

General Elements of Cooperative Law in Africa

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GEZKI Conference - October 1, 2021

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Introduction

- Having the intention to talk about cooperative law in Africa in 30 minutes is ambitious (with the pretention to give a comprehensive account of it).
- Africa currently has 55 member countries (African Union – AU). AU Member States are divided into five geographic regions.
- These 55 states represent a great cultural, political, linguistic, geographic, historical and social diversity.

Introduction



Northern Africa



Eastern Africa



Central Africa



Southern Africa



Western Africa



Introduction

- To this end, we will limit our reflections to general aspects without the intention of reporting on the reality in all countries.
- Where necessary, we will use national examples, but only for the purpose of illustrating a point of view.

Introduction

There are 2 ideas widely accepted by most researchers:

1. Cooperatives, in their modern form, were introduced on the continent through colonization
2. Cooperatives (at least in their modern form) coexist, in the territories, with local forms of cooperation or mutuality (***traditional organizations in Africa***), depending on the country.

Introduction

- Moreover, a little more than 10 years ago, after an attempt at classification, I asked myself whether what can be called **traditional organizations in Africa** can be part of the social and solidarity economy (SSE).
- In a publication in progress (FAO Guidelines for SSE legislation), Gilles Caire and I are still addressing the question.

Tentatives de définition de l'Économie Sociale et Solidaire : quelle place occupent les organisations traditionnelles en Afrique?

Xe Rencontres du RIUESS - Luxembourg - 2 au 4 juin 2010

👤 Willy TADJUDJE, June 2010

👥 RIUESS 2010 - Xèmes Rencontres internationales du Réseau Inter-Universitaire de l'Économie Sociale et Solidaire - Luxembourg - 2 au 4 juin 2010

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Summary :

Se limiter à une orientation conceptuelle restrictive (par statuts) de l'ESS serait laisser subsister une incomplétude flagrante dans sa définition. De même, laisser croire qu'il n'existe pas encore de secteur de l'économie sociale en Afrique c'est méconnaître en même temps l'Afrique et la pertinence du concept d'ESS.

📁 Section:

Profile and Identity of SSE entrepreneurship

📍 Place :

Africa

🔑 Keywords :

the SSE concept

Values and representations

History of cooperative law in Africa

Taking as a reference the colonial period as the gateway to cooperatives, while projecting to the present day, we can define three generations of cooperative laws:

- First generation of cooperative laws
- Second generation of cooperative laws
- Third generation of cooperative laws

First generation of cooperative laws

- The first generation of cooperative laws refers, in our opinion, to the cooperative laws of the colonial period.
- By reviewing them, it is easy to realize that the cooperative spirit was not a goal to be achieved.
- The aim of the political leaders of the time was mainly to collect cash crops (cocoa, coffee, etc.) and send them to the metropolis.
- The cooperatives were more instruments at the service of the state.

Second generation of cooperative laws

- The second generation of cooperative laws is more or less a continuation of the first.
- It corresponds to the period from independence (1960) to the early 1990s.
- During this period, cooperatives were instrumentalized by the political leaders of the newly independent states.
- It is not uncommon to find that during this period, cooperatives were run by civil servants.

Third generation of cooperative laws

- The third generation of cooperative laws, unlike the previous two, introduces a radical change.
- It allows the emergence of autonomous cooperatives, independent of the state.
- From then on, cooperatives became private enterprises in the same way as commercial companies.

The 3 generations: an overview

- Given that all African countries are now independent (which excludes first generation cooperative laws), African states are mostly divided between the second generation and the third generation, with a predominance for the third.
- Third generation: Morocco, the 17 States of the OHADA zone, South Africa, Kenya, Tanzania, Madagascar, etc.
- Second generation: Ghana, Liberia, Gambia, Sierra Leone, etc.

The 3 generations: an overview

However, despite these improvements, there is still confusion in many countries with 3rd generation of cooperative law because the state still intends to maintain a certain control over the cooperative movement (Madagascar, Tanzania, Ghana, etc.)

> RECMA > VOLUME 351, ISSUE 1, 2019 > COOPERATIVES IN MADAGASCAR: WHAT...

