

The Constitutional Validity of the Ohada Treaty in Cameroon

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Abstract

The incompatibility of articles 42 and 63 of the treaty relating to the Organization for the Harmonization of Business Law in Africa (OHADA treaty) and article 1 (3) of the constitution of Cameroon gives rise to the question: is the OHADA treaty constitutionally valid in Cameroon given its mixed legal system? The author answers in the affirmative. The paper seeks to investigate into the constitutional validity of the OHADA treaty. In so doing, the paper shall explore the Cameroonian legal system and some key provisions of the OHADA Treaty, which will be highly selective for this article with the view to determine whether the Treaty establishing OHADA is constitutionally valid in Cameroon. The value of this article lies in the insight it offers into OHADA and Cameroon's legal system.

Index terms— constitution, validity, ohada, treaty, cameroon, legal system.

Introduction n the early 1960s, the African states in the franc zone applied outdated and inconsistent French laws, ranging from the French civil code to the 1804 commercial code (Tiger 2004, p35). This inconsistency resulted in legal uncertainty regarding the applicable laws and incurred unnecessary costs to cross-border business transactions, considerably harming investment prospects in the zone. Consequently, the ministers of finance in the franc zone decided to appoint high-level working group to investigate the problem, and consider the possible solutions (Martor and Thouvenot 2004, pp 5-11). After months of investigations, the group concluded that it was feasible and necessary to create a new business law for the francophone African states. This led to the signing of the Treaty relating to the harmonization of business law in Africa (OHADA Treaty) by 14 African states which established OHADA, literally translated as the organization for the harmonization of business Law, with the signatory states agreeing to relinquish some of their sovereignty (Abarchi 2000, pp10-11).

The OHADA treaty strives for the harmonization of business law in Africa with the aim to attract foreign investment in order to foster regional economic integration and development of member states. This is not to say that harmonized laws are enough. Harmonized laws are necessary but not a sufficient condition for development because there are other Author: University of Buea Higher Technical Teachers' Training College (HTTTC) Kumba P.O. Box 63, Buea. e-mail: dorisleno2008@gmail.com factors which must be considered for the development of a country or continent. To date, this treaty is ratified by 17 western and central African states. Anglophone Cameroon is distinct from the rest of OHADA member states because it inherited the British common law system while the rest of the member states inherited the French civil law from their colonial past and OHADA's official language is French (Article 42 OHADA treaty). Taking into account articles 42 and 63 of the OHADA treaty and article 1 (3) of the Constitution of the Republic of Cameroon which formalized the equality of English and French by introducing the phrase "having the same status", this paper raises one important question: Is the treaty establishing OHADA constitutionally valid in Cameroon? The author answers in the affirmative.

1 II.

2 Cameroonian Legal System

Historically, Cameroon was colonised by Germany and then Great Britain and France. France took the larger eastern sector and Britain the smaller western sector, which they administered separately as mandated territories

2 CAMEROONIAN LEGAL SYSTEM

44 under the League of Nations. Britain transplanted her English common law system in West Cameroon while
45 France transplanted the civil law system in East Cameroon. In 1960, East Cameroon gained independence as La
46 Republique du Cameroun (Republic of Cameroon). In 1961, West Cameroon joined the Republic of Cameroon
47 to form the Federal Republic of Cameroon made up of West and East Cameroon, with each section maintaining
48 its own legal system. The federation was replaced in 1972 by a Unitary Republic of Cameroon while the name
49 of the unitary state was subsequently changed in 1984 to the Republic of Cameroon. The Federal Republic was
50 formed with article 1 of the Federal constitution of 1961 providing that the official languages shall be French and
51 English. This was retaken in article 1 of the unitary constitution of 2 June 1972 and article 1 (3) of the revised
52 constitution. This reunification left the country with two distinct legal systems: the civil law system operating
53 in francophone Cameroon, and the common law system operating in anglophone Cameroon.

