



**Wednesday, October 3, 2012**

**9:00 AM - 10:30 AM**

**608 – The Pioneers Take the Arrows (and the Gold): Legal Risks when Doing Business in Africa**

**Celine Gerson**

*Chief Ethics and Compliance Officer*  
Cameron

**Jonathan Lang**

*Partner*  
Bowman Gilfillan (Lex Mundi)

**Bellanne Toren**

*Vice President Legal & General Counsel*  
Central European Petroleum Ltd.

## Faculty Biographies

### **Celine Gerson**

*Chief Ethics and Compliance Officer*

Cameron

### **Jonathan Lang**

Jonathan Lang practices at the leading South African law firm, Bowman Gilfillan. He is head of the Bowman Gilfillan Africa Group and based in Cape Town, South Africa. He is also a member of Bowman Gilfillan's Executive Committee. He specializes in corporate finance, including mergers and acquisitions, joint ventures, privatizations and equity and equity-linked capital markets.

Prior to joining Bowman Gilfillan, Mr. Lang was a partner at Allen & Overy, the UK "magic circle" firm. During his tenure there he worked in the firm's London, Paris and Hong Kong offices.

Mr. Lang advises international clients investing in South Africa and South African and multinational clients investing in the rest of Africa. He advised Philip Morris International on its acquisition of Swedish Match in South Africa, McDonald's Corporation in connection with the 20-year master franchise for South Africa granted to Cyril Ramaphosa and Shanduka Group and Virgin on the establishment of Virgin Money in South Africa. He advised Standard Bank on the acquisition of a majority stake in Nigerian bank IBTC Chartered and advised Barclays Bank on the disposal of its custody business in nine African countries to Standard Chartered Bank.

After attending high school in Australia, Mr. Lang received a BA (Hons) law from the University of Kent, England and graduated from the College of Law, Guildford.

### **Bellanne Toren**

Belle Toren has over 26 years of legal experience in the international petroleum industry covering over 21 countries. She is the vice president legal and general counsel for Central European Petroleum Ltd. in Calgary, Alberta, Canada, and her responsibilities include petroleum matters for its German operating subsidiary.

Prior to joining CEP, she maintained her own practice and worked for Gowlings Lafleur Henderson LLP in Calgary. During this period, she worked on two East African projects related to the discoveries of natural gas offshore Mozambique and the development of reliable electricity to rural southeast Tanzania. Previously, she worked for Triton Energy Ltd., as its vice president legal, and for Hess Corporation after its acquisition of TEL, where she negotiated its entry into the Ghanaian offshore that led to the discovery of the

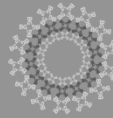
2011 Paradise Field discovery. Prior to that, she was an associate at Thompson & Knight LLP in Dallas, TX.

She is a member of the Alberta Law Society and Texas Bar Association and a past president of the Association of International Petroleum Negotiators (1999-2000). She joined the ABA ILEX Trip to Tanzania and Rwanda, and chaired a joint program with representatives of the Tanzanian business, legal and energy sectors.

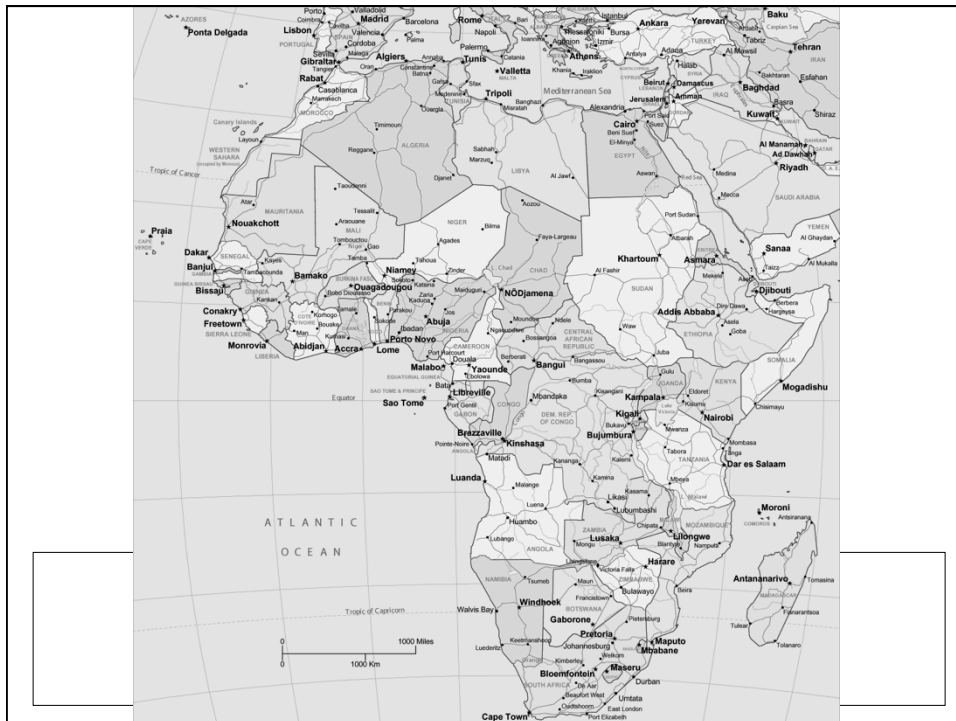
Ms. Toren graduated summa cum laude from Guilford College with a BAS with high honors and from Duke University School of Law with a JD with high honors.

