April 2009

Volume 1, Issue 3

Africa Law Today

In This Issue

A publication of the ABA Section of International Law Africa Committee

A Message from the Chair

Victor S. Mroczka

AFRICA: IMPOSSIBLE INTEGRATION?

Welcome everyone to another exciting issue of the Africa Law Today newsletter as we stand on the precipice of the Section's Spring Meeting - where the Africa Committee fairs quite prominently in a number of programs. As promised by editor extraordinaire Roland Abeng, this is the much-anticipated OHADA/Integration-focused issue and our Mr. Abeng has not disappointed. We have two excellent articles dealing with some of the provisions and practical challenges of OHADA. These are quickly followed by two pieces discussing regional issues and the various hurdles that must be overcome before any semblance of a working mechanism can be truly realized. And speaking of hurdles, Nancy Kaymar Stafford has penned (is that au courant anymore?) a very tragic yet necessary discussion of the plight of albinos throughout the continent. I encourage everyone to read this most important contribution. We also have a piece from Michael Judin - someone who should be familiar to all - regarding South Africa's regime for the acceptance of foreign lawyers and law firms. Finally, and not to be missed, we have a number of administrative notes, including a report of the Ghana Working Group, details on the World Bank/IFC project "Doing Business", and a report from Ogechi Eto on the success of the Private Equity panel that took place in New York City in March. As you can see, Africa Law Today, as always, covers a broad array of areas, regions, and topics - consistent with the philosophy of the Africa Law Committee and the members which it serves. However, it is a publication that never sleeps. I encourage everyone to contact Roland Abeng and explore YOUR idea for the next edition of our rising publication. Warms wishes to everyone and I hope to see most of you at the Spring Meeting!!!

CALENDAR OF EVENTS

SECTION SPRING MEETING
WASHINGTON, D.C.
APRIL 14-18, 2009

MIDDLE EAST INVESTMENT IN AFRICA
WASHINGTON, DC
SPRING 2009

DEVELOPMENTS IN THE OIL & GAS INDUSTRY
GHANA
MAY, 2009

SUMMER 2009 NEWSLETTER
JUNE 2009

SECTION LEADERSHIP RETREAT
WISCONSIN
JULY 29-30, 2009

A Message from the Editor

Roland Abeng

AFRICA: IMPOSSIBLE INTEGRATION?

Our last newsletter was published three months ago and we promised then to examine the theme "African Integration" in the next issue of our newsletter, Africa Law Today, which is now before you!

Since our last newsletter, the continent has witnessed coups (or something similar) in Madagascar and Guinea-Bissau and the current news coming out of Guinea Conakry, Sudan, Zimbabwe, Equatorial Guinea, Mauritania, Somalia, and Eritrea have not been encouraging.

Added to this is the shockwave that was caused by the International Criminal Court (ICC) arrest warrant issued against Sudanese President Umar al-Bashir on March 4, 2009. I personally salute this bold step taken by the ICC but realise that almost all African countries were unanimous in discouraging the issuance of the arrest warrant. In fact, the African Union sent a team to the United Nations just before the issuance of the warrant in a bid to make the United Nations Organisation ask the ICC to halt any proceedings against al-Bashir. If coming together and speaking with one voice is part of integration, then the move to support al-Bashir is a good example that Africans can come together and make things happen on the continent. What is deplorable however is that "coming together" this time around and "speaking with one voice" was to encourage outright impunity without proposing any alternative solution!

Or maybe the solution is the "*United States of Africa"* that was proclaimed verbally from the podium of the African Union Summit by Libyan Leader Colonel Mouhamar Ghadafi two months ago when he was elected as the head of the Union for a one-year term. The fact is that integration, whether economic, social, political, or legal cannot be achieved through such outburst, but by thorough brainstorming and the cultivation of the spirit of sacrifice because integration cannot be achieved without releasing some aspects of national sovereignty. I would have loved to ask the Libyan President what plans he has to stop the tumultuous political situations in most African countries or if he thinks the *"United States of Africa"* can be achieved with almost half of its countries in turmoil.

The examples above should not make us forget the encouraging successes of OHADA, ECOWAS, SADC, CEMAC, BEAC, and BCEAO. These are good examples of regional integration that have had various degrees of success which should be encouraged on the continent.

The articles in this newsletter all point to the fact that integration whether political, social, or legal, is very possible if we just put aside certain differences and move in the same direction. This does not necessarily mean the same exact path, but does mean having the best intentions for all Africans at heart. Having the best interests of the population includes putting an end to the killing of albinos for sacrifices and rituals in Tanzania as pointed out by Nancy Kaymar Stafford in her article on the treatment on albinos in that part of Africa.

We want to thank all those who have taken time out of their busy schedules to write articles for this newsletter, especially those who are participating for the first time. The exhaustive list of those whose articles are herein published and their contact information can be viewed on the editorial board. We promised to always improve on our performance and we hope we have not disappointed you this time. In any case we still promise to do better.

The Spring Meeting is right around the corner and I cannot wait to meet you all who have been part and parcel of this newsletter and our beloved committee.

Gretchen Bellamy joins me in wishing you all a wonderful spring meeting and joyous Easter season. Ciao.

Solicitation of Contribution

Contributions to this newsletter by committee members are always welcome. In fact, we are officially requesting at least one article from all members (we are ambitious aren't we?!). Please send your articles or other news to: roland@theabenglawfirm.com

Thank you in advance!

OHADA SPOTLIGHT ARTICLE I

The Problematic Application Of Commercial Criminal Law Within The OHADA Territory

Justice Anne Afong

Introduction

The Organization for the Harmonization of Business Law in Africa Treaty was signed in Port Louis Mauritius on 17 October 1993 and it jumpstarted the legal, judicial, and economic regional integration of Francophone, Anglophone, and Lusophone Africa. The harmonization of business law is certainly one of the catalysts in the efforts to secure an effective and efficient judicial environment. Eliminating legal obstacles is vital to the effective functioning of any integration scheme in Africa. Thus, the focus on adopting common, simple and modern rules in Uniform Acts, the establishment of uniform judicial procedures within the member states should be the most important focus of the member states. To this end, eight Acts have so far been enacted. Embodied in the provisions of some of these Acts are criminal prescriptions; their application is herein the focus of this article.

Global Criminalisation of Commercial Law

The concept of "white collar crime" dates back to 1939 and was coined by Edwin Sutherland, the president of the American Sociological Society. Sutherland defined the term as "a crime committed by a person of respectability and high social status in the course of his occupation." The term today generally encompasses a variety of nonviolent crimes usually committed in commercial situations for financial gain. Many white-collar crimes are especially difficult to prosecute because the perpetrators are sophisticated criminals who have attempted to conceal their activities through a series of complex transactions.

Lawmakers aware of the fact that non-repressive sanctions cannot efficiently deal with white-collar crime seek recourse in criminal law to effectively punish these offences. The legislators in most legal setups have created specific sanctions destined for corporate executive deviants who have committed "an imperial invasion of the criminal law."