54 Legal systems varied greatly across the world, but civil and common law is the most used. Like South Africa,
55 Cameroon operates a dual legal system, the difference of which is demonstrated herein. First and foremost, civil
56 law is defined as written rules of law enacted by parliament. Its originates from Europe and does not recognize
57 the English concept of *stare decisis*, a concept that obliges lower courts to comply with decisions of the higher
58 courts ??Tetley 1999, pp 591-618). On the other hand, Common law is what francophones refer to as "driot
59 anglophone". In both systems, judges play an important role. In civil law, the inquisitorial or investigatory
60 system obtains. Under the system, the judge is the chief investigator who comes to court already acquainted
61 with the facts of the case. He is assisted by a lawyer whose role is to advise a client on legal proceedings, write
62 pleadings and help provide favorable evidence to the judge. In common law, adversarial or accusatorial system
63 prevails. Under the system, the judge acts as a referee that is neutral person or obiter -ignorant of the facts of the
64 case while the two lawyers argue their sides of the case. The judge listens to both sides to come to a conclusion
65 about the case.

66 Examination of witnesses is a key feature under the common law system, the importance of which rest with
67 the concept of presumption of innocence. Meaning an accused is presumed innocent until proven guilty (*actori
68 incumbit probatio onus probandi incumbit et qui dicit meaning imputes no guilt until guilt is proven*). This
69 concept is well outlined in section 11 of the Universal Declaration of Human Rights 1948 and the preamble of
70 Cameroon's constitution which affirms Cameroon's firm attachment to the United Nations. More so, trial is done
71 by a jury be it in a criminal or civil suit while in civil law, there is no trial by jury except in criminal cases
72 because the fact finding function is entrusted to a specially appointed judge called "le juge d'instruction". le
73 juge d'instruction is an investigatory magistrate who never sits in the panel of trial judges. In civil law, police
74 have arbitrary powers where it is believed that the fear of gendarmes is the beginning of wisdom. A contrary
75 view obtains in Anglo-Saxon where the fear of the law is the beginning of wisdom (rule of law shall prevail)
76 ??Anyangwe 1983, p245).

77 Based on the differences in legal education and training in francophone and Anglophone Cameroon, the judges
78 approached the question of statutory interpretation differently, which, according to Tabe-Tabe Simon (2009,
79 p18) hinders the uniform interpretation and application of the OHADA UAs. Technically, interpretation is a
80 process whereby meaning is accorded or assigned to words in a statute while construction is the process whereby
81 exuberances in a statute are resolved or the process whereby uncertainties or ambiguities in a statute are resolved.
82 Interpretation is both a power and obligation for judges. Judges are obliged to interpret the law failing which
83 they shall be prosecution for denial of justice. This is on the bases of article 37 of the Cameroon's constitution
84 and article 4 of the Civil Code. Generally speaking, interpretation is part of legal reasoning and every statute
85 that comes before the court must be interpreted and interpretation is generally when a word in a statute is
86 obscure which may have resulted from drafting error made by parliament without noticing. It may also result
87 from the use of broad terms designed to cover several possibilities like motorcycle taken to include motorbike,
88 from changes in the use of language and ambiguity, that is, when a word has two more meanings with difficulty
89 of ascertaining the right one.

90 French codes do not contain provisions regarding methods of interpretation. It is thus left for the judges to
91 decide on the methods to be used or to find ways of interpreting statutes. In francophone Cameroon, judges
92 rely on grammatical, logical, historical and teleological approaches to the interpretation of states ??nyangwe 1983,
93 p294). Anglophone judges like their counterparts in England and other Anglophone countries rely on rules of
94 construction such as the literal rule, golden rule and the mischief rule (Tabé-Tabé, 2009 pp 9-10). In Practical
95 terms, the approaches are similar because the literal rule correlates to the grammatical method, the golden rule
96 to the logical method and the mischief rule to the both the historical and teleological methods.

