not put under pressure. Before OHADA the creditor could come and take possession of the things to recover the debt and keep them. However now, the debtor is obliged to keep possession of the things until the end of all the procedures and only thereafter the creditor can come to take the things with power. The debtor can hence be inclined to dilatory proceedings leaving the creditor nothing. As time has gone we have begun to consider this proceeding normal even though initially we thought this would unjustly favour the debtor. Today even the debtors know that they will end up paying anyway. Maybe this solution is not fully adapted, but I think it is beneficial for us to adapt to this solution, because it is progress – it is better than what we had before.”⁷⁰

In this example a lawyer tells how OHADA laws have changed the legal framework for debt recovery procedures by providing more protection for the debtor. Reflecting upon this technical change, he acknowledges the role of OHADA law in changing actual business practices and the initial difficulty as the OHADA laws were in many cases not adapted to the realities. As this example shows, it has however managed to change the realities.

Applying OHADA law in the court is another way in which lawyers and judges have normalised OHADA law. Using OHADA law as the legal basis for arguments and for decisions in cases of OHADA creates and propagates compliance through the litigants. However judicial legal uncertainty remains high and as all the lawyers told me decisions are often based on extra-judicial factors. All the interviewed lawyers complained about the corruption in the judiciary. According to them, OHADA system has had very little impact on corruption in the judiciary. However some ways can be imagined in which OHADA law has also influenced judicial legal certainty. The fact that lawyers now have up-to-date codes and actual jurisprudence from CCJA that they can use as a basis for their argument in court makes it harder for judges to write corrupt decisions. The development of arbitration, especially since the arbitration court of Cameroonian employers' union GICAM has become more active over the past three years, offers a viable alternative to the regular judiciary. Although with only about a dozen cases per year, the GICAM arbitration remains marginal, but when it expands it will become a viable alternative to businesses

⁷⁰ Interview with a business lawyer (lawyer1) in Yaoundé 18 March 2011.

and potentially even compete with the regular judiciary. The possibility to appeal decisions to CCJA, which is perceived to be considerably less corrupted,⁷¹ is another option to access a more reliable and less corrupt court, though it can be expensive and time-consuming. Even though OHADA laws have had a limited impact on corruption in the judiciary, the fact that cases are brought to court based on violations of norms of OHADA law contributes to the normalisation of the provisions of OHADA laws. This way OHADA cases in courts have contributed to a wider normalisation of OHADA rules in the society. Besides this direct contribution to legal certainty the establishment of a clear and undisputed standard in business laws also creates a *sine qua non* condition for improvement of judicial legal certainty.

The result of both these developments has been the formalisation of business relations in Cameroon. Most of the interviewed lawyers indicated that OHADA law brought a certain standard of modernisation. At the time of adoption OHADA norms did not correspond to the business practices in Cameroon. According to one of the lawyers the texts when they arrived did not correspond to the realities, but over time OHADA laws have modified business practices. Praising the positive impact of the OHADA law he said:

“It is maybe not truly adapted to the situation, but our societies have a lot to gain from adapting to the solutions of this law. This law can help us have better modern business relations.”⁷²

Another lawyer described the situation as OHADA laws setting a benchmark of modernisation to be attained by the Cameroonian businesses.⁷³ The result of this modernisation is that the business relations have become increasingly formalised and legalised. OHADA law has played a part in creating a legal standard that can actually be applied to the contractual relations and giving a possible ground for court cases if violations occur. According to interviewed lawyers, companies in Cameroon have understood the importance of legalising their contractual relations.⁷⁴ There is an increasing recourse to legal services to write better contracts so as to avoid spending time and money going to court.⁷⁵ Probably the most telling indicator of the formalisation of business relations in Cameroon is the fact that an increasing number of companies have hired in-house legal counsel.⁷⁶

This process of formalisation of business relations has contributed to the growth of legal certainty. First of all, the existence of a clear and accepted written standard under OHADA law provides economic actors with more certainty as to which law normally governs their contracts. This leads to the general formalisation of business relations. Companies are more concerned with the precise legal formulation of their contractual terms and their conformity with OHADA law so as to avoid going to court. The formalisation leads to more precise contracts and thanks to standardisation of contractual terms, there is also more predictability in business relations.