Traditionally, criminal law punishes transgressions which are morally reprehensible of a behavourial code. Commercial criminal law is more a law of direction, as it rather orientates serene commercial activity. The fact that the latter values are more latent than the obvious moral values have led to much controversy in its criminalization. This explains why commercial criminal law has wavered between indulgence and severity.

Corporate Criminal Law: Between Indulgence and Severity

It has been opined that behavior of a simply negligent nature, which does not interfere with another's physical integrity or life, should not attract sanctions such as deprivation of ones liberty. It has been said that the business world should use the available civil and commercial arms in defense without recourse to the inhibitions of the criminal law. It has also been said that it is even detrimental to a country's economy that corporate executives can be jailed for inadvertent acts. This sentiment for tolerance in the domain of economic offences is further exhibited in the decriminalization of certain offences in some countries. The following are examples of this sentiment:

1. In France, the issue of a check without cover is no longer strictly criminal.
2. In Canada, misleading publicity no longer attracts criminal sanctions.

Tolerance has also been manifested in the more extensive use of existing civil law measures and mechanisms such as ordering "astrient," which has a very punitive cost and involves appointing administrators. However, with the increase of economic illegal acts characterized by deceit, concealment, and violation of trust, the need for criminalization has been accompanied by a measure of punishment.

Punishment

The legislators of commercial law have ensured that these illegal acts, albeit non-violent, make their way into the arsenal of repressive measures. A recent example is the repression of money laundering which is reprimanded by "Law No. 01/03/CEMAC/UMAC/2003," which criminalizes the actual laundering as well as use of the proceeds. In France, the offence of obtaining property by false pretences has been extended to include corporate as well as physical persons. In the same vein, the offence of receiving by deception no longer reprimands only the custodian of goods with a criminal origin, but also the custodian of the proceeds of the same goods. Thus, these examples show an obvious effort by the courts to severely contain commercial deviant behavior.

Further appreciation of the position of the French courts highlights the tendency towards punishment in this domain. Originally, an offence such as misappropriation of corporate property was computed for being time barred as of the date of commission, but the French courts, appreciating the fact that the offence can only be obvious much latter, have deferred the date of computation to when the offence becomes apparent, as opposed to when it is actually committed. This raises the legality of the judges usurping the legislator's role in an overzealous attempt to combat corporate crime.

In an effort to acknowledge global trends, article 5 of the OHADA treaty stipulates: "the Uniform Act can prescribe criminal offences, the member states will determine their sanctions." To this end, several Uniform Acts have proceeded to include offences as prescribed by the treaty to wit:

- The Act on Accounting
- The Act on General Commercial Law
- The Act on The Collective Proceedings For The Wiping Off Of Debts
- The Act on Commercial Law And Economic Interest Groups

Unfortunately, only two member states have so far enacted legislation relating to penalties for offences provided in certain Uniform Acts: Senegal in law no 98/22 of the 26th day of March 1998, and Cameroon in law no 2003/008 of the 10th day of July 2003. Other member states have failed to follow suit. This hesitation by the majority of the OHADA member states is without doubt a hindering the progression of the harmonization process. The Uniform Acts so far have omitted many aspects of corporate delinquency, a potential hindrance to its subsequent efficiency.

The lack of precision in the existing offence prescribed by the act is a major cause for concern. Theoretically, one may ask if the criminal provisions prescribed by this Act are a myth as opposed to a reality. The elements in Toto of the criminal provisions should have, in principle, emanated from the Uniform Act itself. The enactment of criminal legislation being the prerogative of each member state and the difficulty of vesting the legislators of OHADA with the powers of prescribing both the requisite sanction has made it nearly impossible to legitimize the Act. There are too many sources of ambiguity and lack of harmony between national and regional legislation to have a successful integration.

Regional integration is a modern process of amalgamation or fusion of two or more sovereign entities within a given geo-political zone into one unit for the greater or enhanced protection of their political, economic, and legal priorities or interest. Integration cannot be achieved without some measure of super-nationalism. The experience of the economic community of West African States (ECOWAS), though not perfect, confirms that unless states give up some part of their national sovereignty and empower regional institutions to make and implement binding decisions, little progress can be made.

In order to adhere to the treaty, the OHADA member states automatically surrendered some part of their sovereignty in favor of regional judicial integration, a necessary prelude to economic integration. The existence of common rules in the domain of general commercial law, securities, arbitration, accounting, execution, and, recently, land transport have been enacted without complex peculiarities.

The complexity arises in the criminal law because each member state is vested with the choice of the criminal sanction, thus safeguarding its sovereignty. The choice of each state to determine sanctions according to its socio-cultural politics is important. Thus, the OHADA criminal legislator is ordained with the prerogative of determining regional commercial criminal offences, while member states maintain their sovereignty in prescribing their penalties and their distance from regional application. This level of prudence and compromise can only produce a mediocre level of regional integration.

Legislative Compromise

Two factors demonstrate the level of compromise of the regional legislators. First, it can be unequivocally affirmed that the determination of criminal law sanctions is the exclusive competence of national legislators; it is a constitutional provision. Subsection 2 of Article 5 of the treaty reiterates this fact to wit: "[m]ember states will determine the criminal sanctions." This leads to the obvious conclusion that the OHADA legislators are reluctant to drown the sovereignty of member states.

Second, the OHADA legislators often ask member states to apply their own existing laws in the repression of certain deviant corporate behavior. To highlight a few examples, reference is made to Article 43 of the Uniform Act on general commercial law and to Article 11 of the act on accountancy.

Technical Problems

It is obvious that a law enacted by two different bodies can only result in a chaotic application. The offences criminalized in some of the acts are vague, which is not good in relation to criminal law. The act on commercial companies and economic interest groups exhibits this fact, as a lot of offences therein prescribed give the judge latitude and discretion destined to defeat a fair and uniform application.

The power left to member states to prescribe the sanctions has created a wide discrepancy. While misappropriation of corporate property is punishable in Senegal with a maximum fine of five million francs, the same offence in Cameroon can earn a fine of up to twenty million francs. This can encourage the existence of corporate criminal havens, akin to tax havens, thus smacking short of the very dream of harmonization the main objective of the OHADA legislators.

If harmonization entails the convergence of various legal systems laws or regulations, policies or practices which governments or organizations agree in a friendly way to make similar, then it should ensure certainty in the law or practical and predictable rules for the determination of the appropriate uniform law to apply. It should create a culture of legal protection of member countries' citizen's rights of access to justice and legal remedies and enforcement of cross-border judgments of one country to another within the regional group. Such harmonization can hardly exist in a region with a disparity in penalties for the same offence.

The Absence of a Regional Appellate Jurisdiction

The appellate destiny of corporate criminal litigation within the OHADA territory is a significant problem. Is the CCJA the competent jurisdiction? Noteworthy is the fact that this court, vested with the task of developing autonomous jurisprudence through a cosmopolitan approach, is devoid of a prosecutorial arm.

