Africa's Turn: Law and the Last Great Emerging Market

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About this Report

This is the eighth Jomati Consultants report on key issues affecting the legal market. The next report, to be published in autumn 2012, will focus on the global impact of the energy sector and its growing importance across multiple practice areas and geographies.

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Introduction

"It's our turn."

Kalidou Gadio, General Counsel of the African Development Bank (ADB)[1]

Africa is a vast continental market of 54 nations[2] with a combined population of one billion people living across six time zones. It is as wide as the Atlantic between America and the UK, and stretches from the Southern Ocean up to the Mediterranean. To many it seems strange and distant, yet it is just a 30 minute ferry ride from Spain and the European Union.

Its potential riches are huge, with untapped resource wealth estimated at $14 trillion just in the energy sector, although this is probably a major underestimate. Its population is young, ambitious and increasingly demanding a level of participation in globalisation that is far beyond just permitting resource extraction. As Mr Gadio of the ADB said, it is now Africa's turn to reap the benefits of an interconnected world. The Arab Spring was a manifestation of this desire and its new relationship with the rest of the world. The days of Africa, Northern or sub-Saharan, remaining detached and dictated to apparently are over.

Africa is not without its problems still[3]. But the positive stories about Africa are also true, though not everyone has heard them. Against popular preconceptions it is Fortune 500 CEOs, global banks and fund managers who have heard the good news about Africa and who are acting upon their insight with billions of dollars in investment.

The reason for the excitement in Western, as well as Middle Eastern and Asian, especially Chinese circles is Africa's growth potential and scale, as well as its huge natural resources. If you want a return on investment then you need potential for growth and if Africa has nothing else it has enormous room to grow. Secondly, investors and corporates have already entered many of the world's developing and emerging markets. It is not an exaggeration to say Africa is the last great geographical region to embrace, and be embraced by, globalisation. Africa is therefore a good answer to the question: 'Where next?'

A 2011 survey[4] asked leading asset managers how big a part Africa played in their current portfolio. Only 13% said it was higher than 5%, and over a fifth had no interests there at all. Then they were asked how big a part Africa would play by 2016, the answer was very different: every single investor would have assets in Africa by then and a third would have more than 5% of their total capital invested there, some much more.

It would be naïve to claim everything will now be easy going in Africa, or that there won't be major crises along the way. But then, no developing market is easy, especially one at this stage. Corruption is still rampant in some African countries, but according to Transparency International it still is in Russia and China, and that has not stopped investment. Investors also face structural risks and the threat of Government intervention, but so do they in other emerging economies. Take the case of Argentina recently[5]. The local legal landscape in Africa is still evolving and few local law firms share the culture of US and UK firms. But, again, this is not unique to Africa.

[1] Quote from International Bar Association webinar on 'Africa and the Rule of Law', 13 Feb 2012.

[2] See Map of Africa in Appendix A.

[3] Kidnappings and terror attacks in Nigeria, piracy, famine and warfare in the Horn of Africa, poor health care and creaking civic infrastructure is enough to send many professionals from the UK and US running back to more familiar surroundings. But this is just a small slice of what is going on in Africa. To ignore Africa for this would be to refuse to go to South America because of the barrios in Brazil or FARC guerrillas in Colombia, or stop visiting China because of the lack of political and human rights. Most of the world is not like the West, even so global law firms must operate across the planet, not just in the 'safe' parts.

[4] 'Into Africa', Invest AD/Economist Intelligence Unit, Jan 2012.

[5] Argentina announced plans in April 2012 to nationlise the local assets of Spanish oil company Repsol.

As this report seeks to show, Africa will be a market for those who can accept the negatives, but also see the opportunities and embrace the positives. Nigeria is not about to become as safe as Switzerland, nor South Africa suddenly reverse 150 years of wealth inequality, nor Casablanca rival European financial centres just because it is opening up to foreign banks.

Patience will be the watch word, and a level head will be needed to cope with the clashing contradictions of Africa. For all the discussion of poverty, the relative standard of living is shooting up in Africa. Nigerian-owned private equity funds are going from strength to strength, grand solar power projects are being built and mobile phone subscriptions are rocketing. The business culture is changing and a new generation of entrepreneurs is emerging. In Morocco, for example, business schools are growing rapidly in number[6]. But there is also a famine in Somalia and some people are dying of hunger. Yet, at the same time, Kentucky Fried Chicken (KFC) is planning to open 1,400 branches across the continent, and African doctors are reporting the first serious levels of obesity. And while it is abundantly true many millions of Africans do still live on less than $2 a day, Porsche, Aston Martin and Lamborghini have all opened dealerships in Africa[7], and the list of African millionaires grows day by day. Forbes has even launched an African 'Billionaires List'[8], and thankfully it does not number any dictators, but rather business leaders. Ten years ago the list might have been very different.