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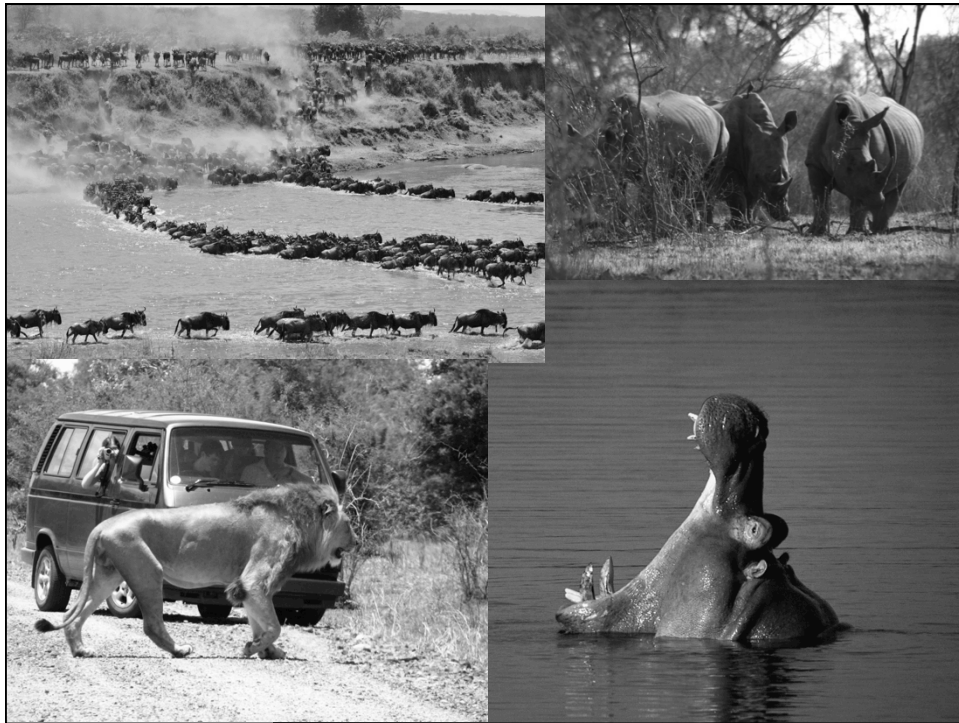
# The Pioneers Take the Arrows (and the Gold) Legal Risks when Doing Business in Africa



Lawyers  
who see  
the bigger  
picture, and  
the details.









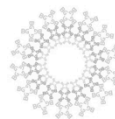


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“Africa could be on the brink of an economic takeoff, much like China was 30 years ago, and India 20 years ago.”

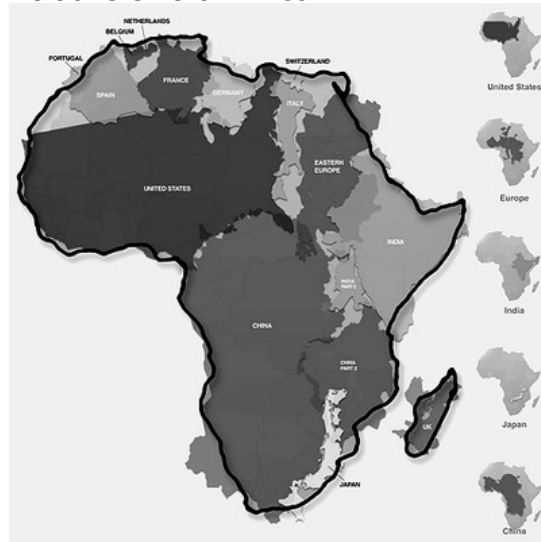
The World Bank

Source: Africa's Future and the World Bank's Support to it.  
The World Bank, March 2011





### Relative size of Africa



The United States, the fourth largest country in the world, could fit into Africa more than three times. China and India, the two most populous countries, could fit into just 40% of Africa. The USA, China, India, Japan and all of Europe could fit into the African continent

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### Africa by numbers

Today	Tomorrow
<p><b>US\$ 1.9 Trillion</b> Africa's GDP in 2011</p>	<p><b>US\$ 2.6 Trillion</b> Africa's GDP in 2020</p>
<p><b>500 Million</b> the number of Africans of working age in 2010</p>	<p><b>1.1 Billion</b> the number of Africans of working age in 2040</p>
<p><b>40%</b> the proportion of Africans living in cities in 2010</p>	<p><b>50%</b> the proportion of Africans living in cities by 2030</p>
<p><b>US\$ 9 Billion</b> FDI flows into Africa in 2000</p>	<p><b>US\$75 – 100 Billion</b> projected FDI flows into Africa in 2014</p>

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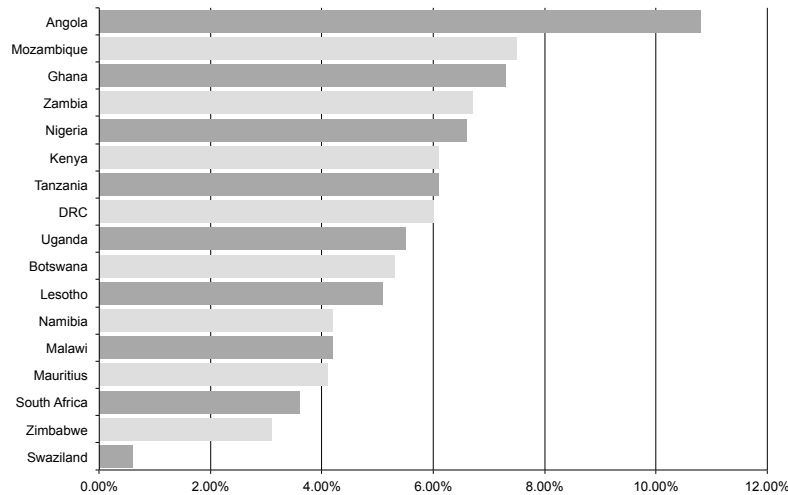
### Africa by GDP

