

THE NECESSITY OF SETTING UP A BANKING COMMISSION FOR THE PROTECTION OF FINANCIAL CONSUMERS IN REPUBLIC OF CONGO - LESSON FROM CHINESE BANKING COMMISSION REGULATORY

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ABSTRACT: *Since the subprime crisis of 2008, financial consumer protection has become a hot topic all over the world. This is how, in certain countries, governments are still looking for an appropriated mechanism to improve the protection of financial consumers. It is the case of the Republic of Congo where financial consumers are defenseless. They are victims of bad practices from financial institutions. The embezzlements of depositor funds is currently a common phenomenon due to the shortcomings encountered by the Banking Commission of Central Africa. This situation has created a confidence crisis between financial consumers and financial institutions. Nowadays, people are keeping money in households and using informal means to get financial services. Which is causing significant social and economic consequences. This is how we have oriented our research study on the legal mechanisms established by the Chinese authorities through the China's Banking Commission Regulatory set-up in 2003. In this paper, the authors present the vulnerable state of financial consumers in Congo, and demonstrate the inefficiency of the Banking Commission of Central Africa, show the progresses made by the China Banking Commission Regulatory, and recommend the setting-up of such a commission in Republic of Congo.*

KEYWORDS: Consumer, Financial Consumers, Protection, Financial Institutions

INTRODUCTION

The contemporary era is marked as the era of consumers. Consumers are the key players in the market place and their consumption patterns greatly influence the society and the economy of the nations. Today, no country can knowingly or unknowingly disregard the role and the importance of the consumers in their society. This can be argued on the basis of fast enactment of consumer protection laws in almost all part of the world¹. Thus, there is no

¹ *In accordance with the Resolution 39/248 of the General Assembly of United Nations, of 16 April 1985, adopting the United Nations Guidelines for Consumer Protection, recommended to all States. This Guidelines was expanded by the Economic and Social Council by the resolution 1999/7 of 26 July 1999, and revised and adopted by the General Assembly through the resolution 70/186 of 22 December 2015. The interest of the United Nations to protect consumers is due to the strong participation in the economic life of the States. This is how the United Nations have put in its agenda the World Consumer Rights Day, celebrated on 15 March of every year. This day is an opportunity offered to all consumers to claim for the respect and protection of consumer rights and interests. Also to protest against market abuses and social injustices which undermine those rights. The World Consumer Rights Day was inspired by the President John F Kennedy, who sent a special message to the US Congress on 15th March 1962, in which he formally addressed the issue of consumer rights. He was the first world President to pronounce upon the interest of protecting this economic group.*

economy without consumption. Therefore, consumers constitute the first economic power of the States. That is why, consumers must not be considered as simple buyers of goods and services, rather as strategic business partners for the governments and the companies. It is in this context that it has been realized that the protection of consumers must be a socio-economic program established by the governments as well as the companies because the consumer satisfactions constitute a great interest for these two entities. Yet, the governments have a primary responsibility to protect consumer interests and rights, through appropriate policy measures, legal structure and administrative framework². But, in certain countries, consumers are still defenseless. They are victims of the violations of their rights, due to the lack of a consumer protection framework, which makes them vulnerable in face of their co-contractors. This is the case of the Republic of Congo, where, since several years, financial consumers are abandoned as an easy prey for financial institutions. One of the flagrant cases is the embezzlements of consumer savings by financial institutions. The Banking Commission of Central Africa (COBAC) set up by the member States of the Economic Community of Central African States (CEMAC)³, since 1990, is still far away to guarantee the protection of financial consumers in Congo, given the ineffectiveness of that Commission. This is why it is urgent for the Republic of Congo, to establish a new policy in order to improve the protection of financial consumers, because, to paraphrase Nagavalli Annamalai, the protection of financial consumers contributes to the stability and economic growth of the States through the confidence existing between consumers and financial institutions⁴. In this article, the authors present the vulnerable state of financial consumers in Congo, demonstrate the inefficiency of the Banking Commission of Central Africa, and express the interest of exploiting Chinese model by showing the progresses made by the China Banking Commission Regulatory (CBCR), and, recommend the implementation of such a commission in Republic of Congo.

LITERATURE REVIEW

It is in the early 2000s that the issue about the vulnerability of financial consumers in the CEMAC countries and particularly in Congo, has started to concern consumer associations, public authorities, media, and, an increasing number of scholars, due to the misconduct of financial institutions, caused by the inefficiency of the COBAC. In a universe where the banking landscape (financial) is mainly constituted of banks and microfinance institutions, the

Recall that the World Consumer Rights Day comes from the first consumer's movement in 1983 in the USA.

² Singh, S. S., and Sapna Chadah. "Consumer Protection in India Some Reflections." *Indian Institute Of Public Administration, New Delhi, India* (2006).

³ *The Economic Community of Central African States abbreviated and usually called CEMAC is an economic and monetary institution which includes six States of Central African, having the CFA Francs as common currency. Which are: (Republic of Congo, Chad, Gabon, Central African Republic, Cameroon, and Equatorial Guinea). CEMAC was created by the treaty of 16 March 1994 in Ndjamen capital of Chad, and became operational in June 1999, replacing the Customs Union of Central African States (UDEAC) dissolved in the early 1990s. Its main missions is to achieve collective autonomy, to raise the standard living of the populations and to maintain economic and financial stability through a harmonious cooperation between member States. Thus, The Banking Commission of Central Africa (COBAC) was set up by the Convention of 16 October 1990, signed by these six States of the CEMAC and became operational in 199310.*

⁴ Available at: <http://www.worldbank.org/en/news/feature/2013/02/05/Beijing-Workshop-Promotes-Financial-Consumer-Protection> visited on 28 February 2018.