For Western lawyers and their clients this clash of images is understandably confusing[9]. How can Africa have champions of industry and finance yet in some places famine and civil war? How can it have such corruption, but also so many highly respected statesmen, from Nelson Mandela to Kofi Annan? One answer is that Africa is so large and diverse there is room for everything to grow, from the very best to the very worst aspects of our world. The US, China, India, Europe and Japan combined would all snuggly fit into the continent of Africa. The US can fit comfortably no less than three times. That is a lot of room for diversity to grow.

Contradictions are part of life in Africa and they should not deter international law firms from considering their options here. Without doubt there are opportunities for law firms willing to follow their clients to Africa, or to come to Africa to find new clients. Whichever way one sees Africa it is not going away and will only grow in importance to your clients in the future. We hope this report sheds some light on what is a huge and complex market, but one with considerable potential for growth as a source of legal work.

[6] FT, 10 Oct, 2011. Some estimate the figure to be 140, but that might include non-exclusively business schools. There are also some major Western business schools with campuses here, such as Euromed Management School and the Toulouse Business School.

[7] Reuters, 19 March, 2012, 'Porsche targets rich Nigerians' love for luxury.' At present only 200 Nigerians own a Porsche in the country, but this is set to rise rapidly. As Reuters points out it would take most local workers over 100 years at current wages to save enough to buy one. But that is the new Africa.

[8] www.forbes.com/lists/2011/89/africa-billionaires-11_land.html.

[9] Of course, no country or region has a uniform set of facts, especially one as large and diverse as Africa. In the EU for example, Scandinavia may have very little corruption, yet parts of southern Italy are dominated by organised criminals. India now has multiple billionaires in Mumbai, but rural poverty is still crushing. Africa, like other large regions, faces the same contradictions. One might say uniformity is the exception in this world.

Chapter One: Why Africa and Why Now?

Breaking Through

Africa is 54 countries with South Africa ranking as its largest economy. But, when combined, Africa's total GDP[10] would make it the fifth largest economy in the world, after the US, China, Japan and India. A large part of the continent's growth has come in just the last ten years (see table 1).

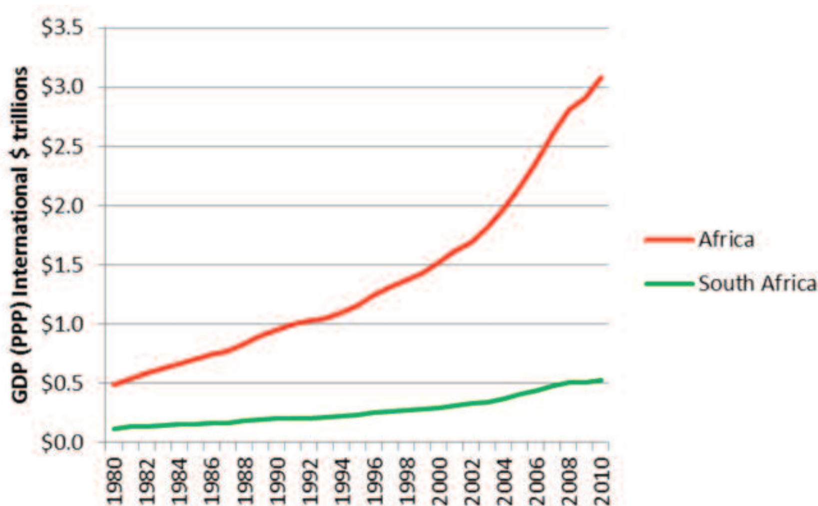


Table 1: GDP PPP, all Africa, plus South Africa alone. World Bank Data to 2010 only.

South Africa's contribution to this stellar rise cannot be ignored, but it is not the only driving force. Its share of Africa's GDP has fallen to around 17% today. Much of the last ten years' growth has come from the rest of Africa, led by Nigeria, Morocco and Egypt, plus some of the smaller resource-rich nations such as Ghana and Angola. In total Africa's economy has grown by 500% in 30 years. This growth has now understandably been 'noticed' by business leaders and economists the world over. It has also provided a powerful sense of optimism to encourage further investment among African businesses.