The question here is: "was the legislator's quest to criminalize commercial law intended to be an integral part of the OHADA Uniform Act, an accessory to the treaty, or perhaps even a separate treaty? These are some of the grey arrears hindering the practical application of corporate criminal law.

The Absence of Uniformity

The objective envisaged by the legislators of the OHADA Treaty in creating uniform criminal offences in the commercial law arena is commendable, as economic activity cannot exist without anti-economic behavior. The impossibility of suppressing economic deviant behavior without the threat of looming criminal sanctions reiterates the fact that a uniform criminal law in this domain is indispensable to a truly economic integration.

The intention of the legislators however does not seem to have hatched from theory to practice as the practitioners of the OHADA member states are simply operating on different platforms as far as criminalization of business law is concerned. A law is said to be uniform when it applies equally to all persons within its contemplation. Thus, if there is to be a uniform application of corporate criminal law, the same offences must attract the same penalties in all member states.

The Resistance of Certain Member States

Article 5, Subsection 2 of the Treaty vests member states with the ability to enforce the penalties of the offences prescribed by the Act. It was assumed that member states were conscious of the mandatory provisions of the Treaty. The legislators of the treaty failed to envisage the reluctance of member states to rise to this obligation. Only two of the sixteen member states have fulfilled this obligation. Fourteen countries are yet to enforce the penalties. This failure is a major contribution to the unsuccessful application of corporate criminal law within the OHADA territory.

The Loop Holes: "A Legal Practitioners Nightmare"

The Uniform Act has introduced several criminal provisions in the business law domain. A critical analysis of some of the specific articles highlight the scant attention addressed to some fundamental principles of criminal law.

The vagueness of the law is an obstacle to be addressed by practitioners; it endows the judges with the discretion to punish a wide range of behaviors, thus producing a subjective application bound to smack of uniformity even in the same state. The offences fail to define the material elements culminating in the *actus reus*, more compelling to unequivocally define what discerns the *mens rea*. Modern criminal law frowns at this high handed manner of drafting.

Legal practitioners are further embarrassed by the numerous existing voids as a bevy of deviant corporate behavior still remains unreprimanded by both the regional and national legislation. A major shortcoming is the fact that the Act reprimands natural to the exclusion of corporate persons. Although individuals are more often prosecuted for criminal offences, corporations may also be subject to pecuniary sanctions. The Enron case is an example of the courts sanctioning a corporation as opposed to an individual. The details of the aforecited case will be expounded upon in the presentation on offences against supervisory bodies.

The Problems Related to the Classification of the Offences

A close perusal of the criminal offences embodied in the Uniform Act does not immediately depict their classification as to being a simple offence, misdemeanor, or felony. By virtue of the fact that the penalties vary in different member states, the classification will also vary. The uniformity desired by the legislator is hence crippled from inception by these disparities. In consideration of these hurdles, can it be opined that corporate criminal law under the Act is still born?
This Act is viable and eventually will be deeply rooted within the OHADA member states; its application is actually reminiscent of the application of the OHADA Uniform Act in the common law jurisdictions. It is incumbent on all the stakeholders to realize the challenges and opportunities regional integration affords and simply endeavor to realize the dream of the Ministers of Finance of the franc zone that was held at Ouagadougou, Burkina Faso in April 1991.

Way Forward

The former Secretary General of the O. A. U., Salim Ahmed Salim, pertinently observed the following while attending the 26th summit of African Heads of State and Governments held in Addis Ababa in July 1990:

> Africa now faces more formidable, if not insurmountable challenges. Some of the old regional and domestic conflicts still linger on as the continent continues to be paralyzed by a mounting debt burden, a growing trade imbalance, decreasing external flow of resources and increasing marginalization by the new international division of labour which favours pacific countries. All this would require that African states now more than ever down play their differences and put on a more cohesive unified front.

Thus, practitioners should endeavor to ease the Act's application into the legal system. They should encourage proceeding against a suspect for misappropriation of corporate property as opposed to proceeding under section 318 of the penal code.

The legislators can further be moved to consider the extension of this law to include the corporate body as opposed to only natural persons. It may not be overreaching even for the judges to do same. For example, Judge Melinda Harmon in the Enron case realized this necessity and setting legal precedence, and was evidenced when she ruled: "[t]hat jurors could

reach a verdict on a company as a whole even though they failed to agree on the individual responsible for ordering the shredding." It is a landmark decision subject to future legal challenges. If this American judge could venture to make such a ruling, why not a Cameroonian judge?

It is further incumbent on the Counsel of Ministers of the OHADA Permanent Secretariat to encourage the other member states to enact the criminal penalties provided for in the Uniform Act. Worth commending are the efforts of the Cameroonian and the Senegalese legislators in this domain.

I hasten to conclude that a problem identified is a problem solved.

OHADA SPOTLIGHT ARTICLE II

Some Aspects Of Executive Compensation Under The Uniform Act Of OHADA[1]

Christian Agbor

This article addresses the compensation, including, but not limited to, severance pay, cash bonuses, and stock options of corporate executives of insolvent companies within the OHADA region. A key issue with regard to this situation is whether the payment of these executive benefits is appropriate and lawful within the context of the current economic circumstances within the OHADA jurisdiction.

Proponents of these benefits argue that they provide three main benefits:

- They make it easier to hire and retain executives, especially in industries prone to mergers.
- They help executives remain objective about the company during the takeover process.
- The cost of the benefits are a very small percentage of takeover costs and do not affect the outcome.

Critics have responded to the above by pointing out that:

- Dismissal is a risk in any occupation and executives are already well compensated.
- Executives already have a fiduciary responsibility to the company and should not need additional incentives to stay objective.
- They dissuade takeover attempts by increasing the cost of a takeover, often part of a poison pill strategy

To illustrate how OHADA works, let's use a hypothetical situation. *Assurance Generale Africaine* S.A. (AGA S.A.) is a multinational corporation located within the jurisdiction of the OHADA. Seventy-seven (77) executives are receiving CFA 3 billion in indemnities to depart as the company continues to struggle and slips into insolvency. The company has lost more than CFA 389 billions within the last six months and analysts are predicting that AGA SA will not survive the current economic situation.

Under Article 180 of the OHADA Uniform Act (the "Act") on the collective proceedings for the clearing of debts, corporate executives (or "management") are defined as persons who are officially directors or managers of the company or persons with *de facto* management control, including but not limited to members of the board of directors.

Where there are insufficient assets to meet the company's liabilities and when bad management has contributed to this insufficiency, the court may decide pursuant to Article 185 that the compensation be paid back to the corporation at the request of the administrator or liquidator, or on its own motion.

