

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

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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 Cooperative Societies (UA). The second is the East African Community (EAC) with the East African Community Cooperative Societies Bill 2014 (EAC Bill). The EAC Bill has not received the assent of the Heads of State in the EAC, so it is not yet an Act of the EAC Community. However, the purpose of this article is to compare these two legal frameworks. For the purpose of this analysis and comparison, the EAC Bill will be treated as if it was an Act of the Community.

Introduction

The African continent has 55 countries all represented in the African Union². In a bid to ensure their economic development, most African States have joined various regional economic integration organizations³. These organizations may use several means to achieve their integration objectives, including legislation. However, in certain regions of Africa, particularly in West and Central Africa, there are regional organizations whose only aim is legal integration⁴. These organizations coexist with economic integration organizations, which also produce regional legislation. One such organisation is the

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² The African Union (AU) is a continental body consisting of the 55 member States that make up the countries of the African Continent. It was officially launched in 2002 as a successor to the Organization of African Unity. More details on its website: <https://au.int>

³ Economic Community of Central African States (ECCAS), Economic Community of West African States (ECOWAS), West African Economic and Monetary Union (WAEMU), Economic and Monetary Community of Central Africa (CEMAC), East African Community (EAC), Southern African Development Community (SADC), etc. For more details on regional integration in Africa, see De Melo, J. & Tsikata Y. (2014): "Regional integration in Africa Challenges and prospects" WIDER Working Paper 2014/037.

⁴ For example, the CIMA (*Conférence Inter-Africaine des Marchés de l'Assurance*) - Inter-African Conference of Insurance Markets. More details on its website: <https://cima-afrique.org/>

Organization for the Harmonization of Business Law in Africa, in French *Organisation pour l'harmonisation en Afrique du droit des affaires* (OHADA). It was established in 1993⁵, and currently comprises 17 States in Central and Western Africa⁶. OHADA includes the following institutions: the Permanent Secretary⁷, the Common Court of Justice and Arbitration⁸, the Higher Regional School of Magistracy⁹, the Council of Ministers of Justice and Finances¹⁰, the Conference of Heads of State and Government¹¹. It is a legal integration organization aimed at the standardization of business law through the introduction of uniform acts whose provisions are directly applicable in national laws¹².

Ten uniform acts have already been adopted and deal with various business law matters¹³. The ninth act is about cooperative societies and it was introduced after almost ten years of negotiation within the OHADA zone. The Uniform Act relating to cooperative societies (UA) was adopted on 15 December 2010 and published on 15 February 2011 in the OHADA official Gazette¹⁴.

The UA did not introduce a new law for cooperative societies which supplemented existing national laws. Rather, the new law replaces existing national laws which will disappear or will subsist only as a complement to the UA. Specifically, the UA applies directly in domestic law. Its provisions take precedence over the rules of domestic law, which may be applied only if they are not contrary to the provisions of the UA. With the UA, OHADA has produced the first supranational cooperative legislation in Africa.

Four years after the adoption of this Uniform Act, the East African Community (EAC) also prepared a legal framework applicable to cooperatives. The EAC is a regional intergovernmental organization of 6

⁵ This organization was born after a Treaty signed in Port-Louis (Mauritius) on October 17, 1993 (modified in Quebec City in 2008) with the aim of building a community of legal integration through Standardization of business law.

⁶ Benin, Burkina Faso, Cameroun, Chad, the Comoros, Congo, Democratic Republic of Congo, Ivory Coast, Central Africa Republic, Gabon, Guinea, Equatorial Guinea, Guinea Bissau, Mali, Niger, Senegal, Togo.

⁷ The Permanent Secretariat is attached to the Council of Ministers and is responsible for the preparation of all acts and the annual program for the harmonization of business law. The headquarters are in Yaoundé - Cameroon).