surveys carried out these last years in those two financial sectors, still reveal several imperfections. For example, 2r Consulting (2014) notes a lack of a full disclosure of information from banks in matter of credit contract. It maintains that the interest rate calculated at the time of granting credit often does not correspond to the interest rate charged by banks at the time of credit repayment. Which is putting consumers in a complex situation. He also notes an imbalance of power between banks and consumers because banks, in position of strength, sometimes, are imposing abusive clauses to consumers. In such a situation, Congolese people are obliged to use informal financial circuits to get credits such as tontines⁵, which are not based on the legal grounds, or, recourse to the local and amateur funders, who are performing beyond the existing laws, charging excessive interest rates to borrowers, sometimes, going around 35%, and, increases when the borrower is incapable to reimburse the loan at the due date. This exposes consumers to risks and excludes them from the formal financial circuit, a sort of economic and social marginalization. Thus, 2r Consulting suggests a reform of the current legal framework, likely to guarantee rights and interests of banks and consumers. Jean-Valère Ngoubangoyi (2006) also notes a lack of vocation and professionalism from microfinance institutions, of which some of them have made this activity an enrichment source to the detriment of people with low income, by embezzling their savings, instead of a financial instrument, promoting financial inclusion and fighting against poverty. This is how he recommends more vigilance from public authorities, to allow the perpetuation of the microfinance in Congo, which is an important economic tool. The same observation was made by Sara Nandjip Moneyang (2013) who, having noted the misappropriation of consumer savings by microfinance institutions in the CEMAC zone, argues that the CEMAC legislator did not skimp on means protecting depositor funds of microfinance institutions. She also notes the non-respect of the prudential rules due to the weakness of the control means of the COBAC. This is how she thinks that other avenues and new measures, must be explored for an effective implementation of the existing protection tools. This issue was also raised by SUNKAM KAMDEM Achille (2016) who, after bringing out the legitimacy of choosing a banking community system by the CEMAC member States, thinks that the reasons of the inefficiency of the COBAC are due to the lack of autonomy of this body. He also raises the issue about the legal state of the COBAC. According to him, the Convention of 16 October 1990 establishing COBAC as regulatory body of the banking activity in the CEMAC zone, and its annex, have not recognized expressly its legal personality. Rather, this legal personality has been recognized to the CEMAC through the Article 35 of the CEMAC addendum treaty relative to the legal and institutional system of the CEMAC, and, to the BEAC by the Article 5 of the BEAC status. The lack of the recognition of the legal personality of the COBAC is likely to complicate the legal regime of its civil liability. Thus, he thinks that this situation must be clarified in order to strengthen the independence the COBAC, to establish in a clear way its civil liability as a regulator, and that of its agents, which could contribute to the improvement

⁵ Tontine is a financial system that includes a group of people which, from an agreement, decide to pay a specified amount (according to the time fixed by the participants, either per month, or per year, per week or per day), of which the total amount of all the payment will be given to one of them in alternative way, until everyone will get payment. A sort of saving without interest because each participant gets the total amount of his saving in accordance with the time that the tontine will take. As the amateur funders who are performing in violation of the applicable laws, the tontine is an informal financial system due to the fact that it is not taken into account by the financial current law in the CEMAC. This financial informal deal is also used in almost all the Sub-Saharan Africa and in many Asian countries with different names.

of the protection of financial consumers. This has led Ayuk, Elias T. (2015) to say that the banking system in Central Africa still has imperfections that need to be resolved as soon as possible in order to stabilize the banking economy in this area. Yet, from our point of view we believe that the protection of consumers need to be one of the main issue of that reform as suggested by several scholars because financial consumer protection improves confidence of depositors in the banking systems by making sure that they invested (deposited their funds) in products suitable for their risk profile and financial plans. This, in turn, enhances the stability of banks' deposit base and diminishes the risk of panic and runs on bank deposits. Hence, financial consumer protection can complement prudential supervision, when implemented in proper balance. They can enforce good business conduct and market discipline of financial institutions as long as an inexpensive, fast and effective redress mechanism is in place. All this contributes to the opening of the capital market as well as to the economic growth of the countries. For that, legislators have to take strong measures, putting consumers away from the bad practices of financial institutions, to create an atmosphere of mutual trust between those two economic actors. That is why, we share the vision of Shudi Zhu and Lina Huang (2012), who consider that the insufficient individual behavior of financial institutions can lead to a negative externality and dysfunction of the financial market or even the crisis of the entire economic system, taking the crisis of subprime mortgages as example. This is why, they believe that governments should take the necessary action to uncertain and high-risk activities of financial operators in order to increase the confidence of financial consumers and protect their rights. It is in that direction that this study finds its all interest.

The Vulnerable State of Financial Consumers in Congo

The Republic of Congo is located in Central Africa. It sharing its borders with the Central African Republic in the North, Cameroon in the Northwest, Gabon in the West, Angola in the extreme South-West, and Democratic Republic of Congo in the East and South. With an average land area of 342,000 km² and a population estimated at four million people, the Rep. of Congo went from six banks in 2010, to eleven banks in 2015 of which the most recent is the Sino-Congolese Bank for Africa (BSCA Bank) which is the result of a good cooperation between Congo and China. The Rep. of Congo also includes about 68 microfinance institutions in 2017⁶. Despite the number of these financial institutions, the use of financial services still a

⁶ *Microfinances are financial institutions specializing in banking services (payment, deposit, credit granting and money transfer) for low-income groups or individuals. Microfinance institutions provide account services to small-balance accounts that would not normally be accepted by traditional banks, and offers transaction services for amounts that may be smaller than the average transaction fees charged by mainstream financial institutions. According to the Article 1 of the Regulation n°01/02/CEMAC/IMAC/COBAC relative to the functioning and control of microfinance institutions in CEMAC countries, microfinances are financial institutions which are performing banking operations without having a bank status. Historically, microfinances have emerged through the pioneering experiences of Grameen Bank in Bangladesh and Banco Sol in Bolivia, headed by the 2006 Nobel Peace Prize Professor Mohammed Yunus who is considered as the father of the microfinance. However, in general way, microfinance has arrived in Central Africa following the reforms that took place after the financial and economic crisis of the 1980s which has caused the fall of the banking system through the bankruptcy of the banks. Still, in this area people prefer to collaborate with microfinances than banks because of their accessibility and proximity. In fact, microfinance institutions are selling their services at reasonable costs. For example, the opening of a bank account in microfinance services is around 9usd and, those institutions are dispersed in whole the country even in countryside's which prevents social and geographic exclusion of people in financial activity. We also note the simplification of the administrative measures in matter of credit.*