Rank	Country	2009 (billion USD)	2010 (billion USD)	2011 (billion USD)	Rank	Country	2009 (billion USD)	2010 (billion USD)	2011 (billion USD)
	World	57,920.270	62,909.274	69,659.630		World	57,920.270	62,909.274	69,659.630
	Africa	1,476.179	1,730.072	1,880.380		Africa	1,476.179	1,730.072	1,880.380
1	South Africa	283.977	357.259	408.074	28	Madagascar	0.974	0.345	10.025
2	Nigeria	168.846	216.803	238.920	29	Burkina Faso	7.780	8.781	9.981
3	Egypt	188.608	218.466	235.719	30	Chad	6.974	7.848	9.344
4	Algeria	138.763	160.270	190.709	31	Zimbabwe	5.836	7.474	9.323
5	Angola	75.508	85.312	100.948	32	Benin	6.401	6.649	7.306
6	Morocco	91.374	103.482	99.241	33	Rwanda	5.011	5.622	6.179
7	Sudan	55.802	68.441	64.750	34	Niger	5.323	5.577	6.022
8	Tunisia	43.523	44.290	46.360	35	Malawi	4.909	5.053	5.673
9	Ghana	25.988	31.084	37.158	36	Guinea	4.436	4.633	5.212
10	Libya	69.239	74.232	36.874	37	Mauritania	3.241	3.799	4.200
11	Kenya	29.394	32.163	34.796	38	Swaziland	2.929	3.553	3.947
12	Ethiopia	32.249	29.717	31.256	39	Togo	2.771	3.194	3.611
13	Cameroon	21.820	22.478	25.759	40	Eritrea	1.694	2.117	2.609
14	Côte d'Ivoire	22.909	22.823	24.096	41	Lesotho	1.624	2.127	2.453
15	Tanzania	22.159	22.671	23.333	42	Burundi	1.410	1.489	2.356
16	Equatorial Guinea	11.175	14.485	19.805	43	Sierra Leone	2.064	1.905	2.196
17	Zambia	12.805	16.192	19.206	44	Central African Republic	1.983	2.018	2.165
18	Botswana	10.808	14.039	17.570	45	Cape Verde	1.755	1.651	1.903
19	Uganda	15.804	17.011	16.810	46	Djibouti	1.089	1.140	1.239
20	Gabon	10.936	13.056	16.176	47	Liberia	0.868	0.974	1.154
21	Democratic Republic of the Congo	11.108	13.125	15.668	48	Seychelles	0.656	0.936	1.014
22	Republic of the Congo	0.632	11.530	14.769	49	The Gambia	0.983	1.067	0.977
23	Senegal	12.610	12.877	14.461	50	Guinea-Bissau	0.438	0.837	0.969
24	Mozambique	9.654	9.893	12.827	51	Comoros	0.525	0.534	0.614
25	Namibia	9.039	11.865	12.461	52	São Tomé and Príncipe	0.189	0.196	0.248
26	Mauritius	9.156	9.729	11.313					
27	Mali	8.757	9.268	10.600					

Source: IMF  
 Note: Somalia and South Sudan N/A



### Forecast 2012 GDP growth



Source: IMF and Economist



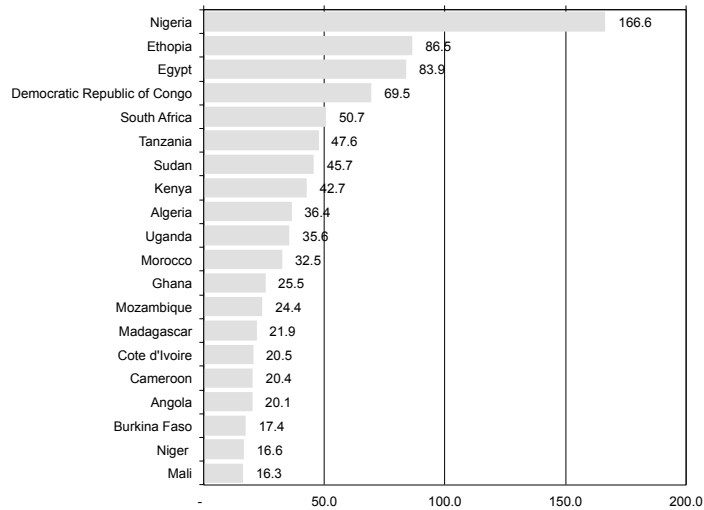
### Investment attractiveness

Rank	Score	Country
1	5.6	South Africa
2	4.9	Nigeria
3	4.4	Ghana
4	4.3	Ethiopia
5	3.9	Tanzania
6	3.9	Botswana
7	3.9	Kenya
8	3.7	Uganda
9	3.5	Angola
10	3.5	Zambia
11	3.4	Mauritius
12	3.3	Rwanda
13	3.3	Mozambique
14	3.1	Sudan
15	3.0	Namibia
16	3.0	Cote d'Ivoire
17	3.0	Burkina Faso
18	2.9	Senegal
19	2.9	Cameroon
20	2.7	Malawi

