Stimulating Sustainable Economic Growth in Sub-Saharan Africa with Legal Systems Enabling Women Entrepreneurs’ Creativity

By Isabelle Deschamps
Policy Brief

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Isabelle Deschamps†

Executive Summary

This brief addresses the problem of gendered poverty in Sub-Saharan Africa and argues that multifaceted context-sensitive business law reform is necessary for tackling issues underlying the problem. It takes the reform initiatives led by the Organisation pour l’harmonisation du droit des affaires en Afrique (OHADA) as a case study and draws on interviews carried out by the author with women entrepreneurs, OHADA agents, lawyers and journalists in Benin and Cameroon in 2010, 2011 and 2012. The brief argues that business law modernization in Africa should not be only or predominantly aimed at attracting foreign investors and ensuring a secure legal climate for multinational corporations. Rather, African business law reform should also attend to the informal sector and aim to make states’ legal systems friendlier to micro, small and medium businesses (MSM), in particular ones operated by women.

Concomitantly, Canada’s international development assistance policies should aim at promoting, through commercial law reform, entrepreneurial skills and creativity among principals of MSMs. Strategies and recommendations for reaching policy goals should be rooted in local needs and frames of reference. They should target and be accessible to those running MSMs in the region.

This brief notes CIDA’s successes in this area, and shows how current programs can be adjusted to prioritize the achievement of policy goals and the development of strategies in cooperation with female-run MSMs, financiers, jurists and organisations like the OHADA operating in sub-Saharan Africa.

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**Policy Goals**

- Promote laws and business-law cultures in Sub-Saharan Africa favourable to **market niches** through which MSM enterprises’ novel goods and services can penetrate regional and international markets.
- Support women’s full participation in Sub-Saharan commerce by encouraging new **bottom-up generated financing models**, improving women’s knowledge of the **risks and benefits of microfinance** and strengthening **traditional savings and credit associations**.
- Foster effective **cooperation between Canadian experts and investors in Sub-Saharan Africa**, **African women entrepreneurs, lawmakers and financiers** to promote needs-based commercial law reform in the region and support sustainable trade between Canada and Africa.

**Significance of Issue**

Research shows a correlation between informal markets, poverty and being a woman. It also indicates that Sub-Saharan Africa has the world’s highest percentages of informal employment. Over the past decades, the size of informal economies has been growing worldwide. Carefully modernizing and calibrating business laws in Sub-Saharan Africa to the needs of small female-run enterprises and other local economic actors that dominate the informal economy, as well as reassuring foreign interests, will strengthen and stabilize African economies. This will in turn increase people’s, and in particular women’s, quality of life and help prevent civil unrest.

**Canada’s Interest**

Targeting the identified policy goals should be among Canada’s top priorities because i) it will help transfer Canadian expertise on law reform to African lawmakers and help transfer African knowledge on the informal economy to Canadian experts; ii) this will increase the efficiency, quality and sustainability of the assistance provided by CIDA to the OHADA and other socio-economic development projects in Sub-Saharan Africa; iii) it will allow the measurement and improvement of the real on-the-ground outcomes of CIDA’s assistance in the region, including regarding the OHADA reform in Senegal and Mali—two of CIDA’s countries of focus; iv) it will contribute to more equality between women and men in the region, one of CIDA’s crosscutting themes; v) it will facilitate sustainable trade between Canadian and African enterprises.

**Policy recommendations**

- Support projects teaching **African business law reform experts** in Canada and Africa about the **real challenges** to women’s full participation in Sub-Saharan commerce so that their expertise is more appropriately targeted and that new laws effectively benefit women.
- Help design rules and promote business-law cultures that will enable women entrepreneurs to mobilise their skills and creativity in order to develop new markets.
- Support **locally attuned legal education** initiatives teaching **women** running MSMs about the **tools for mobilising their entrepreneurial skills**, about their tax and business law **obligations**, and how to cost-effectively assert their **rights**.
- Partner with **locally operating banks** to develop **bottom-up generated financing models** tailored to meet the specificities of the economic sector in which they operate.
- Contribute to programs informing **businesswomen** of the **uses and misuses** of microfinance.
- Fund research on **non-officially regulated savings and credit structures** and promote context-sensitive methods for increasing their accountability.
- Prioritize African commercial law reform assistance projects that use **participatory, inclusive and collaborative methods** as well as techniques for monitoring **actual outcomes and uptake of laws** by women entrepreneurs.
Introduction – Alleviating Gendered Poverty in Sub-Saharan Africa Through Needs-Based Business Law Reform

UN Women, the World Bank, the ILO and other labour and development agencies report that Sub-Saharan Africa has the highest percentages of informal economy and informal employment in the world (Box 1). Moreover, research shows a correlation between working extra-legally in the informal economy and being poor. Data also shows that women in Sub-Saharan Africa predominate in the informal sector and are hence poorer than men. One way of addressing the problem of gendered poverty in Sub-Saharan economies is to reform legal regimes in the region. Making these regimes friendlier to micro, small and medium businesses (MSMs) will help stabilize the informal economy and support the activities of women entrepreneurs.

Focusing on business law reform sensitive to MSMs and women entrepreneurs’ realities in Sub-Saharan Africa is a necessary complement to the multiple projects put in place over the past fifty years on the continent to attract foreign direct investment, facilitate regional economic integration, institute democracy, enforce principles of international human rights, uphold a “rule of law”, improve women’s health and formal education and campaign for their economic empowerment. In light of the expanding size of informal economies over the past decades (in developed and developing countries - Chambwera, 2012), carefully reforming and calibrating business laws to the needs of female-run MSMs and other local economic actors that dominate the informal sector, in addition to reassuring foreign interests, will strengthen and stabilize African economies and facilitate sustainable regional and international trade. This will increase people’s, and in particular women’s, quality of life and help prevent civil

Box 1. Statistics about the Informal Sector in Sub-Saharan Africa

- Average percentage of states’ informal economy as measured against “official” gross domestic product: 38.4%.
- Size of informal non-agricultural employment: 72% of all non-agricultural employment.
- Informally employed non-agricultural women workers compared to men: 84% versus 63%.

Sources: Schneider, 2010, 32; UNIFEM, 2005, 39.

