



**MANAGING ALTERNATIVE DISPUTE RESOLUTION AND  
INTERNATIONAL COMMERCIAL LITIGATION WITHIN THE  
MICROCOSM OF SUB-SAHARAN AFRICA'S BUSINESS AND  
LEGAL CULTURE**

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**I. INTRODUCTION AND SUMMARY**

A region of great diversity, Sub-Saharan Africa (“SSA”) is burdened by and, in some instances, afflicted with a variety of socio-political and legal contexts. For instance, there is a mixture of authoritarian, military, and democratic administrations. Africa is also diverse in terms of its people, religion, normative values, colonial experience, political systems, economic systems, physical environment, and the cultural legacy of colonialism. Managing litigation and other legal issues in the U.S. could be challenging enough; doing the same in SSA is certainly a hair-raising adventure at best.

Conflict is an inevitable aspect of human interaction. It can, however, be prevented on some occasions and managed on others. Navigating conflicts successfully in SSA requires a combination of global experience, local knowledge, and cultural competence. While most western jurisdictions, including the U.S., have Uniform laws governing commercial transactions, the same is not true in most SSA countries. Litigation, regardless of where it rears its ugly head in SSA, could cause debilitating anxiety to both counsel and client. Disconcerting questions that often come to mind include: What is the lingua franca where the matter will be litigated? Will U.S. laws be applied? How long will it take for the matter to be resolved? Will the contract in place between the parties be enforced? Will it be interpreted the way it was written or will a local interpretation come into play and change the terms? Will corruption, which is endemic in this region, tilt the playing field and influence the decision of the foreign court?

The first order of business for the in-house lawyer with a case in SSA is to hire a good lawyer or a law firm that is capable of handling and managing Alternative Dispute Resolution (“ADR”) or

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litigation in the country in question. In selecting lawyers to handle complex legal issues with cross-jurisdictional implications, U.S. companies normally look for large international firms because of perceived capacity. However, in selecting lawyers to handle work in SSA, well-informed foreign companies have been known to prefer specialization to size. While U.S. corporations tend to use formal means like the Request for Proposal (“RFP”) in their regular selection of lawyers for domestic work, selecting counsel for international legal matters in SSA may, for the most part, require informal means. The lack of local knowledge and cultural competency by multinational corporations require referrals or recommendation by professionals who know the terrain of the country in question and have a high level of expertise in the region.

For instance, there are generally no reporting systems to track law firm and lawyer performance in most SSA jurisdictions to gauge their competence and true capabilities. The best and/or most influential counsel on a given legal subject matter or problem may not even have a facsimile line or email. In some SSA countries, possessing modern communication equipment is still more a function of exposure, youth and/or age group of the particular attorney than competence and applicable influence. The task is even more difficult when the country is not a common law country.

Africa’s complex and changing cultural environment also presents mind-boggling legal challenges. Socio-economic, legal and business culture varies widely from country to country. What is true in one nation might not be true in another. Because American business culture substantially differs from African business culture, there are four important questions to ask about cultural differences to ensure legal or business success in Africa. First, what specific characteristics define African business and legal culture? Second, what are the implications of these cultural characteristics for American business? Third, what strategies can be used to successfully manage cultural differences in Africa? Fourth, what factors shape the culture of the continent?<sup>1</sup>

Africa’s most common cultural characteristics to be mindful of include: *High Social Inequality; Respect for Title, Age and Hierarchies; Importance of Personal Connections and Relationships; Emphasis on Tradition and Honor; Festering Corruption; and Disregard for the Law Due to Lack of Enforcement.*<sup>2</sup> It is true that Africa has high social inequality whereby subordinates depend considerably on bosses. Titles, formality, and prestige are taken very seriously in African cultures and Africans have a remarkable respect for hierarchies, titles, and age. Africans emphasize knowing people, having personal connections, and cultivating relationships. Africans also believe that tradition and honor, as well as “saving face or protecting face” (that is, preventing the loss of honor), are very important.<sup>3</sup> Bribery and corruption are on the rise in Africa and Africans usually do not adhere to rules and discipline, not because they have a greater propensity to break rules, but because rules are not always enforced.<sup>4</sup>

To effectively manage cultural challenges and succeed in dispute resolution in SSA, one must first recognize, accept, and then manage cultural differences. Personal relations and connections play a far-reaching role in African business and legal landscape. They invariably affect social, business, political and legal affairs, and are the building blocks for personal trust, loyalty, and cooperation. One must also comprehend the concept of “African Time” and recognize it in making plans, as well as ensure that there is considerable follow-up.<sup>5</sup> If business partners do not arrive on time for a

meeting, it is generally accepted and should not necessarily be deemed disrespectful or earth shattering.<sup>6</sup> Also, deadlines generally tend to be very flexible, although that it is not necessarily the case in courts or when dealing with legal matters.