⁸ The Court is based in Abidjan, Ivory Coast. Its main functions are to hear appeals against the decisions of the national courts, and to give opinions on the common interpretation and application of the Treaty, the regulations made for its application and the Uniform Acts. The Court also intervenes in arbitration proceedings.

⁹ The School is responsible for the training of magistrates and judicial officers of the Member States in harmonized law and business law. The headquarters are in Porto Novo, Benin.

¹⁰ Composed of Ministers responsible for Justice and Finance Ministers, it meets at least once a year, convened by its President.

¹¹ It is the Supreme organ of OHADA. It was created through the revision of the original Treaty at the Quebec City Summit of October 17, 2008, which remedied an absence that was felt. The Conference "shall be composed of the Heads of State and Government of the States Parties. It shall be chaired by the Head of State or Government whose country holds the presidency of the Council of Ministers".

¹² Martor, B., Pilkington, N., Sellers, D. & Thouvenot, S. (2009) : "Le droit uniforme africain des affaires issu de l'OHADA", *LexisNexis*.

¹³ Pougoue, P.G. (2011), "Encyclopédie de droit OHADA", *Lamy*.

¹⁴ The Uniform Act entered into force 90 days after its publication on 15 May 2011. It is therefore expressly provided that existing cooperatives must adapt their by-laws within two years of this entry into force, in order to comply with its new provisions (before 15 May 2013).

Partner States: the Republics of Burundi, Kenya, Rwanda, South Sudan, the United Republic of Tanzania, and the Republic of Uganda. Its headquarter is in Arusha, Tanzania. The EAC was established by the EAC Treaty which guides the work and the activities of the Community. The EAC Treaty was signed on 30th November 1999 and entered into force on 7th July 2000. The main Organs of the EAC are the Summit¹⁵, the Council of Ministers¹⁶, the Co-ordinating Committee¹⁷, the Sectoral Committees¹⁸, the East African Court of Justice,¹⁹ the East African Legislative Assembly²⁰ and the Secretariat²¹.

The objectives of the EAC are to develop policies and programs aimed at widening and deepening co-operation among the Partner States in political, economic, social and cultural fields, research and technology, defense, security and legal and judicial affairs, for their mutual benefit (Article 5 of the Treaty). One way of achieving these objectives is the production of appropriate and applicable legal standards (Acts). One of these proposed legal standards is the EAC Co-operative Societies Bill, 2014. (EAC Bill). According to Article 62-1 of the EAC Treaty²², “the enactment of legislation of the Community shall be effected by means of Bills passed by the Assembly and assented to by the Heads of State, and every Bill that has been duly passed and assented to shall be styled an Act of the Community”. The East Africa Legislative Assembly²³ stated in a media released on January 2015 on its website that the Bill was passed, but there is no information available regarding assent by the Heads of States. Article 63-1 and 4 of the EAC Treaty provides that “1. the Heads of State may assent to or withhold assent to a Bill of the Assembly” and “4. if a Head of State withholds assent to a re-submitted Bill, the Bill shall lapse”. Article 54 of EAC Bill provides that it shall prevail over the laws of the partner States in respect of

¹⁵ The Summit includes Heads of Government of Partner States. The Summit gives strategic direction towards the realization of the goal and objectives of the Community.

¹⁶ The Council of Ministers is the central decision-making and governing Organ of the EAC. Its membership constitutes Ministers or Cabinet Secretaries from the Partner States whose dockets are responsible for regional co-operation.

¹⁷ Under the Council, the Coordinating Committee has the primary responsibility for regional co-operation and co-ordinates the activities of the Sectoral Committees. It also recommends to the Council about the establishment, composition and functions of such Sectoral Committees. It draws its membership from Secretaries responsible for regional co-operation from the Partner States.

¹⁸ Sectoral Committees conceptualize programs and monitor their implementation. The Council establishes such Sectoral Committees on recommendation of the Coordinating Committee.