Box 2. The formal-informal spectrum

- Although measurement tools are imperfect and no clear boundaries exist between formal and informal sectors, businesses can be viewed as operating on a formality-informality spectrum. They will be qualified as more or less formal or informal according to the extent to which their operations fall within the ambit official laws and/or take place outside of official structures.
- Hernando De Soto coined the term “extra-legal” to describe non-formally regulated social conventions in an effort to move away from the formal/informal opposition and the prejudice associated with informal or illegal arrangements.

Sources: Chambwera, 2012; De Soto, 2000, 150-51 & 170-71; Spring, 2009.
unrest in the region. Moreover, laws that facilitate the operation of MSMs by women will promote women’s economic freedom and thus contribute to more gender equality.

Notwithstanding the importance of adequate business laws for development, during the decades that followed decolonization, comparatively little attention was paid to the need to improve commercial legal environments in Africa. One notable exception was the creation in 1993 of the Organisation pour l’harmonisation du droit des affaires en Afrique (OHADA) between fourteen West and Central African states. Since then, the OHADA has adopted nine Western inspired Actes uniformes (uniform laws) that make legal rules and institutions uniform between all member states in various areas of commercial law (Box 3).

There are a few encouraging figures in the World Bank’s Doing Business 2011 series on the OHADA, and many jurists continue to defend the thesis of the ‘trickle-down effect’ of business law reform. Nonetheless, the OHADA’s success in achieving economic development and facilitating the activities of women entrepreneurs remains uncertain. Some legal efficiency studies have been carried out (e.g. the CREDERSUMA (OHADA) 2011-12 investigation on commercial debt recovery difficulties in WAEMU states) and myriad theses have been written by African students on the specificities and/or inconsistencies of the OHADA and its Acts (e.g. Kanchop, 2008) but no comprehensive investigation exists on the regime’s overall impact on economic growth and development in the region. Little is known about the actual impact of the OHADA and of international assistance for private sector law reform on business landscapes and environments, on the development of sustainable MSM enterprises in host regions and on the livelihoods of the women, families and other groups targeted by the programs.

Reforming the law in Sub-Saharan Africa should no longer be mainly about modernising or unifying rules by reference to foreign models with context-specific provisions only scantily dispersed in new legislation. Business law reform, in particular in
the OHADA region, needs to focus more on designing and adapting laws to the actual and evolving economic, commercial and social circumstances on the continent. It should not be only or predominantly aimed at attracting foreign investors and ensuring a secure legal climate for multinational corporations. For one thing, the periodically recurring financial and economic crises that have shaken the world since the beginning of the last century confirm the weakness of the foreign investor credo. In this regard, Canada is an interesting example of a country whose modernized, but carefully attuned, business laws in both civil law and common law traditions are considered by many as having promoted a robust economy that survived recent economic turmoil. Most importantly, sustainable economic growth in OHADA states cannot occur without the participation of the numerous, often unofficial, MSM businesses, many of which are operated by women.

Recognition of the need to design more “pro-poor” (Besley, 2007) commercial laws aimed at MSMs transpires from the adoption in 2010 by the OHADA, under the impetus of France and the World Bank, of revised *Actes uniformes* on general commercial law and on secured transactions, and of an act on cooperatives. Among other changes, the revised acts contain new sections that specifically regulate individual micro-traders (*entreprenant*) and reduce the formalities required of them for officially operating a business.

Yet the reach of OHADA Acts—in their form as originally enacted, or revised, or entirely new—is limited, especially among female-led MSM businesses. My empirical research in Benin and Cameroon (Box 5), although limited in scale, suggests that these laws do not address many of the problems faced by women entrepreneurs. OHADA laws still contain too few “pro-poor” rules and the gaps between the law of the books and the laws of the streets remains significant.

In addition to the OHADA, Canada has contributed to various legal and economic initiatives aimed at developing the private sector in Sub-Saharan Africa (Box 4). However, similar to the OHADA, a number of these initiatives are still too aspirational, insufficiently grounded in local modes, physically inaccessible to those they are meant to benefit (for example, many programs supported by CIDA do not operate in Francophone West Africa) or have not taken root in practice. Even when claimed to be “pro-poor” or pro-women, private sector development projects in the region often continue to be shaped by the interests and conceptions of a wealthy foreign or local minority, a “political elite and the well-connected who dominate the formation of […] [formal] legal norms and the institutions that regulate them” (Stephens, 2009, at 134). This makes projects less attractive to the poor and to MSMs. For example, Beninese president Yayi Boni set-up a microcredit program for the poor. However, loans made were of a maximum of 30,000 FCFA, a sum that I was told by women in the Sample to be largely insufficient to help them expand (Deschamps, Empirical data – Box 5).
CIDA’s private sector development policies should be rethought in order to serve the interests of MSMs in Sub-Saharan Africa more suitably in addition to those of foreign businesses and large financiers.

Recommendations need to be put into practice through sustained and decentralised groundwork, in a language, at a location and through methods accessible to those running MSM businesses in the region, and with strategies rooted in local needs and frames of reference.

Bearing this in mind, this brief makes Canadian policy proposals in response to the following questions, which relate to CIDA’s priority to stimulate sustainable economic growth: How can law help increase the participation of MSMs in the socio-economic development of Sub-Saharan Africa? In particular, how can commercial legal reform initiatives such as the one led by the OHADA facilitate the operation of MSM businesses by women in West and Central Africa?