rare commodity in Congo. For instance, the surveys carried out between 2015 and 2016 by the competent services, revealed that the bancarization rate in Congo is estimated at 13%. This report was approved by the Congolese Minister of Finances and Economy Mr. Gilbert Ondongo in 2016, during the inauguration ceremony of the headquarters of the BGFIBank Group in Brazzaville, capital of Congo⁷. By contrast, the report presented by the World Bank on 15 May 2016, through its representative in Congo Mr. Issa Djibrila, states that the poverty rate in Congo has known a large reduction going up from 51% in 2005 to 36% in 2016⁸. This approach shows that at least 50% of the Congolese population are living on average. This justifies that one of the causes of the low bancarization rate in Congo, is due to the misbehaviors of the financial institutions towards financial consumers. Indeed, since several years, in Congo, financial consumers do not have any protection which means that they have no right. The lack of a solid protection framework has caused the vulnerability of financial consumer's vis-à-vis to financial institutions. One of the most flagrant cases is the lack of the protection of consumer savings. Hence, the repeated embezzlements of the consumer funds by financial institutions. One of the most famous cases, is the case of Salu Humberto Brada (SHB) in 2002⁹. The chairman of this microfinance institution was originally from the Democratic Republic of Congo, with an Angolan passport, where he was coming right from. He arrived in Congo in 2001, where he obtained a license to import food products. Then, he extended his activities to the saving by opening counters in Brazzaville and Pointe-Noire (economic capital of Congo), where people were coming to make deposits, repayable after 45 days with an interest rate of 30%, whereas the rate of the commercial banks in the CEMAC countries was around 5% and 12%. Which means that SHB was performing contrary to the COBAC rules. After one year, SHB closed its doors under the pressure of the Congolese Ministry of Finance and the Central African States Bank (BEAC)¹⁰, which considered that the nature of the savings made by the HSB was illegal and accused this financial institutions as crook. Thus, more than 48 thousand people have never been reimbursed and are still waiting for their reimbursement of which the total amount is estimated at 29.6 billion CFA francs whereas at its closing, HSB had a cash balance of only 1.2 billion of CFA francs according to the leader of the savers committee Mr. Julien Ebisou¹¹. Apart from HSB case, several similar cases can be listed such as the Mutuelle Social Du Congo known as MUSCO in 2004, the Caisse D'épargne Ristourne ET Finance (Cerfi), and the Caisse Confessionnelle De L'église Kimbaguisme (Cepki) in 2005, Horthy

Whereas banks are present only in the big cities it is also the case of Congo where banks concentrated in two cities Brazzaville and Pointe-Noire and the opening of a bank account is around 100usd, and access to credit that still complicated.

⁷ Available at: http://french.china.org.cn/foreign/txt/2016-02/26/content_37875627.htm visited on 23 December 2017.

⁸ Available at: http://www.portail242.info/Le-taux-de-pauvrete-a-baisse-au-Congo-Brazzaville_a1703.html visited on 22, November 2017.

⁹ Available at: <http://www.congopage.com/Salu-Humberto-Brada-devra> cited visited on 15 January 2018.

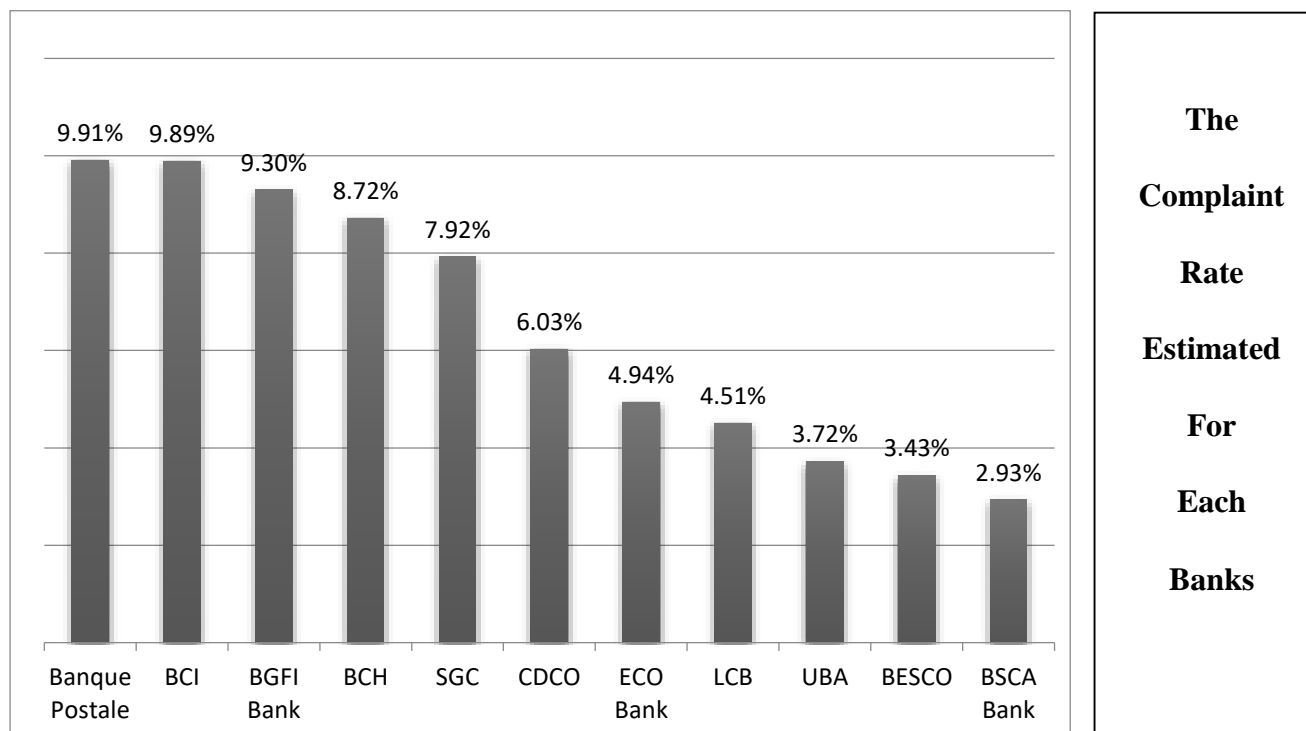
¹⁰ Abbreviated and usually called BEAC in French, the Bank of Central African States was created in 1972. It is a central bank common to the six states that constitute the Economic and Monetary Community of Central Africa (CEMAC). The BEAC's missions are: Promote financial stability. Promote the smooth functioning of payment and settlement systems; hold and manage the official foreign exchange reserves of the Member States; lead the CEMAC exchange rate policy; issue fiduciary money (banknotes and coins that are legal tender and discharging power in the CEMAC); define and conduct the monetary policy of CEMAC.

