Village Debt Resolution: formal and informal ADR and Recovery Procedures in OHADA

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I hold that debtors in a village who owe each other can **absolutely submit to Alternative Dispute Resolution (ADR) mechanisms at an informal or formal level and, if necessary, to simplified recovery procedures; these procedures are not mutually exclusive**.

According to World Bank statistics and related reports, the percentage of Cameroonians living in rural areas was approximately 40.4% as of the start of 2024. This percentage slightly declined to approximately 40.11% in 2024 and was estimated at around 39.8% in early 2025.

Thus, the rural population in Cameroon in 2024 and 2025 hovers around 40%, indicating a slight downward trend in recent years. These statistics are the same for the other 16 member states of Ohada. In Cameroon, approximately 11.5 million Cameroonians reside in Rural areas, subject to informal proceedings.

The OHADA member countries (currently 17 states, including Cameroon and the Democratic Republic of Congo) have a combined population of over 275 million people as of 2024-2025.

Using the estimated rural population percentages for the 16 countries, excluding DRC, and earlier data for Cameroon, the approximate breakdown is as follows:

- Total population of OHADA member countries: ~275 million
- Approximate rural population percentage (weighted average across countries): Around 55%-60% based on individual country rural population data.

The total estimated rural population in OHADA countries is therefore roughly between 145 million and 165 million people, implying that about 53%-60% of the total OHADA population lives in rural areas as of 2024-2025.

This indicates a significant rural majority across OHADA states, with notable exceptions such as Gabon and Equatorial Guinea, which have much lower rural population shares. The preceding statistics are from www.tradingeconomics.com.

This means that a majority of the populations of the member states of the Ohada community are susceptible to undergoing more informal ADR proceedings than formal ones. This might be their only means to initiate the recovery proceedings for debts, obligations, and other related matters under the Uniform Acts of Ohada.

The question is, under these informal proceedings, how do they interact within the Ohada Uniform Acts' legal framework, and what is the nature and scope of the evidence acceptable under the Uniform Acts?

Let me explain how they can interact within the OHADA legal framework, exceptionally accommodating local commercial realities:

• **ADR is Broadly Applicable and Flexible:**

◦ **Scope:** Mediation, as defined by OHADA, is a process where a third person assists parties in reaching an amicable settlement for disputes "arising out of a legal or contractual relationship, or related to such relationship, involving natural persons or legal entities, including public bodies or States.

This broad definition easily encompasses individuals in a village setting. Arbitration is also available to "any natural or legal person with respect to any rights that may be freely disposed of".

◦ **Informality Recognised:** The mediation procedure can begin based on a **"written or oral mediation agreement"**. This is particularly crucial in village contexts, where formal written contracts may be less familiar.

Similarly, while arbitration agreements are generally in writing or "any other form evidencing their existence", OHADA's Uniform Act on General Commercial Law allows commercial acts and sales contracts to be proven "by any means," including customary practices and witness testimony, which can support fewer formal agreements.

◦ **Cultural Sensitivity in Process:** Parties in mediation are **"free to agree on the way in which mediation is to be conducted, including by reference to Rules of mediation"**. In arbitration, parties "may, directly or by reference to arbitration rules, determine the arbitral procedure" or allow the tribunal to conduct it "as it deems appropriate". Furthermore, arbitrators can be authorized to decide **"as amiable compositeur"**, basing their decisions on equity and fairness, which can align with traditional justice mechanisms and local commercial relationships. Parties can also mutually choose mediators and arbitrators, allowing them to select individuals familiar with their specific commercial or cultural context.

• **Pathways from ADR to Simplified Procedures:**

1. **Successful ADR Leading to Enforcement:**

▪ If debtors reach a **written agreement through mediation**, this agreement is **"mandatory and binding between them"** and is **"enforceable"**.

▪ To ensure enforceability, this mediation agreement can be submitted for **"registration under the notary's registry"** or **"approval or exequatur by the competent court"**.

▪ Once approved and formalised, if a party fails to honour the mediated agreement, it can then serve as the **legal basis for simplified recovery procedures**, such as a mandatory injunction to pay a particular debt. This converts an amicable settlement into a legally enforceable title, allowing for judicial compulsion if voluntary compliance is not achieved.

2. **Failed ADR Leading to Judicial Recourse:**

▪ If the mediation process ends **"without any mediation agreement"**, the **statute of limitations for the action begins to run again from that date**.

This means that if amicable resolution fails, parties are free to pursue their claims through standard judicial channels, which would include simplified recovery procedures, without having lost their legal right to do so.