While international export trade is increasingly brisk, in turn boosting the continent's GDP, only around 12% of African trade is between African nations[11]. This is a hurdle the continent must overcome if it truly wants to compete with large, politically integrated geographies such as Brazil or India that, at least nominally, operate as single economies.

Until very recently many African nations have assumed it is better to export than develop domestic consumption and intra-African commerce. But this is starting to be challenged as African populations move up the developmental pyramid and now need to consume greater natural resources for energy, building and manufacturing, and consume manufactured goods and financial services.

[10] Using the Purchasing Power Parity system recognised by the World Bank for US dollar conversion. Clearly, Africa does not trade as a single economic entity, though the African Union is debating Africa's economic issues as a single entity. Data: CIA Factbook/World Bank.

[11] Inter-African trade is low partly due to trade barriers between African nations, something UK Prime Minister, David Cameron picked up on in a speech last year: "It is time to make African free trade the common purpose of the continent and the wider world." Guardian, 18 July 2011. Rather like European nations before World War Two and the eventual development of the European Union, African states have tended to work against each other rather than in co-operation, especially with regard to trade. Although, the African Union is working hard now to address this.

Law Firm Interest

Law firms in the US, and especially in the UK and France, have been handling work remotely in various parts of Africa for decades. Initially the work was sporadic, often with a strong oil or mining focus. Today, that focus is widening even if oil and mining are still important. An example of some large recent deals[12] includes:

- This year's Royal Dutch Shell $1.6bn bid for Africa-focused oil and gas group Cove Energy.
- Jinchuan Group International Resources' $1.4bn takeover of South Africa's mining and exploration company Metorex.
- Capital Property Fund's $1.8bn takeover of Pangbourne Properties Ltd, also in South Africa.
- Conoil Plc's purchase of a major mining lease in Nigeria worth $1.2bn[13].
- India's Bharti Airtel acquisition of Zain Africa for $10.7bn in a huge telecoms deal in 2010[14].

Many African deals are not as large as the ones above. But when one considers the potential volume of work that can develop from the businesses of 54 nations doing deals and the many inward, as well as domestic, investors then Africa seems an overlooked market. It would also be a huge underestimate to believe that Africa's potential was only in the mining sector. Africa is so much more than this. As it develops it increasingly will offer a wider range of practice area and sector opportunities. As this report shows in the following chapters, there are numerous developing sectors for law firms to consider, stretching from massive projects such as the Great Equatorial Land Bridge (see later), to African internet start-ups, to the launch of new airlines.

The increasing flow of work, plus the potential to gain more work by having a fixed presence on the ground, has changed the approach to Africa among law firms. Remote working and loose friendship with firms in Morocco or Nigeria that one rarely visits, or have little if any say over how they produce work, are no longer enough for some law firms. That change is a reflection of closer client interest in the legal work related to Africa, and a growing sophistication among African businesses. In a world where foreign corporates can no longer cement deals with bribes, or make 'handshake deals' with autocratic African leaders who once sold their nation's assets at will, more normal corporate and legal behaviour is taking over. With this new behaviour naturally comes a greater need for lawyers and legal transparency on both sides of the deal. In effect, with better corporate governance comes a greater need for lawyers. Add this to a bustling, continent-scale economy and any managing partner has a compelling story to pitch to his partners about the need to be in Africa.

At the vanguard are those law firms that have watched their Africa transactions slowly build to a point where it is now economically viable to go to the next stage of development. For example, one international firm of hundreds of partners noted around a quarter of its lawyers had now advised on at least one Africa-related transaction. It was clearly time to act and it has now done so.

Major law firms that have recently set up in North Africa include, Clifford Chance, Norton Rose and Allen & Overy (see Appendix C). US-based global firm Dewey & LeBoeuf greatly expanded its long standing South African base in January 2012 with a group of high level hires from a leading local firm[15]. Other firms such as DLA Piper, White & Case and Baker & McKenzie already have coverage in certain markets. SNR Denton is also well known for having pioneered its African alliance of firms over many years and it has an office in Cairo.

[12] See Appendix B for extended deal data and law firms involved.
[13] MergerMarket, including two deals above, all in 2011.
[14] Legal Week, 2 March 2012.
[15] At time of going to press Dewey & LeBoeuf had lost numerous partners and appeared likely to dissolve.