¹¹ Available at: http://www.inter-reseaux.org/IMG/pdf/9_dossier_microfinance_congo_gds32.pdf visited on 11 January 2018.

Service case in 2009, and CADESFI in 2013. A large majority of savers in those financial institutions are still waiting for the reimbursement of their savings estimated at several billions of CFA Francs. And, those shady economic operators have never been presented before the courts leaving many families in despair. Although this phenomenon is almost absent in the banking institutions since the bankruptcy of the Commercial Bank of Congo, known as Banque Commerciale du Congo (BCC), in French, in 1992, of which an important number of savers are still not reimbursed, but, we note a lack of good faith from those institutions especially in term of credit contract. For instance, banks requires more guarantees to borrowers which does not facilitate access to credits. Also, they do not disclose enough information's about the nature of the credit and its consequences. Hence, borrowers with low financial education are always surprise to realize that the interest rate calculated at the time of granting credit often does not correspond to the interest rate charged by banks when it comes to reimburse the credit. This means that banks are taking advantage of the borrower ignorance's to use bad practices. In position of strengthen, banks also impose high interest rates to borrowers going from 9% to 20%, whereas the interest rate in the CEMAC is fixed around 3% to 15%. This is how, a survey carried out by 2r Consulting in 2014, based on the banks behaviors, on a sample of 1511 customers from the eleven banking institutions in Congo, published in *Libre Afrique* newspaper, reveals that 58, 39% of this quota think that banks are less honest¹². The report of that study also notes that the oldest banks have got a complaint rate higher to the recent banks that we have tried to estimate as follows¹³:

¹² Available at: <http://www.librefrique.org/Moussaoui-kodia-finance-congo-180215> visited on 28 February 2018.

¹³ This table has been made by the authors to show the approximate result obtained by this survey because 2r Consulting did not want to publish the result in detail way to avoid misunderstandings with banking institutions. This is how the survey report said "the oldest banks have got a high complaint rate than the recent banks" hence the 2.93% attributed to the China Sino-Congolese Bank for Africa (BSCA Bank) as it started its activities in 2015.



**The
Complaint
Rate
Estimated
For
Each
Banks**

The Eleven Congolese Banks

As said in the report, this survey shows that whether a study can be carried out on a sample of more than 1511 customers, it is probable to get more than 58,39% of complain. In such a universe people are obliged to save money in households with all the risks that this option involves, or using informal means commonly called tontine, for saving and getting credits, and, also consult the amateur funders who are imposing excessive interest rates, that grow up when borrower does not repay the credit at the deadline. This constitutes a social and economic insecurity for the population, and causes enormous consequences on the country's economic and social life. Thus, several studies deduce that this reality is largely due to the lack of efficiency of the control mechanisms set up by the sub regional authorities.

The Inadequacies of the Banking Commission of Central Africa

Following the consequences caused by the financial crisis at the end of 1980s, the member States of the CEMAC decided to improve banking policy in the CEMAC zone through a Sub-regional banking regulation instrument. It is in this context that the finance ministers of the member States met in Cameroon in October 1990, to create the Banking Commission of Central Africa usually called COBAC, which was effective after the signature of the Convention of 16 October 1990 by the six member States of that organization namely Congo, Chad, Cameroon, Gabon, Equatorial Guinea and Central African Republic. This Commission missions is to regulate banking activity, to fight against financial crises, to stabilize, regulate and control financial market, and to punish bad practices from financial institutions with a view of protecting financial consumers in the CEMAC zone. But, since the setting up of that

Commission, several imperfections has been noted. However, after having analyzed the Convention of 16 October 1990 establishing that Commission, as several scholars, we have realized that the inefficiency of that Commission finds its sources in that Convention especially from the Article 5 of the Convention which states: “The BEAC shall ensure, through its budget and with the assistance of its staff, the functioning of the Commission”. Through this provision, the CEMAC legislator has established a financial and human resources dependence of the Commission towards the BEAC, which is one of the main reasons of the difficulties encountered by the Commission because financial and human resources autonomy are important elements for the efficiency and good functioning of any institution insofar as they allow to the institution to accomplish regularly their tasks. This is how, due to the lack of financial autonomy, the Commission is not able to execute certain missions because the BEAC which has the responsibility of the Commission budget, sometimes, finds certain preoccupations of the Commission less useful. For instance, since several years, the Commission was not capable to send its commissioners for an inspection mission on the field, in the six member States of the CEMAC, as laid down in the Article 10 of the Convention of 1990¹⁴. The campaigns about financial education, which is an effective means to strengthen financial consumer protections and to promote financial inclusion, are almost non-existent in the CEMAC zone. This is due to the fact that these activities require important financial resources, of which the necessity must be appreciated by the BEAC, which, in most cases, is insensitive to the Commission concerns. This situation doesn't allowed to the Commission to fulfil its mission in the sub region. Note that until 2017, the Commission had under its supervision 52 banks and 814 microfinance institutions dispersed in the six member States of the CEMAC which requires the considerable financial resources for a good mission of control every year.

In addition, given the number of the financial institutions existing in the CEMAC zone, the Commission needs important humane resources in quantity and quality. Yet, faced with a lack of staff, the Commission is obliged to resort to the competence and the staff of the BEAC as provided in the Article 5 of the Convention of 16 October mentioned previously. However, contrary with the provisions of the Article 5, in the facts, the borrowing of the staff of the BEAC to the Commission has never been a guarantee because in many cases the BEAC also needs its staff for its own tasks. Hence, the lack of an effective control on-site of financial institutions in the CEMAC countries. For example, in 2010, the COBAC had planned to perform a mission of control on-site in all banks and microfinance institutions in Cameroon. Due to the lack of human resources, the mission could not be carried out. Note that the financial network in Cameroon is the largest in Central Africa and counts nowadays 14 banks and 412 microfinance institutions. Also in 2011, the inspection mission on-site in all the CEMAC has been carried out only at 21.5% also due to the lack of staff¹⁵. We can deduce that out of a total of 866 financial institutions existing in the CEMAC, only about 190 financial institutions was audited.