The brief identifies and analyses three policy goals in order to address these questions. They focus on the need to increase access of women entrepreneurs to profitable and sustainable business opportunities in OHADA states and in Sub-Saharan Africa generally. The goals concern the promotion of laws and business cultures favorable to market niches, increased access of women entrepreneurs to appropriate

### Box 4. Canada’s private sector development assistance in Sub-Saharan Africa - Selected examples of partners and projects

- **UNDP - Legal Empowerment of the Poor**: recommendations made for strengthening formal business, property and land rights regimes.
- **Développement international Desjardins (“DID”) - Support to Microfinance**: technical and other assistance to microfinance federations, practitioners and public partners in Benin for the reconfiguration of accredited credit unions, continuation of their services country-wide, reinforcement of monitoring capacities, harmonization of their rules with the West African Economic and Monetary Union (WAEMU)’s 2007 microfinance law, awareness-raising sessions on securing the microfinance sector and other tasks.
- **Plan International Canada (“PIC”) - Promoting African Grassroots Economic Security**: goals include enhancing vocational and entrepreneurial skills of women and youth and their access to microfinance (CIDA and PIC websites are silent on steps taken, if any).
- **World Bank - Investment Climate Advisory Services**: services offered to governments worldwide to make policies, laws and regulations more investment friendly.
- **Actis and Cordiant - Canada’s Investment Fund for Africa**: the fund finances large African businesses and banks in Africa including in OHADA states (Senegal, Burkina Faso and DRC).
- **IFC - Grassroots Business Fund**: the fund finances non- and for-profit organisations that work with the poor and marginalized in East Africa.
- **SOCODEVI - Program 2007-2012 – Africa**: support to private and public sector partners in West and Central Africa for better economic, organisational and governance performance and increased social influence of cooperatives and mutual.
- **ITC - ACCESS II for African businesswomen in international trade**: through the program local trainers were certified and materials prepared for exporter training, trade information, peer mentoring and business counseling adapted for women all over the continent.

microfinance and bottom-up developed bank credit and savings instruments, and effective collaboration between stakeholders involved in or affected by business law reform in Africa.

Each policy goal is discussed in separate sections that also detail recommended strategies for its attainment. Proposals draw on my graduate research, including interviews and discussions with women entrepreneurs, OHADA agents, lawyers and journalists in Benin and Cameroon (Box 5). Despite local differences between Sub-Saharan countries, there are commonalities in the experiences of women running MSMs that make the lessons learned from my research transferable to other states in the sub-region (including CIDA’s focus countries). Similarly, the methods suggested in the policy paper can be used to design new strategies for dealing with the overlap between informal employment, poverty and femininity in developing countries elsewhere in the world.

Box 5. Grounded research
The policy goals and recommendations set out in this brief draw from empirical qualitative data collected in Benin and Cameroon, namely:

a) Interviews conducted in Benin (Cotonou, Porto-Novo, Glo Yekon) from 19 June to 5 July 2011 and 25 to 29 April 2012 and in Cameroon (Douala, Yaoundé, Bangoua, Abonbang, Dschang, Maroua, Maga, Ngaounderé) from 5 to 20 July 2011 and 30 April to 20 May 2012, with:
   • 62 women entrepreneurs aged 20s to 60s, operating registered and non-registered local MSMs, mostly in retail and/or wholesale sector (the “Sample”);
   • 3 businessmen (aged 20s and 40s, operating small local non-registered businesses and large local businesses; in retail sale and information technology);
   • 1 journalist;
   • 1 accountant;
   • 3 clerks at the Registre du commerce et du crédit mobilier (separate locations);
   • 2 agents working for microcredit institutions
   • 7 agents from the ERSUMA and the OHADA Permanent Secretariat;
   • 3 litigation lawyers.

b) Observations made during a tontine reunion between members (men and women) of a village association in Yaoundé, Cameroon in May 2012. To maintain confidentiality, pseudonyms are used in this brief when referring to specific women in the Sample. This research was funded by McGill Graduate and Post-Graduate Studies and the McGill Graduate International Travel Fund.

c) Informal discussions with 12 women entrepreneurs, 3 litigation lawyers, 1 judge, 1 professor of law, 1 law student, 3 agents of the ERSUMA, 1 representative of the Chambre de conciliation et d’arbitrage du Bénin; and observations at a meeting between Nigerian and Beninese businesswomen at the Chambre de l’Industrie et du Commerce du Bénin (Cotonou and Porto-Novo) from 23 May to 25 June 2010. This was independently funded research.

d) Informal discussions with residents and observation of local modes, Benin (Abomey, Aklampa, Calavi, Cotonou, Dassa, Glo Yekon, Grand Popo, Natitingou, Ouidah, Porto-Novo), 9 April to 3 July 2009. This was independently funded research.
Moving Forward - Fostering Sustainable and Dynamic Economies in Sub-Saharan Africa Through Creativity

Stimulating sustainable and dynamic economies in Sub-Saharan Africa requires revisiting a number of assumptions about how commerce and labour markets are structured and function in the region. It requires re-examining presumptions about the relationship between the informal sector and growth, notably that informality is an obstacle to economic growth and prosperity. Business law reformers should rethink postulates about the need and manner in which to integrate informal enterprises in the state-regulated economy and about the necessity for (business) laws to tackle this objective, namely by submitting all aspects of exercising a business to official rules as is the aspiration of the OHADA (Box 3).

**Policy Goal 1: Promote laws and business-law cultures in Sub-Saharan Africa favourable to market niches through which MSM enterprises’ novel goods and services can penetrate regional and international markets.**

If looking to purchase textiles in West and Central Africa, Missèbo market in Cotonou, Benin is the place to be. Streets there are lined with shops filled with African-inspired design cloths imported from China, Holland, the UK, Ghana, Côte d’Ivoire, Mali and Nigeria. Competition is fierce between Lebanese, Indian and Beninese sellers and strong negotiation skills are necessary to land a good deal.

If a stroll in Missèbo turns out to be unfruitful, one need not despair. The bordering Dantokpa market, one of the largest and most dynamic places of commerce in Africa, hosts numerous stalls that sell textiles more or less similar to the ones in Missèbo. One will also come across women and girl peddlers posted on city street intersections in search of textile buyers. In fact, in Beninese urban centers, it is difficult to find women running MSMs who have never taken part in the sale of textiles. In the countryside, rotating village markets almost always include a few cloth stands operated by women who purchase their products in the city.

Despite its popularity, textile selling in Benin is lucrative for only the few larger traders and wholesalers, often of foreign origin, whose purchasing power allows them to buy and sell at lower prices. MSM textile businesses, predominantly run by Beninese women, often have short lifespans, collapsing under the weight of the competition.

The ephemeral existence of MSMs in the cloth industry and the strong competition between them are difficulties not exclusive to the textile business. Of the sixty-two women in the Sample (Box 5), forty percent pointed to competition as one of the main challenges they face in operating their business.