To sum up what is going on on the domestic level, lawyers have become aware of and trained in OHADA law thanks to official and unofficial training sessions and promotion efforts of UNIDA OHADA clubs. Published legal texts, doctrinal work and compendiums of case law have

⁷¹ Interview with a business lawyer (lawyer10) in Douala 23 March 2011.

⁷² Interview with a business lawyer (lawyer1) in Yaoundé 18 March 2011.

⁷³ Interview with a business lawyer (lawyer2) in Yaoundé 25 March 2011.

⁷⁴ Interview with a business lawyer (lawyer10) in Douala 23 March 2011.

⁷⁵ *Ibid.*

⁷⁶ The importance of this change was emphasised in interviews with business lawyer lawyer9 in Douala 22 March 2011 and the GICAM responsible for Arbitration Pierre Anthony Atangana in Douala 21 March 2011.

not been as important in teaching lawyers about OHADA laws, but have provided a crucial tool for lawyers already practising. The lawyers have used OHADA laws in advising their clients and in drafting contracts as well as advocating cases in courts. The fact that OHADA laws provide a clear standard of legislation that is more widely available has led to the formalisation of business relations as manifest in contracts. These legal changes have led to more predictable and secure business relations, which means that overall legal certainty has been enhanced.

So far I have explained how the OHADA laws were developed on the international level and how lawyers on the national level have become aware of the content of OHADA laws and how by applying them, they have contributed to the formalisation of business relations. For a full understanding of the processes leading the institutional change brought about by OHADA laws, the interaction between the two levels needs to be further analysed.

IV. INTERACTION BETWEEN DOMESTIC AND INTERNATIONAL ACTORS

International and regional actors have played a crucial role in promoting OHADA laws in Cameroon and bringing together motivated domestic actors. This collaboration has occurred on several levels. First, individual Cameroonian legal professionals have been directly interacting international and regional organisations. Second, Cameroonian state institutions have collaborated with both the OHADA institutions and other international actors interested in the implementation of OHADA laws. Third, Cameroonian non-state actors like UNIDA OHADA clubs or GICAM have collaborated with both the official OHADA institutions and other international and regional actors in their efforts to propagate OHADA laws. Similarly to the growth of importance of regional actors in the interaction between regional and international levels in the law-making cycle, the importance of domestic actors seems to have grown over time in the implementation cycle.

The most direct form in which the international and regional organisations have collaborated with the Cameroonian legal profession have been training sessions organized by ERSUMA with the financial support of international organisations and foreign donors, especially Canada.⁷⁷ Both local lawyers and state legal officials attended training sessions that provided a platform for direct contact between the international and regional organisations on the one hand and the Cameroonian legal profession on the other. As a result of trainings for trainers, more active and convinced lawyers from Cameroon met colleagues from other member states and gained a uniform vision of OHADA law. By organising training sessions back home, they passed the same vision to the Cameroonian legal profession. Similarly, judges and court clerks who participated in international training sessions were led to apply OHADA laws in light of what they had learnt in these international training sessions. With the growth of the domestic OHADA community, UNIDA trainings became to dominate over training sessions organized by the ERSUMA and OHADA Permanent Secretariat. The fact that OHADA Permanent Secretariat is located in Yaoundé has further facilitated the organisation of different training sessions and seminars for Cameroonian legal professionals.⁷⁸

⁷⁷ OHADA (2009), *Table ronde OHADA et Partenaires techniques et financiers*, p. 18.

⁷⁸ Interview with OHADA legal specialist Clarisse Motsebo 27 March 2011.