Norton Rose has perhaps taken the greatest step so far and merged with South African firm Deneys Reitz. At the same time there are extremely successful boutique project finance firms, such as London-based Trinity, which are also doing an increasing level of work across Africa, but without the same overheads as some larger firms. There are also many other international firms, such as Watson Farley & Williams, that may not have a presence in Africa but have handled deals in multiple African countries advising on everything from privatisations to technology licensing[16].

We should not only consider US and UK law firms. Canada's Fasken Martineau has an office in Johannesburg, South Africa. It opened there in 2004 and in 2010 reinforced the office with the key hire of White & Case's joint head of the global metals and mining practice group, Tanneke Heersche. Leading French firm Gide Loyrette Nouel has had an office in Casablanca and also in Algiers for some years, although recruitment by UK firms has depleted it a little in Africa. JeantetAssocies also has a base in Casablanca. CMS Bureau Francis Lefebvre has a base in Algiers, so too French compatriot and property experts, Lefèvre Pelletier & Associés. More recently Italian firm CBA Studio Legale announced it was going to work with German-Arab law specialist Amereller to open an office in Libya[17].

Portuguese law firms have also invested heavily in building up capability and expertise to manage deals in Lusophone Africa, such as Angola and Mozambique. One example is Miranda[18], which has been especially active in building alliances with local law firms. Another example of a Portuguese firm developing in Africa is PLMJ, which has formed co-operation agreements with Angolan firm GLA and GLM in Mozambique and both are part of its international network[19].

Africa is therefore by no means terra incognita to the world's international law firms. But, these are still very early days and mirror where China was 20 years ago or more. We are still very much at the edges of the map in terms of firms having a presence on the ground (more on setting up in Africa in Chapters Six and Seven).

Africa's Long Term Future

A key part of Africa's recent growth is linked to resource demand from China[20] and rising commodity prices in general. That raises the question of whether African growth is now too tightly coupled to China's growth, and that if China slows[21] then Africa might revert to its former economic doldrums. For any managing partner with a nascent Africa strategy it is a question that has to be faced. We believe that Africa's economic development is far more than the result of a single export-based relationship.

In terms of commodity prices, in a world where population size could rise from 7 billion to 9 billion by 2040, and where even the poorest nations are seeing growing demand for cars, computers and air conditioning, then the outlook for commodities exports is relatively bright. Africa also exports to Europe, America and Asia. Domestic economic development has also changed the profile of African demand for commodities. Moreover, even if China did slow down, that still leaves tens of millions of Chinese 'middle class' consumers who regardless of high or low growth will continue to impact commodity prices.

[16] Watson Farley & Williams, Africa brochure, 2012.
[17] The Lawyer, 27 Jan 2012.
[18] http://www.mirandalawfirm.com/en/miranda_alliance/
[19] http://www.plmjnetwork.com/en/
[20] China's impact on Africa has been significant. China even paid for the African Union's new $200m HQ in Ethiopia. Many of the workers and engineers were Chinese, as is the case with other Chinese backed projects.
[21] A slowing in Chinese growth is seen as inevitable by observers. Investors.com, 16 March 2012, 'China Enters Era Of Slow Economic, Population Growth.' That said, a more developed China even with 6% or 7% growth is still a huge consumer of raw materials from abroad.

In table 2 we can see two other illuminating trends. The first is that Africa tracks the crises in the West quite closely. This suggests that Africa is very much still part of the Western economic sphere and has not been subsumed into the Chinese economic story, no matter how powerful.