Beyond the obvious fact that too many businesses are trying to sell the same products to the same potential customers, multiple other interrelated elements make it difficult for women to fruitfully participate in commerce in Benin, Cameroon and
elsewhere in Sub-Saharan Africa. These elements should be better investigated and be brought to the attention of business law reformers so that they can design legal tools that will address women’s difficulties in operating businesses in Sub-Saharan Africa more comprehensively (First Recommendation). Moreover, CIDA should encourage its partners, consultants and legal experts working on the OHADA and other private sector development projects in Sub-Saharan Africa to promote laws and business cultures that will enable women’s entrepreneurship and creativity (Second Recommendation). It should support locally attuned and delocalised legal education initiatives that will teach women entrepreneurs their obligations under state and OHADA business laws and how to mobilise their capacities more successfully (Third Recommendation).

i. First Recommendation: Support projects teaching African business law reform experts in Canada and Africa about the real challenges to women’s full participation in Sub-Saharan commerce so that their expertise is more appropriately targeted and that new laws effectively benefit women.

In order to promote the development of MSM businesses in OHADA states, those engaged in commercial law reform projects should have fuller knowledge of the specific challenges faced by women seeking to participate in commerce in Sub-Saharan Africa (Box 6). They need to better appreciate the reasons for which women entrepreneurs enter saturated markets in the first place, their socio-economic realities and trading practices, and the workings and levels of informality of female-run MSms.

CIDA should support comprehensive empirical research on these elements and on how they shape business law in Africa; for example, through topic-based graduate scholarships and Afro-Canadian multidisciplinary

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**Box 6. Obstacles to the operation of MSM businesses identified by 62 women entrepreneurs in Benin and Cameroon (June-July 2011; April-May 2012):**

- Increased competition
- Lack of capital and of cash flow
- Cost of formalities required to obtain a secured loan
- Lack of collateral to secure bank and/or microfinance loans
- Husband and/or peers pressuring for a cease and/or change of business
- Family/spousal obligations requiring time away from the business
- Cost and delays of custom clearance for products sourced
- Climate affecting clientele and/or damaging products
- Heavy fiscal charges
- Fluctuating and rising prices of products sourced
- Difficulty in predicting sales
- Credit sales and debt collection
- Robberies of products
- Difficulty in penetrating public sector clientele without connections
- Unattended work-related health problems

*Source: I Deschamps, empirical research in Benin and Cameroon, June – July 2011, April – May 2012.*
collaborative research initiatives. These could be set up via the CIDA funded *Programme canadien de bourses de la Francophonie* or the International Development Research Center.

CIDA should also sponsor workshop series, periodic webinars, continuing professional education courses or other programs teaching those involved in African business lawmakers in Canada and Africa how social, cultural, gender and economic variables influence commercial norms in the region. In particular, CIDA could work with the ERSUMA to supplement its current legal education offerings focused on the contents of enacted *Actes uniformes* with seminars on the interactions between OHADA law, MSMs’ business practices and gender issues.

While some of the challenges faced by women entrepreneurs in low income countries are perceived to be well known and are the frequent attention of international and Western aid institutions, their real impact on women’s business operation remains unclear. For example, illiteracy and low formal education levels are generally viewed as an obstacle to proper business management. Looking at the Sample, of the sixty-two women interviewed, forty-five did not make it to or finish high school and only five completed a university degree. It can be expected that a correlation exists between these women’s levels of education and the obstacles they face in doing business. Yet the different elements involved in this correlation remain to be clearly understood by lawmakers. What is more, there are many examples of illiterate African women who successfully trade internationally on relative large scales. They are evidence that commercial prosperity is not directly dependent on one’s level of formal education.

Another suggested cause of women’s difficulty to penetrate Sub-Saharan markets in a sustainable manner is the perception that they lack entrepreneurship. This perception often results from Western experiences and conceptions of commerce that do not necessarily correspond with the context and realities of African marketplaces.

For example, a preliminary assessment could lead some to find that when Lydia, a woman in the Sample, decided to open up a small candy stall in Dantokpa market alongside many other similar or larger candy and food product shops, she lacked the imagination necessary to break out of the mould and engage in a more lucrative activity. However, she explained that before selling candy, she qualified and worked as a secretary, a better paid job that provided more predictable revenues. Because of a stigma that exists in sections of the Beninese society against secretaries though, her husband pressured her to resign. She thus followed the family market selling tradition and opened a stall beside her sister’s food stall in the market.

Law reformers need to better understand the wide array of socio-economic factors that influence women’s commerce in the region. They include religious beliefs, official language proficiency, motherhood, ethnic identity, the persistence of obsolete colonial laws, workplace and business environments (e.g. private homes, public spaces - UNIFEM, 2005, 60), labor relations, production systems, real and perceived benefits of
working unofficially, geography, climate, and the wide-range of those who employ unofficially (including formal enterprises). Many of these elements are often overlooked by business law reformers. As such, jurists should work more closely with women entrepreneurs to design legal structures that address the challenges these elements pose to their full participation in trade. Lawmakers also need to better understand and attend to the components of commercial legal cultures that dampen women’s creativity and prevent them from diversifying their activities (Second Recommendation).

ii. Second Recommendation: Help design rules and promote business-law cultures that will enable women entrepreneurs to mobilise their skills and creativity in order to develop new markets.

One element that stands out from Lydia’s situation and is common to over a third of the sixty-two women in the Sample is that in deciding to take up her market-vendor trade, she followed in the footsteps of many of her aunts and sisters. This is reflective of a practice of family transmission of the trade present among many ethnic groups in Africa (particularly among the Yoruba) (Igué, 2003). Such a practice may prevent women from developing the reflex to look for different market niches when entering the workplace. The fact that in many cases women running MSMs join the trade as young girls assisting their elders lends support to this hypothesis.

Strict or prohibitive business laws, heavy legal formalities (registration, secured lending, etc.), onerous fiscal burdens, and rules too abstract for women entrepreneurs to understand, as is the case of many OHADA norms transplanted from Western and international systems, exacerbate this situation. Faced with little resources and pressing subsistence and educational needs of their children (of the 62 women in the Sample, only two did not have a child), women seeking to develop a business will favour activities that they are familiar with and that require low initial capital input rather than engaging into new operations whose outcomes are unknown or whose start-up costs are higher.