¹⁴ “The Commission through the BEAC organizes and performs Banking checks on the administrative documents and credit institutions on-site”. During that audit the COBAC checks the legality of the administrative documents of banking (financial) institutions, cash balance, loans and deposits, then decides for the continuation, cessation and the liquidation of the institutions according to the result obtained from the audit.

¹⁵ See the Central African Banking Commission 2011 Annual Report available at: http://www.sgcobac.org/upload/docs/application/pdf/2014-10/ra_cobac_2011.pdf visited on 22 March 2018.

We also need to note that the lack of financial and human resources autonomy is also the cause of the lack of decentralization policy of the COBAC because the Commission does not have representative offices in the member countries as provided by the Convention. This situation benefits to financial institutions, which are performing in violation of the current laws, knowing that there is no any watch dog on-site. This is how, apart from the cases encountered in Congo, several similar cases are also identified in other countries of the sub region, among them Cameroon, where the headquarters of the COBAC is located. For example, in 2011 the Coopérative Financière De L'estuaire (Cofinest) a microfinance institution based in Cameroon had closed its doors leaving thousands of savers in despair. According to the recent information's from Inter-African Consumers of Goods and Services (Miacbis), an association for the defense of consumer rights in Africa, several savers are still waiting for their repayment of which the total amount is estimated at several billion of CFA francs¹⁶. In 2012, First Investment for Financial Assistance (FIFFA Bank), had also closed its doors in the same conditions. The consequences were huge because this bank was selected by the Cameroon government for the payment of the government agent salaries. In such a context, we can understand that many people have lost their savings in this bank¹⁷. In October 2015, BR SARL a microfinance based in Gabon, was offering to its customer's an interest rate of 20%, in violation of the COBAC regulations. After four years of existence, the company has closed its doors leaving a harm of 23 billion euros¹⁸. The same case happened still in Cameroon in 2016 with the BICEC case and recently the MIDA case in 2018, in which the lack of vigilance of the COBAC has largely been expressed by the public opinion¹⁹. This, let's us to presume that similar cases are also encountered in other CEMAC member countries, which is one of the reason of the financial exclusion and the low bancarization rate in that part of Africa, estimated at 7%²⁰.

Beyond financial dependence and human resources, the COBAC is also under a structural dependence. In fact, this institution includes a representative of the French administration appointed by the governor of the Bank of France. This representation within the COBAC is subject of several criticisms among which Professor SUNKAM KAMDEM Achille²¹, who states that *"This representation it is a means for the French administration to take care of their interests in the banking sector of the Central African countries rather to help these countries*

¹⁶ Available at: <https://www.237online.com/article-71645-cameroun--cofinest-sa-les-eacute-pargnants-toujours-en-attente-de-remboursement.html> visited on 8 April 2018.

¹⁷ Available at: <http://www.cameroonpostline.com/looming-bankruptcy-of-fiffa-bank-worries-customers/>; visited on 14 January 2018.

¹⁸ Available at: <http://www.rfi.fr/afrique/20160802-gabon-victimes-escroquerie-br-sarl-portent-plainte-france> visited on 12 February, 2018.

¹⁹ Available at: <https://www.cameroonweb.com/CameroonHomePage/economy/La-hi-rarchie-de-la-Bicec-a-organis-le-pillage-Auditeur-384188> and <http://www.camer.be/67735/11:1/cameroun-affaire-mida-au-pays-de-la-corruption-9-milliards-en-fumae-cameroon.html> visited on 15 April 2018.

²⁰ Available at: <http://www.agenceecofin.com/mobile/0906-169-cemac-porter-en-cinq-ans-le-taux-de-bancarisation-de-7-a-20> visited on 18, February, 2018.

²¹ In *Reflection on the System of Institutional Regulation of Banking Activity in the CEMAC* [SUNKAM KAMDEM Achille, « REFLEXION SUR LE SYSTEME DE REGULATION INSTITUTIONNELLE DE L'ACTIVITE BANCAIRE DANS LA CEMAC », *Revue de l'ERSUMA : Droit des affaires - Pratique Professionnelle*, N° 6 - Janvier 2016, *Etudes.*].

to improve their financial market''. Several opinions consider this act as an imperialist act²². In some extent, we can say that COBAC is also under a foreign dependence. Thus, to take out Congo from that situation, we have oriented our study on the Chinese experience for many reasons.

Seeking for Improving the Protection of Financial Consumers in Congo from the Experience of China

It is since 1993 that the People's Republic of China has launched its campaign on the protection of consumer through the promulgation of the Law of the People's Republic of China on the Protection of Consumer Rights and Interests²³. This law represents the basic legal instrument protecting rights and interests of consumers in China. Any law protecting consumer in a specific sector of the consumption, basically, must comply with that law²⁴. It has been amended two times. In 2009 and 2013. From there, several laws protecting consumers have been adopted and promulgated. Among which the Food Safety Law of the People's Republic of China, the Law of the People's Republic of China on Product Quality, and, the E-commerce Law of the People's Republic of China etc. Also, several bodies has been set up such as the Consumer Protection Commission (Republic of China), which includes the Consumer Protection Committee of Taiwan (CPC), and the Commission on Food Safety of the State Council etc. All these bodies are headed by the State Administration for Industry and Commerce (SAIC) which is the primary government body tasked with enforcing the regulations about the pricing, product quality and the improvement of services, which contributes to the protection of consumers²⁵. We also note the participation of the civil society organized around the associations of the protection of consumers present in almost whole the cities in China. Remind that China includes about 3,279 local and grassroots consumer associations nationwide. Those associations are led by the China Consumer Association (CCA) created since 1984²⁶. In

²² Recall that the six member States of the CEMAC are all the oldest French colonies and the CFA francs which is the currency commonly used by the French colonies in Africa was proposed by France since the end of the colonization.