3. **Simultaneous Protective Measures (Not Mutually Exclusive):**

▪ Even if parties have agreed to mediation or arbitration, they can still initiate **"provisional or conservatory measures"** through state courts to safeguard their rights. The **"existence of an arbitration agreement shall not prevent a court... from ordering interim or conservatory measures"**.

▪ Such measures are not considered a waiver of the ADR agreement or a termination of the ADR process. This is critical for creditors who might fear the dissipation of assets during the ADR process.

▪ The OHADA Uniform Act on Simplified Recovery Procedures and Enforcement Measures explicitly allows for "protective measures" like **sequestration (preventive attachment)** of property, including for claims that appear founded but need safeguarding.

This means that a village debtor, fearing that another debtor might hide assets, could initiate such a protective measure while still attempting to mediate or arbitrate the underlying dispute. State courts retain jurisdiction over "conservatory seizures and judicial sureties," even when an arbitral tribunal is involved.

In summary, the OHADA framework is designed to be flexible, allowing debtors in a village to first attempt amicable resolution through mediation or arbitration. If successful, these agreements can be legally enforced. If unsuccessful, or if protective measures are necessary, parties can then turn to, or simultaneously use, simplified judicial recovery procedures.

2.

<u>OHADA: Resolving Informal Contracts Through ADR</u>

Arbitration and mediation are key alternative dispute resolution (ADR) mechanisms within the OHADA legal framework, designed to provide flexible, confidential, and enforceable solutions for contractual disputes.

They are particularly relevant and beneficial for parties involved in informal contracts, such as villagers seeking debt recovery, due to their adaptability to local realities and emphasis on good faith.

How Arbitration Works

Arbitration under OHADA is governed by the **OHADA Uniform Act on Arbitration (UAA)**, which applies to any arbitration where the seat of the arbitral tribunal is located in one of the Member States. The **Common Court of Justice and Arbitration (CCJA)** also has its own **Arbitration Rules** for institutionalised arbitration.

1. Scope and Applicability of Arbitration:

• **Who can use it**: Any natural or legal person, including **States and other public entities**, can resort to arbitration for rights they can freely dispose of.

• **Basis for Arbitration**: An arbitration can be based on an **arbitration clause** (for future disputes) or a **submission agreement** (for existing disputes). An arbitration can also be based on an instrument regarding an investment, such as an investment code or a bilateral or multilateral investment treaty.

• **Form of Agreement**: The arbitration agreement **must be in writing, or in any other form evidencing its existence**, such as a reference in a contract to a document containing an arbitration clause56.

• **Independence**: The arbitration agreement is **independent of the main contract**, meaning its validity is not affected by the nullity of the contract. Parties can also resort to arbitration even if legal proceedings are already pending before a state jurisdiction.

• **Initiation**: Arbitral proceedings are deemed to commence when one of the parties initiates the procedure for the constitution of the arbitral tribunal. If parties refer to an arbitration institution, they are considered to have agreed on that institution's rules.

2. Constitution of the Arbitral Tribunal:

• **Number of Arbitrators**: An arbitral tribunal can be composed of a **sole arbitrator or three arbitrators**. If the parties do not agree on the number, it will default to a **sole arbitrator**.

• **Appointment**: Arbitrators are appointed, revoked, or replaced **according to the parties' agreement**. If the deal is insufficient or absent, a competent judge in the State Party will make the appointment. For CCJA-administered arbitrations, the **CCJA appoints or confirms arbitrators**.

• **Qualifications**: Only a natural person with full civil rights can be an arbitrator, and they must **remain independent and impartial**. Prospective arbitrators must disclose any circumstances that may create a doubt about their independence or impartiality. Challenges to an arbitrator's independence or impartiality are decided by the competent judge in the State Party, or by the CCJA for institutional arbitration.

3. Arbitral Proceedings:

• **Equal Treatment**: Parties are accorded **equal treatment** and a full opportunity to present their case.

• **Jurisdiction (Kompetenz-Kompetenz)**: The arbitral tribunal is **competent to rule on its own jurisdiction**, including objections regarding the arbitration agreement's existence or validity. An objection to jurisdiction must generally be raised before the submission of the statement of defense.

• **Time Limit**: Unless otherwise agreed, the arbitrators' mandate is **six months**, extendable by agreement or by the competent judge or the arbitral tribunal itself.

• **Relationship with National Courts**:

◦ **Decline of Jurisdiction**: National courts **must decline jurisdiction** if a dispute is brought before them that the parties had agreed to settle by arbitration, upon request of one of the parties. This applies even if the arbitral tribunal has not yet been seized, unless the arbitration agreement is manifestly null or inapplicable.

