Online Symposium on Recent Developments in African PIL (II) – The Recognition and Enforcement of Foreign Judgments within the CEMAC Zone

*As part of the second online symposium on **recent developments in African private international law**, we are pleased to present the second contribution, kindly prepared by **Boris Awa (Kigali Independent University, Rwanda)**, on **The Recognition and Enforcement of Foreign Judgments within the CEMAC Zone**.*

I. Introduction

The Central African Economic and Monetary Community (CEMAC) is a regional intergovernmental organization comprising Cameroon, the Central African Republic, Chad, the Republic of Congo, Equatorial Guinea and Gabon. It was created by the Treaty establishing CEMAC on 16 March 1994 and revised in 2008 (Hereinafter referred to as the CEMAC Treaty). All CEMAC Member States also

belong to the Organisation for the Harmonisation of Business Law in Africa (OHADA),[i] which aims to harmonise business law among its Member States. OHADA is composed of 17 Member States, all with legal systems rooted in the civil law tradition.

As regional integration and the harmonization of laws in CEMAC deepened, issues related to the recognition and enforcement of judgments became more prominent than ever before. This came in handy through the entry into force of the Judicial Cooperation Agreement of 28 January, 2004 (hereafter the "CEMAC Agreement").[ii] Closely linked to the CEMAC Agreement are other multilateral initiatives, such as the General Convention on Judicial Cooperation in matters of Justice, 12 September 1961 in Tananarive (hereafter the "Tananarive Convention")[iii], as well as bilateral treaties and domestic legislations of Member States, all of which are relevant in this context.

Against this background, we shall in turn discuss the conditions for the recognition of judgments under the laws of member States (II), under the relevant multilateral instruments, namely the Tananarive Convention and the CEMAC Agreement (III), and the hurdles that impede the recognition of foreign judgments under the CEMAC Agreement (IV).

II. Recognition and Enforcement under Domestic Legal Regimes

Most Member States in CEMAC have black letter laws on the recognition and enforcement of judgments. The table below outlines the relevant laws and provisions governing this area in each CEMAC Member State.

Jurisdiction	Code/Act	Provision

Cameroon	Law No 2007/001 of 19 April 2007 to Institute a Judge in Charge of Litigation Related to the Execution of Judgements and lay down Conditions for the Enforcement in Cameroon of Foreign Court Decisions, Public Acts and Arbitral Awards	Articles 5-9
Gabon	Civil Code (1972)	Articles 71-77
	Civil Procedure Code (1977)	Articles 967-971
Tchad	N/A	N/A
Central African Republic	Code of Civil Procedure (1991)	Articles 469-471
Equatorial Guinea	Spanish Civil Procedure Code (1881)	Articles 951-958
The Republic of Congo	Code of Civil, Commercial, Administrative and Financial Procedure (1983) (CCCAFP).	Articles 298-310

It emerges that five of the six CEMAC Member States have codified provisions on the recognition and enforcement of judgments. Moreover, the conditions for the recognition and enforcement of judgments in three Member States (namely, Cameroon, Gabon and Central African Republic) are similar. These include indirect jurisdiction, the right of defence, inconsistent judgments, public policy and finality. On the other hand, Congolese law provides no formal conditions for the recognition and enforcement of foreign judgments. In the Republic of Congo, the judgment debtor must seize the court that would have had subject matter jurisdiction to hear the claim, to render the foreign judgment executory in the Republic of Congo (art. 298 of the CCCAFP).

Apart from the aforementioned requirements for recognition and enforcement common to CEMAC member states, only Gabonese law (article 75 of the Civil Code) recognizes reciprocity as a condition for the enforcement of foreign

judgments.

III. Recognition and Enforcement under the Applicable International Instruments

Two principal legal instruments govern the recognition and enforcement of judgments in the CEMAC zone: the 1961 Tananarive Convention and the 2004 CEMAC Agreement.

1. The Tananarive Convention

The Tananarive Convention presents the first efforts towards the harmonisation of judgment enforcement in francophone Africa. This convention mirrors the zeal to set up a common legal regime among Francophone African countries on judgement enforcement immediately after obtaining their independence.

