

A New Role for Citizens in West and Central Africa Commercial Law Reform

Isabelle I.D. Deschamps¹

¹McGill University, McGill Institute of Comparative Law, Montreal, Canada

isabelle.deschamps2@mail.mcgill.ca

This paper aims to reframe debate about the purposes and goals of business law reform in West and Central Africa in order to better serve human and economic development in the region.

In order to do so, it will look at the evolution of formal business law in the region from the colonial period, when it was regulated by the French *Code de commerce* of 1807 and other laws, until today where Uniform Acts adopted by the Organisation for Harmonization of Business Law in Africa (“**OHADA**”) constitute its primary source. The paper will show the gap that continues to exist between these Western-inspired sources of law and the traditional business practices of the citizens of the region, one example of such practice being the “tontine”, an informal micro-credit arrangement.

I argue that the paradigms and methods currently used by OHADA and other international organizations such as the World Bank, the European Bank for Reconstruction and Development and the United Nations Commission on International Trade Law in their law reform activities do not take appropriate or adequate account of economic, social and cultural realities of the regions where the new law is to be implemented.

Drawing from social-scientific and critical legal pluralist theories, the paper will suggest that commercial law reformers should recognise the central role of citizens in creating the law. By so doing, they will design legal reform instruments that integrate traditional norms and practices and ensure their equal status with officially enacted State rules. Moreover, the paper will argue that commercial law reform involves more than efficiency concerns, and must be attentive to human rights and gender issues in business practices.

Finally, it will propose an analytical framework for applying these objectives so as to empower citizens in West and Central Africa as law-makers. This framework will integrate some of existing law reform paradigms with additional ones focused on the identity of legal actors in the region (banks, small, medium and large entrepreneurs, micro-credit institutions, financiers, etc.), the dynamics between them, the role of women in business and alternative legal reform methods based on bottom-up approaches to law.