Conversely, when the corporation is put into administration or liquidation, Articles 189 and 191 of the Act allows this procedure to be extended to management personally if they have exercised personal commercial activity under the cover of the company when it was obvious that the result of their actions would be negative for the corporation.
In addition, during the proceedings of administration or liquidation, the court may sanction these corporate executives under Article 194 by putting them into personal bankruptcy. (Please note that "personal bankruptcy" under the Act is a sanction as opposed to "rehabilitation" or a chance to be reborn.) It is a punishment that will prevent these executives from (i) exercising any commercial activity or management within the jurisdiction of the OHADA, (ii) acting any public elective function or voting in such elections, (iii) exercising any administrative or judicial function, or any representative functions within any professional organization for a period not less than three years or more than ten years. This form of punishment may be utilized if the executive committed one of the following:

- Removed the accounts from the company, embezzled or concealed part of the company's assets, or fraudulently acknowledged non-existent debts;
- Exercised a commercial activity in his own personal interest;
- Utilized the creditor assets of the company as if they were his own;
- Fraudulently obtained a composition agreement that has subsequently been declared null and void; or
- Committed certain acts of bad faith or has been guilty of inexcusable negligence, or has seriously infringed commercial rules and practices.

Furthermore, Article 234 goes beyond most legislation by empowering the State, the administrator or liquidator, or creditor acting in his own name to begin criminal bankruptcy proceedings (*banqueroute*) if so authorized by the supervising judge. However, the applicable penalties for criminal bankruptcy are defined in each Member State's national criminal law.

In the instant case, AGA SA has compensated executives when the business was insolvent, therefore, these payments will be considered fraudulent because of the preference and the corporate waste in view of this current and particularly harsh economic climate. The criminal court and not the commercial court will have jurisdiction with regard to criminal bankruptcy. Proceedings may be commenced by the public prosecutor, a private plaintiff, the administrator or liquidator, or any creditor acting in his own name or on behalf of the body of creditors pursuant to Article 235 of the Act.

Therefore, AGA SA's executives who authorized this transaction will be penalized and will have to refund these funds as illegal distribution and other members of the management team may be charged with the offenses assimilated to fraudulent bankruptcy on the grounds that are similar to those applicable to individual operators and shareholders with unlimited liability pursuant to Article 230 of the Act.

The effects of the global financial crunch on corporations and their management is not only limited to certain parts of the world as some corporate executives of the OHADA region think. The woes of the management of AIG and other corporations in Europe and the USA can befall any corporate executive within the OHADA region and it is time to sit-up. Compensation of corporate executives is not to be condemned, but it should be done within a particular context. To be forewarned…

1 Signed on 17 October 1993 by fourteen African states - now sixteen - from West and Central Africa, the OHADA Treaty aims at creating a uniform, secure, and modern legal environment for the stimulation of economic activity and investments within the Member States. The Treaty has put in place a system which is gradually replacing domestic legal provisions with harmonized regulations.

The OHADA framework presently consists of eight areas of regulation including corporate law, commercial law, securities, enforcement measures, arbitration and the framework is given effect by Uniform Acts directly applicable in the sixteen member states. There are also other efforts being conducted to harmonize laws in the following areas: contract law, evidence, telecommunications law, and employment law.

Considering that the OHADA harmonizes general business law but not the material mining or oil regulation, some mining and oil companies believe that this system is not a helpful tool for the implementation of a project. However, the OHADA provides for a framework which can avoid many difficulties while a project is in progress. One provision provided for by the framework is potentially including an OHADA arbitration clause in the mining/oil contract.

The adoption of identifiable uniform and modern rules has thus made it possible to begin to modernize business law infrastructures and to create a more stable environment for companies wishing to invest in the OHADA zone. Consequently, the OHADA improves legal security and predictability in order to promote investment and trade, and promote economic growth in Africa.

REGIONAL INTEGRATION ARTICLE I

Legal Integration in Africa – How to Match Different Pieces of the Same Puzzle?

Ricardo Silva

Any talk about Africa evokes romantic images of the lions in the savannah, along with not so romantic images of civil war and strife. The truth is that for most who have never set foot on the Continent, African countries share the same environment, landscape, cultural heritage and problems. Never mind the fact that the Kenyan savannah is a world apart from the Virunga Mountains straddling Uganda, the Democratic Republic of Congo and Rwanda, that coastal Angola is different from the Kilimanjaro in Tanzania, and that the Cape has nothing to do with the banks of the Ruvuma separating neighboring Mozambique from Tanzania.

Besides the differences in landscape and, in some cases, even climate, there is also a cultural diversity between the Continent's nations that has molded their institutions and legal systems. In this respect, the significant impact that each country's colonial heritage has had on the local language and legal systems, amongst other aspects, cannot be overlooked when discussing any project for legal integration.

Legal systems

The first aspect that may undermine legal integration in Africa is the variety of legal systems that coexist on the Continent. In rather simplistic terms, we could try and delineate these differences to common law or civil law jurisdictions. However, the situation is much more complex. For example, we can find a wide variety of influences in different civil law jurisdictions. Although civil law is commonly associated with the French legal system and, more specifically the Napoleonic Civil Code, French influence is mostly limited to former French or Belgian colonies. The former Portuguese colonies have based their legal systems on Portuguese law, which is strongly influenced by German sources, although it has also benefited from some French and Italian influence. In turn, Equatorial Guinea is based on Spanish law, which has a strong Napoleonic influence with certain specificities.

Things get more complicated in various jurisdictions which mix a wide range of influences. For instance, Nigeria mixes English common law in some states, with Islamic law in the 12 northern states. Cameroon mixes French civil law with common law influences. South Africa combines Roman-Dutch law with English common law. Kenya relies on its own statutory law, mixed with Kenyan and English common law and Islamic law. Lastly, Mauritania bases its legal system on French civil law and Islamic law.

To add a touch of spice, most African countries (to a greater or lesser extent) also rely on customary law to deal with some aspects of day-to-day life, such as family law and dispute resolution in traditional rural areas.

So the obvious questions are: Where to start a harmonization process? Which legal system should be the basis of the harmonized law? How do you guarantee that the solutions provided for in the harmonized statutes make sense to the local populations affected? This last question is of the utmost importance as, as the philosophy of law is clear to point out, a certain rule will only persist insofar as the community it aspires to bind acknowledges its fairness and understands its scope.

Language

Another aspect that must be taken into account is the language differences between the various countries. In this respect, choice is abundant: Afrikaans, French, English, Portuguese, Spanish, not to mention the innumerous dialects present in all African countries.

Although this may seem like a secondary aspect, it is of significant importance if the harmonized legal system is to

effectively take hold in the variety of countries it intends on applying to. A good example is the OHADA framework, initially drafted in French (which is the only official language). This framework has had difficulty in being implemented in non-French speaking countries, most notably the ex-Portuguese colonies and Equatorial Guinea. Although OHADA has since issued translations of most of its regulations in English and Portuguese, the legal framework has not yet fully been accepted by the courts and other legal practitioners. In comparison, the European Union has 23 official languages in which the official gazette is published.