The Tananarive Convention provides five (5) conditions for the enforcement of judgments in contentious and non-contentious decisions in civil and commercial matters under the treaty. These conditions are set out in article 30 and include:

(1) competent court according to the rules set out in the Convention (art. 38),

(2) the decision was rendered following the laws on conflict of law applicable in the state of where enforcement in sought,

(3) the judgment has, under the law of the state of origin, acquired the force of res judicata and is capable of enforcement

(4) the right of defence must have been respected and

(5) the judgment is not contrary to public order in the state where enforcement is sought, and does not conflict with a final judicial decision rendered in that State.

2. The CEMAC Agreement

The CEMAC Agreement is the first legal instrument establishing a unified legal

framework for the enforcement of judgments within the CEMAC zone. Based on the principle of supremacy of community legislation over national laws, it follows that the CEMAC Agreement sits above local legislations in the hierarchy of legal norms. Thus, the legislation to be applied by the courts for the recognition and enforcement of judgments within the zone should be derived from CEMAC law – namely, the CEMAC Agreement – rather from local legislations.

There are five (5) conditions for the recognition and enforcement of judgments under the CEMAC Agreement. These requirements are set out in article 14 of the Agreement which states that the judgement must satisfy the following conditions:

(1) the decision emanates from a competent court of the country where it was rendered

(2) the decision is not contrary to case law in the member state where enforcement is sought,

(3) the decision has acquired the force of res judicata

(4) the judgment was rendered in a fair trial that guarantees the equitable presentation of parties, and

(5) the judgement is in conformity with public policy in the member state where enforcement is sought.

3. Brief Comparative Overview of the Two Instruments

While the conditions for allowing enforcement under the CEMAC Agreement may appear similar to those provided under the Tananarive Convention, several differences exist. Substantively, the Tananarive Convention allows the control of the law applied in the state where enforcement is sought, but this is not the case with the CEMAC Agreement. Also, while the CEMAC Agreement provides for the determination of the competent court based on the law of the rendering state, the Tananarive Convention provides controlling criteria for the determination of competent court in article 38 based on the type of civil or commercial dispute. Procedurally, under the CEMAC Agreement, the judgment creditor, by a petition (*requête*), seizes the president of the court in the place where enforcement is sought, provided that the court would have had subject matter jurisdiction to hear

the dispute (art. 16). Under the Tananarive Convention, the request for enforcement is brought, by petition (*requête*), before the president of the court of first instance or a corresponding jurisdiction at the place where enforcement is sought (art. 32).

It is worth noting that article 37 of the CEMAC Agreement abrogates treaties, bilateral agreements, and conventions among CEMAC members states insofar as they are contrary to the CEMAC Agreement. Thus, the Tananarive Convention ceases to be a source of law for purposes of the recognition and enforcement of judgments within the CEMAC zone to the extent that its provisions conflict with the CEMAC Agreement.

IV. Hurdles Besetting the Recognition of Foreign Judgments within the CEMAC Zone

1. Fragmentation of laws

The CEMAC region is characterized by the coexistence of multiple applicable legal frameworks governing the recognition and enforcement of foreign judgments, including domestic laws, bilateral conventions, multilateral conventions (notably the CEMAC Agreement and the Tananarive Convention). This raises questions as to the rationale for the continued conclusion of bilateral treaties on the recognition and enforcement of judgments, given that the enforcement regimes found under various instruments in the region are sometimes similar, with few differences.

2. Judicial neglect of the CEMAC Agreement

Given the superiority of CEMAC law over local legislation, the enforcement of judgments within the CEMAC zone should be governed by the CEMAC Agreement rather than by the domestic laws of the Member States. In practice, however, courts in several CEMAC Member States have not consistently adhered to this principle. Instead, judges often resort to domestic legislation with which they are more familiar when dealing with the recognition and enforcement of judgments

from member states within the CEMAC zone.