One should certainly be cognizant of the roles that honor plays in business relations because this is important for mutual understanding and effective communication.<sup>7</sup> Learn to read the nuances and understand when “yes” really means “yes” and “no” really means “no,” and how to clearly communicate what one means. In-house or managing counsel must realize that certain practices that are not tolerated or permitted in the U.S., such as bribery, may be rampant in some SSA countries and draw a line in the sand, so to speak, as to where gratuity stops and bribery starts. Sensitivity to cultural differences minimizes organizational tensions and provides a synergistic framework for an effective legal management culture.

Even more confusing is the fact that in the face of globalization, African societies and cultures, always dynamic, are undergoing rapid transformations.<sup>8</sup> With a proper understanding of the African business and legal environment, as well as the requisite cultural fluency, in-house and/or international managing counsel can achieve and enjoy success in their SSA endeavors. A successful execution of any legal transaction or litigation regardless of the jurisdiction is in the preparation. However, sometimes the best preparation may not take into consideration or account for issues of culture, tradition, politics and the legal history of the country in question. Because of colonial rule, whether an SSA country evolved from British, French, Belgian, or Portuguese rule will have a lot to do with its legal institutions or court system.

## **II. PROCESS AND BEST PRACTICES IN SELECTING AND EFFECTIVELY MANAGING SUB-SAHARAN AFRICA COUNSEL**

The uncertainties associated with litigation and the unfamiliarity of SSA laws call into question the wisdom to even pursue litigation in SSA jurisdictions. The increasing use of Arbitration and other dispute resolution mechanisms in SSA are tools that can be deployed to minimize business and commercial risk or exposure by U.S. multinational corporations in their operations on the continent.

With the advent of globalization, in-house counsel must now always be prepared for transnational litigation and alternative dispute resolution. Selection of competent local counsel is unmistakably a critical step to successful business and/or legal transactions in SSA because it is crucial to retain local counsel who is capable of guiding in-house counsel in navigating the legal system and to appreciate the culture and society in which they are doing business.

It is axiomatic that before retaining SSA counsel, the in-house lawyer must first sketch out the parameters of the legal matter, research local laws, identify the type of international counsel needed, such as the foreign office of international law firm, organized legal referral networks, a barrister, solicitor or notary from a local law firm, or a foreign legal consultant – expatriate lawyer based in U.S. The SSA counsel you choose must be able to educate you about the relevant SSA country – the history, culture, customs, and its legal system.

SSA counsel must also guide you to ask essential questions, such as whether the judicial system is generally perceived to be impartial? Must the legal/business issue be resolved in the country? Is there a political method for resolving disputes in said country? Are alternative methods of dispute resolution available and permitted in the particular aspect of law? How long would it take to resolve the type of dispute in question? Can foreign judicial decisions be enforced in the country? Can decisions from the country be enforced outside the SSA country or the U.S.? Are there alternative tribunals? Are there different legal systems within the country or its political subdivisions? And whether the rules of privacy, attorney-client and attorney work product privilege exist in the country?

The usual foreign counsel selection procedure for in-house counsel is to solicit RFPs and recommendations from other corporate counsel, business professionals, international counsel with whom the multi-national corporation has an existing relationship, Martindale-Hubbell International Law directory and other international legal resources. You must articulate a structured process for completing these anxious tasks and strive to continually revamp the process. Prior to making your final selection, endeavor to consult or contact the U.S. Embassy in the relevant country and the country's embassy in the U.S. via their commercial attachés to seek their input with respect to any information they may have about the reputation of the lawyer or law firm.

Before selecting your counsel, arrange interviews with selected local counsel in person, telephonically or via video conferencing and check the integrity of local counsel and his/her reputation in the local community, his/her expertise by specialty, resources (including modern communication system), and fees relative to the competition, etc. Next, ensure that the foreign counsel understands well enough what your company does. Then proceed to elicit from him/her what other questions to ask in the context of the legal matter or dispute since what you need is a lawyer who can issue-spot from the perspective of the in-house lawyer/client.