Cooperatives in Madagascar: What is the right balance between government powers and the movement's development?

Willy Tadjudje

IN RECMA Volume 351, Issue 1, January 2019, PAGES 101 TO 113

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In 1999, Madagascar passed a new law on cooperatives. One of its objectives was to turn Malagasy cooperatives into genuine companies designed with more professionalism than previously. Such a reorientation required creating new legal rules that foster cooperative autonomy and independence. Yet, when examining this law, we find that important functions for promoting cooperatives have been

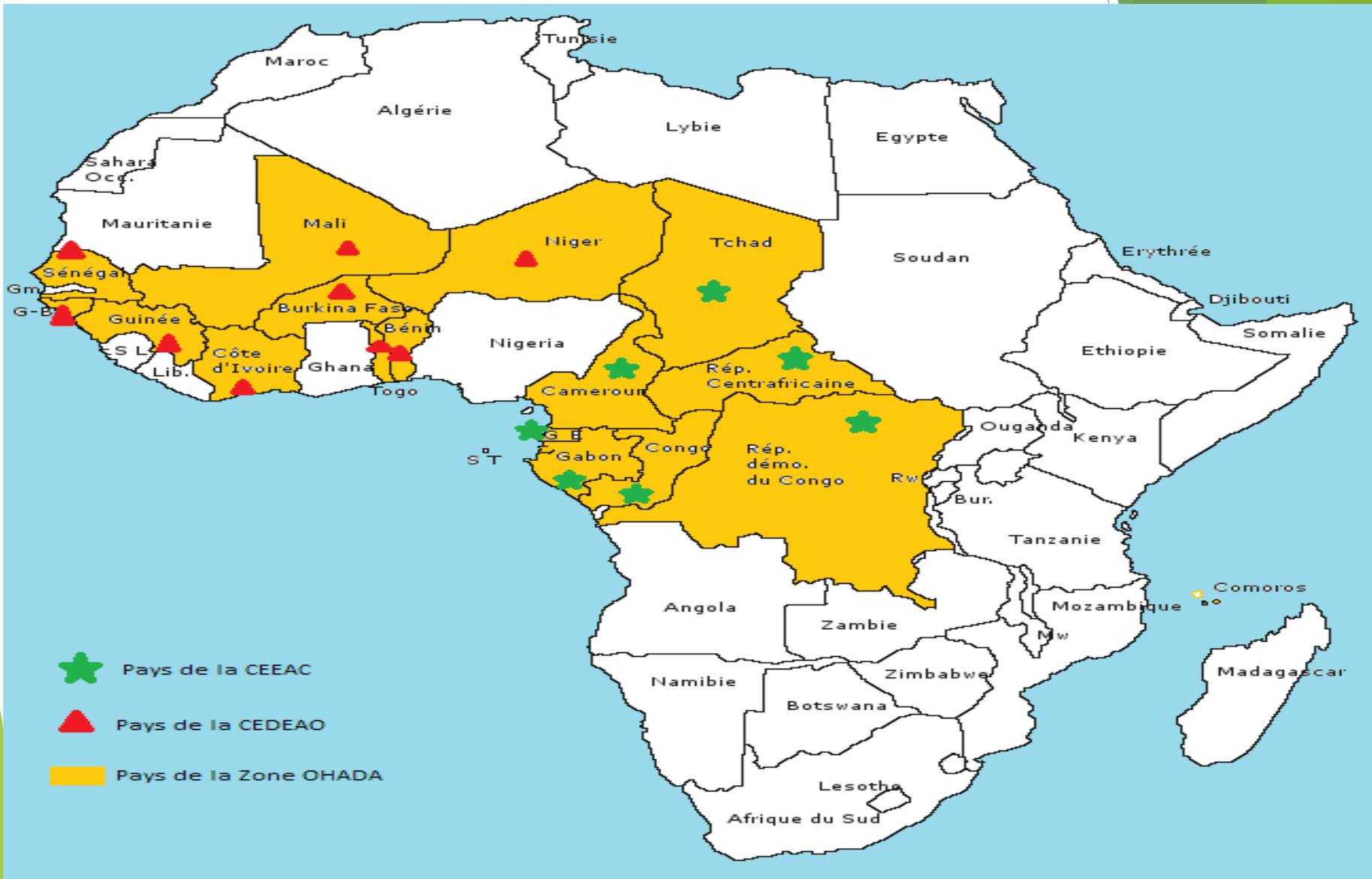
Adapted Forms of cooperatives

- Alongside the second generation of cooperative laws, some countries have introduced pre-cooperatives and simplified forms of cooperatives (Cote d'Ivoire, Cameroon, Chad, Guinea, Burkina Faso, Tanzania, etc.)
- In the case of pre-cooperatives, this was a way for the State to create a preliminary (learning) stage towards the cooperative form. - *Failure due to lack of public support*
- In the case of simplified forms, it was mainly a way to introduce lighter models of cooperatives to take into account the difficulties of certain categories of persons, including people living in rural areas.

Regionalization/standardization of cooperative law

- There is a trend towards regionalization with two experiments, one already functional and the other not yet.
- The first one is the OHADA, launched in December 2010.
- The second is the East Africa Community's Cooperative Societies Bill. It is not yet an Act of the East African Community because the drafting process, as provided for by the treaty, has not yet been fully implemented.

The OHADA zone



Assessment of the OHADA Cooperative Law

A first evaluation of the implementation of the OHADA Uniform Act (after a decade) has just revealed significant shortcomings.

LE DROIT DES COOPÉRATIVES EN AFRIQUE

Réflexions sur l'Acte uniforme de l'OHADA

sous la direction de Willy Tadjudje

Le présent ouvrage a pour but d'analyser le niveau de mise en œuvre de l'Acte uniforme relatif au droit des sociétés coopératives (AUSCOOP) dix ans après son entrée en vigueur. Des analyses, conclusions et recommandations des auteurs, l'on peut retenir deux principales idées. D'une part, qu'il contient des faiblesses et des incohérences qui méritent d'être corrigées à l'occasion d'une réforme. D'autre part, qu'il souffre d'un manque de communion avec l'environnement juridique global. Des deux idées, il semble que la seconde ait été plus déterminante pour la faible mise en œuvre de l'AUSCOOP.

