

STRATEGIES FOR ADOPTING OHADA LAWS IN ANGLOPHONE AFRICAN COUNTRIES.

Honourable Attorney-General and Minister of Justice of the Republic of Ghana,
Distinguished Colleagues, Ladies and Gentlemen.

I would like to express my gratitude to the organizers and sponsors of this historic event for according me the privilege of an address at this august and historic event. I say august and historic event because, I believe this is the first time we are having an Ohada conference jointly organized by three francophone Ohada Clubs on an Anglophone soil and in a Common Law African Jurisdiction.

Let me begin by citing the immortal words of the late Keba Mbaye, the first President of Ohada, *“OHADA is a legal tool thought out and designed by and for Africa to serve the purpose of regional integration and economic growth on the Continent”*

I would like to ask the question: Has the purpose of regional and economic growth on the Continent been achieved since the talk began several decades ago? The answer is no. In our West African Sub-Region, the ECOWAS was established in 1975 for the purpose of regional and economic integration. How much, if any, of that has been achieved till date. Not much, very little indeed. What has the investment climate been like since the creation of ECOWAS? Has there been a secured legal environment (through harmonized business law) to promote investments, whether south – south or north – south investments. These are the questions we must provide answers to, if we are to truly and squarely face the challenges of regional and economic integration through the instrumentality of law and marriage of legal systems, principally the civil law and common law systems.

Scholars, both from within and outside the continent of Africa, have made meaningful intellectual contributions over the years, which must now be put into practical use if we do not want to be engaged in endless debates that will not achieve the desired goal of economic integration and growth in our sub-region through law.

The focus on harmonization of business law (which is the “raison d’etre” of OHADA) is, most appropriate at this point in time, when globalization is the order of the day. At the first OHADA conference in Nigeria held in May 2004, late Professor Ademola Yakubu, the

convener, remarked “*globalization derives its full meaning within the context of regional integration, therefore African countries must rise up to the challenges of harmonizing its different laws to take the continent away from the stigma of a developing status to that of a developed one*”

The Professor also remarked “*African countries need better legal cooperation to bring about certainty in the business law among African nations and that cooperation does not necessarily create a loss of sovereignty or a situation where one of the contracting states becomes helpless*”.

Professor Martha Tumnde of University of Buea, Cameroon also remarked at the conference as follows:-

“Most African countries inherited laws from Europeans, which resulted in patchwork of different laws that created a state of legal uncertainty”

“This legal balkanization of the continent created a state of insecurity for foreign investments. The present movement tends towards the reconciliation of laws in the area of business law. The purpose of harmonization is basically to end this trend of balkanization”

One very important point and conclusion that can be drawn from the Lagos Conference is that Africa must end balkanization of its different laws and legal systems and embrace harmonization of business laws and legal systems in order to attract investments and ensure economic growth.

Professor Claire Moore Dickerson, an Arthur L. Dickson Scholar, in an article “*Harmonising Business Laws In Africa : Ohada Calls The Tune*”, noted “*The OHADA laws articulated purpose is to facilitate investment in general, and foreign investment in particular.*”*OHADA may materially change the investment climate in West Africa. If successful, it offers a model for development in other parts of the developing world*”

It is pertinent to ask at this stage, what are the advantages of harmonization? To mention a few, it encourages, free flow of investments, cross-border trade, certainty in business law, legally secured environment, political stability, economic growth and regional economic integration. We must therefore seek to understand or have a clear understanding of what harmonization of business law is all about.

The political will of Ohada States to have a Uniform Business Law was ably demonstrated at Port Louis (Mauritius) on 17th October, 1993, when fourteen African States (all francophone) signed the Ohada Treaty. The continuous existence of Ohada as an entity with clearly set-out

Goals, is an assurance that the political will has not dwindle. It is in this vein that I invite Anglophone States of Africa with the common law heritage to create the political will and espouse the ideals of harmonization. This, I must say, may take time, but being inspired by the Chinese proverb – “*a journey of a thousand miles starts with the first step*”. Let us take the first step in an organized manner and pursue the common goal of an harmonized business law.

Harmonisation of laws must not only be well planned and coordinated, it must also be put into effective cross-boarder use and practice. We must therefore evolve acceptable strategies to achieve harmonization of laws beginning with business law. This is why OHADA must take its rightful place in the process of harmonization of business laws in Africa. Ohada, to all intent and purposes, must not only be the vehicle for harmonization, it must also be the centre from which reforms in Business Law in Africa emanate or the centre where Business Law in Africa are re-written. It is the centrifugal law that we can all draw from as a model for harmonization. This is not to say it is perfect. On the contrary, it is far from being perfect, but it is sufficiently good for the match towards harmonization of business law and legal systems in Africa.

One good example of reforms in the Ohada Business Law is the current efforts to harmonise Contract Law within Ohada. This task was placed on the wide shoulders and deep legal mind of Marcel Fontaine, (Professor Emeritus and the former Director of the Centre for the Law of Obligations, Law Faculty, Catholic University of Louvain, Belgium) by the International Institute for the Unification of Private Law (UNIDROIT). The Preliminary Draft – “Ohada Uniform Act On Contract Law”- was presented at a UNIDROIT organized conference in Ouagadougou last November – “**The Harmonisation of Contract Law Within Ohada**”. It is note worthy and gladdening to say that the Preliminary Draft is fashioned after the UNIDROIT Principles of International Commercial Contracts. Permit me to quote from “The UNIDROIT Principles of International Commercial Contracts - A Brief Introduction” presented at the Ougadougou Conference:

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

The UNIDROIT Principles is a model that can be adopted to suit our peculiarities in the ECOWAS sub-region in the marriage of the Civil Law and Common Law systems. It is being done successfully on the Ohada Uniform Act On Contract Law. It espouses, as does the UNIDROIT principles of International Commercial Contracts, the common law system and the civil law system.