Source: RMB FICC Research: Where to Invest in Africa (2011)

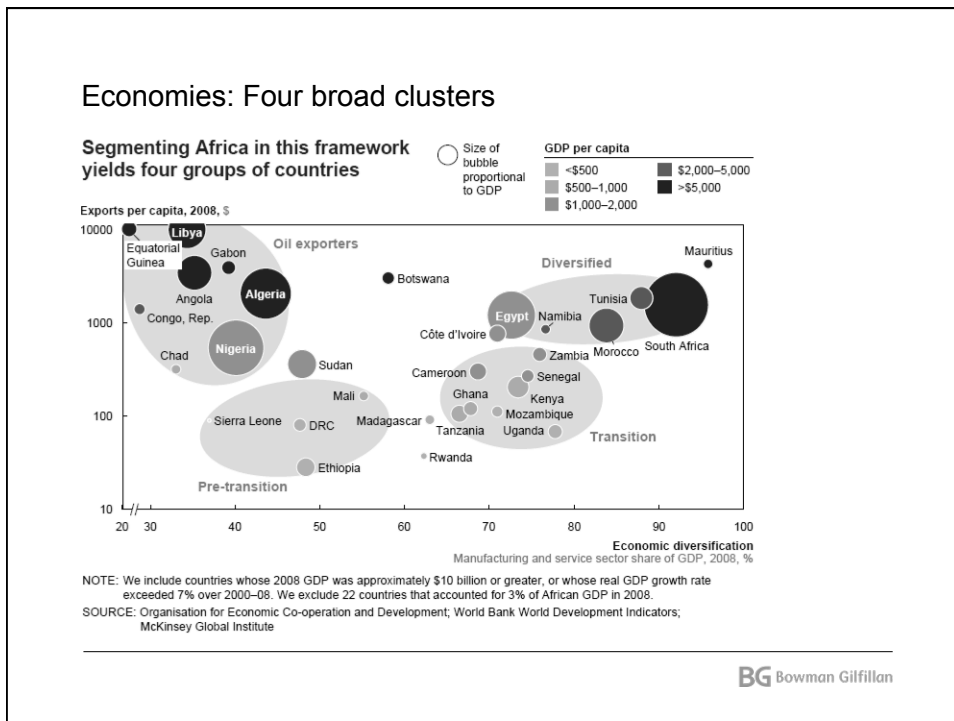
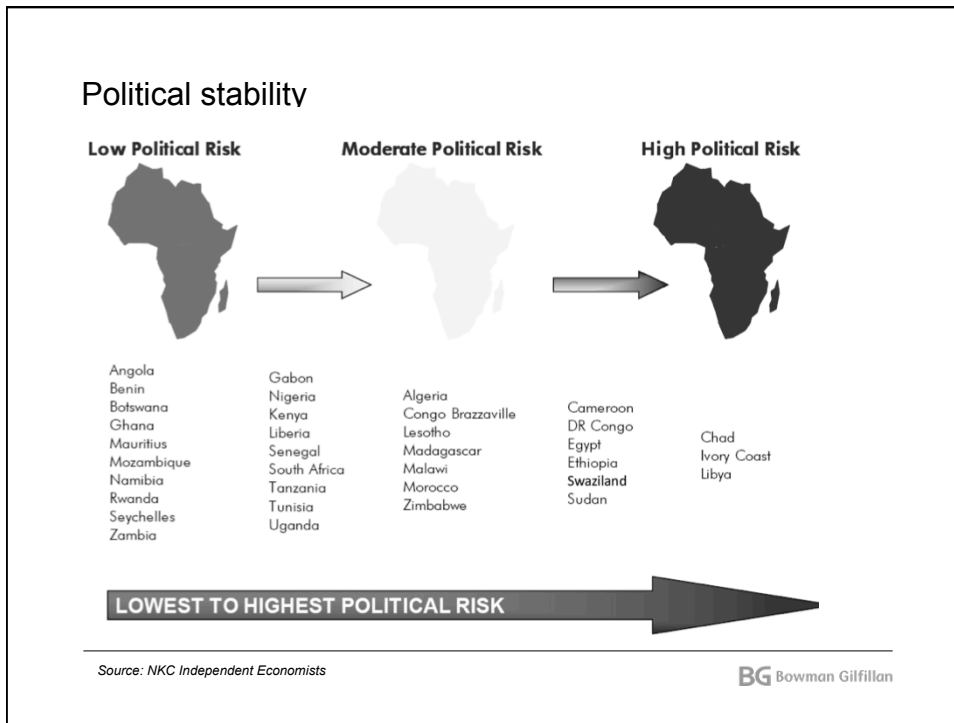
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### Top 20 by population



Source: Census results and official estimates

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### Where do I start?

- |  |                                   |
|--|-----------------------------------|
| Setting up a branch or subsidiary      | Can I?                            |
| Entering into a distribution agreement | How do I?                         |
| Employing local or expat staff         | How is the law different?         |
| Buying a business                      | Do I need a license?              |
| Exporting goods or services            | How do I protect my interests?    |
|  | What happens if I have a dispute? |
|  | How can I be sure I'll get paid?  |

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### A few things to bear in mind

- Language
- Different systems of law
- Less specialisation
- Less leverage
- Poor ITC
- Less Choice
- Higher Fees
- Commercial awareness
- Variable quality



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## Preparation

*"Fail to prepare, prepare to fail"*

Obtain initial legal advice relevant to your project:

- Is it possible?
- How long will it take?
- How much will it cost?
- Do I need to have a local partner?
- Do I need a licence or official approval?
- Is foreign exchange control relevant – in SA and the other country?
- Can I freely remit funds to/from the country
- If so, will they be subject to withholding tax?