◦ **Provisional Measures**: However, the existence of an arbitration agreement does not prevent a court, in urgent cases, from ordering provisional or conservatory measures, as long as this does not involve examining the merits of the substantive dispute. The arbitral tribunal can also order interim or conservatory measures, except for conservatory seizures and judicial sureties, which remain within the jurisdiction of state courts.

• **Procedure**: Parties can **determine the arbitral procedure** directly or by reference to other arbitration rules. Failing this, the tribunal can conduct the arbitration as it deems appropriate.

• **Evidence**: The arbitral tribunal may request explanations and evidence, and must allow parties to discuss all arguments or documents before relying on them. It cannot base its decision on grounds raised *sua sponte* without inviting parties' observations.

• **Law Applicable**: Arbitrators apply the **law chosen by the parties** to the dispute's merits, or failing that, rules they deem most appropriate, considering **international trade practices**. They can also decide as **amiable compositeur** (friendly compromiser) if authorized by the parties.

• **Confidentiality**: Arbitral deliberations are **confidential**. This confidentiality also extends to the work of the CCJA related to the arbitration proceedings.

4. Arbitral Award and Enforcement:

• **Effect**: The award has a **res judicata effect** as soon as it is made.

• **Form**: The award must be signed by the arbitrator(s). If a minority refuses to sign, mention is made, and the award still has effect.

• **Correction/Interpretation**: Arbitrators have the power to interpret the award, correct material errors, or issue additional awards for claims not decided, upon request within 30 days of notification.

• **No Appeal on Merits**: Arbitral awards are **not subject to opposition or appeal** on factual or legal grounds before national courts.

• **Annulment Action**: Awards can be challenged through an **annulment action** before the competent judge in the State Party on specific grounds, such as lack of an arbitration agreement, improper constitution of the tribunal, exceeding the mission, violation of due process, contradiction with international public policy, or failure to state reasons. The decision on an annulment action can only be appealed before the CCJA.

• **Enforcement**: Awards can only be **forcefully executed by virtue of an exequatur decision** granted by the competent judge of the State Party. For CCJA awards, the **CCJA has exclusive jurisdiction to grant exequatur**.

• **Refusal of Exequatur**: Exequatur may be refused if the award is **manifestly contrary to international public policy**54.... The decision to refuse exequatur by a national judge is appealable only before the CCJA.

3.

OHADA: Law's Embrace of African Commercial Customs

The Uniform Acts' flexible rules for contract formation and proof collectively create a legal environment that is adaptable and can integrate the diverse cultural realities within the local and business communities of the contracting states of the organisation, promoting the Harmonisation of Business Law in Africa.

Traditional lending practices or differing priorities in specific cultures contribute to a legal framework within OHADA (Organisation for the Harmonisation of Business Law in Africa) that provides mechanisms for incorporating local commercial realities and established customs. This framework implicitly facilitates the accommodation of cultural sensitivities in commercial interactions.

The key areas of the Ohada Uniform Acts that enable cultural sensitivity within the OHADA legal space include:

• **Emphasis on Good Faith (Bonne Foi)**: The principle of good faith is a cornerstone of OHADA commercial law. Parties are **required to comply with the requirements of good faith in commercial dealings, and this obligation cannot be excluded or limited in its scope**.

While not explicitly cultural, this principle encompasses a duty of loyalty and honesty, which can indirectly support a judicial understanding of what constitutes fair and expected behaviour within a given community, even in the absence of formal written contracts.

This overarching principle guides the interpretation and application of the law to achieve just outcomes, preventing opportunistic behaviour.

• **Binding Force of Customs and Usages**: The OHADA Uniform Act on General Commercial Law (AUGC) explicitly states that parties are bound by customs they have agreed upon and by the course of dealing established in their commercial relationship.

Furthermore, unless otherwise agreed, parties are deemed to have agreed to professional practices of which they knew or ought to have known, and which, in trade, are widely known and regularly observed.

This provision, found in articles such as AUGC Article 145 (on commercial intermediary relationships), AUGC Articles 206 and 207 (on commercial sales), and reinforced in AUGC Article 238, provides a direct legal basis for courts to consider traditional approaches and community norms when interpreting obligations and resolving disputes, especially in informal settings in prove or in dispute of a debt, obligation or for specific performance etc.

• **Flexibility in Contract Formation and the broad interpretation of Proof**: OHADA commercial law prioritizes substance and commercial reality over strict formalism.

Commercial sales contracts **may be in written or verbal form and are not subject to any condition of form**.

Moreover, commercial acts **may be proven by any means**.