What then should be our common strategies of Harmonisation of Business Law in Africa?

In discussing the issue of acceptable strategies, I am conscious of the fact that this conference was not convened for this purpose. I must therefore not take away the wind out of the sail. I therefore would like to limit my suggestions to a framework that can be fully developed and presented at another forum.

1. We must convene, from time to time, stakeholders' conference and workshops which will include all countries and language zones in Africa, Multilateral Organizations/ Institutions, the African Union, the United Nations, the African Development Bank, the World Bank, the ECOWAS, L'UMEOA etc.
2. An all embracing Working Group (funded by the multilateral institutions mentioned above, States, friends of Africa and other interested stakeholders) must be set up to:-
 - i. Examine OHADA Laws and Treaty and the impact on harmonization of business law in Africa so far.
 - ii. Fashion out the best way to introduce Harmonisation of Business Law in Africa to non-Ohada States
 - iii. Draw up a programme of awareness of the Ohada Laws in Anglophone, Lusophone and Arabophone countries in Africa, raising such pertinent issues in a simple manner as follows:-
 - WHAT IS OHADA?
 - UNDERSTANDING THE OHADA LAWS
 - WHY HARMONISE?
 - ADVANTAGES OF HARMONISED BUSINESS LAWS AS A TOOL FOR ECONOMIC AND REGIONAL INTERGRATION AND GROWTH
 - OHADA AND THE HARMONISATION PROCESS – THE JOURNEY SO FAR

- iv. Critically examine the obstacles to Harmonisation of Business Laws in Africa which include:
 - FEAR OF DOMINATION OF THE COMMON LAW HERITAGE BY THE CIVIL LAW HERITAGE
 - EXISTING LEGAL SYSTEMS AND STRUCTURES IN MEMBER STATES
 - LANGUAGE OBSTACLES
 - v. Critically examine how to overcome Obstacles to Harmonisation of Business Law in Africa.
 - vi. Establish or assist to establish Department of Harmonisation of Laws or of Ohada Laws in some Faculties of Law in Anglophone countries.
3. We must do a critical examination of the interface between existing Ohada Institutions and legal structures – Council of Ministers, CCJA, L'ERUSMA and Existing Regional/ECOWAS Institutions and legal structures - ECOWAS Court, ECOWAS Parliament etc and their functions with a view to harmonizing the structures and their functions.

In concluding, I would like to highlight some of the strategies we have adopted in Nigeria and recommend its adoption to other non-Ohada States. Our main goal is to create a public/private participation in the harmonization process in Nigeria. Get Government Officials, Legislators and the private sector involved in achieving the goal of harmonization of business law in Nigeria, nay Africa.

Nigeria is a member of African Union, ECOWAS, NEPAD, and other bilateral and multilateral institutions that seek economic integration in Africa. Nigeria has a Ministry of Economic Cooperation and Integration in Africa. We therefore have what it takes to lay a solid foundation for the adoption of Ohada Laws as may be amended by consensus of all participating States in the process of harmonization.

We have, in pursuance of the above objectives:-

1. incorporated Ohada as a company limited by Guarantee. Thus giving it a legal personality to carry on its main object of promoting harmonization of laws in Africa.
2. started to create awareness of Ohada in the organized private and public sectors by organising activities that involve the stakeholders. We organized

the first Business Luncheon/Seminar on 1st November, 2007. A paper entitled **“The Quest for Legal Integration of the African Continent: OHADA and its progeny”** was delivered by Dr. Adesegun Akin-Olugbade the former General Counsel of the African Development Bank. The attendance cut across the private and public sectors and the diplomatic community.

3. a three-hour session at the Nigerian Bar Association/Section on Business Law of 3rd Annual Conference taking place 25-29 March, 2008, has been dedicated to two topics: “Barriers To Trade in Africa” and “Harmonisation of Business Laws in Africa. One of the eminent speakers is Professor Claire Moore Dickerson, a well-known name on the subject.
4. already embarked on membership drive by making membership of Ohada Nigeria open to all stake holders - businessmen, financial and banking sector operators, lawyers, insurers, oil and gas operators and all of whom are involved in cross-border transactions.
5. We are planning another Business Luncheon/Seminar for Lagos in May or June, 2008.
6. We are planning several seminars, workshops and conferences to enable us articulate positions on harmonization of business law in Africa with a view to preparing grounds for imminent changes in Ohada Laws and Treaty.

Honourable Minister, Distinguished Guests, Ladies and Gentlemen, I hope I have whet your appetite for the papers, debates and discussions on the subject of our conference – **“Ohada, A Vector of Legal and Judicial Security in the Service of African Development”**. If I have not, I do apologise. I believe, however, that I have created a food for thought for now and in the future on our common subject, OHADA Laws. I look forward to an opportunity in the near future to elaborate on the issues raised in this very short presentation, particularly the issue of the interface between Ohada Structures and ECOWAS Structures in the process of Harmonisation in the West African Sub-Region and beyond.

Thank You.

Akin Akinbote

Former Chairman, Nigerian Bar Association, Lagos Branch
President OHADA Nigeria
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