¹⁹ The East African Court of Justice is the principal judicial organ of the EAC and ensures adherence to the law in the interpretation and application of compliance with the EAC Treaty. It was established under Article 9 of the Treaty.

²⁰ The East African Legislative Assembly (EALA) is the legislative organ of the EAC and has a cardinal function to further EAC objectives, through its legislative, representative and oversight mandate. It was established under Article 9 of the Treaty. The Assembly has a membership comprising of 45 elected Members (nine from each Partner State), and 7 ex-officio Members consisting of the Minister or Cabinet Secretary responsible for EAC Affairs from each Partner State, the Secretary-General and the Counsel to the Community totaling 52 Members. More details on the website of EALA: <http://www.eala.org/>

²¹ The Secretariat is the executive organ of the EAC. As the guardian of the EAC Treaty, it ensures that regulations and directives adopted by the Council are properly implemented.

²² The treaty is available on the EAC's website: <https://www.eac.int/documents/category/key-documents>

²³ See <http://www.eala.org/media/view/assembly-passes-eac-cooperative-societies-bill-2014>. Also, a press release from the Farmers' Federation is accessible via this link: https://www.ica.coop/en/media/library/press-releases/press-release-east-african-community-co-operative-societies-act-passes?_ga=2.228284440.447941260.1588746275-197673619.1580869006

any matter to which its provision relates. This assumes that the national provisions which are not contrary to or complementary to the Act remain valid.

The objective of this article is to compare two examples of supranational cooperative law, namely the the EAC Bill and the OHADA UA . Particular emphasis will be placed on the development process and the contents (constitution and functioning). This article presents only a few essential points of comparison.

Adoption procedure: Work of experts (OHADA) versus concerted approach (EAC)

We can identify four steps in the history of the EAC Cooperative Societies Bill, 2014²⁴.

Period	Activities	Comments
<u>First phase: mobilizing broad-based expertise to define a model legislation</u>		
In 2009	A comparative study on cooperatives	EAFF ²⁵ commissions a comparative study of cooperative laws in Ethiopia, Uganda and Kenya. Best practices are identified and a model legislation drafted serving as a very first draft of the Bill ²⁶ .
March 2010	Validation of the study	The study report is validated during a workshop among EAFF members.
June 2010	Sharing the draft with EALA members	EAFF convenes a workshop in Nairobi to look at policy issues and process at the EAC.
June 2011	1st think tank on cooperatives	EAFF convenes a think tank at the Cooperative College of Karen (Kenya) to further work on the draft.
<u>Second phase: from a farmer proposal to a regional law</u>		
March 2012	Meeting at EAC	EAFF sends a delegation to meet the Speaker of EALA and the EAC

²⁴ IFAD (2018), Farmers' Organizations in Africa Support to Farmers' Organizations in Africa Programme (SFOAP) – Main phase 2013-2018, IFAD, 31-32 :

https://www.ifad.org/documents/38714170/40324794/SFOAP_Results.pdf/c863b76b-7939-4899-91a8-2971c30fb185

²⁵ Eastern Africa Farmers' Federation.

²⁶ Nkandu, J. (2010) "Analytical Study of the Co-operative Acts of Eastern Africa (Ethiopia, Kenya and Uganda)" Commissioned by the Eastern Africa Farmers' Federation (EAFF), Draft Report : The next link doesn't work: http://www.sfoap.net/fileadmin/user_upload/sfoap/KB/docs/EAFF%20Cooperatives%20Study%20Report.pdf