This flexibility is vital in contexts where formal written agreements are rare, such as in dealings between villagers, customary market sales, and borrowing or lending practices. It allows for evidence to be gathered from factual circumstances, negotiations, established practices between parties, and customary practices within the concerned profession or community.

Even informal accounting books can be admitted as evidence. This broad interpretation of proof facilitates the establishment of debt existence, even without a formal written contract, thereby accommodating standard practices in many African communities, such as those of the Bakweris, Bayangis, Banso, or the northerners of Cameroon.

• **Promotion of Amicable Dispute Resolution (Mediation)**: The OHADA legal framework encourages amicable settlement. The **Uniform Act on Mediation (2017)** provides a formal process whereby a neutral third person assists parties in reaching an amicable settlement of their dispute, even in local communities.

The neutral third party may be a chief, a designated member of the traditional council, a pastor, a community leader, a social leader, or other persons who facilitate an agreement or conciliation between the parties in a form recognised by the Uniform Act on Mediation or in ad hoc arbitral proceedings.

This aligns with cultural norms in many African villages where disputes are often first resolved through community elders, religious leaders, or traditional councils.

In such settings, evidence, aligning with the broad framework of the Uniform Acts for the benefit of formal court proceedings, can be reduced to a written document. Alternatively, elders or witnesses present during these informal, local, customary hearing proceedings may later testify to present the findings of fact established during the informal process. However, the decision may be contested, absent, or made.

Exhausting these traditional or informal dispute resolution mechanisms first is **highly advisable**, as it aligns with cultural norms and can lead to more amicable and quicker resolutions.

Mediation, as a formal option, thus facilitates cooperative resolution within the modern legal process, mirroring culturally sensitive approaches described above.

In essence, while it does not delve into specific cultural details, OHADA's foundational principles include good faith, as well as its recognition of customs and established practices as legally compelling and binding.

Its flexible rules for contract formation and proof collectively create a legal environment that is adaptable and can integrate the diverse cultural realities within its member states, ensuring fairness and predictability in commercial justice.

4.

But what is this formal mediation by the Uniform Act that may help local communities different from informal local community mediation?

Formal Mediation under OHADA is governed by the OHADA Uniform Act on Mediation (AUM), which promotes the amicable settlement of disputes.

1. Definition and Types:

• **Mediation**: Any process where parties request a **third person (mediator) to assist them in reaching an amicable settlement** of their dispute.

• **Types**: Mediation can be **conventional** (initiated by parties), **judicial** (at the request/invitation of a state court), or triggered by an **arbitral tribunal** or competent public entity. It can be **ad hoc or institutional**. The AUM does not apply to cases where a judge or arbitrator directly attempts to facilitate a settlement.

2. Commencement and Effects:

• **Initiation**: Mediation starts on the date the most diligent party implements a **written or oral mediation agreement**. If a written invitation is not accepted within 15 days, it can be considered rejected.

• **Court/Arbitral Referral**: A state court or arbitral tribunal may, with parties' agreement, suspend proceedings and refer the case to mediation, fixing the period of stay.

• **Suspension of Statute of Limitations**: The **start of mediation suspends the statute of limitations** for the action. If mediation ends without an agreement, the statute of limitations restarts for a period of at least six months. This is crucial for villagers to pursue amicable solutions without losing their legal right to pursue formal litigation later.

3. Mediator Selection and Status:

• **Mutual Choice**: The parties **mutually choose the mediator or mediators**. They can seek assistance from an "appointing authority" to recommend or directly appoint a mediator.

• **Independence and Impartiality**: The mediator must be **independent and impartial**. They must disclose any circumstances that are likely to raise doubts about their impartiality or independence at the time of appointment and throughout the process. If new circumstances arise and a party refuse to continue, the mediator's mandate ends.

• **Incompatibilities**: Unless agreed otherwise, a mediator **cannot act as an arbitrator, expert, or counsel** in the same or related dispute.

4. Conduct of Mediation:

• **Party Autonomy**: Parties are **free to agree on how mediation is conducted**, including by reference to mediation rules.

• **Mediator's Role**: The mediator conducts the mediation as they deem appropriate, taking into account circumstances and parties' wishes. They **cannot impose a solution**, but may make propositions to settle the dispute. They can also invite parties to appoint an expert for technical opinions.

• **Guiding Principles**: Mediation adheres to principles ensuring respect for parties' will, mediator's moral integrity, independence, impartiality, **confidentiality**, and efficiency. The mediator provides a solution that genuinely reflects the parties' will and respects public policy.