²³ Adopted at the 4th Session of the Standing Committee of the Eighth National People's Congress on October 31, 1993; amended for the first time in accordance with the Decision on Amending Some Laws adopted at the 10th Session of the Standing Committee of the Eleventh National People's Congress on August 27, 2009; and amended for the second time in accordance with the Decision on Amending the Law of the People's Republic of China on the Protection of Consumer Rights and Interests adopted at the 5th Session of the Standing Committee of the Twelfth National People's Congress on October 25, 2013.

²⁴ It means that all the laws on the protection of consumer in a particular sector of the consumption must be in accordance with the Law of the People's Republic of China on the Protection of Consumer Rights and Interests because these laws need first to guarantee the protection of the basic rights and interests of consumers which are defined in the Law of the People's Republic of China on the Protection of Consumer Rights and Interests before to guarantee the rights and interests of consumer in accordance with the realities of those specific sectors of consumption.

²⁵ The State Administration for Industry and Commerce (SAIC in Chinese: 国家工商行政管理总局), is the authority in the People's Republic of China responsible for advancing legislation concerning the administration of industry and commerce in the People's Republic. Under the State Council, it is also the general watchdog taking care of consumer protection in the People's Republic of China because the regularization of the commercial sector contribute to the protections of consumers.

²⁶ China Consumers Association (CCA) is a national organization which aim is to monitor goods and services; to protect consumer rights and interests; to provide guidance on consumer activities and development and to promote a healthy environment for a socialist market economy. CCA was founded

addition, Chinese media – including CCTV’s annual 3.15 Gala- are playing an important role by bringing consumer protection cases to the fore, as a means of encouraging law enforcement in this area. In the financial sector, we can note the efforts made by the Chinese government about the regularization of the financial market, through the setting up of the China Banking Regulatory Commission in 2003. This commission is responsible to ensure the functioning and stability of the banking sector (Financial), to combat financial risks, to fight against fraud and to protect financial consumers, by establishing laws and regulations. Also, the presence of China in certain international institutions such as the United Nations Economic and Social Council (ECOSOC), G20, and its partnership with the Organization for Economic Cooperation and Development (OECD), where, several recommendations on the protection of financial consumers have been done following the recent financial crisis of 2008, enriched the experience of China in the matter of protecting financial consumers.

However, the Republic of Congo is among the countries in the world that has not adopted yet a law protecting rights and interest of consumers. This legal vacuum was expressed by the Republic of Congo, during the Sixth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices held in November 2010 in Geneva²⁷. On that occasion, the Republic of Congo expressed the necessity to elaborate a legal framework protecting consumer, and recognized that Congo was lagged behind other countries and that, the 06-94 Law of 1 June 1994 still in force in Congo²⁸, did not take into account the multilateral rules of the World Trade Organization (WTO). Indeed, certain principles and equitable rules agreed at multilateral level, are lacking in this legislation. The law focuses on the repression of fraud, including the aspects related to the price regime. The law issues and competition policies are stated without to be treated with thoroughly in order to guarantee the competitiveness of companies and the protection of consumers. During a certain period, the national competent authorities have tried to exploit the n°1/99UEAC-CMC-639 Regulation of 25 June 1999, regulating anticompetitive commercial practices in the CEMAC countries. This community regulations includes provisions in line with the principles of transparency, non-discrimination and loyalty laid down by the WTO. Unfortunately, this Regulation cannot be applied at the national level. This is how the Republic of Congo noted that this legal vacuum constitutes an important difficulty for the courts and the Directorate-General for Consumption, Competition and Fraud Control (DGCCRF), to impose the penalties against bad the practices from traders on consumers. On

in December 1984 and is made up of 3,279 local and grassroot consumer associations nationwide. Remind that it is with the CCA’s support, that the Law for the Protection of Consumer Rights of the People’s Republic of China was passed on 31st October 1993.

²⁷ Available at: http://unctad.org/sections/wcmu/docs/tdrbpconf7_s3_CongoRep.pdf visited on 22 March 2018.

²⁸ *The 06-94 Law of 1 June 1994 still in force in Congo, is the law that regularizes the commercial sector in Congo. Which means that this law also should guarantee the protection of consumer, in absence of a law protecting consumer. But, promulgated before the accession of the Republic of Congo to the WTO in 1997, after some years of practical experience of that law, the Congolese legislator has realized that the national legislative provisions of that law did not take into account the multilateral regulatory provisions of the World Trade Organization (WTO). Some principles and equitable rules agreed multilaterally are lacking in this legislation. For instance, the law has put an emphasis on the repression of fraud, including the aspects related to the price regime while the issues on rights and interests of consumer are almost not stated. Which justifies the words of Congo at the Sixth United Nations Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices.*

other hand, the civil society concentrated around two main associations namely the Congolese Association for the Defense of the Rights of Consumers (ACDDC), the Congolese Observatory of the Rights of Consumers (O2CD), and, some press organs such as International Digital Television (DRTV), Les Depeches De Brazzaville and Agence Information D'Afrique Central are the only instruments that are fighting for the respect of the rights and interests of consumers through conferences and emissions on the TV. But, their actions seem to be inefficient due to the lack of a basic law protecting consumers, and the presence of no law protecting consumer in a specific sector of consumption. Remind that the draft law on the consumer protection presented by the parliament to the government since 2014, is still under examination, between the two institutions. On the financial sector, the Republic of Congo has given the responsibility about the regularization of the financial sector and the protection of financial consumers to the COBAC, which, since a decade, is unable to guarantee the protection of financial consumers in Congo, due to the difficulties encountered by that commission as detailed in our previous lines. In such a context, it can be understood that the experience of China on the protection of consumer, and, its mechanisms about the protection of financial consumers can serve as a means to improve the protection of financial consumers in Congo.