Some of those relevant questions may include the counsel's education, training, expertise and experience. Has counsel been educated or worked in the U.S. and if not, does counsel have an international perspective, although resident in SSA? In what language(s) does counsel have fluency? Does counsel have sufficient support staff capabilities and office equipment/technological resources for efficient handling of the matter? Has counsel worked with other U.S. clients? Does counsel have local contacts that might be important to your case? Is counsel available after-hours and holidays? Is counsel familiar with the venerable U.S. Foreign Corrupt Practices Act (FCPA) and OECD counterparts or other pertinent statutes?

It is also essential to require counsel to identify local laws, customs and practices that differ from U.S. federal and/or state laws that pertain to the matter. SSA counsel must be able to help you fully understand relative differences between U.S. and local laws and procedures, so that you are clear on local standards of conflicts well in advance. Establish timeframes and calendar reminders to meet deadlines, as well as be specific about whose time zone and date apply when parties are in different geographical locations. Further, decide and clarify how delivery of documents and information is to be handled ~ in person, courier, fax, email, voicemail, etc.

Regarding communications, SSA counsel should be able to apprise you of the best method of communication ~ in-person, videoconferencing, telephone, email, fax, courier, letters, etc. They

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should also notify you of the local holidays and standard local office hours. Your action plan must be implemented with cognizance to time efficiency, research costs, resources, potential exposure to liability, and business interruptions and deadlines. You may even want to get down to the nitty-gritty by specifying the chain-of-command regarding document handling, information flow, legal bills and contact with key participants. Keep SSA counsel informed of any changes in U.S. laws that may affect your company's foreign operations, of significant internal changes in your company, or any changes in its corporate code of conduct and mission directive. Ascertain your local counsel's commitment to periodic relationship reviews in which expectations, performance, fees, expenses and timetables will be discussed. Regardless of the variability of your needs, your aim must be to build a fundamental consistency in your working relationship with local counsel.

SSA counsel must have a proven track record of providing competent advice relative to litigation and other matters within the relevant SSA jurisdiction. However, do not rely on any one firm or lawyer in any one country in SSA to meet all of the needs of your company. Also, source local counsel whose specific expertise is best suited for a given transaction, consistent with the geographic area, complexity of matter, budget and other pertinent factors, which may even include the ethnic group of the counsel you choose. SSA counsel should be able to provide additional significant depth of knowledge and innovative, value-added service that the in-house team is unable to access, such as industry knowledge gained from working with other multinational clients in the region.

Foreign counsel should be willing to place the client's interests ahead of their bottom line. The focus must be on the outcome to the corporate client and the firm or counsel you choose must be proactive by offering integral contributions toward preventive measures. He/she must also provide a broad perspective that reflects lessons learned, and identify trends and particular areas where the client's business units need education. Ensuring that local counsel manages workflow efficiently, as well as establishing clear, ongoing mechanism to communicate expectations and articulate needs must be your focus from the "get go."

Effective management of SSA counsels means constant evaluation and re-evaluation of their performance. Require counsel to provide clear billing structures and rates, and to prepare budgets for all specific matters and cases at the outset. Regular reviews of expenses, work product, periodic assessment of the firm's work and end-of-matter assessments should be standard practice. Seek to partner with counsel and firms that have the ability to proactively solve problems and are creative strategic thinkers and effective communicators who are responsive and result oriented. SSA counsel needs to provide strategic thinking with emphasis on early case/issue assessment, which takes into account the potential liability, knowledge of opposing counsel and local jurisdiction, business input for the overall strategic approach to the case, and the business implications of the legal matter or suit. By this process, you and SSA counsel will quickly get on the same page and agree on the course of action that will result in the earliest disposition of the case consistent with your business objectives. With this approach, strategic budgeting becomes merely an input to case management as opposed to an absolute cost-control device.