97 The historical evolution of Cameroon equally leaves the legal landscape with three laws: rules of customary
98 law (which most Cameroonians follow in matters such as marriage and divorce), English-derived laws and French-
99 derived laws) and two distinct languages: English and French ??Leno 2014, p 26). By virtue of Art 1(3) of the
100 Republic of Cameroon's constitution, "The official languages of the Republic of Cameroon shall be French and
101 English, both having the same status. The state shall guarantee the promotion of bilingualism throughout the
102 country. It shall endeavour to protect and promote national languages". Art 1(3) lays down the principle of
103 equality of both languages, which involves equal protection and promotion". Accordingly, Art 31(3) Cameroon
104 Constitution provides that "laws shall be published in the official gazette of the Republic in English and French".
105 This means that any act of parliament, ordinance of the president, treaty or convention, decree, order, or

106 regulation intended to apply throughout the Republic of Cameroon must be made, enacted, printed, or published
107 simultaneously in French and English (Enonchong 2007, p 101).

108 In practical terms, most of the laws of the country are enacted and published in French. An example of such
109 is the presidential decree (Decree 2006/441 of 14 December 2006) appointing the vicechancellor of the English-
110 speaking University of Buea; although it was a decree appointing an Englishspeaking Cameroonian, it was issued
111 and published in French only. Coins and notes of the national currency which were bilingual in the past have
112 become unilingual in French only. Even the road signs in the Englishspeaking parts of Cameroon are sometimes
113 printed with the French version more conspicuous and prominent than the English version. The principle of
114 equality of languages is only enshrined in the constitution without actual implementation. The principle of
115 equality does not avail English-speaking Cameroonians the right to receive information from state institutions in
116 the official language of their choice. Moreover, it does not give equal opportunity to obtain employment in state
117 institutions or regional bodies such as OHADA. On the strength of article 1 (3) of the Cameroon constitution,
118 such discriminatory practices should be condemned as outright violation of a core constitutional provision.

119 Cameroon is signatory to several international agreements and treaties including but not limited to the OHADA
120 treaty. Business laws fall within the jurisdiction of the legislative power that is the parliament, meaning that the
121 area covered by the treaty is effectively reserved for parliament. However, "with regard to the subjects listed in
122 Art 26 (2) [of the Constitution], Parliament may empower the President of the Republic to legislate by way of
123 ordinance for a limited period and for given purposes" (art 28 (1)). Art 36 (1) further states that:

124 The President of the Republic may after consulting with the President of the Constitutional Council, the
125 President of the National Assembly and the President of the Senate, submit to a referendum any reform bill
126 which, although normally reserved to the legislative power, could have profound repercussions on the future of
127 the Nation and National Institutions. This shall apply in particular to; inter alia, bills to ratify international
128 agreements or treaties having particularly important consequences. (Italics are author's emphasis).

129 It follows that the President of the Republic of Cameroon may ratify international agreements or treaties
130 within the area of competence of the parliament, but only with the authorisation of parliament. With the power
131 bestowed on the president of the republic (law 94/04 of 4 August 1994 authorizing the President of the Republic
132 of Cameroon) to ratify the Treaty, The OHADA treaty was ratified (decree 96/177 of 5 September 1996) but
133 without consideration of the legal peculiarities of the country, that is, art 1 (3). The constitutional principle
134 of "hierarchy of norms" confers precedence on duly ratified international treaties and agreements over national
135 laws. This is properly underscored in art 45 of the Cameroonian constitution which clearly states that: "Duly
136 approved or ratified treaties and international agreements shall, following their publication, override national
137 laws, provided the other party implements the said treaty or agreement". Art 45 underscored the supremacy
138 of ratified international treaties to the effect that in the event of conflict between a ratified treaty and national
139 law, ratified treaty shall prevail. The ratification of the OHADA treaty is Cameroon's first attempt to provide a
140 uniform law on business law matters. But is that ipso facto enough to militate for the ratification of the OHADA
141 treaty if not in line with a constitutional provision? As regards Cameroon in particular, it would be an aberration
142 for Cameroon to ratify a treaty which clearly excludes any of these languages (French and English) as working
143 languages.