The Protection of Financial Consumers in China: China's Banking Regulatory Commission (CBRC)

Created on 10 March 2003, following the First Session of the Tenth National People's Congress, the China Banking Regulatory Commission usually called CBRC²⁹, is a ministerial-level organization under the State Council, charged to supervise and regulate financial activity in China, aiming to protect the rights and interests of depositors and other financial consumers, promoting the safety and soundness of the banking sector, and fostering the banking sector to meet the financial needs of the economy and society, in accordance with the Law of the People's Republic of China on Banking Regulation and Supervision, adopted at the Sixth Session of the Standing Committee of the Tenth National People's Congress on 27 December 2003. With a structure organization composed of 14 Departments and 36 provincial offices, 306 field offices and 1,730 supervisory agencies, and, 4 training centers in Beidaihe, Shenyang, Shunde and Langfang, and a financial autonomy under the watchful eye of the State Council, in fifteen years, the Commission has made tremendous efforts to harmonize financial market by gaining consumer's trust. Nevertheless, those efforts have been more visible after the financial crisis of 2008, considered as a fire baptism for the Commission. They have been remarkable in terms of regulations, administrative reforms, and through the works made on the field.

²⁹ *The China Banking Regulatory Commission (CBRC) is a body under the State Council (executive body of China) charged to regulate and supervise financial activity in the People's Republic of China (PRC) except the territories of Hong Kong and Macau, both of which are special administrative regions. This Commission has been set up after the recapitalization of the banks by Chinese government in 2003, following the swelling debt loads, undercapitalization and non-transparent business practices from banking institutions replacing the People's Bank of China (PBOC) with more independence and missions. It started functioning on 28 April 2003, with Liu Mingkang as first chairman before being replaced by Shang Fulin in 2011.*

Regulations and Administrative Reforms

2011 has been the really starting point, because, it is during that year that the Commission has issued several new regulations such as the Rules Governing the Sale of Wealth Management Products of Commercial Banks, the Notice on Further Strengthening the Risk Management of the Wealth Management Business of Commercial Banks, the Measures for the Supervision and Administration of the Credit Card Business of Commercial Banks, and the Notice on Reinforcing Risk Management of Housing Financial Services, to enrich the regulatory framework and strengthen the supervision regarding the businesses of wealth Management Business of Commercial Banks, the Measures for the Supervision and Administration of the Credit Card Business of Commercial Banks, and the Notice on Reinforcing Risk Management of Housing Financial Services, to enrich the regulatory framework and strengthen the supervision regarding the businesses of wealth management, bank cards, personal loans. In addition, the Commission guided the China Banking Association (CBA) to issue the Industry Self-Discipline Convention on Deposit-taking Businesses, the Industry Self-Discipline Convention on Commercial Paper Businesses, the Industry Self-Discipline Convention on Home Mortgage Loan Businesses and the Industry Self-Discipline Requirements on Having Consumers Fully Informed of Service Charges. The progress have also been made in standardizing banks conduct of business, enhancing information disclosure and correcting irrational fee charges. It highlighted the importance of issuing risk alerts on a timely basis to financial consumers. For instance, during a period, risk alerts were issued regarding text message and website scam, illegal fund-raising scam, safety of certain electronic banking activities³⁰. In 2012, the Commission issued the 2012—2015 Banking Consumer Protection Planning Outline, to specify the principle and framework for financial consumer protection, the approaches of financial literacy and the procedures for handling consumer complaints. It formulated the Guidelines on Banking Consumer Compliant Handling, thus further improving the mechanism for handling consumer complaints. It issued the Arrangement for Banking Consumer Protection Joint Meeting Mechanism to strengthen the coordination and collaboration among relevant agencies in protecting the rights and interests of consumers. It required financial institutions to factually disclose the futures and risks of their products and services before consumers purchase and to comply strictly with the clauses on consumer protection when marketing their products and services³¹. In addition, the Commission established a Banking Consumer Protection Department with main responsibility to develop the strategies, policies and regulations regarding the protection of financial consumers' rights and interests, to facilitate the implementation of financial institution mechanisms to enhance product services and complaints handling, to organize supervisory examinations on consumer protection and rectify malpractices in accordance with relevant laws and regulations, and finally to coordinate and organize financial consumers education activities from publicities and other means. In 2013, Responding to the consumers' expectation, the Commission issued a guidelines on the protection of financial consumers called "Guidelines on Banking Consumer's Rights Protection" which has effect of law, pending the adoption of the law on financial consumer protection by the National People's Congress. A Guidelines structured of 5 Chapters and 46 Articles taking into account the basic rights of consumers, and the recommendations made by the United Nations Economic and Social Council as well as

³⁰ See the CHINA BANKING REGULATORY COMMISSION 2011 Annual Report p76.

³¹ See the CHINA BANKING REGULATORY COMMISSION 2012 Annual Report p104.

G20, regarding the protection of financial consumers³². Since then, the administrative reforms and the establishment of the new regulations contributing to protect financial consumers in China, became a common practice.

The Actions made on the Field

It is in 2011, that the Commission has launched a strong campaign of awareness to educate consumers on products and financial services, and about various risks linked to those transactions, executed through its provincial offices. This how, trainings have been organized in urbans and rural areas, in countryside's, local communities, and schools. Series of publications about financial education have been distributed, including Scientific Financial Planning Handbook, Financial Education Textbook for Students, Financial Education Textbook for Farmers, and others tools. In certain big cities as Beijing, the Commission held exhibitions to educate youth on financial planning, and launched the program of Financial Planning Classroom in schools for secondary students. At certain communities, the Commission has also promoted financial educations about construction infrastructures. The functions of its Public Education Center has been improved because it received more than 3,800 phones to allow consumers to get more information's from the Center at any time³³. In 2012, The Commission local offices made a range of active efforts to protect financial consumers' rights and interests, by establishing financial service inspection teams, improving the consumer complaint handling process and procedures, opening the Public Education Center, developing financial service websites, and producing financial literacy video programs. It also guided financial institutions to conduct systematic and in-depth financial literacy promotion and education activities for different customer groups to nurture their ability to make independent choices and judgement and protect their own rights³⁴. In 2013, the Commission rolled out the National Financial Education Campaign. Throughout the month, the campaign involved over 200,000 banking outlets and about 1.09 million employees. Around 80,000 outdoor publicity booths were set up, offering over 84 million pieces of advice, distributing over 85 million leaflets, sending about 260 million pieces of text messages, placing 1.08 million publicity adverts, and generating around 35,000 media stories. The CBRC also reached consensus with TV channels, radio, newspaper and magazine corporations on creating banking consumer protection columns to publicize knowledge about preventing telemarketing scams, properly using credit card, improving self-protection skills, etc³⁵. This is how, those strategies became the means used by the Commission to protect financial consumers because they have got positive impacts from public opinion and media that find through those initiatives a sense of responsibility from the Commission.