These training sessions are equally illustrative of the collaboration between the Cameroonian state and international and regional institutions. Cameroonian government collaborated directly with the regional training projects by covering the participation costs for its civil servants attending seminars organised by ERSUMA and UNIDA. On the other hand the Cameroonian state organs have had the opportunity to influence OHADA legislation by participating in the legislative procedure through their national commission. Furthermore, being party to OHADA has also impacted the relations between Cameroon and other international actors. For example the European Union project for fostering Cameroonian judiciary is construed mostly to accompany OHADA's legal reform by guaranteeing a better application of OHADA norms by the Cameroonian judiciary.⁷⁹

Cameroonian non-state actors for their part have directly collaborated with international and regional actors to influence the Cameroonian legal profession and state actors to support OHADA. The unofficial OHADA clubs that are endorsed by their regional mother organisation have contributed to the training efforts by organising seminars and participating in publishing materials on OHADA law. Besides providing materials and organising training sessions, they have brought together local legal professionals and permitted them to organise local OHADA promotion events. Thanks to different institutional sponsors from the private and public sector, UNIDA is given financial support and has brought in contact the individual national UNIDA suborganisations. This way, the international community has brought together motivated domestic lawyers and has given them means to promote OHADA laws in Cameroon. This support has allowed Cameroonian UNIDA clubs to be a crucial player in promoting OHADA norms domestically.

Overall the international and regional organisations have been in close collaboration with the Cameroonian legal profession, state organs and non-state organisations in promoting OHADA laws and smoothing the legal reform. Regional voluntary OHADA networks and international organisations have helped training the Cameroonian legal profession both in public and private practice. In parallel, the Cameroonian state organs have taken part in OHADA legislative activities and encouraged the legal reforms domestically by facilitating the participation of the Cameroonian state officials in the training sessions. Overall UNIDA and OHADA organisations with the help of international partners have played a crucial role in facilitating the mobilisation of the domestic legal professionals through training sessions and participation in the workings of UNIDA. The World Bank facilitated the recent revision of the Uniform Acts on Commercial Law and Securities Law by organizing official and unofficial meetings and workshops to see how the Uniform Acts could be updated and improved.⁸⁰

V. OHADA EXPERIENCE IN CAMEROON AND THEORY

This research on how OHADA law has become effective in Cameroon has confirmed several predictions of the theoretical frameworks described in section one. The combination of the institutional framework of Halliday's recursivity approach with Jacoby's theory on how coalitions

⁷⁹ Interview with the direct of the European Union Justice Project in Cameroon François A. Boko 24 March 2011.

⁸⁰ Interview with technical assistant for OHADA-IFC project Andre-Franck Ahoyo, Yaoundé 18 March 2011.

are formed internationally proved especially useful for analyzing how the international, regional and national organisations collaborated in making the legal reform work. Whilst validating the importance of actors in the legal field, the findings show how the Bourdieusian legal field approach needs to be altered to be adapted to the specific conditions of countries where the judicial system is less formalised. Besides testing different theories on how international law becomes effective with the OHADA case, this research can show directions in which further research on OHADA should be headed. As there is little research so far assessing OHADA's broader impact, hopefully these guidelines can be useful for drafting future research on OHADA.

a. Recursivity of international-regional lawmaking and coalitions

For the study of how OHADA laws have become effective in Cameroon, Halliday's recursivity of global norm making approach proved very useful, although with a slight modification – instead of the national level the main legislative ground became the regional level. In OHADA, the law making mainly occurs in dialogue between the regional bodies and the international organisations whereby domestic institutions only get involved as a party in the regional institutions. With this slight modification Halliday's approach captivates the organisational structure in which OHADA law making occurs. In the cycle of regional lawmaking, regional actors collaborated with international organisations and non-governmental organisations offering global standard laws on the books as well as French officials and lawyers. This cycle resembles Halliday's global norm making cycle by its participants and legislative processes, however the norms that it produces become directly applicable domestic law in the member states giving it the legal effect of national lawmaking processes. In the domestic implementation cycle, regional institutions played a crucial role in training local legal professionals and hence smoothing the reform.

