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ABSTRACT

Africa is now facing a serious welfare problem. Social Security is only open to a limited segment of the population (10%). Curiously this Social Security does not and has never integrated health issues.

But health is the cornerstone of the population quality and following the increasing privatization of health services provision, social and solidarity economy organizations need to be promoted because of their ability to support all layers of the population, including the most vulnerable.

The best known of these enterprises are cooperatives and mutual societies. We will focus especially on legal barriers to the development of these two forms of enterprise. Their legal framework is vague if not, at least incomplete or nonexistent, depending on the region. Moreover, public policies are not strong enough.

The purpose of this proposal is to take a critical look at the role of cooperatives and mutual societies in the development of Africa, specifically in the field of health, while suggesting solutions to consolidate their sustainable emergence.

DEFENDED IDEA

To achieve their objective as tool for social protection for all, even the more vulnerable, cooperatives and mutual societies active in the health domain have to be supported and promoted. Appropriate legal frameworks and strong legal policies are necessary in this perspective. .

APPROACH AND METHODOLOGY

The approach is essentially legal. Legal texts governing cooperatives and mutual societies in Africa will be analyzed and compared to the functioning of cooperatives and mutual societies. Formal and informal surveys were conducted to complete the analysis of the legal texts.

INAPPROPRIATE COOPERATIVE LAW AND INEXISTENT MUTUAL SOCIETIES LAW

THE OHADA COOPERATIVE REGULATION

OHADA was born on 17 October 1993 with the aim to harmonize business law in Africa. OHADA currently comprises 17 countries

(Benin, Burkina Faso, Cameroon, Comoros, Congo, Democratic Republic of Congo, Ivory Coast, Gabon, Guinea, Guinea Bissau, Equatorial Guinea, Mali, Niger, Central African Republic, Senegal, Chad and Togo). The formula used to harmonize business law is the adoption of uniform acts whose provisions are directly applicable in the Member States.

Nine uniform acts have already been adopted, and the last is related cooperative societies. It was adopted on 15 December 2010 in Togo and is applicable since 15 May 2011.

But the OHADA cooperative regulation does not include specific rules depending on activities. Those rules should be determined in internal or Community law that usually does not exist. Except in financial cooperatives where special provisions exist in Community law, the other cooperative families only work on the basis of the general rules set forth by the Uniform Act.

EAST AFRICA COOPERATIVE LAW

The Legislative Assembly of East Africa has designed a new legal framework for cooperative societies within the Community of East African States. It brings together Rwanda, Burundi, Kenya, Tanzania and Uganda.

The purpose of the new law is to promote the activity of the cooperative sector by reducing or removing barriers of any kind, in accordance with Article 128 of the Treaty establishing the regional organization.

As the OHADA Uniform Law, Eastern Africa legislation does not include specific rules for health cooperatives. As in OHADA, they should be designed by the national authorities, in line with the general rules at regional level.

Some national laws have set specific rules for cooperatives depending on the activity (most legislation was limited to rules governing financial cooperatives).

This is the case in South Africa with the rules for four cooperatives families. But it should be noted that nothing has been designed for health cooperatives.

There is an urgent need to support the development of health cooperatives by the establishment of appropriate legal provisions. Indeed, such provisions should contribute to the legitimacy and feasibility of health cooperative projects.

MUTUAL SOCIETIES LAW only in West Africa

Regarding mutual organizations, very few countries have an appropriate legal framework. WAEMU Regulation (West Africa Economic and Monetary Union) is if not the only, at least one of the few experiences of legislation governing mutual health organizations in Africa.

As cooperative legislations, the WAEMU law for social mutuality present deficiencies and weaknesses. They were exposed in the book.

WEAKNESS OF PUBLIC POLICIES

At least partially, the existence of a legal framework is an instrument for promoting cooperatives or mutual societies.

In Guinea, for example, actors demonstrate that the absence of legislative framework complicates the promotion of mutual societies. Thus, they argue that the increase of membership requires the definition of an appropriate legal framework.

However, the definition of a legal framework is not enough, it should also be appropriate.

In Cameroon a country without legislation for mutual societies, there were 158 mutual societies in 2009 and an average number of beneficiaries amounted to 1,589, or 1.3% of the total population. In Mali, a country with a law since 1996, the data are not very different in a more or less similar period. This country had, in 2007, 91 mutual societies with a coverage rate of just 1.7%, about 215,000 beneficiaries.

Anyway, one appropriate legal framework cannot change things in themselves. Besides, there should be strong public policies.

A SUPPORTIVE ACTIVITY: the Yaoundé 2016 seminar

On May 2016 in Yaoundé, the Pan-African Cooperative Conference, the International Summit of Cooperatives and the Geneva Health Forum organized an international seminar dedicated to the promotion of cooperatives and mutual health organizations in Africa.

Attention will be given to advocacy.

A compendium of national analysis has been prepared for the event. It contains 12 African national studies about the condition of cooperatives and mutual societies in Africa, and many other analysis.

IN AFRICA, COOPERATIVES AND MUTUAL SOCIETIES IN GENERAL ARE OVERLOOKED AND SELDOM-USED IN SPITE OF THEIR GREAT POTENTIAL

This affirmation results from my doctoral research. For 4 years (2009-2013), I studied the dynamics of legislative and public policy relating to cooperatives and mutual societies in Africa. My work has been published and I received an award from the Higher Regional School of Magistracy of the Organization for the harmonization of business law in Africa (OHADA).



PERSPECTIVES

- Revision of existing legal texts with introduction of specific rules governing Health cooperatives and mutual health organizations;
- Consideration and development of synergies between cooperatives and mutual societies in a complementary and efficiency approach;
- Development of strong public policies to support cooperatives and mutual societies in the health domain: supporting the establishment of apex organizations, elaboration of appropriate tax and customs rules, etc.
- Better coordination of financial and other State aids, with a priority on training and awareness, as well as the establishment of an appropriate control and monitoring strategy for cooperatives and mutual organizations;
- Organization and solidification of cooperatives and mutual societies networks, and rationalization of partnership relations with international NGOs;
- Structuring an African space for dialogue, physical or virtual, between actors involved in cooperatives and mutual health organizations, with a view to sharing knowledge and exchange experiences.