Moreover, in countries, including members of the OHADA, where interactions between private and public agents are uneasy, time-consuming, highly bureaucratised, involve bribes and/or are characterised by mutual suspicion or censor, citizens generally seek to limit contacts with authorities (Mbembe, 2001). For example, my initial contact with women interviewed in Cameroon was significantly more difficult than with the ones interviewed in Benin. Indeed, the former, in particular those with the least formal education, were often skeptical and distrusting of me, refractory to speak and to give me their full name and/or have their pictures taken. Some expressed the fear that the information collected would be broadcasted in the paper, to Cameroonian authorities or be used in Canada for a purpose that may be harmful to them. Some of the jurists I met in the country share the belief that the political and legal culture operating in Cameroon has contributed to install a certain climate of fear among the population.
It can be anticipated that legal cultures that cultivate apprehension among economic agents will discourage creativity among MSMs. It is likely that women entrepreneurs will refrain from engaging in innovative commercial activities because this may draw the attention of state authorities.

CIDA should promote laws and business legal cultures that favour mutual trust between private and public agents as well as freedom and diversity in markets. To do so, it should argue for the adoption of flexible business legal structures and tax incentives in its publications and with its consultants and partners. In particular, norms need not all be written in pieces of legislation nor dictated by formal lawmakers. They could be orally transmitted, included in statutes, contracts or rules of associations, found in customary practices or other. CIDA should also advocate business rules and regulations set out in simple terms and in a language that is locally adapted so that women entrepreneurs may understand them (Macdonald, 2006, at 256).

iii. **Third Recommendation**: Support locally attuned legal education initiatives teaching women running MSMs about the tools for mobilising their entrepreneurial skills, about their tax and business law obligations, and how to cost-effectively assert their rights.

Enacting rules that address the challenges faced by MSMs in Sub-Saharan Africa and that promote creativity-friendly business cultures does not suffice to effectively enable women entrepreneurs to develop new business niches. Programs need to be put in place to educate women running MSM businesses on their basic rights and obligations under fiscal and business laws, and in particular under OHADA laws. The methods and contents of business law education programs need to be adapted to the environments where women work and to their specific information needs (Box 7).

As such, as a complement to programs such as Access II (Box 4), CIDA should support business law courses for MSMs in markets, village centers, during trade union meetings and in other public spaces. Topics would include business registration, saving

**Box 7. Business legal education needs of 62 women entrepreneurs in Benin and Cameroon**

Interviews with women in the Sample revealed that most were either unaware or unclear of:

- the existence of OHADA laws;
- the purposes and difference between tax and business registration;
- the possibility to register as “entrepreneur”, which entails fewer formalities and costs;
- the comparative advantages and disadvantages of registering their enterprise;
- the benefits of holding an inventory and of bookkeeping and how to bookkeep;
- the extent of their fiscal obligations;
- copyright infringement and how to deal with unfair competition;
- the social, cultural and legal implications of using children’s labor;
- debt recovery methods.

*Source: Deschamps, Empirical research (Box 5).*
and financing, product sourcing, transportation of goods, intellectual property, unfair competition, labour relations, non-judicial dispute resolution, insolvency, accounting, business planning and feasibility studies, and the principles of CSR as adapted for MSMs. Locally attuned pedagogical methods for these courses include teaching in both official and local languages, singing the rules and important information (Box 8), broadcasting business law lessons on local and/or market radios, opening university business legal education clinics aimed at MSMs, acting out case studies, and problem-solving.

Legal structures such as cooperatives, unions, associations and networks that facilitate women entrepreneurs’ understanding of formal laws and help them develop their capacities should also be promoted. For example, Odile, (Sample, Box 5) who sells school furniture and other products at Dantokpa, expressed her delight of having joined StreetNet, a web of militants and researchers who focus on informal economy actors (ILO, 2002, at 78). It allowed her to receive information on her rights and obligations as a market trader. In particular, StreetNet (and other market unions) lobbied to ensure that MSMs like hers would no longer be pressed to make various arbitrary, undue and bribe-like payments for operating their business in the market.

Increasing women entrepreneurs’ understanding of their obligations under state and OHADA business laws and of how they can cost-effectively assert their rights will increase their confidence and contribute to their full participation in markets. This will likely result in women taking on bolder and more creative business strategies and thus help them develop new markets (Trebilcock, 2008, at 354-55).

**Policy Goal 2: Support women’s full participation in Sub-Saharan commerce by encouraging new bottom-up generated financing models, improving women’s knowledge of the risks and benefits of microfinance, and strengthening traditional savings and credit associations.**

When asked what their future business objectives were, 70% of the women interviewed indicated wanting to expand and/or improve the look and quality of their business and products. At the same time, a third of them indicated that one of their main business challenges is access to appropriate financing.

There are various ways to obtain credit in OHADA states. Some channels are formally regulated such as banks and certain microcredit organisations. Other sources of
financing include family loans, donations including remittances sent in from abroad, and traditional rotating credit and savings arrangements (ROSCAs) (Moyo, 2009). The latter are frequently called tontines or reunions in Benin and francophone Cameroon.

Women running MSMs in Benin and Cameroon have difficulty in accessing bank loans because they cannot provide the collateral required by institutions to secure loans (e.g. official titles on immovable property), or the funds to pay for the various transaction formalities (e.g. registration of land titles, account opening fees). Moreover, in rural Cameroon, many women do not have a birth certificate or a national identity card, which are needed to open a bank account. Some of the women interviewed were also wary of additional costs and interest banks may charge them.

Banks operating in OHADA states should be encouraged to develop financing methods that are better tailored to the needs of MSMs operating in the region (Fourth Recommendation).

A second category of formally regulated financing structures within the OHADA region is legalised microcredit institutions. These organisations are regulated by national statutes and regulations from regional economic communities (e.g. WAEMU and ECCAS) (N.B. the OHADA Acte unifor me on cooperatives specifically excludes credit unions that perform banking and financial operations—e.g. tontines, other ROSCAs and microcredit institutions—from its application). Microcredit institutions take various forms: they can be state-funded and/or state-managed such as the Yayi Boni microcredit program in Benin, registered private for-profit, or non-profit organisations including NGOs.