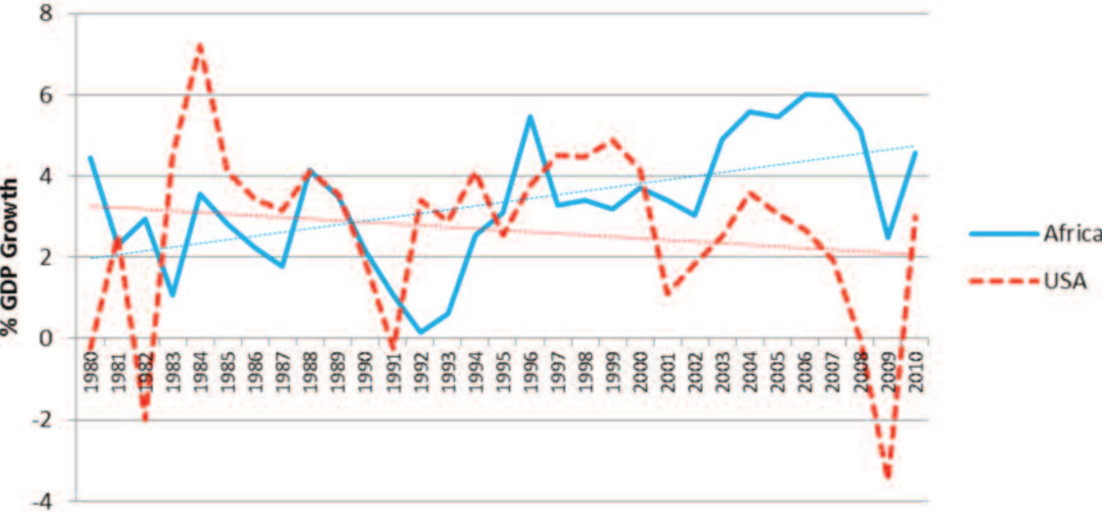


Table 2: GDP growth Africa versus USA. Dotted red and blue lines show long term trends. World Bank data.

The other insight this table gives is that since 1994, Africa as a whole has not grown less than 2.5% per annum, and reached a high of 6% in 2006 and 2007, which is an impressive result for an average across 54 often very different nations, some struggling out of absolute poverty[22] and in a number of cases even civil war. Despite this Africa as a whole has not had a single year of below zero growth in the last 30 years, which is better than the US.

The long term trend over this period is also better for Africa than the US, which is perhaps not what many would expect. Some spotted this trend earlier than others. Stephen Jennings, the founder of Renaissance Capital, who grew rich by focussing on Russia after the breakup of the Soviet Union in 1989, said in May 2007[23]: "If Russia was a once-in-a-lifetime opportunity, sub-Saharan Africa is a second once-in-a-lifetime opportunity." He has since established offices in Lagos, Nairobi, Harare, Accra and Johannesburg to make use of a $1 billion Africa Renaissance Fund. It is now 2012, five years later, and Renaissance Capital is still in Africa and doing well, though the financial crisis that soon hit after those prophetic words did perhaps slow its progress. Other investors, perhaps ones that are a little more risk averse, are now buying into the vision that this 'first mover' saw some time ago. Also today the global economic climate is somewhat less fragile.

Divided Nations

One structural drawback that cuts across this positive picture of growth and potential is that Africa only has 13 nations with a population over 20 million, even if it has a large number of swelling cities. The average population per country is around 18 million. This small jurisdictional size, despite a billion-strong total population, is partly a legacy of colonial times where empires sought to split Africa into 'manageable' pieces, sometimes based along tribal groups, or due to geographical terrain and the limits of travel at the time.

[22] It was 53 nations until recently when South Sudan became an independent state in July 2011.
[23] Bloomberg, 30 May 2007.

This tends to mean that despite healthy total growth, investment focusses on the larger African countries such as Nigeria[24], which has a population of around 155 million – or half the US population[25], or where there are clear regional synergies, such as the North African countries.

That said, some smaller resource rich nations such as Angola with only 15 million people continue to see strong investor interest. This paradox of Africa's continental size compared to the relative small size of most nations will remain a challenge for all investors and law firms operating in Africa. Although, one could argue the complexity of so many legal jurisdictions in Africa produces more work for law firms to handle especially for clients developing multinational African strategies (see Chapter Seven for more on this issue).

Cash Rich in a Corrupt Culture

If one looks at the large foreign cash reserves of two major oil-producers, Nigeria and Angola (see table 3), one can appreciate how much Africa is changing from the clichés of poverty of the past.