144 3 III. Appraisal of Ohada and its Legal

145 Framework (ohada treaty)

146 OHADA is a French acronym literally translated as an Organisation for the Harmonisation of Business Law
147 in Africa. For Martor et al (2007, pp284-285), OHADA is a manifestation of the political will of the ministers of
148 finance and justice of the France zone to create uniform rules for the restructuring and amendment of the legal
149 environment. Eba (2004, p7) succinctly describes OHADA as "a legal tool thought out and designed by and
150 for Africa to serve the purposes of regional integration and economic growth on the continent." Dickerson (2005,
151 p21) provides a more elaborate definition; she predicates that: OHADA is a system of uniform laws; it is a unified
152 legal system designed to protect and enhance the pro-investment qualities of OHADA laws. It accomplishes this
153 by erecting an entire legislative and judicial structure that formulates and interprets the OHADA laws, and
154 prepares them for enforcement.

155 Martor et al (2007, p1) described OHADA as an international organization with a legal personality distinct
156 from those of its members. As a legal entity, it has the capacity to conclude or negotiate international contracts.
157 It is useful to note that OHADA cannot be sued but can appear before domestic courts, and it enjoys privileges
158 and immunities in the exercise of its functions in all member states. The judges of the CCJA enjoy diplomatic
159 immunity, and so do the officials, employees, and the court-appointed arbitrators. OHADA is not a federation,
160 economic or monetary union, but it does possess certain characteristics thereof (Paillusseau 2004, pp 1-2).
161 OHADA member states have control over their own affairs, but are subject to OHADA for national decisions
162 pertaining to business laws. Although it remains to be seen how Anglophone countries might be integrated into
163 OHADA, by virtue of article 53 of the OHADA treaty, it might be described as a continental organization that
164 seeks to unify the business law of the African states.

165 The beginnings of OHADA can be traced to the signing of the treaty, which entered into force in 1995. The
166 OHADA treaty is to be read with the Revised OHADA treaty. To date, this treaty is ratified by 17 western and
167 central African states. Ratification is in accordance with constitutional procedures of the member states. The

3 III. APPRAISAL OF OHADA AND ITS LEGAL

168 constitution of most of the member states requires the intervention of the national parliament for its authorization.
169 For Abarchi (2000, p10), the immediate effects of ratification are to modify the internal laws of the signatory states
170 and engage those states financially. In other words, following ratification member states are obliged to apply the
171 UAs and contribute financially towards the functioning of OHADA's institutions. Apart from Cameroon, which
172 was colonized by the Germans and then the French and British, the rest of OHADA's member states were French
173 colonies where consequently, the French imparted their tradition and laws on which OHADA is prodigiously
174 based. Accordingly, French is the official language and Article 42 of the OHADA treaty provides "le français est
175 la langue de travail", meaning French is the working language of OHADA. This means that the drafting of the
176 Uniform Acts (UAs), the language of instruction at Higher Regional School of Magistracy and Administration
177 (ERSUMA) and proceedings at the Common Court of Justice and Arbitration (CCJA) and council meetings are
178 all conducted in French.

179 The treaty seeks for the harmonization of business law in Africa through the "elaboration and adoption of
180 simple modern common rules adapted to their economies, by setting up appropriate judicial procedures, and by
181 encouraging arbitration for the settlement of contractual disputes". Underlying this is the aim to attract foreign
182 investment in order to foster regional economic integration and development of the member states. To this effect,
183 nine UAs have been adopted by the council of ministers. The provisions of the UAs are self-executing and enjoy
184 precedence over nationally-enacted business laws. This implies that upon ratification of the OHADA treaty by
185 a state, the state becomes automatically bound by the provisions of the treaty and the UAs (Leno 2012, pp
186 261-262). According to Leno (2014, p133), this eliminates any possibility of escape by contracting states from
187 the provisions of the treaty and the UAs. Because the provisions of the UAs are automatically binding, there is
188 no need for any transformation or enactment by national parliaments.

189 The OHADA treaty has put in place five supranational institutions to serve the organization. These include
190 the Conference of Heads of State, the Council of Ministers of Justice and Finance, the Permanent Secretariat,
191 ERSUMA and the CCJA whose role is to ensure that the treaty and the UAs are interpreted uniformly across the
192 entire OHADA territory. Every qualified citizen of the signatory states is eligible for employment by any of these
193 institutions. Given that the working language is French, the possibility of Anglophone Cameroonians serving in
194 some of the institutions is limited. This is true for admission into ERSUMA predicated to train and improve
195 knowledge of the UAs and other regional laws. This is equally true for conduct of proceedings in the CCJA. The
196 altitude of art 42 clearly explains why most of the cases to the court originate from the French-speaking countries
197 of OHADA. Leno (2008, p487) showed that 90 percent of the cases decided by the CCJA are transferred
198 locally from the Ivorian courts. English, Portuguese and Spanish translators have been appointed to serve the
199 non-French citizens of the organization but it leaves much to be desired.