Specific Legal Frameworks

Most countries have specific legal frameworks governing certain issues which are not only determined by their cultural and historical heritage, but also (in some cases) totally different from the frameworks of neighboring countries. Among the issues commonly addressed by specific legal frameworks are employment, land use and occupation, family law, and rules on exploitation of natural resources.

If integration in terms of business law is, to a certain extent, accepted as an achievable goal (as one can infer from OHADA's achievements), the same cannot be said about legal integration in respect of the above issues and also of procedural law (notably civil and criminal procedure). In respect of these matters, any type of uniformization of rules is highly complex and, when achieved in the past, has been mostly limited to acknowledgement and enforcement of foreign awards and decisions and suppression of document formalities.

In turn, many of the specific legal issues dealt with differently by the various African countries may have an impact on harmonization and integration (such as that intended by OHADA). For example, each country's rules on the use and occupation of abandoned land will necessarily impact on companies' access to real-estate; the rules applicable to the assets of a married couple will impact the personal guarantees a certain company's shareholder can grant, etc.

Human and Material Resources

Finally, one aspect that has significantly impaired the OHADA effort, and which will affect any project for legal integration in Africa, is the limited resources that most States have committed to the legal integration efforts. In this respect, as in many of the other aspects referred above, African nations are hostage of historical factors, most of which have been beyond their control.

With the end of colonial rule, African nations had to prioritize their investments in development of their countries due to their limited resources. Even resource rich countries were left with deficient economies, (in some cases) devastated areas, and a long road ahead to political stability. Another problem that most faced were limited human resources, as one of the most widely felt backlashes of decolonization was the flight of most of the qualified personnel, which traditionally were made up of individuals from the colonial power. Development of local human resources was mostly limited.

In light of the above, it is easy to understand why some countries do not see a major advantage in committing resources to a legal integration project. When you are still concluding the training of your judges and public servants in your own national law, it seems a waste to adopt a new legal framework that, in some cases, is substantially different from the one currently followed. On another note, when you are busy managing your budget to increase the quality of life (and even life expectancy) of your people, it is difficult to justify spending money translating and implementing new laws.

Conclusions

Irrespective of the advantages that legal harmonization can bring to cross-border transactions, the truth is that many African countries are currently still in the process of developing a modern internal market. Only when they reach a level of internal development that can justify setting their sights on new (external) challenges, will the conditions be met to fully take on an integration project.

Some will argue that certain African nations have already reached a level of political and economic maturity that allows for the implementation of a legal integration project. As undeniably certain countries are ahead of others in terms of internal stability, maturity of their institutions, and economic development, the solution may be the one followed by the

European Community (now the European Union) of having some countries become members of the integration project, while others go through a transitional period. If the member-countries set a good example, and other nations are able to conclude that integration brings effective benefits, the list of "would-be" members is sure to increase.

When the benefits of integration become known, there is a high probability that even the continental rivalries and the cultural and historical differences may be put aside. The European Union is a good example. The economic benefits of integration have joined together countries that, a mere 60 years ago, were just stepping away from one of the bloodiest pages of world history.

One must not forget the lessons learned from other integration projects. Legal integration in Africa is a possibility, but it will take hard work and investment. It is not a simple project to be implemented swiftly. It is a complex dream that will require negotiation, study and, above all, patience and time.

REGIONAL INTEGRATION ARTICLE II

Regional Integration In Africa

A Comparative Overview of Integration in the CEMAC and ECOWAS Regions: Together We Fall?

Roland Abeng

On March 4, 2007, the Cameroonian Finance Minister published a communiqué after a conference of Finance Ministers of the six Central African Economic and Monetary Union (CEMAC) countries. This communiqué was to the effect that four of the six CEMAC countries have decided to abolish visa requirements for movement of its citizens between the concerned states. This decision was to be formalized during the Head of States Summit held March 17, 2007. As per the communiqué, no visa will be required for civil servants, business travelers, and diplomats between four countries (Cameroon, Chad, Congo-Brazzaville, and the Central African Republic) beginning 1st July 2007. This was supposed to be followed by a total abolishment of visas between the four countries by December 2009. According to CEMAC Ministers, the free circulation of products within the region should also be implemented by the end of 2009. Gabon and Equatorial Guinea asked for more time for discussions at home before joining the program, in June 2007 at the earliest.

The entire population of the CEMAC region eagerly anticipated this long awaited dream to come true 43 years after the creation of the Central African Economic and Customs Union (UDEAC), CEMAC's predecessor. The intriguing issue about this whole project is that none of the Heads of State attended the summit in N'djamena, Chad on March 17, 2007, at which this dream was to be made a reality and unfortunately, no progress has been made on the issue since then.

The CEMAC passport, Community cattle market, Community hotelier school, free movement of people and goods within the community, the CEMAC airlines, the CEMAC University, free trade zone-- these are just a few of the very lofty and high-sounding projects that the leaders of this African regional organization have been nurturing for almost half a century without going beyond the stage of resolutions. It has all been wishful thinking!

What is most surprising amongst these countries is that unlike the Economic Community of West African States (ECOWAS), the CEMAC countries share much in common which makes integration in the political, economic, and legal domains easier. CEMAC is made up of just six countries with tribal groupings transcending national borders; they share a common geography and a common currency (the CFA franc); they are all member states of bodies of legal integration like OHADA for business law, CIMA for insurance law, OAPI for intellectual property; and they are all member states of the French oriented *Organization internationale de la francophonie.*

In an article on CEMAC's free movements of people and goods dated March 16, 2007, the Cameroonian national daily newspaper stated "Inter-state trade is virtually at the nadir if compared to similar sub-regional organizations in other parts of Africa. This is largely due to the difficulty of moving from one country to another." Cameroonians traveling, for example, to Equatorial Guinea or Gabon, tell troublesome tales which generally begin with the process of obtaining an entry visa into these countries. Then, traveling by road is another horror of sorts. A few courageous traders who attempt to transport badly needed food items from Cameroon to Gabon narrate disturbing experiences. Countless security checks take up most of the traveling time and there are documented instances where fresh food has spoiled before arriving at the destination. The founding fathers of UDEAC had envisioned a sub-region in which movement between the various countries, just as commercial exchanges, were going to be done without difficulty.

With a photo identity card, an ECOWAS resident or a Nigerian citizen can go from shopping in the morning from Lagos, Nigeria (anglophone country) to Cotonou, Benin (francophone country) and be back home for supper. A Togolese citizen can on the spur of the moment and just with a national ID card travel to Benin, Burkina Faso, Cape Verde, Côte d'Ivoire, Gambia, Ghana, Guinea (Rep of), Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, and Sierra Leone. This is the extent to which integration within the ECOWAS region has gone. In fact the ECOWAS territory is fast becoming a region without internal borders. On the other hand, in CEMAC, a Cameroonian national resident at the Cameroonian border town of Kye Osi (about 500 metres from the Equatorial-Guinean Border) needs to travel first to Yaoundé, the Cameroonian capital, to obtain a visa from the Equatorial-Guinean consulate in order visit his relatives on the other side of the border.