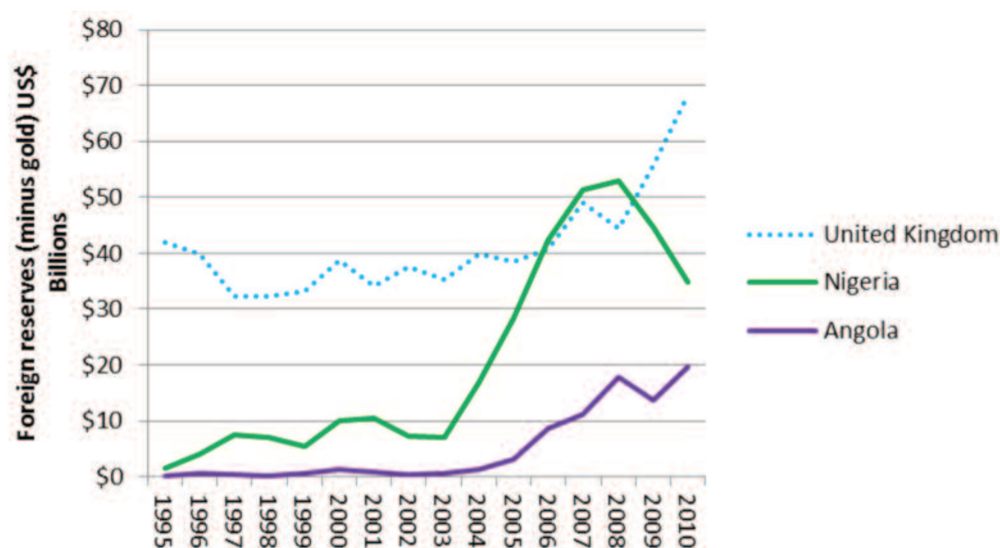


Table 3: Foreign Reserves (not including gold), World Bank data.

In 2008 Nigeria had around $53 billion in foreign cash reserves. To put that in perspective, Nigeria was more cash rich than the UK, the world's second largest financial centre. Today this has fallen back because Nigeria is using its cash to pay off international debts and invest in infrastructure and public works[26]. The Government also had to intervene in a number of Nigerian banks that had run up dangerous levels of debt in 2008/9. These cash reserves are a lot smaller than those of an export giant like China. Even so, this is not a country with a begging bowl; dependent on aid; nor at the mercy of the IMF like Greece is and countries such as Spain and Italy that still could be. Ironically, Nigeria is in a better position to lend money to Europe than Europe is to lend money to Nigeria. That is quite a turnaround.

[24] More key gateway nations in Africa in Chapter Six.

[25] If current growth rates continue, it is estimated Nigeria will have the same population as the US by 2050, i.e. US population growth will slow and Nigeria's will accelerate, eventually reaching parity. Thirty eight years is a long way off, but it is only the length of the career of a junior lawyer starting at a firm today. Whether Nigeria will ever approach the average wealth seen in America is another matter.

[26] Central Bank of Nigeria.

Angola, which is a far smaller country of just 15 million people, has also accumulated relatively large reserves for a developing nation of around $20 billion primarily via oil exports. This is especially impressive after a damaging civil war that lasted 27 years and only ended in 2002[27]. Of course, the key question is what will the relatively stable Government do with this cash? Invest it in infrastructure, is the hoped for answer (see Chapter Two).

Naturally, worries still remain that these wealthier African democracies could evolve into a new kind of kleptocracy[28], perhaps not as extreme as the dictators of the 1970s and 80s, but still not as open and transparent as is hoped. This is a real risk, but hopefully may not materialise, largely due to far higher levels of accountability and a more sophisticated civil society.

The Arab Spring was perhaps the most visceral example of this societal change and African leaders have taken careful note of it. Increasing efforts by the international banking system to prevent capital flight have also had an effect[29]. And the Chinese, whose influence on African politics is growing day by day, may turn a blind eye to corruption as they do at home, but it is not in their interests either to have client nations destabilised by rampant fraud. Finally, as more Africans appreciate the way to get rich is through private business, not the diversion of State funds or extracting bribes from investors and local people, corruption may very slowly begin to diminish[30]. That in itself will hopefully steer a path far away from the excesses of the past and create a virtuous circle of transparent commerce. But, this will take time.

The African Middle Class

Let us consider another indicator, Gross National Income (GNI) per capita. Although income inequality, especially in Nigeria and South Africa, is still extreme, most African people are wealthier than before (see table 4), some more so than the average Indian. That matters to law firms as their clients, selling goods or financial services, will respond to such figures as they seek to take global market share and prevent rivals from taking over new markets.