However, the four main mechanisms developed in Halliday's theoretical framework (actor mismatch, diagnostic struggles, contradictions and indeterminacy) only partially describe how the OHADA laws became effective in Cameroon. There were mismatches in power and interests on the institutional level between regional actors and French foreign services and other international institutions. Similarly there was a mismatch between the type of legislation looked for by the bigger companies and by smaller businesses. Overall, these mismatches seem not to have had a major impact on the legal outcome. Even as OHADA bodies have become more independent from the international sponsors by having more own financial resources at their disposal, the same sources of inspiration have been used for the newer uniform acts. Despite different efforts to address smaller businesses, OHADA laws main subject group remained big international and regional companies. Even though there must have initially been some diagnostic struggles in the French power corridors to gain support for the project, the African leaders seem to have almost universally accepted the project as a possible motor for economic development. Overall there was a deep consensus on the necessity of legal reform to tackle legal uncertainty. This also shows that there were few contradictions on the political level, as a consensus on the utility of legal

unification seems to have ruled between all the actors. One possible explanation is that in post-colonial Africa, there is overall less sovereignty-based opposition to regional organisations.⁸¹

Even though Halliday's recursivity approach is useful for analyzing the organisational structure, it does not provide an explanation of the manners in which the actors interacted. Wade Jacoby's coalition approach's explanation about how international efforts prove an impetus for forming coalitions domestically proved useful for analysing interaction of actors both in the international-regional law making cycle and in the national implementation cycle. In the international-regional law making cycle a minority within the French ministry of cooperation managed to convince both the funders in France and the leaders of African countries of the utility of the project that had previously been discussed and kept the network together. On the national implementation level, UNIDA brought together a minority of convinced lawyers, which made it possible to reach the legal profession at large. In both cases there was a community of like-minded individuals whose collaboration was made possible thanks to external financing and institutional structures. This account corresponds to Jacoby's description on how coalitions between international and domestic actors work: "the coalition approach shows how outsiders can act as glue that binds together the domestic players that share their reform preferences."⁸² Jacoby's coalition approach was a critical addition to the Halliday's theory in that it explained the mechanisms by which the actors actually collaborated.

b. The importance of the legal field in an informal economy

Bourdieu's juridical field framework proved helpful in analysing how lawyers were convinced to take part in the OHADA project. Alter's conclusion on Eurolaw movements, which was that both ideology and material reasons matter for the success of legal integration, also held in the OHADA case.⁸³ Ideology mattered in that the agents who joined the UNIDA clubs and became promoters of OHADA law within the legal field were convinced in the merit of OHADA as a tool for economic development and regional integration. However most of the legal profession learned about OHADA law and started applying it because it seemed attractive and prestigious and offered lucrative opportunities. Hence the engagement of the Cameroonian legal profession with OHADA law falls in Bourdieusian theory as a strategic choice to further its social status.

The juridical field framework proved useful also for analysing how legal certainty is being created. However the study of creation of legal certainty also shows the limits of Bourdieu's theory. The Bourdieusian framework is based on the French society and legal system in which interpretation of the norm by the courts is very important for determining its meaning and does not take into account societies where law and the legal system overall play a less important role. In Cameroon two factors blur the picture: the big informal sector and the high degree of corruption. However, the large size of the informal sector seems to have had little impact on the analytical framework in that OHADA laws have mainly impacted the formal sector and have left the informal sector mostly untouched. In this case, the juridical field does not hold the same monopolistic status in deeming which behaviour provides justice for the whole society but for a

⁸¹ For a broader argument in this sense see Englebert, Pierre. (2009) *Africa: Unity, Sovereignty, and Sorrow*. London: Lynne Rienner Publishers.

⁸² Jacoby, Wade. *Op cit.* p. 647.