Integration between member states of a community (be it economic, political, and/or legal) depends largely on the good will, clairvoyance, and selflessness of each country's leadership. One discovers a functional institutional framework within the ECOWAS region whereby the leadership of the member states of ECOWAS have let go some of their prerogatives and powers to such structures. In the ECOWAS region, we see a real zeal to move forward beyond the stage of resolutions to concrete actions within the institutional framework that actually work from the ECOWAS Conference of Heads of State, passing through the community parliament and the community court of justice, to other specialized institutions. Perhaps this explains some of the achievements like those in the domain of free movement of people which include (but are not limited to) the abolition of visas, the suppression of barriers and police check points, the creation of the ECOWAS travel certificate, the circulation of the ECOWAS passport, and the harmonization of documents, regulations, and formalities.

Though ECOWAS is far from a perfect example of regional integration in Africa, the question that comes to mind is why a heterogeneous and populous ECOWAS has made considerable progress in its march towards integration within 32 years as compared to the less populous, stagnant but relatively homogeneous, CEMAC in 43 years.

Maybe one of the answers to the above question lies in the question. Almost all CEMAC countries are former French colonies with very strong penchants for centralized governments. It is believed within the CEMAC region that the membership of all of these countries in *La Francophonie* (which do not attach much value to democracy and democratic principles as opposed to the commonwealth) is one of the root causes to its slowness to integration. The leadership of these countries either came to power by a military coup, have been in power or intend to remain in power for decades by modifying the constitution. The CEMAC leaders cite Cote d'Ivoire (with its current problems) as an example of the negative consequences of regional integration. These leaders, therefore, believe that opening the borders would bring in disgruntled citizens and adventurers, who bring instability. The leader of Equatorial Guinea expulsed all foreign nationals from his country in 2005 after a coup attempt and closed the country's borders. I find it difficult to believe that this same leader would want, in the nearest future, to allow free movement of persons within CEMAC member states.

The most populous country in the ECOWAS sub-region, Nigeria, has arguably been a democracy since independence. The influence of Nigeria in the ECOWAS region cannot be undermined in terms of fostering regional integration, though that country has had its own series of undemocratic leadership changes. Benin, Ghana, Mali, Liberia, Sierra Leone, and Senegal are examples of ECOWAS countries where the democratically elected leadership work tirelessly for sub-regional integration.

No matter what we say or do, the benefits of regional integration among African countries outweigh the negative effects. The problem has been the failure of African leaders to cultivate a democratic culture which would instill in them the spirit of good governance, thereby stepping-up the fight against poverty and by that same token removing all fears of having to face disgruntled citizens if they open up to the sub-region.

It is important for Idriss Derby of Chad to understand that despite the intervention of the French Army on his side, it is just a matter of time before the rebels opposing him from the Darfur region of Sudan close in on him; the leader of the Central African Republic faces the same fate. It would appear that the adage "United We Stand; Divided We Fall" is better understood in West Africa than Central Africa.

TANZANIA

Too White To Be Black: The Plight Of Albinos In Tanzania

Nancy Kaymar Stafford

Buried alive; head, genitals or limbs cut off; heart carved out of your chest; tongue cut off and left to bleed to death. This is the ominous fate of albinos in Tanzania.

Why are these atrocities happening? In February this year, a Tanzanian man admitted to killing three people by chopping off limbs and private parts for customers who believed that buying the body parts of the albinos would bring them luck in securing employment. Similar stories are told throughout the region, all with the same ending. Sadly, these types of crimes are becoming commonplace in the country with an appalling number of albinos being murdered simply to bring good fortune to the buyer of their body parts. These killings are tantamount to human sacrifices and must be stopped.

Experts estimate that of the approximately 200,000 albinos in Tanzania, 35 were killed last year alone in ritualistic killings for profit. While Tanzania seems to be the most impacted country on the continent, now the killing of albinos has spread to Kenya, Uganda, and Burundi. Witch doctors are making potions and amulets from the blood and body parts of murdered albinos. These charms fetch between US$1,000 - $2,000. In a country where the average income is $800 per year, the temptation to murder is hard to overcome. That is why the Tanzanian government must start taking this issue seriously and condemn the killings and prosecute the murderers.

Tanzanians' basic human rights are at stake. Tanzania is a party to all of the major human rights conventions. As such, the government is required to protect its citizens' fundamental rights of life, liberty, and security of person. Additionally, it is required to prohibit discrimination on the basis of color. Allowing bounty seekers to indiscriminately murder albinos for profit is a gross violation of these rights. Many albinos have been forced to live in fear or move to "safe" communities in order to protect themselves. To date, the government has not made any substantive attempt to end these killings. While the President of Tanzania has spoken out against the killings, there have been no firm directives or attempts to punish the perpetrators. Indeed, although there have been 170 arrests related to these killings, none have been prosecuted. In order to truly protect its albino citizens, Tanzania must begin prosecuting the triumvirate of actors guilty of these atrocities: the murderers, the witchdoctors who advertise the potions, and the customers who purchase the concoctions.

Tanzania's democracy is at stake. Recently, community members have become so disturbed by the government's failure to act that they are threatening to take matters into their own hands. Reports have indicated that the President might actually be fueling this fire! Vigilante justice in burgeoning democracies is a recipe for disaster. The rule of law is the foundation of a democratic society and therefore Tanzania must not only enact laws and ratify human rights treaties, it must enforce the laws and ensure basic freedoms for all of its citizens. The failure to protect albinos, as well as the failure to bring the perpetrators to justice, demonstrates the lack of the government's interest in enforcing its own laws and upholding the rule of law. This

should be of primary concern for the Tanzanian government and indeed the entire international community.

Halting the cycle of violence against albinos will begin with the prosecution of those involved in their murders. However, it is also important that the government understand that the solution must go more deeply than that. There must be educational campaigns established to inform people that albinos are equal to all other citizens and are entitled to the same rights. Programs should be established to integrate albinos into society, rather than to segregate them as they have recently on Ukerewe Island. Albinism is common in East Africa with 1 birth in 3,000 being an albino versus 1 in 20,000 in the United States. The population of albinos is growing and the government must start protecting them now.

PRACTICING LAW ON THE CONTINENT

South Africa's Liberality And Acceptance Of Foreign Law Firms

Michael Judin

Since the demise of apartheid and the introduction of democracy, South African society has developed in such a way that it is referred to around the world as both a rainbow nation and a shining example of the success of democracy in Africa. South Africa's cosmopolitan society is very visible with many religions and races living side by side in equality and freedom.