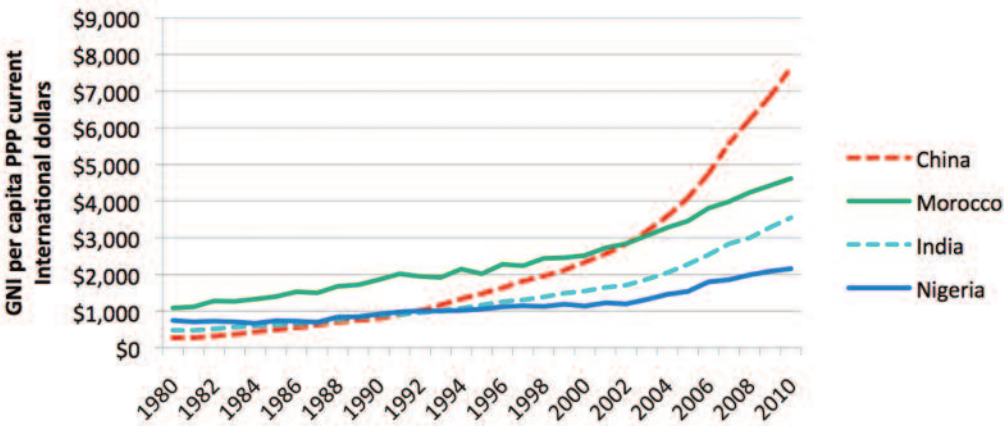


Table 4: Average Gross National Income, per Capita, (PPP) World Bank data.

[27] A proxy war first backed by Soviet Russia versus the US, then later by other countries and which became increasingly confused and bloody, leaving 500,000 dead and Angolan infrastructure in ruins.

[28] Perhaps one of the most infamous examples of this fabled waste of public cash reserves was that of Zaire's President Mobuto. Economist Niall Ferguson says Mobuto is estimated to have stolen $5bn in public funds during his reign. In one incident, after negotiating lower interest payments on Zaire's national debt he hired a Concorde at huge expense to fly his daughter to her wedding in Ivory Coast. Source: 'Dead Aid' by Dambisa Moyo. Note: Zaire is now the Democratic Republic of Congo and Mobuto died in exile in Morocco in 1997.

[29] Although, one should add this greater effort has been driven forward by inter-governmental groups such as the OECD's Financial Action Task Force, and was not necessarily a proactive step.

[30] We must be realistic. The annual total of bribes paid worldwide is $1 trillion, Transparency International.

For example, Moroccans with per capita incomes of around $4,700 on this metric are wealthier on average than Indians. This is still weak compared to the West, however, it certainly qualifies many millions of people into what Goldman Sachs and others have defined as the 'new global middle class'. This is the essential group of developing market consumers who will build up savings in bank accounts, buy insurance and become consumers of higher value manufactured goods. They will also finance their children through the better schools and produce the next generation of professionals. No matter what income resource exports may generate for a country, without this group seen so strongly in Chinese cities then economic development is unsustainable.

Nigeria produces a PPP per capita income of around $2,000. That may only equate to $40 a week, but relative to the absolute poverty of many in the developing world this is a significant step forward. Also, as with India, the professional classes and many urban dwellers can expect far higher incomes[31]. Among the top African commercial lawyers incomes would be stratospherically higher than this.

The other key factor is the size of the population in relation to this middle class category. Nigeria, which by total GDP is one of the richest African nations, only has around 10% of people considered as middle class[32]. But, in a nation of 155m, this is perhaps a large enough group to be of interest to some global companies and certainly to many African companies looking to expand into new markets. This is a key point and works the other way too. There may be some small countries in Africa that are stable and relatively developed, but global companies will take their time entering those markets because with such a small middle class consumer base they will rarely be a priority.

In addition, the African Development Bank estimates that around 5% of Africans would be regarded as 'rich' relative to the local cost of living. In a population of 1 billion the total of middle class and rich combined would total around 170 million people. This may not sound impressive especially as these are weighted figures that take into account local conditions, but there is no point pretending Africa is wealthier than it really is at present. That said, if Africa can grow as many believe it will, then this middle class group will expand rapidly and GNI relative to the West will grow[33]. In turn it will attract greater client interest, beyond just resource companies, and law firms will increasingly be asked to advise there.

[31] GNI does not divide the 'middle class' from the bulk of society which are far poorer. In Africa no country has more than 46% of the population in this category, while the average is around 12% of the population, based on criteria set by the African Development Bank. (See Appendix D for a full breakdown).

[32] Ibid.

[33] One irony of this rich/poor dynamic is that many people in the West now are seeing declining wealth from a relatively high level. Africans are moving very slowly in the other direction, upward, to meet us but from a very low base. For example, the UK's Institute for Fiscal Studies is predicting an average decline of household incomes of 7.4% between 2009 to 2013. Parity will take decades, but it cannot be ruled out.