⁸³ Alter, Karen. *Op cit.* p. 91.

limited scope of businesses in the formal economy. Whatever has been achieved in the formal sector can be analyzed in the Bourdieusian framework, whereas the influence of the juridical field on the informal sector remains small.

The other limitation to the Bourdieusian framework in Cameroon is the high degree of corruption. Where extra-judicial factors are crucial in determining outcomes in courts, battles over interpretation within the legal field are less important. However this does not mean that normalisation as described by Bourdieu does not take place. Simply in a society with a higher degree of corruption law impacts more the way actors desire to behave than their actual behaviour.⁸⁴ Furthermore the normalisation process is not limited to court rulings. The use of legal rules in drafting contracts and constructing arguments for court still propagate legal norms to other influential actors in the society. Whilst being aware of the limitations posed by corruption and the informal sector, the Cameroonian legal profession saw law as really guiding the behaviour of the society.

The fight against corruption in the judiciary is a vast topic and literature suggests many possible solutions. The interviews with Cameroonian legal professionals and the literature point to similar technical fixes. Publishing court decisions and making the judiciary more dependent on electronic systems would increase the opportunities for public scrutiny. Continuing the efforts to train judges to make sure their knowledge of applicable laws is up to date is a sine qua non condition for ensuring that decisions in courts are determined by law. Hiring more court personnel and increasing their salaries can remove some incentives for corruption. All these technical fixes would certainly help to reduce corruption in the judiciary; however, the judiciary does not exist in a vacuum but in a society with its cultural norms and customs.

Corruption impacts the relationship between the judiciary and the society in two ways. On the one hand, corruption in the judiciary impedes OHADA laws from having a broader societal effect through the normalisation process. If the courts are inconsistent in applying laws, if they are guided by extrajudicial factors, the normalisation process is halved. Also a corrupt judiciary is perceived as less serious and by consequence has less moral weight in defining the correct behaviour. This way the corruption in the judiciary prevents OHADA laws from having a broader societal impact. However the corruption of the judiciary does not originate only within the judiciary, but is also induced by a wider acceptance of corruptive practices. It is useful to draw a distinction here between the internal legal culture shared by the legal profession or even its subcategories and the wider external legal culture shared by the whole society.⁸⁵ Individual judges and lawyers might condemn corruption in general, but still engage in bribery and favouritism, because of a prevailing external legal culture.⁸⁶ This was the case with several interviewed lawyers who condemned corruption in the judiciary, but admitted having bribed judges. The prevalence of corruption in the external legal culture diminishes the impact of all legal reforms by undermining the importance of rule of law. Therefore, in order to fight corruption in the judiciary it is not enough to address only the judiciary.

⁸⁴ Kurkchiyan, Marina. (2007) "Judicial corruption in the context of legal culture", Global Corruption Report 2007 Corruption in Judicial Systems, Transparency International, Cambridge: Cambridge University Press, 2007.

⁸⁵ Friedman, L. M. (1990) *The Republic of Choice: Law, Authority and Culture*. Cambridge, MA: Harvard University Press.

⁸⁶ Kurkchiyan, Marina. *Op cit.*, pp. 103-107.

Corruption and the informal economy are probably two principal questions OHADA will need to tackle in the future. If OHADA law continues to enhance legal certainty in the way that it is doing now, it will sooner or later be confronted to the wall that is separating the formal and informal economies. This will put the OHADA approach in front of a question - is OHADA in the future going to induce more actors to enter into the formal economy or can a similar situation continue where legal certainty is enhanced for a set of elite economic actors leaving the majority untouched?