	and EALA	Secretary General
May 2012	1st presentation to the Parliament	EAFF appears before the EALA Committee to present the Bill for the first time (Arusha, Tanzania).
April 2013	2nd presentation to the Parliament	EAFF appears before the Committee for a second time during their session in Kigali, Rwanda
August 2013	Side meeting during EAFF Congress	EAFF convenes a side meeting to discuss the Bill with their members during the 3rd EAFF Farmers' Congress in Burundi
October 2013	2nd Co-operatives Think Tank	A 2nd think-tank with EAFF members and legal experts from the Kenyan Ministry in charge of Cooperatives and the Cooperative University College is organized to further critique the Bill.
October 2013	Submission to EALA and parliamentary sponsorship	EAFF submits the revised Bill to EALA.
January 2014	The Bill is published	The Bill is published by the order of the EAC and is placed as a notice in the EAC Gazette No. 1 of 3rd January, 2014.
22 January 2014	1st Reading of the Bill	The Bill is read for the first time during the EALA session in Kampala, Uganda. EAFF sends 22 representatives to witness the Reading. The motion is seconded and the Bill is forwarded to the Committee for further consultations, before the Bill is brought back to the Assembly for the 2nd Reading.
<u>Third phase: back to the countries</u>		
January–July 2014	National and district consultations	EAFF organizes national and district consultations with members and stakeholders to ensure that the Bill is comprehensively critiqued, while preparing for EALA to convene Public Hearings in the Partner States.

		A report is further prepared and validated
August – September 2014	Public hearings.	
September – October 2014	Preparation of the amended document	All stakeholders comments and submissions are compiled by the Principle Legal Draftsman of the EAC, the Clerk and Secretary of the EALA Committee and the EAFF Policy Officer. A report is consequently drafted together with a proposed schedule of more than 60 amendments.
<u>Fourth phase: the Bill becomes an Act of EALA</u>		
October 2014	Back to EALA	The mover of the Bill and the Chair of the Committee table the report of the public hearings and the schedule of amendments before EALA for further reading.
22 January 2015	The 2nd reading	The Chairman of the Committee presents the Report to the Assembly gathered in Arusha (Tanzania). The Bill successfully goes through the 2nd reading.
27 January 2015	The 3rd reading	The Bill is scrutinized clause by clause during a 3rd reading in Arusha, Tanzania.
28 January 2015	The Bill is passed.	Once ratified, the Bill will become law and take precedence over existing national laws.

Source: Galletti, V. : “Successful engagement of Farmers’ Organizations in the policy arena: EAFF experience with the EAC Co-operative Societies Bill, 2014”,

http://www.sfoap.net/fileadmin/user_upload/sfoap/KB/docs/EAFF_EAC%20Coop%20Bill_Case%20study.pdf

The object of the EAC Bill is to provide a legal framework for cooperative societies. The EAC Bill intends to standardize national cooperative laws in the EAC Partner States. The process outlined above was participatory, involving all stakeholders. As stakeholders were aware of the process, outreach and awareness may not become a major problem. This stands in contrast to the process used with the OHADA UA. In East Africa, the Bill was introduced by a farmer organization (EAFF), while in the OHADA zone,

it was an intergovernmental entity (the Panafrican Cooperative Conference). In East Africa, the cooperative movement took part in the elaboration process, while in the OHADA zone, they were absent (only the OHADA national commissions were part of the process, as detailed below).

The UA was the result of a decade-long process of elaboration. The project was launched in March 2001 following a decision of the OHADA Council of Ministers meeting in Bangui (Central African Republic). During this session, the Council decided to extend the program for the harmonization of business law to cooperative and mutual societies. The project originated in the adoption in July 1999 in Yaoundé (Cameroon) of the 10-year Action Plan to Combat Poverty through Cooperative Entrepreneurship in Africa, at the initiative of the Pan-African Cooperative Conference (CPC), BCEAO (Central Bank of West African States) and ILO (International Labor Office). A few months before the adoption of the 10-year Action Plan in 2000, an expert workshop on the development of a uniform act related to cooperative and mutual societies in Africa was held in Yaoundé. At the end of the workshop, a recommendation was adopted describing the importance of developing a law for cooperative and mutual societies by OHADA²⁷.