24 € TTC • 304 pages • juin 2021
ISBN 978-2-37496-153-4 (broché)
ISBN 978-2-37496-136-1 (PDF)

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The East Africa Community



OHADA and East Africa Laws

OHADA cooperative law and East African cooperative law (as reflected in the Bill - not yet an Act of the community) have similarities and differences, although it seems to us that the OHADA legislator can learn from the East African

IJCL | INTERNATIONAL JOURNAL OF COOPERATIVE LAW | Issue III, 2020

PREVIOUS

STANDARDIZATION OF COOPERATIVE LAW IN AFRICA: A COMPARATIVE ANALYSIS BETWEEN THE OHADA UNIFORM ACT RELATED TO COOPERATIVE SOCIETIES AND THE EAST AFRICA COMMUNITY'S CO-OPERATIVE SOCIETIES BILL

Willy Tadjudje¹

Abstract

In Africa, two organizations have developed supranational legal frameworks applying to cooperative societies. The first is the Organization for the Harmonization of Business Law in Africa, in French *Organisation pour l'harmonisation en Afrique du droit des affaires* (OHADA) with the Uniform Act on

Sectors of activities

- The sectors of activity of cooperatives in Africa are still predominantly marked by agriculture and finance.
- This can be explained by historical reasons. When cooperatives were first introduced, they were mainly active in agriculture and this has remained constant.
- Finance was added later through development programs financed by international donors.

Sectors of activities

- Although cooperatives are mostly active in agricultural activities, they have not developed industrialization.
- The value chains remain short
- Agricultural cooperatives continue to be perceived as enterprises run by poor and village-based people
- Due to the failure of the first two generations of cooperative laws in most countries, cooperatives continue to suffer from a bad reputation

Sectors of activities

- In some countries, cooperatives cannot operate in banking or insurance and are confined to microfinance (OHADA for e.g.)
- The leaders of financial cooperatives perceive the cooperative form as a stepping stone to becoming a public limited company because in most cases the legislation does not differentiate between the legal forms.
- From this point of view, because cooperatives seem to be discriminated against, they have become accustomed to transforming themselves into joint-stock companies after a while.