Legal certainty as a private good seems pointless, however integrating all the smallest actors into the formal economy does not seem desirable either. A balance needs to be found. In order to integrate more actors from the informal sector, registration costs should be lowered, new easier legal forms for groupings created and most importantly there should be some advantages for the businesses to enter the formal sector. There is already some evidence that OHADA laws have changed the way Cameroonian bankers make decisions to grant credit.⁸⁷ Hence registering one's business and declaring one's activities can possibly have the advantage of making it easier to obtain credit. On the other hand, the lowering of minimum legal capital requirements necessary to encourage more businesses to register also reduces contractual certainty. In order to have a broader impact, OHADA needs to find ways to induce more enterprises to enter the formal sector without reducing contractual security.

c. Future research on OHADA

This research has been a first step in getting to know better the OHADA law and its implications. The assumptions and explications presented here need further research and analysis. Besides providing a first attempt at analysing how OHADA laws have impacted legal certainty in Cameroon, this research also points to areas in which further research on OHADA needs to concentrate.

This research focused on Cameroon and even though many of its conclusions might be similar in other member states, Cameroon has some specificities. Interviewed OHADA personnel admitted that Cameroon has seen more progress than many other OHADA countries.⁸⁸ However its Human Development Index and Corruption perception index are about the OHADA average.⁸⁹ One of the reasons why OHADA laws have had more impact in Cameroon is that it has a relatively stable government and hence a less risky investment environment. Also there is a strong tradition of legal education at university and the OHADA trainings might have carried more results in Cameroon, because the Permanent Secretariat is located in Yaoundé.

This research revealed the ways in which judicial uncertainty pertains OHADA from having a greater impact. Further research on the judiciary should focus on the ways in which OHADA laws have impacted judicial legal certainty. Although the interviewed lawyers said there was no impact, it seems reasonable to believe that when litigants and judges know the applying norms

⁸⁷ Fortin, Anne and Dicko, Saidatou (2009). "The impact of the new OHADA accounting system on the judgments and decisions of Cameroonian bankers", *Advances in Accounting, incorporating Advances in International Accounting*, 2009, 5, pp. 89-105.

⁸⁸ Interviews with various OHADA officials in March 2011 and Dickerson, Claire Moore (2005), *Op cit.* pp. 63-64.

⁸⁹ See Transparency International, *Corruption Perceptions Index 2010*, <http://www.transparency.org/content/download/55725/890310> and United Nations Development Programme, *Human Development Report 2010: The Real Wealth of Nations: Pathways to Human Development*, 2010, http://hdr.undp.org/en/media/HDR_2010_EN_Complete_reprint.pdf

and construct their arguments based solely on law, coming up with crooked decisions will be harder. Closely following some court cases will help bring clarity to this issue and corruption in the judiciary in general.

The path of OHADA development shows the importance of norm and policy entrepreneurs. UNIDA has played a crucial role in supporting OHADA's activities in the member states and representing OHADA internationally. It has been so successful that there is even some confusion as to which are the official OHADA institutions. One of the principle reasons behind this is that the same people who were initially behind the founding of the OHADA created UNIDA. The theories and empirical data used here did not pay much attention to the role of these few entrepreneurial individuals. A new research project that wants to explain how OHADA has gained the status it has now must include interviews with people who were at the French ministry of cooperation and members of the respective governments in Africa when OHADA was founded.

This research has mainly dealt with OHADA's influence on legal certainty from the lawyers' perspective. This has offered a thorough understanding of the legal side of OHADA. However, it must be borne in mind that for OHADA legal certainty is mainly seen as an instrument for enhancing economic development and attracting foreign investment. Hence both a quantitative economic study and interviews with business representatives would be needed to understand how OHADA has influenced investment and the subjective certainty of businesses.

VI. CONCLUSION

OHADA is an example of how some active individuals from different countries can collaborate and motivate their respective governments to engage in an international reform, which finally leads to considerable international institutional change. If there exists an epistemic community in the international and national institutions, stable international actors with means can facilitate the creation of a necessary coalition nationally and help keep up the impetus of reform. For reforms that aim at changing the legal system, the adherence of the national legal profession will be crucial as they have the monopoly in applying laws and hence control which effect the reform will have. Coalitions between national and international actors will prove crucial for connecting the reform-minded ideologically convinced individuals within one legislation and across the region. On the national level these people will engage in activities to inform and convince the legal profession domestically. Those who join along the way are more probably motivated by economic reasons. Compliance with the new legislation is hence induced by both ideational and material reasons. Overall new internationally developed laws give the juridical field an opportunity to reinforce the prestige of their profession and the importance of the legal field in defining societal norms. The international nature, the domain of action of business law and promotional government rhetoric add to the prestige of the reform and to the persons carrying it out. If the laws are well suited to the context, their regular application by the legal profession who is now possibly more highly estimated will lead to the legal norms becoming more embedded in the society and hence reinforcing legal certainty.