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## Contracting

The golden rule – make sure you have a good contract

What should the contract cover?

- The key commercial issues
- Risk apportionment
  - Warranties
  - Indemnities
  - Guarantees / security
  - Limitations of liability
  - Force majeure
  - Liquidated damages
- Remedies
  - Quantification of damages
  - Termination rights
  - Penalties
  - Call / put options

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## Contracting

- Conditions Precedent
  - Regulatory consents
  - Third party approvals
  - Parent company / shareholder approval
- Dispute resolution
  - Governing law of the contract
  - Jurisdiction: courts v arbitration
  - Jurisdiction: local or elsewhere?

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## What happens if things go wrong?

- The contract will be key to resolving disputes
- Judgment / award v enforcement
- Are your warranties and indemnities worth anything?
- Who has the deepest pockets?

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YOU'RE EXPANDING  
INTO AFRICA

*We're leading the way*

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AFRICA GROUP

South Africa | Kenya | Tanzania | Uganda

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Thank you

*Legal solutions that make business sense.*

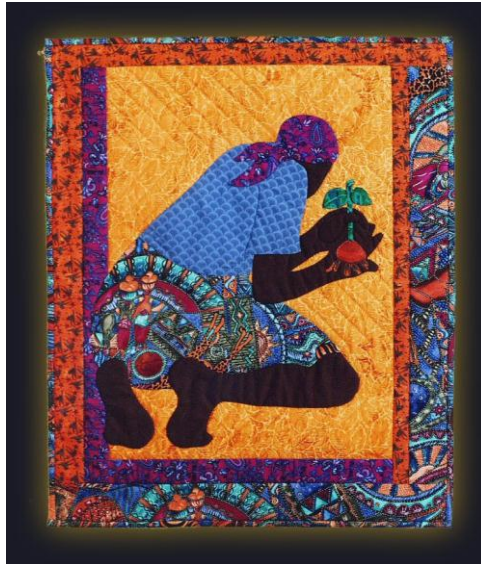




# The **Pioneers** Take the **Arrows** (and the **Gold**): Legal Risks when **Doing Business in Africa**

## Identifying and Engaging Local Counsel

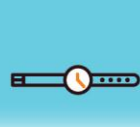
Wednesday, October 03, 2012 from 09:00 AM - 10:30 AM



**Bellanne ("Belle") M. Toren**  
**Vice President Legal & General Counsel**

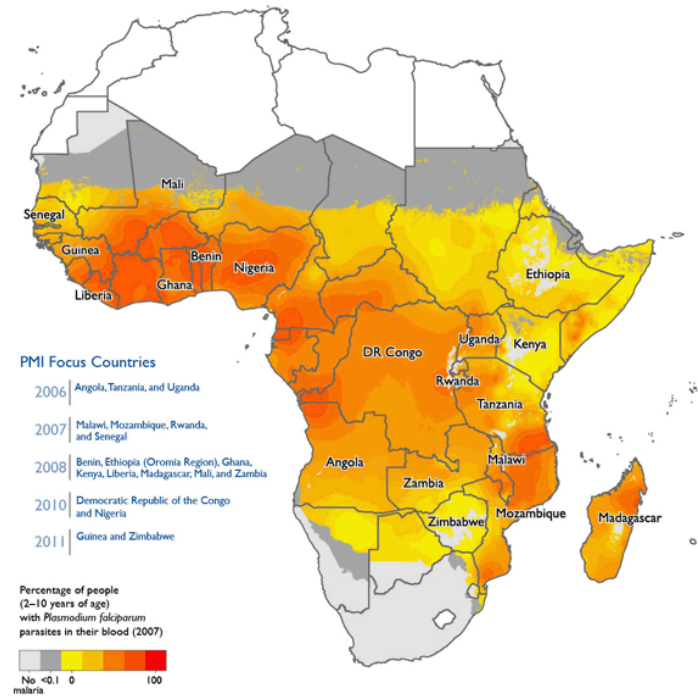


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# Africa: Identifying and Engaging Local Counsel

- **Africa – Three Major Zones, Legal Systems and Language Groups**
  - Maghreb, Sub-Sahara (East and West) and Southern Africa
  - Common Law, Civil Code and Sharia
  - English, Romantic (Francophone & Portuguese) and Arabic



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Citation: Hay, S.I. et al. (2009). A world malaria map: *Plasmodium falciparum* endemicity in 2007. *PLoS Medicine*, 6(3): e1000048. Projection: Plate carrée.



## Africa: Identifying and Engaging Local Counsel

- **Managing the Process**
  - **In-house Counsel Manages the Process**
  - **Local Representative Brings Insights**
  - **Colleagues Provide Guidance**



Belle Toren with the Minister of Justice/Attorney General of Rwanda, M. Tharcisse Karugarama  
March 12, 2012