Sectors of activities

However, there is a gradual opening up, with:

- Housing cooperatives (e.g. Egypt),
- Banking and insurance cooperatives (Kenya),
- Mining cooperatives (Cote d'Ivoire, Central African Republic, Democratic Republic of Congo), etc.
- Health cooperatives – Clinics (Benin) & Pharmacies (South Africa)
- Etc.

Sectors of activities

- It is important to promote cooperatives in all sectors in Africa. This can be a way to mitigate the harms of informal work.
- To do this, cooperative laws should be open (for example, the Malagasy cooperative law lists the areas of activity of cooperatives, while the OHADA Uniform Act allows them to engage in activities in all areas of human life).
- Moreover, there should be synergy between the general cooperative law and the sectoral laws (laws governing sectors of activity). In the OHADA zone, for example, this synergy is still missing.

Sectors of activities

- If we question cross-cutting laws (e.g. laws on taxation, competition, state aid, accounting, etc.) we can see that they do not always take cooperatives into consideration.
- On analysis, one can quickly get the impression that cooperative law in Africa seems isolated from the global legal environment.
- In fact, most of the cross-cutting subjects do not take into consideration the specificities of cooperatives and are more related to the cosmogony of joint-stock companies.

Public policies & Cooperative Supervision

- This slow expansion of sectors of activity has an influence on public policy.
- In many countries (Cameroon, Gabon, Ivory Coast, etc.), the Ministry of Agriculture still supervises the cooperatives, despite the expansion of activities.
- It may therefore seem surprising to go to the Ministry of Agriculture to register an insurance cooperative.
- It might be appropriate to make changes at this level to avoid confusion and encourage the promotion of the cooperative legal form in all sectors of activity.

Perspectives

- 1. Working together to share experiences**
- 2. Improving educational opportunities**
- 3. Acknowledging the potential of cooperatives**
- 4. Encouraging digitalization**
- 5. Supporting cooperative movements to take advantage of the opportunities offered at the regional level**

Perspectives

1. Working together to share experiences in order to improve legal frameworks and cooperative ecosystems

- African lawyers have not yet had the opportunity to work together. An opportunity would be to reflect on the Principles of African Cooperative Law (PAfCOL), following the European experience with the PECOL.
- A model law is a good opportunity, but it must be preceded by prior research.
- A collective Book project (in two volumes) is in progress – *African Handbook of Cooperative Law*
- CLARITY is been updated and can be adapted in Africa as tool to assess and improve legal frameworks

Perspectives

2. Improving educational opportunities

- Faculties of law do not offer courses in cooperative law, and the officials in charge of promoting cooperatives are mostly agricultural engineers.
- Efforts to qualify officials and actors should be considered.
- Without education, confusion will persist and cooperative law will not have the opportunity to contribute to the development of a strong and prosperous cooperative movement in Africa.

Perspectives

3. Acknowledging the potential of cooperatives

- Gender (Women empowerment), Youth, Informal sector, Decent work, etc., are some critical socio-economic challenges in Africa
- Cooperative law can provide solutions

Perspectives

4. Encouraging digitalization

- Following the health crisis, it is urgent to introduce digitalization in the registration and operation of cooperatives.
- This may lead to changes in the cooperative laws, or to the adoption of policies to this effect.
- It is obvious that digitization entails costs, both for the State and for the cooperatives, but it is a means of adaptation to improve transparency in governance and maintain cooperative life.
- In some countries, this digitalization is already accepted and even operational for companies.

Perspectives

5. Supporting cooperative movements to take advantage of the opportunities offered at the regional level, for e.g. the AfCFTA: African Continental Free Trade Area

- This treaty allows for free trade in all African states.
- But, on analysis, cooperatives are not ready to take advantage of such an opportunity. They are weakly structured. Most of the apex organizations are still under the control of the states.
- Thanks to a good cooperative education, cooperatives can open a real dialogue with the States in order to work together. In this dynamic, milestones could be set to make cooperatives real actors of a sustainable development in Africa.

Thank you !

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