Altogether, OHADA has been a success. Certainly more can still be achieved in terms of reinforcing legal certainty, but as a young and developing institution it has managed to achieve a lot already, but has yet more in potential. Most of the people interviewed admitted it has only been a few years that some effect of the uniform acts has been felt. As a result, it has only recently gained the political and financial clout necessary to enhance its organisational capacity by new recruits. OHADA is an important example of a case where big international institutions collaborate with local African leaders and specialists and help build regional organisational capacity by putting funds at the disposal of regional organisations. The OHADA legislative process, which has brought together international and regional experts, is also a great learning environment for both. Finally, the rich communication about OHADA has managed to create interest and curiosity abroad of which this research is one example. Even though OHADA's impact on attracting foreign investment has not yet been sufficiently studied, the attention it has gained internationally has also worked for attracting more investment in the region.

LIST OF LEGAL PROFESSIONALS INTERVIEWED

All the legal professionals in the list were interviewed in Yaoundé and Douala in between 16 and 27 March. The interviews lasted from 20 minutes to 3 hours.

	Person	Professional description
Private practice	Lawyer 1	Partner at a medium-sized law firm specializing in business law (OHADA law), entered practice just before OHADA laws
	Lawyer 2	Partner at a small law firm, has defended OHADA cases both nationally and in front of the CCJA, member of different training groups
	Lawyer 3	Lawyer in a smaller law firm, having practiced for long time before OHADA laws, university professor
	Lawyer 4	Associate at a big law firm, has only practiced under OHADA law
	Lawyer 5	In-house legal counsel at a large bank
	Lawyer 6	Associate at a big law firm, has only practiced under OHADA law
	Lawyer 7	Notary
	Lawyer 8	Business lawyer, practicing OHADA amongst other domains of law, with a more limited knowledge on OHADA
	Lawyer 9	A well-respected notary
	Lawyer 10	Owner of a medium-sized law firm, has previously practiced in Paris
OHADA Permanent Secretariat and related	Clarisse Motsebo	Legal advisor at OHADA Permanent Secretariat
	Robert K. Bagna	Director of human resources, material and general administration, also responsible for the publication of Journal Officiel at OHADA Permanent Secretariat
	Godefroy Epanya Moukeke	Financial and accounting director of OHADA Permanent Secretariat
	Ferdinand Aho	Representative of French Foreign Ministry and Development Cooperation, technical assistant and counsellor to the Permanent Secretary of OHADA
	André-Franck Ahoyo	IFC (International Finance Cooperation – a World Bank Group organisation), technical assistant for OHADA-IFC project at OHADA Permanent Secretariat
	Idrissa Kere	Director of legal affairs at OHADA Permanent Secretariat
Other institutional	Koleka Boutora-Takpa	Permanent secretary till April 2011, previously a law professor in Togo
	François A. Boko	Head of the EU Justice Mission in Cameroon and a lawyer in Paris
	Mougnal Sidi	Diplomat and chief of the treaties and conventions department in the legal affairs section at Ministry of Finance of Cameroon
	Dr Gaston Kenfack	Judge, deputy director of civil, commercial, social and traditional legislation at the Ministry of Justice of Cameroon, university professor and arbitration lawyer
	Pierre Anthony Atangana	Legal clerk and responsible for arbitration at Cameroon's Employers' Union (GICAM)
	Hervé Yotcha	Head of legal studies at GICAM