200 In recognition of the difficulties raised by article 42 of the treaty, the provision of article 42 has been amended
201 providing for four official languages: French, English, Spanish and Portuguese. The author commends OHADA
202 for its effort and postulates that the new article 42 will have far-reaching effect on the membership of OHADA.
203 According to Leno (2014, p25), it will encourage other African states to join the organization. The new article
204 42 not only portrays OHADA's effort in integrating English, Spanish and Portuguese-speaking African states
205 into the system, but also a laudable step towards fulfilling article 53 of the OHADA treaty, which gives every
206 member and nonmember of the African Union the opportunity to join OHADA. A significant feature of the treaty
207 is the opportunity it provides for other African states to join. Art 53 of the OHADA treaty offers every member
208 and nonmember of the African Union the opportunity to join OHADA. Considering the benefits to be derived
209 from a unified business law, many African leaders have agreed to the extension of this priceless tool of economic
210 integration to their respective countries. Nigeria, Ghana, Liberia and Angola have expressed interests in joining
211 OHADA. This is a sign of confidence in the OHADA initiative. The initiative has also attracted the attention
212 of the international community which, through the World Bank, European Union (EU) and the United Nations
213 Development Program, has significantly contributed to and participated in its projects (Dickerson 2009, P 1).

214 It is noteworthy that the new article 42 emphasizes the supremacy of the French language in which the UAs
215 are first published before being translated into the different languages. In the event of conflict between the
216 languages, the French version prevails. This situation raises the issue of the authenticity of the translated versions
217 of the UAs. Unfortunately, the new art 42 has not resolved the difficulty created by the old article 42. French
218 remains the working language in the drafting and printing of the UAs and conduct of proceedings at the CCJA
219 (Thouvenot 2006, p3). This is in line with article 63 of the OHADA treaty which provides that: "the present
220 treaty, written in two copies in the French language, will be deposited in the archives of the Republic of Senegal
221 which shall deliver a certified true copy to each Government of the contracting States. This is another aspect to
222 show that the treaty is discriminatory and unconstitutional.

223 Article 31 (3) of the UA on Arbitration excludes English when it provides that where the documents on
224 recognition and enforcement of arbitral awards are not in French, a party shall have to produce a translated
225 version, certified by a translator registered on the list of experts established by a competent court. These articles
226 contradict the various constitutions which have always provided English and French as the official languages with
227 equal status. It is no secret that English is the leading commercial language in the world of business today. And
228 this has been excluded by the OHADA treaty. This is wrong and leaves us with the impression that Cameroonian
229 authorities just appended their signatures to the treaty without having read through them or worse still that
230 they did not participate in the elaboration of the treaty.

231 4 IV. The Constitutional Validity of the Ohada Treaty in 232 Cameroon

233 The constitution is the fundamental law of the country to which all laws must conform to. Thus, for any law
234 to be constitutionally valid, it must conform to all the provisions of the constitution. When we look at the
235 OHADA treaty critically, there are some articles such as articles 42 and 63 of the OHADA treaty discussed above
236 which do not conform to the provisions of the Cameroonian constitution. A summary of articles 42 and 63 of
237 the OHADA treaty reveals that the treaty is unconstitutional and therefore cannot be applied in Cameroon,
238 because the articles are contrary to article 1 (3) of the Cameroonian constitution. The said articles violate the
239 educational, justice and employment rights of Anglophone Cameroonians guaranteed by international human
240 rights instruments such as the African Charter on Human and People's Rights, the Universal Declaration of
241 Human Rights, and the International Covenant on Civil and Political Rights. These instruments have been signed
242 and ratified by Cameroon, confirming their strong support and respect of fundamental human rights. In light of
243 the international instruments, the application of the OHADA treaty amounts to domination, discrimination and
244 marginalisation of the minority Anglophone Cameroonians by the majority francophone Cameroonians ??Lerner
245 1991, pp 23-37).