This approach has received judicial endorsement. in a number of cases decided by Cameroonian courts. One such example is *La succession Levy représentée par ses administrateurs, sieurs Levy Jesus Cyril et Levy Ishaï, commerçants demeurant à Bangui en République Centrafricaine,* which concerned the recognition and enforcement in Cameroon of a jugdment from the High Court in Bangui (Central African Republic) attributing letters of administration (*administrateurs)* to the plaintiffs. In that case, the court applied Cameroonian domestic law rather than the CEMAC Agreement (*Court of First Instance Douala-Bonanjo, Ordonnance of 31 January 2019 (Unreported)*).

A similar approach was followed in *Dame Tchagang Edo Ovono N'do Eyebe, Sieur Sandjong Mezui Verdier C/ Monsieur le Greffier en Chef du TPI Douala Bonanjo*, where a Gabonese judgment appointing the plaintiff as the heir and successor of the deceased Gabonese national was recognised and enforced in Cameroon on the basis of domestic law, in disregard of the CEMAC Agreement (*Court of First Instance Douala-Bonanjo, Ordonnance N°42 of 19 February 2019 (Unreported)*). Needless to say that the judgments referred to above are, in principle, legally flawed, as they disregard the hierarchy of norms established by the CEMAC Treaty.

Also, despite the fact that article 37 of the CEMAC Agreement abrogates treaties, conventions among others among member states which are contrary to the CEMAC Agreement, some courts in Chad continue to use the Tananarive Convention against the CEMAC Agreement. The Chadian case of *Etat du Cameroun, Représenté par Monsieur le Ministre des Finances C/ Fotso Yves Michel* mirrors this example where the Chadian High Court of Ndjamena enforced a judgment from the Supreme Court of Cameroon in Chad using the Tananarive Convention thereby disregarding the CEMAC Agreement (*High Court of Ndjamena, Repertoire No 78/2024 of 23 July 2024 (Unreported)*).

Several factors may explain this state of affairs. One particularly relevant in our view relates to is the scarcity of sufficient legal literature, with a regional or community-law focus on the recognition and enforcement of foreign judgments within the CEMAC zone. Conflict of law scholarship in the region continues to place predominant emphasis on domestic private international law, often overlooking the relevant community-law framework. As a result, judges are

deprived of adequate doctrinal guidance, and developments in CEMAC law in this field often go unnoticed.

V. Conclusion

The reception and application of the rules governing the mutual recognition and enforcement of judgments within the CEMAC zone is not uniform. While some judges in Cameroon disregard the CEMAC Agreement and apply domestic legislation in enforcing judgments rendered from CEMAC member states, others in Chad continue to rely on the Tananarive Convention. As a result, despite of its twenty-one years (21) of existence, the CEMAC Agreement has – to the author's best knowledge – yet to be effectively tested in judicial practice. This situation stems from the complexity of the applicable legal frameworks – domestic, bilateral, multilateral and regional integration frameworks – which operate concurrently.

Against this backdrop, it is recommended that academics within the CEMAC zone engage more actively with regional case law, increase scholarly output, and help raise the visibility of legal developments in the region. Such efforts would provide judges with doctrinal guidance and foster the development of private international law in the region in line with international standards and best practices.

Previous contributions:

1. Online Symposium on Recent Developments in African Private International Law, *by Béligh Elbalti & Chukwuma S.A. Okoli* (Introductory post)

2. Recognition and Enforcement of International Judgments in Nigeria, *by Abubakri Yekini & Chukwuma Samuel Adesina Okoli*

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[i] For an overview from the perspective of models of trust management in private international, see Matthias Weller, '"Mutual Trust": A Suitable Foundation for Private International Law in Regional Integration Communities and Beyond?' 423

Collected Courses (2022) 203

[ii] On CEMAC and the 2004 CEMAC Agreement, see Weller, *op. cit.*, 184 ; E-A T. Gatsi, 'L'espace judiciaire commun CEMAC en matière civile et commerciale' 21 *Uniform Law Review* (2016) 101.

[iii] Ratified by 12 African States including, Cote d'Ivoire, Benin, Burkina-Faso, Madagascar, Mauritania, Niger, Senegal and all the CEMAC Member States, except for Equatorial Guinea. This is likely because Equatorial Guinea had its independence seven years after the adoption of the Convention. On this Convention, see Weller, *op. cit.*, 199.