## Africa: Identifying and Engaging Local Counsel

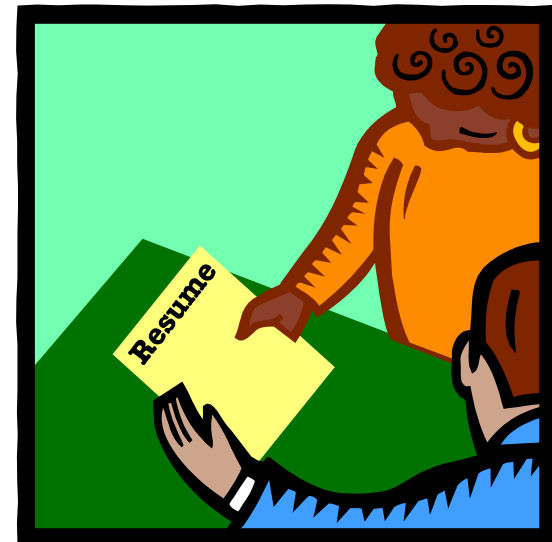
- **The Search: Where to Look**
  - Your Network of International Lawyers
  - Multi-National Law Firms
  - Associations of Independent Law Firms
  - Websites and Rating Agencies
  - Company's Local Representative

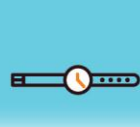




## Africa: Identifying and Engaging Local Counsel

- **The Search: The Interview**
  - **Scope of the Practice**
  - **Cultural Match with Your Organization**
  - **Knowledge of Your Industry**
  - **References**
  - **Language Fluency**

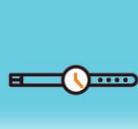




# Africa: Identifying and Engaging Local Counsel

- **Making the Decision**
  - Reaching a Consensus with the Client
  - Going with One or More Firms
  - Assigning a Role for Local Counsel





## Africa: Identifying and Engaging Local Counsel

- Working with Local Counsel
  - Getting to Know Each Other
  - Don't Assume Anything
  - Train and Integrate Local Counsel into the Team

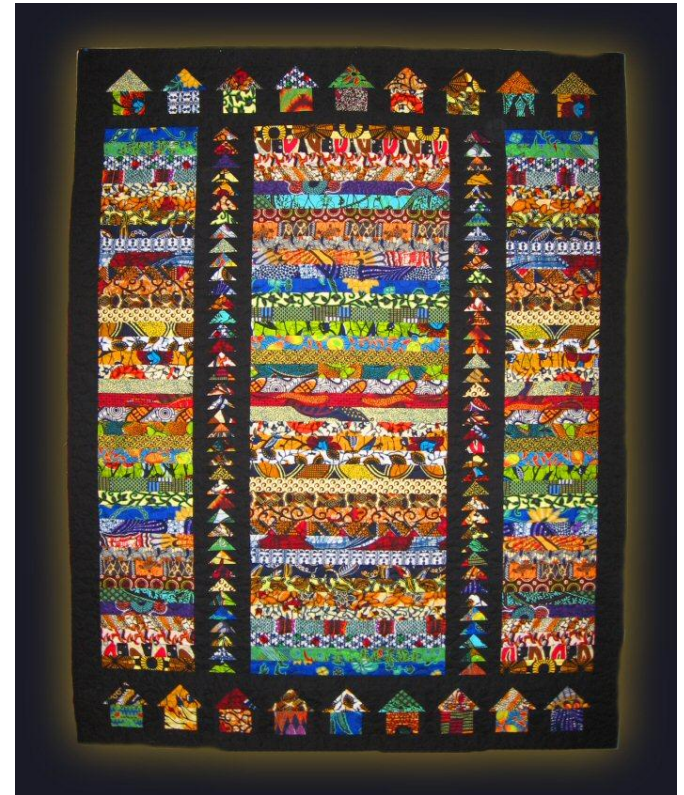


Belle Toren with Mr. Lugano Mwandambo and Mr. Alex Nguluma, Partners of RexAttorneys, Tanzania  
March 6, 2012



## Africa: Identifying and Engaging Local Counsel

- **Become Involved**
  - Local Bar Associations
  - Regional Legal Associations - East Africa Law Society (EALS), West African Bar Association (WABA), Pan African Lawyers Union (PALU), International Lawyers for Africa (ILFA)
  - International Legal Organizations – ACC, ABA SIL, IBA







# Africa: Identifying and Engaging Local Counsel

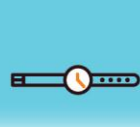
“Representing, promoting and protecting the interest of the legal profession in West Africa”

The West African Bar Association (WABA) is an association of lawyers and lawyers' associations in West Africa.

WABA aims to be a leading edge organization committed to enhancing the professional and commercial interests of a diverse membership and to protecting the independence of the judiciary and the Bar.



<http://www.wabalaw.org/>



# Africa: Identifying and Engaging Local Counsel

## • PALU Executive Committee (2009-2012)

- President: Mr. Akere T. MUNA (Cameroon)
- Vice President for Central Africa: Mr. Vincent KARANGWA (Rwanda)
- Vice President for Eastern Africa: Mr. Hashim AL JA'LY (Sudan)
- Vice President for Northern Africa: Mr. Mohommed JMOUR (Tunisia)
- Vice President for Southern Africa: Mr. Elijah BANDA (Zambia)
- Vice President for Western Attica: Mr. Mame Adama GUEYE (Senegal)
- Secretary General: Mr. Akintola Anthony AKINBOTE (Nigeria)
- Deputy Secretary General: Mr. Bruce KYERERE (Uganda)
- Treasurer: Prof. Tom Odhiambo OJIENDA (Kenya)
- Member: President, Ethiopian Bar Association: Mr. Seleshi KETSELA (Ethiopia)
- Chief Executive Officer: Mr. Donald DEYA





