

IBA regional forum hailed

The International Bar Association's Africa Regional Forum that wrapped up in Livingstone, Zambia on Friday has been hailed by organisers for the robust and lively debate between some of Africa's brightest legal minds and delegates from around the world. **Legalbrief** reports that the gathering focused on the rule of law in Africa, developments in the relationship between business and human rights, mergers and acquisitions and many other pertinent issues. One of the highlights of the event was the keynote address by Zimbabwean businessman Strive Masiyiwa. He presented **an extraordinary narrative about his decade-long journey through the corridors of justice** in Nigeria and England in an attempt to resolve a multimillion-dollar cellphone licence dispute.

[See CyberAnalysis \(below\)](#)

Zambian President Edgar Lungu, who delivered the opening address, said his government remains committed to addressing issues of human rights and the challenges that surround the rule of law. He said the call for greater unity through Pan-Africanism that sounded when African countries were fighting for independence is just as pertinent today as it was then. **'Unless we endeavour to learn from our fellow Africans, we will continue to be plagued by poverty, disease and poor governance in our respective countries.'** Reflecting on his own country's progress, he noted that his government has made considerable strides in promoting gender equality and empowerment of women in various arms of government, 'including the appointment of the first Vice- President, Chief Justice, Cabinet Ministers and institutional heads'. Lungu, who officially opened the three-day conference, said its theme (Building on the foundations for a successful future: economic development and the rule of law in Africa) resonates well with the African Union Agenda 2063 which is to build an integrated, prosperous and peaceful Africa, managed by its own citizens and representing a dynamic force in the international arena.

A panel of experts addressed the crucial role the law plays in the 'next wave of colonialism'. This is in reference to the surge in interest – particularly from China – in the mining and oil discoveries on the continent. Michelo Hansungule, a professor in human rights law at the Centre for Human Rights, said it is crucial that African states get their houses in order to ensure that they are capable of dealing with global players. 'If we are going to demand that businesses comply with human rights and that they don't violate workers' rights, we have to create the right environment. The responsibility to create the right environment is incumbent on the states. In Africa, we don't have capacity to address very complex issues relating to new discoveries in oil. **We need to look at the law and how it will assist governments to prepare effective legal frameworks to address these challenges.** If you the lawyers remain passive in trying to assist societies and countries, the colonialism we saw in the last century will be nothing compared to China's colonialism. It is not simply that there must be roads or dams... we need those things. But we need a balance so we can have value-based development that doesn't lead to the destruction of people. If you cannot respect us, then pack up your bags and go,' he said.

Another panel discussion focused on recent developments in corporate and M&A law in Africa. The speakers, who included Julien David (Gide, Casablanca), Charles Douglas (Bowman Gilfillan, Johannesburg) and Mwelwa Chibesakunda (Chibesakunda & Company, Lusaka), focused on current trends and anticipated changes in the laws affecting corporate and M&A practice around the continent. **Again the role of corruption was a pivotal focus** with the consensus that it is crucial to identify any issues with regards to the roles of investors and to work out a strategy to deal with any eventuality.

Zambian High Court Judge William Mweemba addressed measures that have been taken by the host nation to ease the backlog in the courts. These include the use of tools to let judges track all the cases they are presiding over, including scheduling and status conferences which offers 'pretrial management' of cases before the courts. 'The question is, why manage a case? It's to save time. **If a case is properly managed, issues are exposed early and this aids faster settlements.** The judiciary encourages the resolution of disputes through mediation and arbitration for selfish reasons. Both help to decongest the system.' He added that 150 mediators are currently employed and there are plans to train a further 80 next year.

South African advocate Vusi Pikoli warned delegates to guard against their Constitutions becoming 'paper tigers'. The former head of the National Prosecuting Authority, who is noted for instigating criminal charges against disgraced police commissioner Jackie Selebi and African National Congress president Jacob Zuma, used his own

experiences to outline the dangers of the executive becoming too powerful. While noting that he is an ardent fan of the country's Constitution 'because it addresses past injustices', he said South Africa is beginning to see the undermining of state institutions. He outlined the role he played in the establishment of the Directorate of Special Operations (the Scorpions), a multidisciplinary agency that investigated and prosecuted organised crime and corruption as a unit of his National Prosecuting Authority. It was officially disbanded in 2009 by President Kgalema Motlanthe after clashing with Selebi. **'When we pursued everyone who was the tail we were the darlings, but when we went for the head, we were told that we were getting too big for our boots.'**

The issue of what clients expect of African law firms was addressed in a lively panel debate that focused on how legal services in Africa are evolving from clients' perspectives. One of the main challenges, the panellists concurred, is that there is a global perception that Africa is a single region and, in some cases, a single country. Said Julien David (Gide Caseblanca, Morocco): 'People tend to view Africa as one pack. They want business on a regional scale and, as a result, regional integration is an important part of attracting international investment because it creates a clearer picture (for outsiders).'

Charles Rwechunguru (CRB Africa Legal, Dar es Salaam) said **the reality is that Africa has a billion people which makes it an attractive destination for investors.** Michael Munalula (MML Legal Practitioners, Lusaka), said African states need to secure the right balance with foreign investors to ensure that they are not short-changed. 'In the past, the benefits have been skewed towards the investors,' he said. Using his country's lucrative copper mining industry as an example, he noted that while there have been attempts by Lusaka to introduce measures to ensure that local companies benefit from the mined mineral i.e by producing copper wire, most of it is exported in its raw form. 'Much of it is processed in countries like South Africa and China and comes back in the form of car and electrical goods. The solution is to establish a local plant that could use these base metals to oil industry.'

A second panel addressed the same topic with the focus on the role of internal and external counsel in dealing with disputes. Questioned on how companies formulate their strategies, Jennifer Garvey (Director of Legal Affairs, International Coal Ventures Limited, Maputo), said **the decisions need to be taken on a case-by-case basis.** 'It often depends on whether cross-border arbitration is necessary. 'For example, if it involves South Africa or Australia where we don't necessarily know the law, we would use external counsel - otherwise we would settle for local firms. As regards addressing local matters, she reflected on a recent tax case. 'Our company's internal counsel came to a decision, but we obtained one outside legal opinion which we disagreed with. So went to a third law firm on the same matter, until we achieved consistency.' Lydia Chilumba (Head of Legal, National Pension Scheme Authority, Lusaka) said it is imperative that lawyers not only play the role of advisors for companies, 'but to be business partners, to understand business models and to offer strategic advice to grow the business'.