• **Confidentiality of Communications**: The mediator may meet or communicate with parties jointly or separately. If meeting separately, the other parties must be informed. Information given to the mediator under **express conditions of confidentiality cannot be revealed** to other parties.

• **Admissibility of Evidence**: **All information related to mediation is confidential** unless disclosure is required by law or necessary for enforcement. Generally, evidence from mediation (e.g., offers, admissions) cannot be relied upon or submitted in other arbitral or legal proceedings. This protects open communication during mediation.

5. Termination and Enforcement of Agreement:

• **Termination**: Mediation ends upon conclusion of a **written agreement**, a written statement from the mediator that further efforts are futile, or expiry of the mediation period.

• **Enforceability of Agreement**: If parties settle their dispute by written agreement, it is **mandatory, binding** and **enforceable**.

◦ **Notarization**: Agreements can be submitted for **registration under a notary's registry** for formal recognition and enforcement.

◦ **Court Approval/Exequatur**: Agreements can be submitted for **approval or exequatur by the competent court** upon joint request, or request of the most diligent party. The judge issues an order without modifying the terms, checking only authenticity and compliance with public policy. If no decision is made within 15 days, approval/enforcement is automatically granted.

◦ **Consent Award**: If the agreement is reached during ongoing arbitral proceedings, parties can ask the arbitral tribunal to issue a **consent award**, which has the same status and effects as any other award.

5.

How Arbitration and Mediation Help Villagers in Informal Contract Recovery:

The OHADA framework for arbitration and mediation is highly beneficial for resolving disputes arising from informal contracts, particularly for villagers, by addressing common challenges such as a lack of formal documentation, ambiguity, and the need for culturally sensitive solutions.

1. **Flexibility and Customization**:

◦ **Party Autonomy**: Both UAA and AUM emphasize **party autonomy** in determining procedures. This allows villagers to design a process that aligns with their community's norms and understandings, rather than being bound by rigid court rules.

◦ **"Amiable Compositeur"**: In arbitration, the ability for arbitrators to decide as **amiable compositeur** if authorised by parties means decisions can be based on equity and fairness, which often aligns better with traditional or informal agreements and local justice perceptions, rather than strict legal technicalities.

◦ **Oral Agreements and Proof by Any Means**: OHADA commercial law recognizes that contracts can be **oral and proven by any means**. This is particularly crucial for informal village transactions, where written documents are scarce. Evidence can include factual circumstances, negotiations, established practices, and customary practices in the trade. Even informal "accounting books" can be admitted as evidence. This greatly facilitates proving the existence and terms of a debt that might otherwise be unprovable in a formal court setting.

2. **Good Faith and Commercial Morality**:

◦ The **mandatory principle of good faith (bonne foi)** in OHADA commercial law means parties must act with loyalty and honesty, and this obligation cannot be excluded or limited. As

established in **CCJA, Arrêt n° 17/2015 (New Holland c/c/SIFCA), and its progeny, a party who benefits from a transaction (such as receiving a loan) and then attempts to evade repayment by raising technicalities or claiming ignorance acts in bad faith. Such a defence is likely to be** inadmissible. This principle directly supports the recovery of informal village debts by preventing opportunistic behaviour.

3. **Choice of Neutral and Confidentiality**:

◦ **Trusted Neutrals**: The ability to **mutually choose their mediator or arbitrator** allows villagers to select individuals who understand their local customs, community dynamics, and specific commercial context (e.g., local cocoa trade), leading to more sensitive and effective resolutions. For example, a trusted elder or community leader could serve as a mediator or even an arbitrator if agreed upon.

◦ **Confidentiality**: Both arbitration and mediation proceedings are **confidential**. This can be highly appealing for villagers who prefer to resolve financial disputes discreetly, avoiding public exposure or formal court appearances that could strain community relations or bring shame.

4. **Enforceability and Legal Certainty**:

◦ **Binding Outcomes**: Despite their flexible nature, agreements reached through mediation or awards rendered through arbitration are **legally binding and enforceable**.

◦ **Simplified Formalization: Mediation agreements can be formalized through notarization or court exequatur, ensuring that even amicable solutions reflecting local realities can be legally upheld and enforced, providing legal certainty for all parties**.

◦ **Suspension of Prescription**: The mediation process suspends the statute of limitations, preventing a debtor from using time as a defence and encouraging participation in amicable resolution. Similarly, an explicit or implicit acknowledgement of a debt (such as partial payment or discussions of repayment) can interrupt the statute of limitations in commercial actions, preventing a debtor from using prescription as a defence, especially when acting in bad faith.