In light of the arguments put forward in this recommendation, the experts suggested to the Governing Board of CPC to refer the matter to the Permanent Secretariat of OHADA. The recommendations adopted during this workshop of experts attracted the attention of the Council of Ministers, which agreed to include the law of cooperative and mutual societies in OHADA's legislative agenda as early as 2001. As a result of this validation, work continued with the aim of achieving a uniform act related to cooperative and mutual societies.

In accordance with Articles 6 to 8 of the OHADA Treaty, the process begins with the appointment of an expert to prepare a draft Uniform Act. Once the project is completed and submitted to the Permanent Secretariat of OHADA, it is then sent to the States Parties for comments (most often through the OHADA National Commissions). Subsequently, a plenary meeting of the OHADA National Commissions is held in one of the States Parties to discuss and finalize the draft, with a view to reaching agreement on any amendments. Once this version is adopted, it is then submitted to the OHADA Court for an opinion to be delivered within thirty days. Following the advice of the OHADA Court, the Permanent Secretariat finalizes the draft and presents it to the Council of Ministers for adoption.

²⁷ The main reason was to modernize cooperative law. At that time (2000), OHADA had just adopted a Uniform Act on commercial company law (1998), and the CPC questioned why cooperatives should be left out. According to the CPC, recognizing that most States Parties had outdated cooperative laws, the idea of adopting a Unified Cooperative Act was a strategy to modernize the legal framework and thus a means of boosting cooperative entrepreneurship.

After the integration of the law of cooperative and mutual societies into OHADA's legislative agenda, a working schedule was drawn up under the aegis of the Permanent Secretariat of OHADA. An expert was appointed and a first draft was proposed. A workshop was organized and the exchanges revealed serious inadequacies with the draft. The text was not in harmony with universally recognized cooperative principles and values. At the beginning of the process, OHADA had insisted on such harmony in order to identify the specificity of cooperatives and mutual societies and to achieve a uniform act consistent with the cooperative philosophy. In 2007, a new version was produced taking into account the comments and observations of the reviewers of the first version.

During the numerous debates organized on the basis of the latter draft, difficulties, both legal and practical, arising from the wide scope of the proposed law were highlighted. In Bamako on 30 January 2009 the delimitation of the law became final. During this meeting, the main point of the debate was on the title of the preliminary draft. This led to the deletion of all references to mutual societies in order to adopt the title "Uniform Act related to cooperative societies' law". The Uniform Act was published in the official Gazette on February 15, 2011.

Arguably, the process of elaboration of the UA was not sufficiently participatory, particularly in its final phase. The cooperators and other actors in the cooperative movement in the different States, were not involved enough or were not involved at all in the process, and this may have repercussions on the reception of the UA²⁸. OHADA did not take any steps to disseminate knowledge of the UA through workshops and extension seminars. Consequently the text is still largely unknown to the cooperators who may not agree with OHADA's approach or the content of a large number of the UA's provisions. In contrast, EAC made an effort to include the various stakeholders in order to provide a text that was as consensual as possible. OHADA focused its process on expert work, which may be far from the real needs of recipients of the cooperative legislation. OHADA does not have a legislative assembly, unlike EAC which has a legislative assembly of parliamentarians from all Partner States. Moreover, the CPC, which initiated the UA project represents only States, and not cooperative organizations.

It has been suggested that OHADA should diversify and allow harmonization alongside standardization.

“ The OHADA model is specific and original, but it is far from meeting the promises of flowers. Perhaps it carries a bit of a dream. In order to make it shine brightly, some asperities have to be corrected: to contain the understanding of business law within strict and reasonable limits; to strengthen the dialogue between the CCJA [Court of Justice and Arbitration of OHADA] and the national supreme courts; to enrich the civil law fund of the OHADA law with measured

²⁸ Tadjudje, W. (2015) : “Le droit des coopératives et des mutuelles dans l’espace OHADA”, Larcier, 74-79.

contributions of comparative law; *to accept, besides standardization, other more flexible processes of legal integration, such as directives and model laws , etc.*”. [English translation by the author]²⁹.