246 The marginalisation of Anglophone Cameroon has caused great resentment and resistance by Anglophone
247 practitioners, who see OHADA as a form of domination and as an instrument to undermine the cherished
248 common law of the provinces. The following examples illustrate Anglophone Cameroonians grave resentment and
249 reluctance to apply the UAs. In *Meme lawyers association v Court registrars of Kumba*, a group of Anglophone
250 lawyers demonstrated their resentment against the extension of a ministerial order to anglophone Cameroon. In
251 terms of the circular, a claimant is required to pay a fee of five percent of the amount of his claim before the
252 claim can be listed for hearing. In response to this circular, the group of lawyers brought an action before the
253 High Court of Kumba seeking a declaration that the ministerial circular was unconstitutional and illegal in that
254 part of the country ??Enonchong 2007, p 111). The High Court ruled in favour of the lawyers to the effect that
255 it is illegal to collect five percent of a claimant's amount as condition precedent for filing.

256 In fact, while some judges in Cameroon west of the Mungo have persistently refused to apply the UAs, others
257 only make allusions to the OHADA treaty without discussing the substantive law ??Ekome 2002, p86). A case
258 in point is that of *Mariner Max and DM Ltd v Dumas Jean Raymond* which involves mismanagement, fraud and
259 misappropriation of a company's funds by the defendant (Raymond), a director and shareholder of the company.
260 The applicants (DM Ltd) sought a restraining order against the defendant on the following terms:

261 An order restraining the defendant from exercising the functions of director or any other administrative or
262 supervisory functions, whatsoever in regard to the affairs of the company; to hand over all key documents of
263 title, records of accounts, money and other objects which were the property of the company and from interfering
264 with the day to day business of the company or from visiting the premises of the company save for the purpose
265 of inspecting documents of accounts.

266 In deciding the matter the trial judge referred to the provisions of article 326 of the Uniform Act on Commercial
267 Companies and Economic Interest Groups (Companies Act) and the Companies Ordinance of 1958 applicable in
268 that part of the country. On appeal, his judgment was revised without reference to any provision of the uniform
269 Act. The same strand of reasoning was followed in the case of *Ngu Chang Celestin and Maitre Mba Godwill v*
270 *Celestin Asangwe* wherein the uniform Act on Simplified Recovery Procedures and Enforcement Measures was set
271 aside for Law 92/008 of 14 August 1992 relating to the execution of court judgments in anglophone Cameroon,
272 on the basis that it was the applicable law in part of the country.

273 In *Akiangan Fombin Sebastin v Foto Joseph and Others, Ayah (2000)* dismissed the application of the OHADA
274 treaty in Cameroon on the basis that, "a treaty which is basically French suffers from self-exclusion from the
275 English-speaking provinces". For him, the treaty as well as the UAs are not applicable in Cameroon, and are
276 thus constitutionally invalid. He further argue that "no piece of legislation can bring in Napoleonic or civil law
277 principles through the back door and even parliament cannot make laws which will abrogate the duality of laws
278 in Cameroon since it was a matter at the heart of negotiations leading to the reunification of the federated
279 states." The same line of reasoning was adopted in *Limbe Urban Council v Isidore Bongam* wherein the presiding
280 judge of the High Court of Fako Division said: "as to the OHADA treaty, I want to point here straightforward
281 that it is not applicable in this Since the OHADA treaty infringes on the constitutional and human rights of
282 anglophone Cameroonians, the question is whether it can be declared unconstitutional by the Cameroonian
283 Constitutional Council (CC). Article 46 of the constitution provides for a CC whose responsibility, inter alia,
284 is to rule on the constitutionality of laws, treaties and international agreements. Even though the CC has not
285 gone operational, article 67 (4) states that: "the Supreme Court shall perform the duties of the Constitutional
286 Council until the latter is set up". Based on article 1 (3), the CC or the Supreme Court can declare the OHADA
287 treaty unconstitutional. However, the government of Cameroon cannot invalidate its consent to be bound by the
288 OHADA treaty on the basis that it is in violation of its internal laws, because the treaty was duly approved by
289 the parliament and ratified by the president, giving the treaty the force of international law in the country. This
290 is supported by article 46 of the constitution which provides: "duly approved or ratified treaties and international
291 agreements shall, following their publication, override national laws, provided the other party implements the
292 said treaty or agreement".