Since counsel's fees must accurately reflect value to your organization, you must try to employ value-billing methods to improve service quality. Factors considered in the value billing analysis include problem-solving skills, availability and timeliness of advice, legal/commercial judgment,

project management and outcome. Ultimately, reward must be according to criteria that reflect value to you, the client. When you identify a dispute, counsel ought to possess the wherewithal to help you determine the timeframe for resolving it consistent with your company's ultimate goals. Then he/she must devise and present an efficient resolution and/or litigation plan. Facilitate regular reporting and review meetings, and strive to centralize and channel all communications through a lead in-house counsel, which assures appropriate briefing on the matter's status and progress, and protection of privileged information.

Aspire to develop a partnering relationship that goes beyond mere legal services. Initially, SSA counsel should concentrate on understanding your business objectives and the importance you attach to partnering with SSA counsel, particularly in today's business environment where building strategic alliances have become a critical success factor. Create the expectation that SSA counsel must deliver top-notch legal advice as well as help you improve the processes in which you and they provide legal advice to the corporate entity because the strategic partnership should blend your core competencies with their applicable capabilities. Becoming stakeholders in each other's business enables you to gain a competitive advantage, as it facilitates measuring performance proficiently, focusing on innovation and change, and pursuing relentless improvement.

Many law firms tend to focus exclusively on winning the case, even when a better business strategy may be to seek early resolution. The SSA counsel you select must be instructed to be mindful of loss of brand equity, loss of consumer confidence, divergence of management time, loss of employee morale and corporate social responsibility best practices. Too much risk can be fatal to an enterprise and too little can cause a business to miss attractive opportunities and reduce the return on economic capital. This underscores the importance of predictive accuracy on the part of SSA counsel. The key is to strive for a favorable balance in your risk analysis through a proactive approach that includes monitoring developments in litigation trends, examining changes in legislative and regulatory policy, and developing tailored-to-fit crisis management plans. SSA counsel should have a standing directive to monitor and send "written alerts" describing changes in the laws and regulations affecting your businesses in their SSA jurisdiction.

Your goal is to get to a stage where you begin to comfortably regard your SSA counsel as a strategic resource of your company based on shared incentives and benefits. The real challenges for in-house and SSA counsel in working together in this treacherous region is to provide the most effective and cost efficient combination of legal services to the multinational corporate client that protects and promotes shareholder value. Ultimately, your corporate business purpose is the panacea that you will use to judge SSA counsel's performance. Therefore, never lose focus that achieving the business purpose is the only measure of outcome that matters.

With a legal system fraught with delays, litigation may not adequately take into consideration the time value of money in cases of monetary claims.<sup>9</sup> A corporation with a sound litigation management strategy would be able to sift its good cases from the bad ones and be able to determine the merits of a cause of action not just in terms of possible success, but also on the basis of its commercial and strategic importance.<sup>10</sup> A firm's decision to go into litigation must always be a business one founded on good analysis and overall benefit to the company.<sup>11</sup>

### III. ALTERNATIVE DISPUTE RESOLUTION AND CUSTOMARY SYSTEMS OF DISPUTE RESOLUTION IN SUB-SAHARAN AFRICA

Customary law is generally known to be the accepted norms of any community.<sup>12</sup> A community may accept certain customs as binding on them. In SSA, such customary laws may be accepted by members of particular ethnic groups and may be regarded as ethnic customary law.<sup>13</sup> Varying concepts of mediation and other forms of alternative dispute resolution run deep in the socio-economic fabric of SSA nations and some of the countries have a longstanding practice of mediation in their social history. Customary law is unwritten and one of its most commendable characteristics is its flexibility, apart from the fact that it is the accepted norm of usage.<sup>14</sup> In one Nigerian case, the court said:

*"One of the most striking features of West African native custom ... is its flexibility; it appears to have been always subject to motives of expediency, and it shows unquestionable adaptability to altered circumstances without entirely losing its character."*<sup>15</sup>

Resolution of disputes was a major function under the indigenous system of governance. The role was taken by the elders or the chief and was meant to maintain social cohesion.<sup>16</sup> There are, however, several limitations to this process in modern times. One is that it mostly applies to land and family disputes. Secondly, it hardly applies to monetized commercial transactions and certainly not to transactions of an international character. Finally, it is community focused and does not contemplate transactions where the parties are from different cultural backgrounds.<sup>17</sup> In SSA, resolving litigation by ADR is important, but "saving face" and walking away with dignity are equally crucial.