Harmonisation would allow national adaptations, which would provide an opportunity for the cooperative movement to have a say. Standardisation, in contrast, requires the application of the same law in all 17 States Parties³⁰.

Constitution of cooperatives

The definition of a cooperative in the UA and the EAC Bill is consistent and inspired by the International Cooperative Alliance (ICA) Statement on Cooperative Identity. The same is true of the cooperative principles, although in the EAC Bill they are elaborated in greater detail.

The UA recognises two types of cooperative: the simplified cooperative society (SCOPS) and the cooperative society with a board of directors (SCOPCA). In most countries of the OHADA zone, there are similar entities, called groups. According to Mr Idrissa Kéré, former Director of Legal Services³¹, the question of the integration of groups in the UA had been considered during the preparatory period. The UA provides more flexible rules for SCOPS, analogous to the rules governing groups under national laws, and more rigid rules for SCOPCA. The aim was to transform the groups into SCOPS and to transform classical cooperatives into SCOPCA. However, the OHADA legislator does not state this intention in the UA. Cooperatives have the choice between setting up as SCOPS (at least five members) or SCOPCA (at least fifteen members) while groups are not recognised in the UA³².

The EAC Bill provides for only one legal model, the cooperative society, whose constitution requires at least ten members. If the formalities of incorporation are met, the founders must apply for registration. Article 7 of the EAC Bill provides that a cooperative society shall be registered by the appropriate authority in the Partner State. It is left to national authorities to determine the registering authority. Article 52 of the EAC Bill states that “an agency responsible for organizing, registering, promoting or supporting cooperative societies and for rendering training, conducting research and other technical support to cooperative societies shall be established by law”. The establishment of the agency shall be determined by

²⁹ Pougoué P.-G. (2009) : “Présentation générale du système Ohada”, in Akam Akam A. (editor), Les mutations juridiques dans le système Ohada, L’Harmattan, 11-19.

³⁰ This argument concerning the admission of harmonization alongside standardization may also be valid for the EAC insofar as it adopts Acts applicable in the same way in the Partner States. Since each country has its own history, culture and specificities, the fact that they cannot be taken into account in a legislative process may create barriers in the implementation of the adopted Acts.

³¹ Director of Legal Services at the OHADA Permanent Secretariat until 2012.

³² Hiez, D. & Tadjudje W. (2012) : “Analysis of the differences between SCOPS and SCOPCA”, RECMA : http://www.recma.org/sites/default/files/scops_scoopca_differences_en.pdf

the societies and documented by way of a resolution passed through the national apex cooperative organization. Also, the EAC Bill requires that at least half of the members constituting the board of the agency shall be selected from cooperative societies.

In the UA it was provided that the cooperatives registry shall be kept by the national authority in charge of territorial administration, or the competent authority. From one country to another, this authority is different. Given that OHADA law is intended to be uniform, this approach is likely to cause many contradictions in the application of cooperative law. Presently, the registry of cooperative societies in Ivory Coast is maintained at the office of the court, in Cameroon and Gabon it is at the Ministry in charge of agriculture, in Mali at the Ministry in charge of the elderly³³. Not only is the authority in charge of the cooperatives registry difficult to identify under the terms of the UA, in addition, all prerogatives are retained by the State. The EAC Bill requires cooperation between the members of the cooperative promotion agency (in charge of registration and others), and is designed to respect the experience, specificities and potential of cooperatives.

The two laws deal with the question of time limits for registration differently. In the EAC Bill, the appropriate authority shall register a society and issue a certificate of registration within 15 days, when it is satisfied that the submitted application for registration has fulfilled the requirements for registration. If the appropriate authority rejects the application, it shall give a written explanation to the representatives of the cooperative society within 15 days. The certificate of registration issued to a cooperative society is evidence that such society is registered in accordance with the EAC Bill, and a society so registered shall have juridical personality from the date of its registration and their members shall have limited liability (Article 8 of the EAC Bill).