Although there is a profusion of microcredit institutions in Benin and Cameroon, the uses, advantages and risks associated with borrowing money from microcredit organisations are often unknown or unclear to women entrepreneurs in these countries (Grant, 2010). For example, research shows that growth seldom results from a one-shot microcredit loan (Breth, 1999, at 3). Yet women running MSMs often lack the knowledge and information necessary to manage their first loan (as well as subsequent ones, if any) in a way that is profitable for their enterprise. As to women’s satisfaction with microcredit, no clear trend appeared among interviewees. High interest rates, lack of trust in the institutions that solicit them and loans too small for their needs are among the reasons quoted to explain their reluctance to use microcredit.

CIDA should help address women entrepreneurs’ difficulty in gaining access to appropriate microcredit and help them better understand the function of microcredit in addition to contributing to initiatives such as DID’s Microfinance Support project aimed at reinforcing capacities and improving governance of microfinance structures (Box 4). It should support programs that educate businesswomen on the uses, misuses and risks of microcredit and provide sustained assistance to women who borrow from microcredit institutions (Fifth Recommendation).
Other than formal microcredit institutions, tontines (or reunions) are widespread and popular among women entrepreneurs in West and Central Africa. They take various forms, none of which is officially regulated. The most common type of tontine in Benin and Cameroon is an informal credit and savings arrangement between a limited number of members from the same community (family, village, neighbourhood, work, unisex, mixed). Each member pays a fixed amount to a pot on a weekly, monthly or other regular basis. The proceeds collected each time are devolved to one of the members, in a rotating manner. A committee administers the tontine, composed of at least a president and treasurer elected on a confidence basis (Igué, 2003, at 90-91).

A second type of tontine is the daily tontine. This is essentially a savings instrument. A sole person, the “tontinier”, administers the tontine. He holds registries of amounts deposited with him by individuals. An administration fee is usually paid to him but he sometimes waves this fee given the considerable advantage he gains by having access to liquidity. Listed advantages of daily tontines are threefold: i) they facilitate saving for participants and help them manage their funds (this is especially true for many illiterate women entrepreneurs); ii) they allow wealthier merchants to place their money privately and away from the reach of banks with which they do business; iii) they allow participants (e.g. ones running MSMs) to deposit small sums that would otherwise not be worth depositing in a bank account (Igué, Yoruba, 2003).

Different from formal microcredit institutions, tontines in Cameroon and Benin are not predominantly focused on providing credit. They are a strong and popular tool for saving money. They can also have social, insurance and networking purposes. For example, in Cameroon (especially among the Bamileke) tontine money can be made available to help pay for the funeral of a member’s relatives and other family celebrations. Members of the tontine often attend the ceremony to show their support.

Tontines can be advantageous for women running MSMs because they are flexible, easily accessible for small businesses and contribute to the social cohesion of their members. They are also relatively effective in terms of debt recovery because they follow a logic of peer-pressure and good reputation. At the same time though, the peer pressure can isolate delinquent members. Moreover, since the contracts and arrangements between members take place outside of the scope of statutory law (including OHADA law), few remedies are available to members when their counterparts default. Indeed, OHADA law and the formal civil justice system are ill equipped to address tontine disputes. In some cases however, members seize (or threaten to seize) criminal and penal courts to have fraudulent conduct sanctioned. The formal civil justice route is only taken, if at all, when all internal sanctions have failed (e.g. peer pressure, meetings with family members, member expulsion) in order to put additional pressure on delinquent members, who may reimburse moneys owed out of fear of state sanction.

Rather than ignoring the multiple arrangements and normative dynamics of tontines, OHADA laws should seek to promote and strengthen their benefits and
specialty while adopting measures to address their defects. CIDA should support reform in this direction (Sixth Recommendation).

iv. **Fourth Recommendation:** Partner with locally operating banks to develop bottom-up generated financing models tailored to meet the specificities of the economic sector in which they operate.

CIDA should fund research aimed at developing financing models adapted to the Sub-Saharan context and the needs of MSMS run by women. It should support programs destined to raise awareness among banks in the region on the profitability of new bottom-up generated financing models tailored to meet the specificities of the economic sector in which they operate. It should also partner with banks on projects to find methods for securing loans to MSMS that balance banks’ needs for appropriate collateral with MSMS’ practices and capacity to provide such collateral. For example, banks could work with CIDA-funded NGOs and develop financing methods based on consignment (Box 9). This would adhere more closely to a technique already used by many African women for financing their business: they purchase their products on credit and reimburse the supplier once they have sold the goods.

Lessons on alternative financing methods can be drawn from South Africa where banks are currently developing cellphone-banking aimed at consumers and small businesses. In Benin and Cameroon, telecommunications companies have also started to provide cellular money transfer services; however, these are only for simple money transfers.

An additional incentive for banks in South Africa to work with MSMS is the country’s 2004 *Financial Sector Charter* that requires banks to adopt measures that promote small business lending. One such measure is low cost accounts for MSMS from which they can perform cellphone transactions. This can help banks and small businesses develop an on-going business relationship and mutual trust (Real Business, 2005). Moreover, banks in West and Central Africa should be encouraged to develop branches or departments that specialise in micro and small business banking.

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**Box 9. Microconsignment as an alternative financing method tailored to local MSMS’ needs**

In low income and isolated areas of the world (currently primarily in Latin America), companies are using a new consignment model—microconsignment—as a means of fulfilling their need for profit and security while helping MSMS generate new markets with minute financial risk and no debt. Suppliers provide products to sell to retailers. Once products are sold, retailers keep a commission and reimburse remaining profits to the supplier, who thus bears the risk. Importantly, when receiving goods to sell, retailers receive training on selling techniques and business development.

CIDA could partner with banks and suppliers in Africa to finance microconsignment aimed at MSMS.