South Africa has been significantly influenced by both Roman-Dutch and English Law since its inception. The legal system continues to be a 'hybrid' or 'mixed' legal system in that South Africa inherited its civil law from its Dutch colonisers, its common law system from its English colonisers, and its indigenous law from customs amongst the locals prior to colonisation. As a general rule, one can say that South Africa follows the Roman-Dutch Common Law in the laws of delict, persons, family, and so forth, whilst following English Law in contract law, evidence, and procedural law. The South African Final Constitution was based upon the Canadian Constitution and is regarded as the supreme law of the country.

In terms of section 39(1) of the Constitution, it is provided that when interpreting the Bill of Rights, a court, tribunal, or forum must consider internal law and may consider foreign law. Various areas of South Africa's law are heavily influenced by U.S. and European law, such as competition law, which shows the country's open-mindedness and acceptance of foreign law and practices. The judiciary remains independent from any form of government influence; the South African Constitution and legal system is argued by many to be among the best in the world.

South Africa does not allow foreign attorneys to practise law locally if they have not studied law at a recognised South African institution; however recognition is given to certain international law qualifications. As a result of the aforementioned, one can arguably declare South Africa to be one of the most liberal African countries because of its acceptance of foreign law firms and locally qualified foreign lawyers.

GHANA WORKING GROUP

Report from the Ghana Working Group

Ghana Working Group Chairpersons

Nene Amegatcher, Partner, Sam Okudzeto & Associates
Jacob Saah, Partner, Saah and Company
Yvonne Fiadjoe, Legal Counsel, African Development Bank

Introduction

The Ghana Working Group anticipates a very busy and active year. The Working Group has scheduled a number of activities which will engage the legal community in Ghana as well as the wider ABA community. The proposed activities are specified in detail below. However, the primary focus of the Task Force for the year will be the Ghana School of Law. To this end, the Working Group intends to strengthen its relationship with the Ghana School of Law through a number of activities.

Background Information on the Ghana School of Law[1]

The Ghana School of Law was established in 1958, by Ghana's first President Dr. Kwame Nkrumah and was the foremost of its kind in Sub-Saharan Africa. Established by the Legal Practitioners Act, 1958 as amended by the Legal Profession Act, 1960 (Act 32) as variously amended, the Ghana School of Law is the sole competent body for professional legal training in Ghana. The School offers three programmes: Professional Law Course, Post-Call Law Course and Career Magistrates Course (which is run on behalf of the Judicial Service). The Professional Law Course is designed for law graduates who have successfully completed the LLB in Universities recognized by the General Legal Council, whereas the Post –Call Course is designed for persons who have qualified in common law countries outside Ghana which operate a legal system similar to that of Ghana.

Achievements of the Ghana School of Law

Since its establishment in 1958, the School has risen to its responsibilities as the sole competent institution for professional legal training in Ghana with a majority of the 4,339 lawyers on Ghana's roll of lawyers being products of the Ghana School of Law. Graduates of the Ghana School of Law have occupied and continue to occupy important positions in all spheres of our national life including the executive, the legislature, the judiciary, the public service, the security services, the financial community, academia, and the private sector. The current President and Chief Justice are both products of the Ghana School of Law.

Challenges

The Ghana School of Law currently has 380 enrolled students, which far exceeds the original capacity of 100 students. The increase in numbers has meant that the number of students has far outstripped the resources available. As a result, the school is faced with a myriad of capacity constraints. For example, the school is in dire need of computers, printers, scanners and other equipment. Additionally, the Ghana School of Law does not have a website where information can be easily accessed by students as well as non-students alike.

Recognizing these challenges, the Ghana Working Group has embarked upon a number of initiatives targeted at addressing some of these challenges.

Relationship with the Ghana School of Law

The Working Group intends to deepen and strengthen its relationship with the Ghana School of Law. To this end, the Working Group has already embarked upon preliminary discussions with the Director of the Ghana School of Law. He is quite keen and receptive to cultivating this nascent relationship with the ABA Africa Committee. As a result, the Working Group will implement a number of initiatives geared towards fostering this relationship. The initiatives are specified below.

1. **Jessup Moot Court Competition**- Over the past few years, the Ghana School of Law has participated in the Jessup Moot Court Competition. To date, however, the Ghana School of Law has not been successful at the competition. In order to improve their chances of success, the Ghana Working Group started looking for firms in the U.S. that were willing to mentor, train, and coach the students prior to the competition. The law firm of Hughes Hubbard & Reed kindly agreed to provide skills training through mentoring and coaching support to the team from the Ghana School of Law for the 2009 Jessup Moot Court Competition. Victor Mroczka played an exceptional role in facilitating this process as well as ensuring that together, with his colleagues, the students received the appropriate mentoring and coaching prior to the competition. The feedback received from the students who participated in the skills training was very positive and indeed encouraging. We hope that this will be an annual event and that the relationship with U.S. law firms could be developed further.

2. **Development of a Website**: The Ghana Working Group is committed to helping the Ghana School of Law with the development of a website for the school. To this end, the Working Group will solicit assistance from the ABA and the wider community to help with this initiative. The Working Group will also explore the possibility of setting up official email accounts for the staff of the Law school.

3. **Technological Support:** The Ghana Working Group also intends to seek assistance from the wider ABA community to provide technological support for the school, including but not exclusive to attaining computers, printers, scanners, and other equipment.

4. **Software Support:** It is envisaged that the Ghana Working Group will help to obtain resources to develop an online resource library for the law school, for both British and American legal documents.

The Book Project

The Ghana Working Group collected hundreds of books last year which are in the custody of Books for Africa. It is envisaged that these books will be distributed to the Ghana School of Law, the University of Ghana-Legon Faculty of Law, and the Ghana Bar Association. The Ghana Working Group is currently seeking funding to pay for the shipment of the books to Ghana The Working Group is indebted to Shakisha O'Connor of Georgetown University and Angela Aifah of Florida Coastal Law School, for the tremendous help they provided in collecting the books and ensuring that they were safely delivered to Books For Africa. The Working Group is also discussing the possibility of expanding the project with Books for Africa.

Publications

The Working Group will continue to provide updates on its work through this medium. In addition, it will publish an article on the recent elections which were held in Ghana. The paper will examine some of the legal and institutional challenges faced by the Ghanaian populace in achieving a democratic election while also addressing some of the reasons why Ghana has been successful in attaining a peaceful transition in Government.

ABA SIL Spring Meetings

The Working Group has organized a session for the Spring Meetings titled "Oil and Gas in Africa: Strategic Importance and Legal Challenges." The Working Group looks forward to the active participation of attendees.

Conclusion

We look forward to new members joining the Working Group and working with anyone who is interested in learning more about the Group, learning more about Ghana, or fostering a deeper relationship with the Ghana School of Law.

STANDALONE PROGRAM

Report on the "Private Equity Investments in Africa: Opportunity in the Face of a Global Financial Crisis" Program

Ogechi Eto

The panel entitled "Private Equity Investments in Africa: Opportunity in the Face of a Global Financial Crisis," held March 26, 2009 in New York was a success, despite the rain. Panel participants and attendees included a wide range of business and legal practitioners from all over Africa including South Africa, Ghana, Zimbabwe, Nigeria, Gabon, and Kenya.