Litigants who choose the seat of their arbitration to be in an African state should be familiar with the degree to which local courts will be able to intervene in the arbitration process. For instance, local arbitration legislation in Nigeria and South Africa gives the courts wide powers to interfere in arbitration proceedings beyond the limited grounds stipulated on the model law. Besides state laws introduced under colonial occupation, there are a substantial variety of traditional legal mechanisms that still coexist with the official law.

The progressive creation of "customary courts" and the codification of "customary law" were two major priorities of colonial policies.<sup>18</sup> Their misunderstanding of local hierarchies and legal mechanisms led to a gap between the recognized "customary law" and the actual local legal practice.<sup>19</sup> After independence, almost all francophone countries abolished their "customary courts." The abolition was mainly motivated by the aim to promote the civil law system as the single one. However, more than half a century later, non-state law remains very important throughout the African continent.<sup>20</sup>

The official recognition of ADR has, in recent times, become a priority again for many legal reform or modernization projects and is dealt with in many different ways in Africa.<sup>21</sup> In most of the countries, extra-legal mechanisms of social regulation are known and tolerated by the state's institutions. Codification of local conceptions of law has been favored by many francophone countries and some common law countries like Tanzania.<sup>22</sup> This procedure has the advantage of providing accessible and reliable written documents. Integration of local law into the state legal system in a non-written form is practiced in Ghana and in some francophone countries.<sup>23</sup> It

requires the nomination of assessors in court and is a realistic way of adjusting the law to local customs and practices.<sup>24</sup>

Incorporation of local institutions into the state legal systems without codification of procedures and the law they use was practiced under the British “indirect rule” in Anglophone Africa.<sup>25</sup> Cooperation is practiced in Burundi and Mozambique, where the Community Courts are recognized as conciliation boards without being part of the state judiciary.<sup>26</sup> Innovations like the rehabilitation of traditional dispute settlement mechanisms in Rwanda or the creation of new institutions integrating locally recognized authorities in Mozambique and Uganda are another method.<sup>27</sup>

The institutionalization of customary mediation and arbitration is a common characteristic of all legal experiences in SSA. However, there are only a few countries where ADR has been integrated into the procedures of the formal judiciary.<sup>28</sup> In Benin, West Africa, specialized conciliation tribunals (“tribunaux de conciliation”) are competent to hear almost all matters of dispute related to civil law.<sup>29</sup> Their records are transmitted to the court of first instance which either confirms the successful conciliation or assumes jurisdiction if the conciliation fails. If the decision is confirmed, the conciliation record acquires the force of a final judgment and can only be contested as to questions of law through an appeal to the Supreme Court.<sup>30</sup>

Although reliance on ADR could minimize the risk of conducting business in SSA, the lack of homogeneity in law, culture, politics, tribe and tongue, are major issues that still make dispute resolution complicated and troublesome. Always keep in mind that the one important area of law that will always hover over your business transactions in SSA is the customary law of the country in question. And that is something many contracts and transactions do not anticipate. Like arbitration, ADR is not adversarial and could be initiated by any party who desires to bring order quickly to a transaction or a dispute. The important characteristic of customary ADR is its flexibility and expediency. It is very adaptable and can be altered to fit the circumstances at hand without losing its character.

Although there are disadvantages to customary ADR and regular ADR practiced in courts, the advantages of both systems far outweigh the court system in most SSA countries. The common law and civil law adjudicatory system, especially in commercial disputes in SSA, are fraught with a myriad of shortcomings. These shortcomings range from the delay in the process of litigation, cumbersome rules of procedure, the corruption of judges and court officials in some countries, the cost of litigation, and the negative publicity that goes with the hearings and judgments. Simply stated, when there is an opportunity for ADR in whatever form, it is always more desirable than litigation.

West and Central African countries are presently working on a regional ADR system for commercial disputes.<sup>31</sup> The project is not unconnected with an initiative of the U.S. Department of Commerce and its Commercial Law Development Program (CLDP). It is designed to lead to the creation of a “Center for Arbitration and Mediation in Africa” (CAMA). Further, through the auspices of the Organization for the Harmonization of Commercial Law in Africa (OHADA), the francophone SSA countries have developed a common legal framework based on French Civil Law. Arbitration is considered the primary way to settle disputes in the OHADA mechanism.<sup>32</sup>

Conflicts are submitted to the common Court of Justice and Arbitration (CCJA) based in Abidjan, Ivory Coast and its arbitration agreements are legally enforceable in all member states.<sup>33</sup>