*Source:* Rosenberg, 2011; [http://microconsignment.com](http://microconsignment.com)
CIDA should encourage its legal consultants working on OHADA projects to support rules that create collaterals that are more anchored in local practice and that impose obligations less onerous for MSMs than the ones in the current Actes uniformes. In parallel, it should support programs informing citizens and businesses in the OHADA region about new collaterals and financing methods.

v. **Fifth Recommendation: Contribute to programs informing businesswomen of the uses and misuses of microfinance**

Initially developed as a not-for-profit activity focused on the poorest (e.g. Grameen Bank), microcredit has evolved into a business with multiple ambitions. Many microcredit institutions today seek wealthier clients and/or are for-profit. The main purposes of modern-day microfinance include providing loans to members and clients (MSMs, traders, self-employed workers, farmers - Breth, 1999, at 118), taking deposits from members and/or clients for savings and repayment purposes, and, in some cases, economic training and education activities. The money lent is meant to support clients’ economic activities, whether in trade, agriculture, fisheries or other. However, women running MSMs are often unaware or unclear of the purposes and intended uses of microcredit. Few make business plans to assess their credit needs and many use the loan as an extra sum of money allocated interchangeably to personal, family or business expenses (Rosenberg, 2011). In fact, the majority of the women in the Sample who had made recourse to microcredit to finance their activities indicated that they assigned the money to personal and business activities indifferently (Bhagwati, 2008 at notes 21-22).

In order to help women make wiser and more fruitful usages of microloans, CIDA should support courses, counselling and campaigns on the purposes, potential risks and benefits, and intended uses of microcredit, as well as on the standing of locally operating microfinance institutions. These services could be provided in coordination with workers’ rights organisations such as StreetNet, or businesswomen associations in Africa.

Indeed, among the multiple institutions that market themselves as microcredit providers in Benin, Cameroon and elsewhere in Sub-Saharan Africa, some have poor governance records, others do not fully conform to the laws meant to regulate them, charge unreasonably high interest rates, or use dubious recovery practices. For example, one woman in the Sample refuses to borrow from certain microcredit institutions because of their practice of naming and shaming delinquent borrowers on the public market radio. Many microcredit institutions also have sustainability problems, which can exacerbate the harmful practices listed above (Grant, 2010). Women entrepreneurs need to know their choices and know which microcredit institution(s) provide the best terms and conditions for their needs. Moreover, they must be better educated about the consequences of non-payment and the importance of designing a business plan to ensure sustainability and expansion of their enterprise. Those who operate microcredit
organisations should receive training on best practices for lending money to the poor and MSM businesses.

vi. **Sixth Recommendation:** Fund research on non-officially regulated savings and credit structures and promote context-sensitive methods for increasing their accountability.

Tontines are self-regulated, self-controlled and well structured (Balkenhol, 1992). They adopt procedures and regulations that make them relatively self-sufficient and independent from the formal judicial system. Notwithstanding all their benefits though, tontines often suffer from a lack of transparency and poor governance. In such circumstance, exploitation of weaker, less informed members is facilitated. A number of tontine members interviewed in the course of the research described in Box 5 denounced abuses by treasurers and managers of tontines. Other difficulties also affect the proper functioning of tontines. In particular, tontines do not provide equal terms of credit and savings to all members: in some instances the rotation procedure results in some members being either creditors or debtors for longer periods. Moreover, because of their emphasis on community belonging, some tontines have been found to foster inter-tribal cleavages and tribalism.

CIDA should fund research on context-sensitive methods (some of which could draw inspiration from formal banking practices) for increasing the accountability, efficiency and equal access to non-officially regulated savings and credit structures such as tontines. To present, one method increasingly used by tontines in Cameroon to remedy governance problems is to open accounts in microcredit institutions. This helps ensure that money is kept safer from untrustworthy administrators. The savings made in the account can also help absorb losses resulting from defecting member(s). Moreover, opening accounts in microcredit institutions can provide tontine members with better access to credit to fund their activities.

Opening accounts in microcredit institutions does however not suffice to adequately address governance problems and other malfunctions of tontines. Legal tools, civil procedures and remedies specifically aimed addressing these malfunctions and at strengthening tontine governance should be developed. The point is not to integrate tontines into formal (micro)banking institutions. This would go against their underlying philosophy and essential structure, both of which are founded on mutual trust and congeniality. Formalizing tontine procedures or seeking to transform them into larger, more anonymous associations would corrode this trust and congeniality and undermine the tontine’s social cohesion functions.

It follows that CIDA should diversify its current involvement in microfinance initiatives in Africa. It should contribute to projects that reinforce capacities of informal ROSCAs in addition to official microcredit structures, and that seek to improve the normative framework of informal microfinance organisations in addition to reinforcing
their management and operation. For example, it could support the preparation of training manuals and users’ guides for members of ROSCAs as a supplement to the CGAP’s Guiding Principles on Regulation and Supervision of Microfinance (Christen, 2003). CIDA should prioritize such programs in the geographical area of the OHADA as this will help make its private sector assistance in the region more sustainable.

Finally, CIDA should contribute to programs aimed at educating law reformers and banks on the modes and arrangements of **tontines** so that their positive characteristics (e.g. trust-based operations and sanctions; low formalities) can inspire banks and formal microcredit institutions that provide services to MSMs.

**Policy Goal no.3: Foster effective cooperation between Canadian experts and investors in Sub-Saharan Africa, African women entrepreneurs, lawmakers, and financiers to promote needs-based commercial law reform in the region and support sustainable trade between Canada and Africa.**

**Box 10. OHADA law-making: an operation concentrated in the hands of foreign and/or foreign-trained legal experts**

- The draft revised OHADA *Acte uniforme sur le droit des sûretés*, which came into force on 16 May 2011, was prepared by a male dominated, mostly French-trained team of World Bank agents, lawyers and university professors in France, Cameroon and Senegal. No open public consultation was held.
- The draft OHADA *Acte uniforme sur le droit des contrats* (not into force) was prepared by a Belgian law professor, without open public consultation.
- Similarly, the preliminary drafts of the other *Actes uniformes* were prepared by a core of foreign experts (most of them French).
- Efforts are nonetheless being deployed by the Secretariat to diversify and "Africanize" drafting teams.

*Sources*: Ohada.com, March 2011; Fontaine, 2006; Interview, C. Motsebo, OHADA Permanent Secretariat, May 2012.