In summary, arbitration and mediation under OHADA provide villagers with accessible, flexible, and culturally adaptable pathways to resolve informal contractual disputes. Their mechanisms, particularly the emphasis on good faith, freedom of proof, and choice of neutrals, align well with the realities of informal commercial dealings, offering a structured yet adaptable approach to ensure that agreements are honoured and debts recovered.

6.

Case Review of Principles guiding contracts and obligations under the Ohad Uniform Act

New Holland Principle: Good Faith in Commercial Law

To discuss the cardinal principle of good faith in Commercial law, let us consider the ratio decidendi of the CCJA, Arrêt n° 17/2015 of 27 March 2015 (Société New Holland Côte d'Ivoire c/ Société SIFCA), including the brief facts, legal issues, violated or relevant legal provisions, principles applied, and the court's reasoning.

Case: CCJA, Arrêt n° 17/2015 of 27 March 20151 Parties: *Société New Holland Côte d'Ivoire* (New Holland) v. *Société SIFCA* (SIFCA).

Brief Facts: New Holland, a company, initiated legal proceedings against SIFCA for the payment of a debt arising from a commercial contract. SIFCA, the defendant, raised a plea of prescription, arguing that the statute of limitations had expired. However, during the course of their commercial relationship and before the initiation of the lawsuit, SIFCA had engaged in conduct such as acknowledging the debt, making partial payments, and requesting a restructuring of the payment terms.

Legal Issues: The primary legal issue was whether a party, by its conduct (such as acknowledging a debt, making partial payments, or requesting restructuring), could be barred from subsequently invoking a procedural defence, specifically prescription, which would otherwise be legally available to them. The core question revolved around the application of principles of good faith and commercial loyalty in the context of contractual obligations and their enforcement.

Violated/Relevant Legal Provisions & Principles Applied:

1. **Principle of Good Faith (*Bonne Foi*):** This is a fundamental principle in OHADA commercial law. The CCJA strongly emphasised that parties must act in good faith throughout the execution of a contract and in their commercial relations. This principle is mandatory and cannot be excluded or limited by parties.

2. **Commercial Loyalty (*Loyauté Commerciale*):** Closely related to good faith, this principle implies that parties should not engage in conduct that is inconsistent with their previous actions or that aims to unfairly prejudice the other party after having benefited from the relationship.

3. **Abuse of Right (*Abus de Droit*):** The CCJA asserted that exercising a right (in this case, the right to invoke prescription) in a manner contrary to good faith constitutes an abuse of right. This

doctrine prevents a party from using a legal right for a purpose for which it was not intended, or in a manner that is unconscionable or inequitable.

4. **Implied Acceptance/Waiver by Conduct**: While not using standard law terms like "estoppel" or "waiver" directly, the court's reasoning aligns with the civil law concept that a party's consistent conduct implying acceptance of obligations can bind them.... SIFCA's actions demonstrated implicit recognition of the debt, rendering its later plea of prescription inadmissible.

5**. Rejection of Formalism over Substance in Commercial Matters**: The decision underscored that in commercial relationships, conduct and economic reality often take precedence over strict formalism. The fact that SIFCA had benefited from the contractual performance was crucial.

Court's Reasoning: The Common Court of Justice and Arbitration (CCJA) reasoned that SIFCA's conduct – specifically, its acknowledgement of the debt, partial payments, and requests for restructuring – demonstrated a consistent recognition of its obligation towards New Holland.

To then allow SIFCA to invoke the defence of prescription, after having benefited from the contract and by its actions, would be contrary to the principle of good faith and commercial loyalty. The Court held that such an act would constitute an abuse of right.

The CCJA ruled that a party cannot implicitly acknowledge a debt and continue to benefit from the underlying transaction, only to later raise a procedural defence like prescription. This would undermine commercial trust and stability. The Court effectively prioritized the substantive fairness and integrity of commercial relations over a strict, formalistic application of procedural deadlines where a party's conduct indicates otherwise.

Holding: The CCJA declared SIFCA's plea of prescription inadmissible and upheld New Holland's claim for the payment of the debt. The ruling emphasised that the defendant's conduct, characterised by an implicit acknowledgement of the debt, rendered the belated plea of prescription inadmissible.

Significance: This decision is a cornerstone of OHADA jurisprudence on good faith and abuse of right in commercial matters.

It reinforces the principle that commercial actors must act consistently and honestly, and that courts will not permit the exploitation of legal technicalities to escape legitimate obligations, especially when a course of dealing and benefits have been exchanged.

The *New Holland* principle has been consistently applied in subsequent CCJA cases to bar belated defences, emphasising commercial loyalty and preventing parties from denying debts they have repeatedly recognised or from which they have benefited to evade their obligations.

