

# Analysis of the Legal Feasibility of Cooperative Pharmacies in Africa: The Case of Cameroon and Kenya

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## Introduction

In Cameroon, cooperatives are governed by the OHADA Uniform Act related to Cooperative Societies (AUSCOOP). This is an Act applicable in 17 States located mainly in Central and West Africa. Article 5 of the Act states that cooperatives may engage in activities in all sectors of human life.

In Kenya, cooperatives are governed by the Cooperative Societies Act 2005 revised in 2012. Unlike the AUSCOOP, the Kenyan Cooperative Societies Act is silent regarding the spectrum of cooperative activities. In practice cooperative societies venture into other forms of business sector.

In Cameroon and Kenya, cooperative laws are general and must be coupled with sectoral laws. More concretely, a cooperative pharmacy must apply two sets of rules: on the one hand, the rules of cooperative law and, on the other, the rules related to the pharmacy sector.

In Cameroon, the pharmacy business is regulated by Law no. 90-035 of 10 August 1990 on the practice and organization of the profession of pharmacist (1990 Pharmacy Act). In Kenya, it is the Pharmacy and Poisons Act of 1989, revised in 2012.

## Methods

To achieve our goal, we used a combination of analytical and exegetical methods.

## Results

The Pharmacy Act distinguishes, among other things, between pharmacy sales and wholesales.

Regarding pharmacy sale, Section 33 (2) of the Cameroon Pharmacy Act provides that :

"(2) Pharmacists may be authorized to form between them either a general partnership or a limited liability company with a view to operating a pharmacy, provided that such a company owns only one pharmacy regardless of the number of pharmacists associated and that the management of the pharmacy is ensured by one of them. The authority referred to in this paragraph shall be granted under the conditions laid down by regulations".

As for wholesales, Section 57 (2) of same Act provides that "Wholesale and wholesale distribution establishments may be incorporated either as a general partnership or as a limited liability company formed between pharmacists".

It is clear from these provisions that the cooperative form is excluded. The law refers to two legal forms of organization, thus excluding the cooperative form.

A ministerial order was issued in 2017 to supplement the Pharmacy Act and relates to the conditions for granting approvals to Pharmaceutical Wholesale Distribution Companies. Its Article 2(1) provides that "Wholesale distribution companies of pharmaceutical products **must** be constituted between pharmacists: either in the form of General Partnerships, or in Limited Liability Companies".

While Act provides that "**it may**", the order is so strict that it is possible to find that it is contrary to the Act and therefore illegal: "Wholesale distribution companies of pharmaceutical products **must be** constituted between pharmacists: either in the form of General Partnerships, or in Limited Liability Companies".

The situation is different in Kenya. The law does not lay down legal forms of organization that are allowed to carry out pharmacy activities. In this regard, and based on Article 21 of the Kenyan Pharmacy Act (related to Bodies corporate), since it does not specify the legal forms of organization authorized in the pharmacy business, it implies that it admits all legal forms of organization including the cooperative form. Specifically, under Kenyan law, stakeholders can freely establish cooperative pharmacies because the Cooperative Act does not set any limits and the Pharmacy Act does not include any exclusions.

## Conclusions

Our analysis of the cooperative drug distribution sector in Kenya and Cameroon shows mixed results. While Kenyan laws allow the establishment of cooperative pharmacies, Cameroonian laws are less open.

It is recommended to advocate to the Cameroonian Ministry of Health for two possible actions:

1. A modification of the Cameroonian 1990 Pharmacy Act in order to admit, or at least no longer exclude the cooperative form as a legal form authorized to carry out pharmacy activities. Indeed, the AUSCOOP has precedence over Cameroonian laws (national laws) and the latter must be brought into harmony with the provisions of the AUSCOOP.

2. Administrative tolerance towards cooperative pharmacy creation projects, pending the revision of the Pharmacy Act.