The gist of African commercial law reform work, in particular that of the OHADA, often takes place in lawyers’ and university professors’ offices, often in countries (France, Belgium, Canada) far away from the actual sites where business takes place and commercial practices are developed. It involves little if any participation of the numerous MSM entrepreneurs representing core segments of Sub-Saharan economies (Box 10). Non-jurist involvement in OHADA law-making essentially takes the form of periodic exchanges between members of the OHADA Permanent Secretariat and representatives of multinational and/or large local businesses at conferences and business forums (Interview - D Sossa, OHADA Permanent Secretariat, 2012). The application of the *Actes uniformes* is for its part essentially the prerogative of lawyers, judges and magistrates, many of who are still not well acquainted with the new regime and/or reluctant to apply it (Interview - PG Pougoué, Université de Yaoundé II, 2012).
The absence of open public consultation and public participation in OHADA law-making can result in laws that lack popular support and legitimacy, and are thus inefficient. Legal drafters need to work jointly and exchange ideas with economic actors on the ground to find creative and adapted solutions to the obstacles they face when doing business in Africa. What is more, law reform involves not only drafting laws but also a sustained effort to ensure that people apply and acculturate to the new rules. To ensure better acculturation of laws, commercial law reformers need to work with all actors of the business world, including MSMs and women.

CIDA should foster effective cooperation between jurists, financiers and African businesswomen on commercial law reform work in line with the above by promoting more inclusive, participatory and collaborative law reform techniques, as well as sustained monitoring of the outcome of the laws enacted (Seventh Recommendation).

vii. **Seventh Recommendation:** Prioritize African commercial law reform assistance projects that use participatory, inclusive and collaborative methods, as well as techniques for monitoring actual outcomes and uptake of laws by women entrepreneurs.

As democracies like Canada have shown over the past decades and in the midst of the current world economic crisis, one key ingredient of sustainable economic growth is a balanced business law regime. This requires that a maximum diversity of economic and legal actors in society jointly and actively contribute to law-making. Similarly, for the OHADA to effectively contribute to sustainable development of its member states, the Actes uniformes and the tools for disseminating them need to better calibrate the interests of the various enterprises and socio-economic agents in the region. To do so, local commercial usages and practices need to be observed and addressed by business lawmakers. They should work in closer collaboration with anthropologists, sociologists, economists, traders’ and workers’ associations, business groupings, women entrepreneurs, and other local stakeholders – and not only with international lawyers and large corporations. This will result in information about the challenges and obstacles faced by local economic actors to be better understood, disseminated and addressed by the OHADA regime.

In its publications, through its consultants and when selecting partners and projects on business law reform in Sub-Saharan Africa, CIDA should prioritize multidisciplinary teams and approaches. Such approaches could draw inspiration from the Law Commission of Canada’s socio-legal work on abuse in residential schools (LCC, 2000) and on close personal adult relationships (LCC, 2001). CIDA should encourage methods for reforming laws that focus on effective and efficient collaboration between stakeholders (here, African and foreign businesses, financiers, and law reformers). In addition to traditional methods such as national assembly representations, public consultations, lobbying, and campaigning, various alternative law-making methods could
facilitate the cooperation between women running MSMs and law reformers. They include participatory learning and action processes (Box 11), preliminary assessment workshops between foreign (including Canadian) and local jurists and actors likely to be affected or to influence envisaged rules (e.g. local businessmen and women, bankers, representatives of chambers of commerce and members of formal and informal credit and savings institutions), seminars and discussions among multidisciplinary teams to identify key legal reform needs and revise draft Acts, courses aimed at developing foreign experts’ local knowledge (e.g. language, traditions, culture, laws, living and business conditions), etc. Techniques should be adapted to the cultural and economic situation of the population (Trebilcock, 2008). CIDA could also fund African law faculty curricula that focus on local economic needs and practices and on the (legal) challenges of local businesses (including MSMs) in Africa.

Finally, to improve the reach, application and acculturation to new laws, CIDA should contribute to more programs aimed at diversifying and multiplying the tools used for disseminating the law. For example, in addition to uniform supranational Acts, OHADA law could be disseminated through songs, rules set out in case law, decentralised legal education and information clinics, and Q&A guidebooks for MSMs such as the Guide de l’entrepreneur OHADA dans l’espace OHADA published by the ITC and distributed in rural regions in various OHADA states.
Conclusion - Bringing Research into Practice for Sustainable Economic Growth in Sub-Saharan Africa

Box 12. Policy Goals and Recommendations for Stimulating Sustainable Economic Growth in Sub-Saharan Africa by Enabling Women Entrepreneurs’ Creativity

1) Promote laws and business-law cultures in Sub-Saharan Africa favourable to market niches through which MSM enterprises’ novel goods and services can penetrate regional and international markets.

   i) Support projects teaching African business law reform experts in Canada and Africa about the real challenges to women’s full participation in Sub-Saharan commerce so that their expertise is more appropriately targeted and that new laws effectively benefit women.

   ii) Help design rules and promote business-law cultures that will enable women entrepreneurs to mobilise their skills and creativity in order to develop new markets.

   iii) Support locally attuned legal education initiatives teaching women running MSMs about the tools for mobilising their entrepreneurial skills, about their tax and business law obligations and how to cost-effectively assert their rights.

2) Support women’s full participation in Sub-Saharan commerce by encouraging new bottom-up generated financing models, improving women’s knowledge of the risks and benefits of microfinance, and strengthening traditional savings and credit associations.

   iv) Partner with locally operating banks to develop bottom-up generated financing models tailored to meet the specificities of the economic sector in which they operate.

   v) Contribute to programs informing women entrepreneurs of the uses and misuses of microfinance.

   vi) Fund research on non-officially regulated savings and credit structures and promote context-sensitive methods for increasing their accountability.

3) Foster effective cooperation between Canadian experts and investors in Sub-Saharan Africa, African women entrepreneurs, lawmakers and financiers to promote needs-based commercial law reform in the region and support sustainable trade between Canada and Africa.

   vii) Prioritize African commercial law reform assistance projects that use participatory, inclusive and collaborative methods as well as techniques for monitoring actual outcomes and uptake of laws by women entrepreneurs.
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