According to Article 77 of the UA, as soon as the applicant's request is ready, the administrative authority responsible for keeping the registry shall assign a registration number and shall mention it on the form provided to the declarant. There is no defined time within which the registration must be processed. Such a situation may cause harm to those seeking to register their cooperative, if the delays are too long and there is no mechanism for redress.

³³ Tadjudje W. (2017) : "L'insuffisance du cadre juridique général du registre des sociétés coopératives en droit OHADA des sociétés coopératives", in Hiez D. & Kenmogne Simo A. (Editors), *Droit des coopératives OHADA*, Presses Universitaires d'Aix-Marseille, 181-191.

Functioning of cooperatives

1. Director's mandates

In terms of governance, the cooperative bodies are almost the same under each law., with the classic distinction between management bodies and supervisory bodies³⁴. One point of distinction is the denial of the accumulation of mandates for directors under the UA. In SCOPS, the chairman of the management committee may be a member of a board of directors of SCOPCA but is not eligible to serve as chairman of the board of directors. He/she may be a member of other management committees, but may not be a chairman. However, in the SCOPCA, the directors can only belong to another SCOPCA board of directors having their seat in the territory of the same State Party. In addition, the chairman of the board of directors may not hold office as chairman of a board of directors or as chairman of a management committee in other cooperative societies in the same State. Similarly, as a director, he or she may not be a member of another SCOPCA board of directors having their seat in the territory of the same State Party³⁵. Given that unions and federations (cooperatives apex organizations) have the legal nature of SCOPCA, this provision on the denial of the accumulation of mandates may prove to be disruptive.

2. Member's Common bond

The UA places great emphasis on the notion of the common bond between members as a criterion for the acquisition of cooperative status. In the UA the common bond between members is explicitly defined. According to Article 8 of the UA³⁶, the cooperative is composed of cooperators who are united by the common bond on the basis of which the society was founded. This common bond designates the objective element or criterion shared by the cooperators and is the basis on which they come together. It can be the profession, or it can be proximity or any other objective link that can bind members such as a community of interests, objectives, etc.

In contrast, the EAC Bill does not focus on the concept of common bond. Under the EAC Bill, the founders (at least ten members) must be people living in the same area. There is one exception: a cooperative society may sell some of its shares to persons outside its area when the society faces shortage

³⁴ However, it should be recalled that in OHADA law, given the existence of two forms of cooperatives, the names of the organs are particular to facilitate distinctions: in SCOPS we have a management committee and in SCOPCA, a board of directors.

³⁵ Hiez, D. & Tadjudje W. (2013): "The OHADA Cooperative regulation", in Cracogna D., Fici A & Henry H. (Editors), *International Handbook of cooperative law*, Springer, 89-113.

³⁶ "A cooperative shall be composed of members who, united by common bond on the basis of which the cooperative was created, shall take part in the activities of the cooperative and hold shares proportional to their contributions and pursuant to cooperative principles.

Within the meaning of this Uniform Act, the common bond shall refer to the element or objective criteria that members have in common and on the basis of which they gather.

It may, in particular, be related to a profession, an identity of a purpose, business or legal form".

of capital. This is the only basis upon which a cooperative society may allow people outside its area to get membership.

The weaker interest of the EAC Bill on the issue of the common bond might be related to the fact that it is already mentioned in national laws. Kenya's national law provides that a person (other than a cooperative society) shall not be qualified for membership of a cooperative society unless, among other requirements, his or her employment, occupation or profession falls within the category or description of those for which the cooperative society is formed, and he or she is resident within, or occupies land within, the society's area of operation as described in the relevant bye-laws. This means that cooperative members must share either a community of occupation or activity, or a geographical proximity³⁷. Once membership has been acquired, the cooperator has rights and obligations. The EAC Bill sets these out clearly. In the UA they must be deduced from the combination of various provisions.