#### **IV. THE PILLARS OF EFFECTIVE & COST-CONSCIOUS LITIGATION MANAGEMENT IN SUB-SAHARAN AFRICA**

In today's litigious business and legal environment - SSA nations not excluded - corporate clients face many challenges in international litigation management. Any type of litigation management, whether international or domestic, often boils down to lawyer management. While multinational corporations, especially oil and pharmaceutical companies, may feel frustrated about being frequently sued in SSA, it *is* possible to manage these litigation matters in SSA jurisdictions to save time, money, and frustration. The three key pillars of litigation management in SSA are (1) Prudent attorney selection, (2) Stringent cost control, and (3) Meticulous legal service management.<sup>34</sup>

To help manage costs, you must have written guidelines for SSA counsel as you would for domestic firms. Written guidelines help to avoid misunderstandings and they should cover items such as the hourly rates you will pay for partner and associate work, the format and frequency of billings, established budgeting and expense-forecasting requirements, what you will and will not pay for, your policy on legal research and retention of expert witnesses, and what they must get pre-approved by you.<sup>35</sup> The guidelines should also cover service standards such as how often you expect status reports, how promptly you expect turnaround on specific requests, turnaround time expected on returning telephone calls, e-mail replies, etc., accessibility at "odd" hours and holidays. This provides the framework for your client "Bill of Rights."<sup>36</sup>

Further, require written budgets with every case assignment. It will not be unreasonable or burdensome to instruct that counsel provide a written budget/forecast of legal fees and related costs within 60-90 days of accepting a case. If the budget looks unreasonably high, that is an early warning that you need to have a discussion with counsel to either understand the costs or to impart a more frugal approach to litigation.<sup>37</sup> There is a "bargaining" culture in SSA, so do not be afraid to request fee discounts. It is always a buyer's market for foreign companies seeking to purchase legal services in SSA, so it never hurts to ask. You may be surprised at how lawyers and law firms in an increasingly competitive climate will quickly accommodate reasonable requests for discounted billing rates or a percentage discount of the total bill for a matter.

Be vigilant to warning signs of sub-standard service, such as trouble getting telephone calls returned, no or slow response to letters and inquiries, different lawyers handling your case, and counsel following a strategy that is inconsistent with your aims and philosophy.<sup>38</sup> Give your SSA counsel a periodic "report card," assessing overall performance in categories of cost, results, and client service and share your findings with counsel to focus on areas that need improvement.<sup>39</sup> You need not get adversarial with SSA counsel to successfully manage how they handle your legal matters or affairs, but you should be a well-informed, hands-on, and especially vigilant consumer of their legal services.

The challenge that most institutional clients face is in balancing a strong defense against its costs. For example, creative billing arrangements – a trend that has become quite popular with the

current worldwide economic downturn – has brought even more attention to the need to consider alternatives to the age old and inefficient billable hour.<sup>40</sup> The difficulty is in finding counsel with the experience and ability not to just achieve successful results but also to maintain reasonable costs. Even if SSA counsel has traditionally handled files and matters on an hourly basis, it may make sense in the context of a particular case or group of cases to establish a different billing system such as flat fee, contingency fee, bonuses tied to achieving specific results or a hybrid of two or more of these.

Also, in the litigation process, your SSA counsel must be cautioned to choose your “battles” carefully. The days where every claim is fought “tooth and nail” or vehemently contested as though the company’s livelihood depended on its outcome is quickly becoming a thing of the past. It is vital for CEOs and other executives to really conduct a valuation and/or thorough cost-benefit analysis before deciding if they want to litigate a matter, and they need to have a cost estimate based upon winning or losing the case. Then use that valuation in deciding how much you should reasonably invest in legal expenses. The actual litigation expenses are much more tolerable if your initial budget for the case matches an accurate valuation of what’s at stake.<sup>41</sup> And settling at the early stage of the case, rather than settling on the courthouse steps – months or years earlier – saves more legal expenses than anything else.<sup>42</sup>

## **V. THE STRATEGIC AND LEGAL IMPORTANCE OF CREATING AND MAINTAINING A GLOBALIZATION ERA CORPORATE SOCIAL RESPONSIBILITY PORTFOLIO IN SUB-SAHARAN AFRICA**

Multinational corporations operating in SSA must learn to embrace corporate social responsibility. Good “bedside manner” and community perceptions as to whether a company is “good” to and for the community can heavily influence the number of lawsuits directed at a company as well as the outcomes. Corporate social responsibility is the commitment of businesses to contribute to sustainable economic development by working with employees, their families, their local community and society at large to improve their lives in ways that are good for business and development.