The panel's moderator was Mr. Philip Isom, Partner at O'Melveny & Myers, LLP. The featured panelists were Ms. Chinwe Esimai, Vice President of Regulatory Audits & Inquiries at Goldman Sachs; Mr. Solomon Wifa, Partner at O'Melveny & Myers, LLP; Mr. Marc Wagman, Managing Partner for Smyth Trade Credit LLC; and Mr. Elchi Nowrojee, Director and Counsel for Credit Suisse Legal and Compliance Department of the Asset Management Division in an engaging discussion. The discussion focused on the issues that are encountered at each stage of the African private equity investment life cycle: fundraising, investment, monitoring and exit. Current issues at the forefront of the discussion were issues such as: areas for potential regional investment, investor disaggregation of Africa, private equity investment horizons, and the importance of on-the-ground monitoring for corruption and risk mitigation.

The event attendees, ranging from managing directors of emerging market desk to seasoned lawyers, maintained a dialogue with the panelists throughout the entire panel. The formal panel was followed by a networking session. The event had a total attendance of 110 guests. Many attendees were interested in future events regarding African investments. Further discussions are being held with the ABA to address these interests.

DOING BUSINESS ON THE CONTINENT

Doing Business: A Joint World Bank/International Finance Corporation Project

Palarp Jumpasut

Project outline

Doing Business researches business laws and regulations in over 181 countries. The purpose of the project is to identify what type of business regulations are most favorable to economic growth. The data and analysis is used to help the World Bank advise policy-makers in developing countries.

The results of the research are presented in the annual *Doing Business* report, which is currently the best-selling World Bank publication. Doing Business 2009 was launched on 10th September 2008. Since the project's inception in 2003, *Doing Business* has inspired over 174 reforms. These reforms make it easier to do business in countries as diverse as Mozambique and Mexico.

The *Doing Business* project investigates seven legal topics:

1) Starting a business - related mostly to corporate law and tracks the procedures, time and cost to start a Limited Company
2) Employing workers - covers labor regulation with respect to use of fixed term contracts, working hours, dismissal requirements and cost
3) Registering property - analyzes a straightforward real estate transaction between 2 companies
4) Getting credit - covers legal provisions that encourage the use of movable collateral focusing mostly on collateral, secured transactions and bankruptcy laws
5) Protecting investors - addresses legal provisions for the protection of minority shareholder rights in related party transactions (mostly corporate law and stock market regulation)
6) Enforcing contracts - relates to the litigation practice analyzing the procedures, time and cost to resolve a commercial dispute between 2 companies
7) Closing a business - studies the time, cost and outcomes of bankruptcy proceedings involving domestic entities.

The World Bank is looking for lawyers in every country's largest business city with expertise in these areas and who would be willing to complete a survey in their area of expertise.

Why participate in this project?

There are several reasons why global law firms and international networks of law firms may be interested in participating in this project. The following are some of the most frequently mentioned by our global contributors:

First, the *Doing Business* project gives global law firms the opportunity to utilize their international expertise in a socially beneficial way. The *Doing Business* analysis shows developing countries how to improve their business environment, thus stimulating economic growth and creating new jobs.

Second, *Doing Business* covers almost the entire world and is therefore a truly global pro bono project in which all offices of a global law firm can participate. As the pro bono and community affairs manager for Allen & Overy stated in a recent interview on Allen & Overy's collaboration with the World Bank, "Working globally is obviously something Allen & Overy gets to do on a regular basis for our corporate clients, but this was an unusual opportunity to do that for a pro bono client."

Third, the areas covered by *Doing Business* are the same areas global law firms focus on, i.e. laws and regulations that directly affect businesses. These include the areas of corporate, employment, real estate, commercial litigation, bankruptcy, and collateral law. In other words, no additional legal research is needed to complete the surveys.

Fourth, this pro bono project is manageable time-wise and limited in scope. Completing a survey should not take an experienced lawyer more than a couple of hours and it is something they can complete from the comfort of their own desk. In March or April of each year, attorneys may expect to receive one or two follow-up calls from the *Doing Business* team to clarify the attorneys' responses to the survey(s). These calls are requested beforehand and can be scheduled for the time most convenient to the attorney.

Fifth, through the *Doing Business* project law firms can develop a positive relationship with the World Bank and the International Finance Corporation. The work of all contributors is acknowledged in the *Doing Business* reports as well as on our website, with separate categories for global and regional contributors.

How to access the Surveys

To access the surveys please go to the following link:
http://www.doingbusiness.org/elibrarydata/elibrary.aspx?libID=11

The surveys include last year's data. Attorneys are asked to confirm or correct last year's data and to indicate where reforms took place.

We provide approximately 3 weeks for completion of the surveys. However, we are flexible with our global contributors and can provide more time as required, as much as up to 6 weeks. Between the months of February and May, the participants may receive a follow up call from a member of the Doing Business team. Our final deadline to accept any completed surveys is the beginning of May. Lawyers can send the completed surveys back to Palarp Jumpasut at pjumpasut@ifc.org or to the analysts listed on the cover page of each survey.

The report is published in September and each participant receives a complimentary copy as well a certificate of participation.

We believe that this is an exciting and fulfilling pro bono project to participate in where lawyers can use their existing skills to change the way people conduct business.

If you have any questions please feel free to contact Palarp Jumpasut at pjumpasut@ifc.org.

OTHER NEWS AND USEFUL INFORMATION

SPRING 2009 MEETING UPDATE

April 14 –April 18, 2009
The Committee is sponsoring two programs addressing the following topics:

- Developments in Oil & Gas in Africa (Jacob Saah)
- Human Rights Situation in Zimbabwe (Laura Young)

Other Projects

- Outreach efforts to work with local human rights groups and law societies in Kenya and Zimbabwe in response to crises in each country
- Advice and consideration of the adoption of the Western Sahara report by the Committee

Join the Africa Committee:

https://www.abanet.org/ome/front/form/ome_main.cfm?JoinType=m&sc=RMM8ILEF

Committee Website: http://www.abanet.org/dch/committee.cfm?com=IC805000

Conference Calls: dial-in information is provided a few days prior to the conference call

April 2009 Call: No call due to Spring Meeting (see you all there!)

Mary 2009 Call: May 13 at 12pm

Useful links

Ghana Working Group: http://www.abanet.org/dch/committee.cfm?com=IC550555
Liberia Working Group: http://www.abanet.org/dch/committee.cfm?com=IC550553
Sierra Leone Working Group: http://www.abanet.org/dch/committee.cfm?com=IC550554

The Liberia Working Group also works with the International Legal Resource Center in implementing its projects. If you have particular subject matter expertise, you can become a member of the ILRC database by registering at www.abanet.org/intlaw/intlproj/ilrc