7.

Judicial Review on Access to Justice and Locus Standi:

From the foregoing premises, we can infer that most debts in the rural milieu are likely to result in small claims of less than 50,000 F CFA, approximately less than $ 100. It might be for just 5000frs, 10,000frs or less. The preceding procedures will be very onerous for a rural person to pursue to recover a small claim of 5,000, 10,000 FRS, or less than 50,000 FRS. It might cost the same 50,000frs or more to recover such a small sum.

What happens on the ground is that litigants of such small sums abandon the legal process and resort to non-judicial instances of debt recovery or enforcement to pay for the arrest and detention of their debtors by the forces of law and order until the debtor is coerced and forced to pay the alleged debt to have his or her freedom.

This leads to gross human rights violations and a breakdown of the rule of law.

How does the Uniform Act of 17 October 2023, organising simplified recovery procedures, try to solve the problems of access to justice and locus standi?

The Uniform Act of 17 October 2023 introduces a framework specifically designed to address the problems of access to justice, particularly for small claims, in settings where formal court procedures can be prohibitively expensive and complex. It does this by creating simplified, rapid legal pathways and establishing a clear, exclusive set of rules for enforcement, thereby providing a viable alternative to the illegal and rights-violating practices you mentioned.

The Act's solution can be understood in two main parts: simplifying the process of getting a legal decision and strictly regulating how that decision is enforced.

1. Improving Access to Justice with Simplified Recovery Procedures

To combat the issue of "onerous" and costly legal processes for small claims, Book I of the Act establishes the **"Injunction to Pay"** procedure. This is a streamlined mechanism intended to be quick, inexpensive, and accessible for recovering debts that are certain and due.

Here is how this procedure directly addresses the challenges faced by a rural person trying to recover a small sum:

• **Simple Initiation:** A creditor does not need to file a whole, complex lawsuit. Instead, the process starts with a simple **application** filed at the competent court. This application must state the parties' details, the amount claimed, and the basis for the claim, and be supported by relevant documents.

• **Rapid Decision-Making:** A judge must rule on the application **within three (3) days** of it being filed. If the claim appears well-founded, the judge issues an injunction ordering the debtor to pay. This speed is crucial for making the legal process practical for small, urgent debts.

• **Clear Path to an Enforceable Title:** Once the injunction is served, the debtor has **ten (10) days** to either pay or file an "opposition". If the debtor does nothing, the creditor can request that an **"executory formula"** be added to the injunction. This act transforms the injunction into a legally enforceable title, possessing the full power of a final court judgment, without the need for a lengthy and expensive trial. The request to affix this formula can even be made orally at the court registry, further simplifying the process.

• **Emphasis on Conciliation:** If the debtor does file an opposition, the court is required first to appoint a judge to **attempt conciliation** between the parties. This provides a less adversarial and potentially faster route to resolution. A successful conciliation report itself becomes a writ of execution.

By creating this fast-track system, the Act gives a creditor with a small claim of 5,000 or 10,000 FCFA a realistic and affordable way to obtain a legally binding decision. This directly enhances their **locus standi**—not just the theoretical right to sue, but the practical ability to see a claim through the justice system.

2. Upholding the Rule of Law with Regulated Enforcement

The Act explicitly prohibits the non-judicial and illegal enforcement methods described by creating a comprehensive and exclusive legal framework in Book II.

• **Exclusivity of Legal Measures:** Article 28 states that a creditor seeking compulsory recovery **"shall only be entitled to implement against his debtor the measures and procedures provided for in this Uniform Act"**. This provision makes it illegal to resort to any other method, such as paying law enforcement to detain a debtor.

• **Requirement of a "Writ of Execution":** Forceful enforcement can only be pursued if the creditor possesses a valid **"writ of execution"**. The Act clearly lists what constitutes such a writ, which includes court decisions with the executory formula (such as those obtained from the injunction to pay procedure) and conciliation reports. This ensures that state-backed enforcement can only happen after a legal process has been followed.

• **Clarified Role of Law Enforcement:** The Act defines the proper role of the state's security forces. Article 29 states, **"The State shall lend assistance in the execution of decisions and other writs of execution,"** and the executory formula **"shall entail the direct requisition of the forces of law and order"**. This means their legal function is to assist a bailiff in carrying out a lawful enforcement measure (e.g., seizing property), rather than acting as an extralegal intimidation force for private

creditors. The detention you described is a misuse of state power and is contrary to the provisions of the Act.