3. Apex organizations

The UA, the law provides for unions, federations and confederations (at national level), to which it adds the cooperative networks (at a regional level) to gather cooperative organizations from different State Parties. The law sets out the frameworks, the methods of formation, and the rights and obligations of these apex organizations without setting out the mechanisms for this vertical structuring. The EAC Bill is less prescriptive and refers to possible collaboration between apex bodies. Article 5 of the EAC Bill provides that cooperative societies serve their members most effectively and strengthen the societies' movement by working together through local, national, regional and international structures. Also, a cooperative society may, according to its nature, be established at different levels as determined by its members.

The EAC Bill recommends the establishment of a single national apex cooperative organization in each Partner State. In the OHADA zone, there are usually several apex organizations in each country, which is unlikely to assist in the unification of the cooperative movement. The EAC Bill's recommendation that there is only a single apex organization at the national level will oblige the national actors to work together, especially since the Bill also ensures that the cooperative movement is represented in the agency responsible for the promotion and registration of cooperatives. The key role of the national apex cooperative organization includes promoting cooperative societies, formulation and review of policy and legislation, and serving as a platform for cooperative societies at the national level.

³⁷ Article 14 of the Kenyan Cooperative societies Act, Revised Edition 2012 [2005].

4. Audit

In the EAC Bill there are two distinct types of audit: a financial audit and a cooperative or organizational audit. The financial audit is conducted to check the accounts of the cooperative in order to assess whether the financial resources have been properly managed. The cooperative or organizational audit is carried out to evaluate the application of the cooperative principles in the cooperative's life. By comparison, no cooperative audit system has been prescribed for by the UA, omitting an important mechanism for protecting the cooperative identity.

5. Policies applying to cooperatives

The EAC Bill has provided for tax exemptions for cooperatives, subject to certain conditions. Similarly, it has provided that cooperatives may access public land under certain conditions. It should be noted that the EAC Bill is the result of a negotiations carried out by agricultural organizations grouped together within a sub-regional entity, and this may explain the inclusion of a public policy relating to access to land. The UA does not deal with public policies for cooperatives, and these matters are left to the prerogative of the States.

6. Dispute resolution

Both laws support the use of alternative means of conflict management. The EAC Bill cites them directly and details the procedures. The UA is not as direct. However, there is the OHADA Uniform Act on Arbitration and a uniform law on mediation is also in progress in OHADA.

Conclusion

Without discounting its merit, the UA has contradictions and inadequacies that complicate the construction of a common philosophy for cooperatives in the OHADA zone. The UA was an opportunity to enshrine in a regional law the culmination of a long tradition and culture in cooperatives in the region since the pre-colonial period. But, it seems to have missed the mark.

In contrast, the EAC Bill has developed an appropriate legal framework for cooperatives. The framework is appropriate insofar as it has taken into account, the opinions of all stakeholders. National parliamentarians are represented in the Community Parliament. The EAC Bill's intended entry into force appears to have been foreshadowed by awareness programs, which may eventually lead to a favorable reception and enforceability. The OHADA legislator can draw on the experience of its counterpart in East Africa in the event of a possible revision of the UA. Drawing inspiration from what is best and

reproducible is always beneficial and it should be remembered that the EAC cooperative legal framework was largely inspired by the Ethiopian experience. The approach in East Africa could enable the OHADA legislator to improve the legal framework for cooperatives. This does not mean that the experience in East Africa is perfect, but it involved a more effective process for stakeholder engagement than that of OHADA.

However, it should be pointed out that the assumed effectiveness of cooperative law in East Africa is only theoretical since the Bill has not yet moved to become an Act of the Community. In spite of this situation, the EAC Bill has at least the merit of being a model law that can inspire various regions interested in the standardization or harmonization of cooperative law, either in the process of its elaboration or in its content.

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