As a result, China has known a strong financial inclusion this last years. For instance, the 2014 Global Findex, reveals that nearly eight in 10 adults in China now have a bank account and, the number of global unbanked has decreased from 2.5 billion to 2 billion in the past three years, and China's progress has been a major driver of this change. Because, according to the survey, the world's 500 million newly banked adults, more than one third (180 million) live in China³⁶. This statistic can be justified with the coming of the proximity financial services

³² See the *CHINA BANKING REGULATORY COMMISSION 2013 Annual Report*. p78.

³³ See the *CHINA BANKING REGULATORY COMMISSION 2011 Annual Report* p78.

³⁴ See the *CHINA BANKING REGULATORY COMMISSION 2012 Annual Report* p106.

³⁵ See the *CHINA BANKING REGULATORY COMMISSION 2013 Annual Report* p81.

³⁶ Available at: <http://www.cgap.org/blog/new-accounts-china-drive-global-financial-inclusion-figures> visited on 21 February 2018.

which are Alipay and WeChat money used by more than half of the Chinese population, even in countryside's, from mobile money. Those financial services allowed consumers to execute financial transactions everywhere without cash. This mutual trust also has allowed a large growth of the banking network with about 4,398 banking institutions³⁷, about more than one thousand rural financial institutions, including mutual cooperatives, which are performing as microfinances³⁸, which represents an important economic network. Thus, the reflection about the feasibility means and their justifications on the implementation of such a model in Congo was one of the key points of this study.

The Implementation Means of the Chinese Model in Congo

Usually, the means of implementing any organ as always been subject of several debates and reflections. From our point of view, we believe that beyond the political will, the establishment of a Banking Commission in Congo under the model of the CBRC, is essentially based on three major elements. Which are financial resources, financial autonomy, and human resources.

Justification of Financial Resources

Nowadays, financial resources plays an important role in the functioning of the modern States. At any initiative, governments need financial accompaniment to realize their project. This is more worryingly when it comes to set up a commission for public interests. In fact, that commission will need infrastructures. For example, a head office that will be located to the capital as usually, and the representative bureaus in every province. And, those offices will need equipment's to accomplish their daily task. Any job deserving a salary, the personnel of that commission must be paid as any worker in accordance with the recommendations of the International Labor Organization. For the case of a specific commission, sometimes, to avoid the Commission members to be corrupt, government are obliged to establish important salaries to make them more professional. This will be the case of the future Congolese Banking Commission because that Commission that will have an economic and social role needs to be established with attention.

Justification of Financial Autonomy

Confronted to the realities of the modern life, governments are sometimes obliged to affect a financial autonomy to the institution to allow them to fulfil their task in total peace. Yet, given the heavy task and responsibility of the future Congolese Banking Commission, a financial autonomy will play an important role for the effectiveness of that Commission. For instance, as we have mentioned before, Congo includes 11 banks and 68 microfinance institutions. Banks are concentrated in five main cities which are Brazzaville, Pointe-Noire, Ouesso, Dolisie and Nkayi. The microfinance institutions, are everywhere until in countryside's. That means that to perform the control mission, the Commission will need to send its commissioner on the field which will need finances. Also, as the CBRC, the future Congolese Banking Commission will need to launch campaigns about financial education on all Congolese territory even in countryside's and schools etc. For that, the Commission will need financial autonomy to

³⁷ Available at: <https://www.statista.com/statistics/259910/number-of-banks-in-china/> visited on 26 February 2018.

³⁸ See the CHINA BANKING REGULATORY COMMISSION 2013 Annual Report. P13.

execute those missions on time. Recall that one of the weakness of the COBAC is the lack of financial autonomy.

Justification of Human Resources

Human resources is an important element which allows institutions to carry out their mission. In this case, the human resources in quantity and quality will be contributive for the effectiveness of the future Congolese Banking Commission. To decentralize the future Commission and accomplish the inspection missions on the field in the financial institutions, the future Commission will need an important effective and competent workers given the number of financial institutions in Congo. The campaign about financial education that must be perform on the all territory will also need people to achieve it. Recall that one of the raisons of the efficiency of the CBRC it is the capacity of its human resources and one of the raisons of the weakness of the COBAC is the lack of human resources.

CONCLUSION

The state of this research allows us to believe that the establishment of a Banking Commission in Congo under the model of the CBRC, will allow to Congolese authorities to restore trust between financial consumers and financial institutions, to increase financial inclusion, to reissue and stabilize financial market, and, to conform financial activity with the international standards, which will produce positive effects on the economic and social life of the country. For a successful implementation of the future Congolese Banking Commission, we recommend to the Congolese authorities to solicit from the Chinese government a training period of the future agents of that Commission within the CBRC, for a deep understanding of the mechanism set up by the CBRC. About the structure organization of the Commission, we recommend to the Congolese authorities to establish a department responsible for the supervision of banking institutions and a department charged to supervise microfinance institutions. As within the CBRC, Congolese authorities also need to include a department for the protection of financial consumers in order to ensure to financial consumers a permanent and efficient protection. However, despite the shortcomings of the COBAC, we recommend to the Congolese authorities to maintain the membership of the Republic of Congo within the COBAC as a member State of the CEMAC because nowadays the community organizations became an essential means for the States to cope up with the phenomena's which are shaking the world today. Likewise, we recommend to the Congolese authorities to speed up the process about the adoption and the promulgation of the Law protecting consumer in Congo because the lack of that Law is an evidence that the respect of consumers rights are not observed in Congo. In this regard, it is important for the Congolese legislator to take into account certain dispositions set out in the Law of the People's Republic of China on the Protection of Consumer Rights and Interests, particularly the duty for public authorities to promote the creation of consumer protection associations which is an act to the respect of human rights.

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