Good corporate governance at home and abroad and promoting economic inclusiveness and community goodwill are important elements of international security and litigation avoidance and/or diversion for businesses. Conflict is endemic to failed states, where violence and lawsuits become the predominant means to express grievances and secure control over wealth and key economic goods. Globalization and the mounting number of conflicts occurring in regions where multinational corporations operate have prompted international organizations, the media, human rights groups, as well as some corporate executives, to ponder the obligation of multinational corporations in promoting peace and economic development. Corporations have an interest in leveraging their skills and impact to promote stability in their areas of operation, not only because it is the right thing to do, but also because it makes good business sense.

A number of companies have been sued under laws such as the Alien Tort Claims Act, a U.S. statute that allows aliens to sue in U.S. courts for torts inflicted outside U.S. borders, including those resulting from human rights abuses. In recent times, such legal actions have included suits against two large oil companies, Unocal and Talisman Energy. In 1996, Burmese villagers sued

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Unocal in California federal court for human rights violations arising out of the company's involvement in a gas pipeline project where an oppressive military government is in an armed conflict with a guerrilla insurgency. Talisman, Canada's largest energy company was sued in November 2001 in federal court in New York City by citizens of Sudan in connection with its oil operations during the civil war between the Muslim-dominated government in the north and the predominantly Christian communities in the south.

The private sector can contribute to economic development in stable and peaceful regions through its core business activities, social investment programs and engagement in policy dialogue and civic institution building. Businesses can help create the conditions for stimulating trade, increasing domestic and foreign investment, and restoring appropriate legal and regulatory frameworks. International companies operating in SSA should develop their own corporate social responsibility concepts as an integral part of corporate and country strategy because it goes a long way toward engendering goodwill. Certainly, managing legal affairs in higher risk and economically depressed regions like SSA is more challenging, but can be accomplished with careful preventive commercial diplomacy.

## VI. CONCLUSION

Along with the U.S., European Union and Chinese governments, we see Africa as the 21<sup>st</sup> Century's new land of opportunities. As the missing link in the global economy, Africa now stands at the cornerstone of growth and opportunity. *"The conventional view of Africa as a genocide inside a failed state inside a dictatorship"* is no longer tenable and is, in fact, wrong.<sup>43</sup>

At Igbanugo Partners Int'l Law Firm, PLLC, we are committed to the best dictates of corporate social responsibility and meticulously adhere to the "triple bottom line" approach of "planet, people and profits." Our commitment to seeing the big picture as well as the details, and understanding our clients' industries, business culture and business goals, ensure both successful and cost-effective representation.

Through solid, strategic alliances and an arsenal that includes an integrated, high-performance team comprised of talented, dedicated and experienced professionals, some of whom were born and raised in SSA, we have achieved the economies of scale enjoyed by large law firms in SSA and worldwide. We offer you the length and breadth of SSA, and everything in between, with consummate cultural fluency. We are proud of our strong African focus and are delighted to share our knowledge of Africa with you.

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<sup>1</sup> Emmanuel Nnadozie, "Managing African Business Culture."

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Kenna & Associates, "Dispute Handling and Litigation Management in Nigeria."

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<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Bolaji Owasanoye, “Dispute Resolution Mechanisms and Constitutional Rights in Sub-Saharan Africa.”

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Lewis v. Bankole* (1908), 1 N.L.R. 81 at 100.

<sup>16</sup> Owasanoye, *supra* note 13.

<sup>17</sup> *Id.*

<sup>18</sup> Alternative Dispute Resolution (ADR) and Mediation: The Experience of French-Speaking Countries.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> Kevin M. Quinley, “The Three Pillars of Litigation Management.”

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> Christopher S. Marks, “Managing Litigation Costs in Difficult Times,” *The Metropolitan Corporate Counsel*, March 31, 2009.

<sup>41</sup> Robert E. Kohn, “Managing Litigation Costs: Five Tips for Business Clients.”

<sup>42</sup> *Id.*

<sup>43</sup> Nicholas Kristof, “Bright Continent,” *The New York Times*, May 3, 2009.