# Africa: Identifying and Engaging Local Counsel

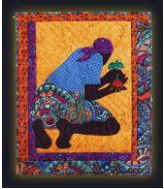
## • ILFA

- Enhanced Understanding and Lasting Relationships with the ILFA candidates' African law firms
- Multinational Corporate Interest  
Diageo, Associated British Foods PLC, H.J Heinz, Hewlett Packard also sponsor candidates.
- Directory for Legal Resources relevant to Africa

<http://www.ilfa.org.uk/directory.php>



Photos from  
<http://www.thelawyer.com/get-with-the-programme/1002900.article>



# Africa: Identifying and Engaging Local Counsel

## THANK YOU!

Special thanks for use of the African theme quilts in this presentation to

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Textile Artist and Quiltmaker

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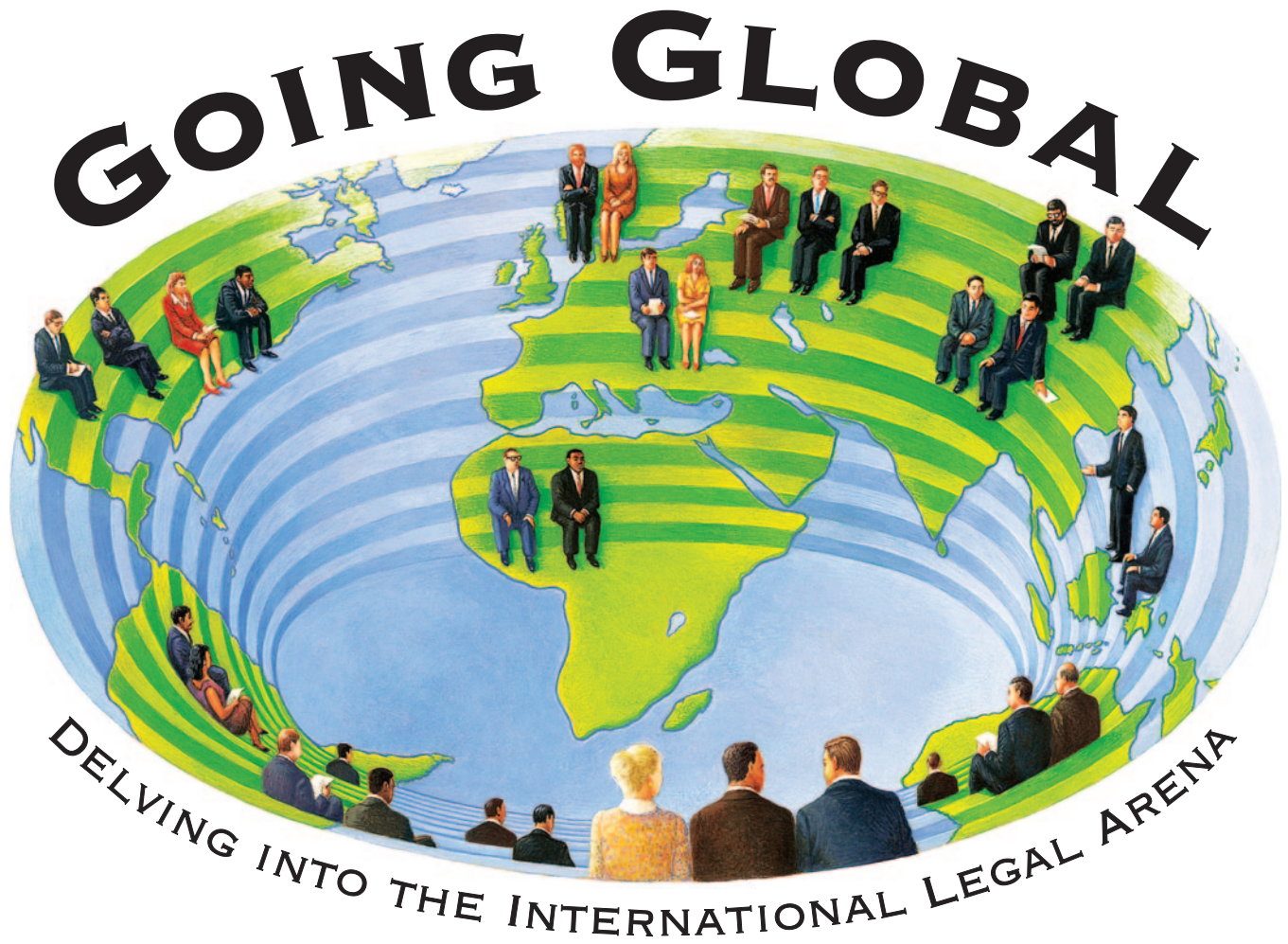
Kitambaa Designs (Patterns & Kits, Fabrics):  
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BY JANET H. MOORE

**G**lobalization increases daily. All lawyers — including solos and small firm lawyers — must be prepared to handle (or refer) international issues that arise.

#### UNDERSTANDING WHAT IS INVOLVED

International lawyers manage a lot of uncertainty every day. Differences between legal systems (civil, common, and sharia law systems) and conflicts between specific laws often preclude clear answers. A good international lawyer needs to know how to help clients with foreign law questions (which may require referring the matter), when to confirm legal conclusions with foreign counsel, and — perhaps most important — how to confirm those conclusions in a way that gets an accurate, insightful, and useful response from foreign counsel. (If in doubt, American lawyers should ask foreign counsel the same question several times, rephrasing it each time. This can ferret out a misunderstanding simply due to language translation.)