5 CONCLUSION

293 The validity of the treaty is also based on the fact that no threat was used against the president of Cameroon to
294 secure its consent, which implies that the treaty is legally binding on Cameroon in accordance with the principle
295 of pacta sunt servanda. Articles 43 and 47 (3) of the Constitution also seem to suggest that the OHADA treaty
296 is valid and applicable in Cameroon. Article 43 provides:

297 The President of the Republic shall negotiate and ratify treaties and international agreements. Treaties and
298 international agreements falling within the area of competence of the Legislative Power as defined in Article 26?
299 of the constitution shall be submitted to Parliament for ratification.

300 On the other hand, article 47 (3) of the constitution provides: "laws as well as treaties and international
301 agreements may, prior to their enactment, be referred to the Constitutional Council by the President of the
302 Republic, the President of the National Assembly, the President of the Senate, one-third of the members of the
303 National Assembly, one-third of the Senators, or the Presidents of regional executives". It follows therefore, that
304 after the enactment or ratification of a law or treaty, it cannot be questioned or challenged the constitutional
305 council, which indicates that the OHADA treaty is valid and constitutional. From this article, it can be deduced
306 that even though the treaty is unconstitutional, there is nothing the state can do once it has been ratified.
307 Thus, Anglophone Cameroonians cannot appeal against the fact that the president has not complied with
308 the constitutional requirements as justification for noncompliance with the treaty. Article 9 of the OHADA
309 treaty provides yet another argument in support of the author's view that the treaty is constitutionally valid in
310 Cameroon. Article 9 gives signatory states like Cameroon the opportunity to oppose the authenticity of the treaty
311 and UAs after 30 days yet the power that he did nothing about it. Thus, despite the verdict in anglophone
312 Cameroon, referred to above, one can say without fear of contradiction that the treaty is constitutionally valid
313 in Cameroon and the rest of the signatory states. If it intends to bring together all African states as depicted
314 in article 53 of the OHADA treaty, OHADA should be authorized to adopt legal rules independent of national
315 interests but without losing sight of each signatory's state legal peculiarities. To achieve this, OHADA should
316 have many official working languages. This requires an amendment of article 42 and consequently article 63 of
317 the OHADA treaty.

318 Drawing from article 1 (3) of the Cameroonian constitution, the languages shall have the same status and
319 OHADA should be entrusted with the task of guarantying the promotion and protection of the languages
320 throughout the African continent. The implication is that all drafting and printing of the UAs shall be done
321 in the different official working languages. It also requires a democratic decision-making processes involving all
322 stakeholders such as business people who live daily with the laws, academics and experts from signatory states for
323 the treaty and its UAs to be internationally accepted. For ??eno (2014, p 133), this would enhance the prospect
324 of common law jurisdiction to joining OHADA and the potential of OHADA being a model for the development
325 of uniform commercial rules in Africa.

326 V.

327 5 Conclusion

328 Having looked at OHADA, one thing is clear, OHADA is a good initiative. The mile stone made by OHADA
329 in a bid to harmonise and unify business law in Africa given the prevailing circumstances is a gesture worth
330 commending and not to carry such initiative like red hot potato in the mouth ready to spit it out at any moment.
331 But is that ipso facto enough to militate for its ratification if not in line with the constitution? The ratification of
332 the OHADA treaty we say violated a constitutional provision, that is article 1 (3) of the constitution, a provision
333 which Cameroonian authorities should have insisted on during the negotiations leading to the signing of the
334 treaty and which they failed to do. Thus, the treaty should not have been ratified or better still should not have
335 been ratified in the present form for reasons discussed above. Despite the verdict in anglophone Cameroon, the
336 OHADA treaty is constitutionally valid and remains so notwithstanding the ¹

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5 CONCLUSION

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