

27th November, 2014

3RD SESSION - SPECIAL INTEREST GROUPS

**REPORT ON THE ARFICA FORUM HELD ON 26TH NOVEMBER, 2014 OF THE
19TH IAP AGM AND CONFERENCE**

The facilitators were Mr. Basil Elombat, Magistrat, Cour d'Appel du Nord Cameroon and Mr. Mutembo Nchito, S.C, Director of Public Prosecutions, Zambia.

The Forum discussed the 15 recommendations which were in the report on the 3rd International Association of Prosecutors Regional Conference for the African and Indian Ocean Region which was held in Zambia from 2nd to 6th March, 2014. The report was made by Mr. Mutembo Nchito, S.C. The theme of the said conference was ““Getting a fair bargain for Africa and the Developing World. The Role of the Prosecutor in combating Financial Crime including Tax Evasion and Environmental Degradation in the extractive and other significant industries””.

The 15 recommendations were:

1. Emphasise the importance of effective, innovative, proactive and tenacious law enforcement and prosecution, particularly against those with senior responsibility, as a deterrent against the commission of corporate financial crime and corruption, tax offences and environmental crime by multi international enterprises, recognising the interrelationship between these forms of criminality;
2. Exchange examples of successful cases between prosecutors and consider formation of mutual support group (Africa specific-such as the Africa Prosecution Association APA);
3. Emphasise the importance of a robust domestic taxation base and strong action underpinned by the ‘rule of law’ against tax abuses in order to foster investment, growth and accountability;
4. Encourage openness and transparency in negotiation of contracts between Governments and multi- national corporations particularly those in the extractive industry to assure public confidence and encourage use of expert professional legal and other advice to avoid negative impacts e.g. on human rights, environment, tax revenue etc;
5. Promote Asset Recovery-‘follow the money’-lobby for enabling legislation if needed and consider financial incentives to address budgetary requirements;

6. Engagement between Prosecutors and civil society-e.g. NGO specialists to increase capacity for active response and reap benefits from respective expertise to obtain more successful outcomes-terms of engagement to be clearly set out recognising risks and constraints as well as expectations and opportunities;
7. Engagement with specialist institutions for technical support;
8. Utilise formal information sharing arrangements and Mutual Legal Assistance arrangements to source and secure relevant evidence. Utilise informal networks to establish personal relationships and trust e.g. IAP, AIPPF,APA;
9. Emphasise importance of the role of legal profession and accountancy profession in assisting states and businesses to confront the negative impacts of tax abuses-achieving a balance between representing clients interest and public interest-moral integrity imperative(see Conclusions of IBAHRI(International Bar Associations Human Rights Institute)Task Force on Illicit Financial Flows, Poverty and Human Rights);
10. Design most effective prosecution delivery models for corporate financial crime/tax abuses/environmental crimes-consider specialist teams with capacity to draw in extensive technical support, expertise and training from home and abroad. Budgetary implications should be offset by increased tax revenue, recovery of assets, substantial fines;
11. Upgrade punitive impact of sentences, including ancillary sanctions such as debarment orders –render fines and penalties more realistic;
12. Consider creation of African network for Environmental Prosecutors (Green Prosecutors)-under auspices of APA (African Prosecution Association)-advice and support available from ENPE (European Network of Prosecutors for the Environment) and IAP. (Africa specific);

13. Encourage dialogue between prosecutors and legislators to identify ‘what works’ and ‘what is needed’ to bring ‘offenders to justice’;
14. Consider good practice guide for environmental prosecutors –to include glossary of terms, definitions of types of crime, tips for prosecuting, methods and practices to promote community engagement and empowerment and public awareness; and
15. Develop series of recommendations/good practice drawing upon good practice elsewhere for dealing with tax abuses, illicit financial flows, environmental degradation and human rights abuses-for information of practitioners and politicians-starting with 10 IAPs (Immediate Action Plans)-see attached paper and also practice in Japan banning payments to corporate affiliates where tax payable less than 20%, to also include ‘tips’ for prosecutors, glossary of terms and acronyms. Relevant recommendations above to also be included.

The aim of discussing these recommendations was to allow the participants to express their views on the said recommendations.

After deliberations, it was noted that the problem of corruption, tax evasion, environmental degradation were a common menace to African countries. To that effect, it was agreed that there was need:

1. To strengthen coordination and cooperation between APA and IAP.
2. As prosecutors to share practical examples on how these crimes have been dealt with in their respective countries so that others can draw lessons and courage from such experiences.
3. To raise awareness on such crimes and were necessary partner with other stake holders such as NGOs and the politicians.
4. Lobby for the introduction of new legislation that would adequately deal with these crimes as well as address the problem of counterfeit medicines being offloaded in Africa.
5. Strengthen cooperation among African countries in terms of Mutual Legal Assistance.
6. Come up with simplified guidelines and manuals on country to country cooperation.