To be able to spot relevant foreign law issues, attorneys should learn some basic legal principles of international practice. Depending on their practice area, they could audit a class on international business transactions, international litigation and arbitration, or public international law. Attorneys can read

texts such as the American Bar Association's (ABA) *International Lawyer's Deskbook (Second Edition)*, which introduces international payment methods, customs, and other key topics. Larger foreign law firms usually distribute complimentary newsletters — a great resource for learning about foreign laws.

Lawyers can access many good international resources on the web. Databases such as the Electronic Information System for International Law ([www.eisil.org](http://www.eisil.org)) publish international treaties and other materials. Good overviews of many foreign countries' laws can be found on legal research websites or by searching under titles such as "Doing Business in [name of foreign country]."

Getting a better grasp of different legal systems, the laws of certain foreign countries, and common legal issues that arise can help equip lawyers to spot critical issues — and save their clients from pitfalls that less internationally savvy attorneys might miss.

#### BUILDING RELATIONSHIPS WITH INTERNATIONAL LAWYERS

Talking to experienced international lawyers is a good way to gain insights into the various kinds of international practice,

as well as critically important recommendations on competent foreign counsel and traveler-friendly office technology. Many international lawyers congregate at events sponsored by the international sections of local bar associations, the State Bar of Texas, and the ABA. The annual conference of the International Bar Association draws thousands of lawyers. (The Hieros Gamos website, [www.hg.org](http://www.hg.org), lists such bar associations.) Lawyers particularly interested in international arbitration should investigate the Dallas-based Institute for Transnational Arbitration.

By becoming involved in a few of these groups, lawyers can build significant relationships with experienced international attorneys — and gain not only information but perhaps also some informal mentoring.

### DEVELOPING INTERNATIONAL WORK

Many small firms and solos wonder whether they can compete in the international arena. The answer is yes, and there are many examples of lawyers who have done so.

Dan Harris, a founding partner in Seattle-based Harris & Moure, P.L.L.C., has developed a highly successful practice focusing on China. “All aspects of law are becoming international and that is to the advantage of small firms,” Harris says. “Small businesses are going international at a rapid pace and even practice areas such as estate planning, family law, bankruptcy, and real estate are getting internationalized.

“Small firms with international experience are better equipped for this sort of work than the big firms because small companies and individuals simply cannot afford the staffing and the rates of big law,” he says.

Sensing that trend early on, Harris used cost-effective marketing tools such as blogging to showcase his expertise. His China Law Blog has been honored by the ABA, and thanks to that recognition, Harris has been quoted often in the national media about Chinese legal matters. His firm has now grown to 13 lawyers, but it started with just a handful.

However, attracting clients abroad can pose challenges. “Developing clients abroad is no easy feat: What works in the United States often doesn’t work overseas,” says Dr. Silvia Hodges, who teaches legal marketing at Fordham Law School. “In many markets, developing business takes even more time than back home and clients won’t buy from you unless you *first* build a relationship with them. Learn to play to the local market: Understand who makes buying decisions on the overseas client side? How? Who influences their opinion? What do they value in their lawyers? What would convince them that you/your firm is a better choice than its competitors?”

As Dr. Hodges explains, in many cultures a close personal relationship must develop before a substantial business relationship can evolve. As a general rule, American lawyers should be prepared to spend more time cultivating certain foreign clients than they would American clients. Precisely because relationships are so valued, personal introductions and recommendations carry a lot of weight.

Given these differences, attorneys should enhance their cross-cultural awareness. Many American lawyers use a forceful, direct communication style that can put off clients from other cultures — and the prospect may be far too polite to acknowledge the offense. Lawyers can increase their knowledge by reading books about multicultural business etiquette (such as those in the *Kiss, Bow or Shake Hands* series).

Even better, attorneys should seek opportunities to interact in a business context with people from other cultures. For example, Texas chapters of the World Affairs Council and the Council on Foreign Relations and university-sponsored organizations such as Rice University’s James A. Baker III Institute for Public Policy and Texas A&M University’s Bush School of Government and Public Service host well-attended lectures on international topics. Developing rapport with business people from other cultures increases cross-cultural acumen — and may attract legal work, too.

### HANDLING GLOBAL WORK

International lawyers work across time zones and cultures, even when doing so isn’t necessarily enjoyable or convenient. They regularly grapple with jetlag and other physical side effects of a global work life.

To work internationally, lawyers must have the technical and other resources necessary to meet clients’ demands. This requires more than merely having a cell phone with a global data plan.

Houston-based Cogan & Partners, L.L.P. is a small firm that has committed to meeting client demands wherever they arise. Says partner Elizabeth Cogan Molino, “Our globetrotting lawyers’ motto is ‘have laptop, will travel.’”

However, the five-attorney firm did not want to be saddled with high administrative or technical costs. This led the firm to choose an IT solution that enabled its attorneys to securely log in “whether in Houston, London, or Rio de Janeiro.”

Molino also notes the importance of satisfying clients’ billing requirements. “On the client service side, if we are dealing with a European client, our bills should be dated according to the European standard; if our client prefers to be billed in pounds or kroner rather than dollars, we should be able to cater to that.”

Client expectations will change depending on the client’s cultural expectations. Lawyers must meet those needs or risk losing the client.

### PREPARING TO GO GLOBAL

As the pace of globalization quickens, so does the importance of becoming internationally adept. The wise sole or small firm practitioner should be positioned — as quickly as possible — to “go global” with the rest of the world. ☘



#### JANET H. MOORE

practiced international business law for 15 years before becoming an executive coach and consultant. She teaches marketing professional services at Rice University’s Jones Graduate School of Business. This article updates a version published in the November 2006 *Texas Bar Journal*.