• **Providing Lawful and Relevant Enforcement Options:** Instead of illegal detention, the Act provides creditors with a range of legal tools to recover debts from a debtor's assets. Crucially, it includes measures specifically relevant to a "rural milieu":

◦ **Attachment of Unharvested Crops:** The Act contains special provisions for attaching almost mature crops, which can be done up to six weeks before the typical harvest time.

◦ **Attachment of Livestock:** There are detailed rules for the sequestration and attachment of livestock, recognising them as a key asset.

In summary, the Uniform Act aims to address the issues of access to justice and locus standi by replacing an onerous and inaccessible system with a simplified, rapid, and cost-effective **procedure for obtaining a judgment (the "Injunction to Pay")**. It then pairs this with a **strictly regulated and exclusive set of legal enforcement measures**, which outlaws the very human rights abuses you described and provides creditors with practical, lawful tools to recover their debts, even in a rural context.

The Guardians of Justice and Dr Tatsi hold that these same provisions were present in the repealed law. One of the objectives of ‘Guajus’ is to engage with other stakeholders to promote and improve the quality and quantity of justice through legal and judicial reports.

We propose the following:

1. The creation of virtual courts with internet mobile booths in local areas, such as councils and local council halls, so persons with small claims can file and litigate their claims online without the need for any lawyers.
2. Digital forms should be created and available online for such a claim, resulting in digital judgments or orders for claims less than 100,000frs, with free bailiff execution of such orders and decisions—the bailiffs to earn state emoluments for such executions.
3. A head of a family or a child above 18 years should have the locus standi to sue for a debt owed to a member of the family based solely on the oral testimony of the family head, mother, community leader, village chief or head of community council, pastor, priest, or school head where the litigant resides on their virtual platform.
4. Claims below 100.000 or interlocutory applications related to such a claim should not involve a court appearance.
5. The time limit for such proceedings should be brief and almost instantaneous.
6. A law should be passed for the prosecution of the forces of law and order and the legal department officials who intentionally hear civil claims.

Our preceding conceptualization of the Uniform Acts operating within our Local communities, the case review and the adaptability of the Uniform Acts to meet local needs, the reliance on substance rather than procedural technicalities, the equitable/legal principles of good faith, commercial loyalty, and abuse of right implied acceptance/waiver, a non-derogable principle in all commercial acts(Articles 237-238 of the AUGC) (good faith) and OHADA's harmonised law may limit the use of such formal defences if raised belatedly or abusively.

OHADA law prioritizes economic reality over formalism, ensuring that commercial justice is accessible, predictable, and fair across its member states. Transactions are:

- Governed by OHADA commercial law,
- Subject to mandatory good faith,
- Interpretable based on conduct and context,
- And provable by any means, including electronic and accounting evidence.

This ensures legal certainty, flexibility, and equitable enforcement — core objectives of the OHADA system.

Summary Table: OHADA vs. English Law

OHADA PRINCIPLE	ENGLISH/WELSH LAW EQUIVALENT
Good faith (*bonne foi*)	Not general, but implied in relational contracts, insurance, and discretionary powers (*Yam Seng*, *Braganza*)
Commercial loyalty	Reflected in equitable doctrines: estoppel, unconscionability, fair dealing
Abuse of right (*abus de droit*)	Addressed via estoppel, penalty rule, public policy, relief against unfair terms
Implied acceptance/waiver	Waiver by conduct, estoppel, laches, and acquiescence

OHADA PRINCIPLE	ENGLISH/WELSH LAW EQUIVALENT
Non-derogable obligations	Statutory protections (UCTA, CRA 2015),void terms, equitable intervention

Final Conclusion:

While England and Wales do not recognise a general duty of good faith or abuse of right as overarching, non-derogable principles in commercial contracts — unlike OHADA or civil law systems — it achieves similar results through a patchwork of equitable doctrines and statutory controls.

The key differences are:

ASPECT	OHADA/CIVIL LAW	ENGLAND & WALES
Source	Codified principles (AUGC, ARO)	Case law, equity, statute
Approach	Top-down: duty imposed by law	Bottom-up: develops case by case
Flexibility	Broad application of *bonne foi*	Limited to specific contexts
Enforcement	Judge of Execution enforces based on conduct	Courts apply estoppel, waiver, fairness

In practice: A borrower in England who benefits from a loan and delays challenging it may still be estopped from denying liability — not because of 'bonne foi', but because of equitable principles that serve the same justice.

Thus, while the language differs, the substance converges in preventing injustice, ensuring fair dealing, and upholding the integrity of commercial relationships in both the Ohada member countries of Africa and in England and Wales.

Thanks.

By Justice, Dr Tatsi, CA, Buea