Chapter Two: Infrastructure Investment

The Great Infrastructure Challenge

From power generation to water supplies and from airport facilities to better road and rail links, Africa is far behind other fast developing parts of the world. Compared to China's huge infrastructure investments[34] of the last two decades Africa is extremely far behind. But things are changing for the better.

It is estimated that $45bn is spent each year on infrastructure in Africa. But this is only 60% of the, at least, $75bn[35] a year the continent needs to keep pace with projected demand. This total is also spread over 54 nations, equating to less than $1bn per country. In those terms this is tiny for a continent the size of Africa, even if labour costs for construction are far lower than in the West. In comparison China invested around $170bn between 2006-2009 just on its high speed rail network[36], while the UK, a country of only 60 million people is spending $60bn a year[37]. But, this is not an entirely negative picture. Uganda has upped its infrastructure budget by 15% and Kenya by 20%. Kenya, for example, is spending $1bn on roads alone[38], with another $430m spent on improving power infrastructure. Also, as economic wealth grows, infrastructure spending may grow too.

Yet, Africa cannot wait for too long. Take table 5 for example, which shows that despite rapid growth in some countries, sub-Saharan electricity use is stuck in the 1980s.

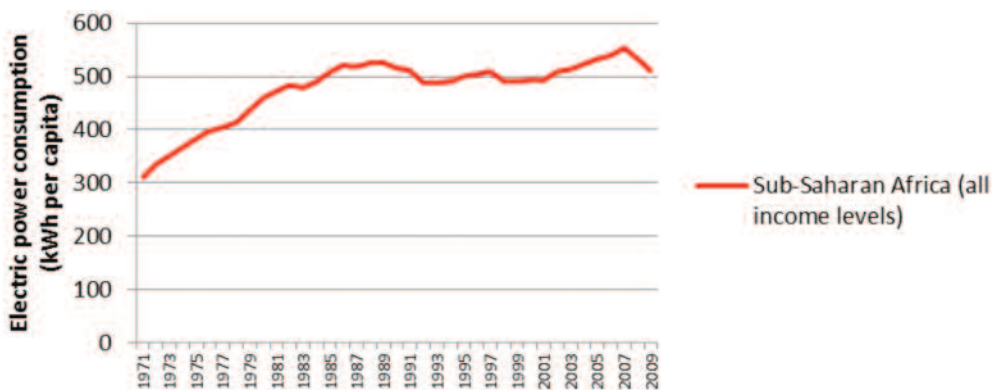


Table 5: Electric power consumption per capita[39]. Data World Bank.

At the same time, electricity use in North Africa is rapidly rising, in part because supply is being provided, not just needed. In sub-Saharan Africa where there is less supply the demand has remained relatively flat. This not because there is no additional demand, it is because of a lack of supply. At present only around one third of people in sub-Saharan Africa have access to electricity even as the population grows and cities swell in size.

[34] Although China is now itself one of Africa's leading infrastructure developers.
[35] African Development Bank.
[36] Business Insider, 4 November 2011.
[37] Balfour Beatty/UK Government data, UK civil infrastructure spending forecast.
[38] www.thisisafricaonline.com, 15 June, 2010.
[39] For comparison, Europeans use around 6,000 kwh per capita, over ten times the level in large parts of Africa.

Solomon Asamoah, Executive Director of the Africa Finance Corporation (AFC), has said that if Africa is to sustain healthy economic growth, it will need to invest 10% of its GDP into infrastructure, and we are a long way from that. The importance of more investment cannot be underestimated. It is hard to develop a thriving urban economy and become part of the global economy when the lights keep going off, or the water is undrinkable, or road systems are incomplete[40] so you cannot deliver goods on time, even if there is $1 trillion of oil under your seabed[41]. A credible economy needs to be more than a resource rich 'cash and carry'. While law firms have been used for many years to support commodities extraction, they are likely to now see a far wider remit in part due to the need to widen infrastructure.

One other increasingly crucial element to African infrastructure development is China. Chinese companies have been significant players in building roads and bridges in return for natural resources[42]. Some observers in the West have been dubious about such deals, but Africans we spoke to are happy with the outcomes so far and see China's role pragmatically. As one African law firm managing partner put it: "The Chinese work harder than the Europeans (on projects), often 24 hours a day using shifts. They complete the jobs faster than companies from other countries and they are cheaper too."

Some Western law firms had significant Chinese clients handling work in Africa suggesting a growing practice based on China/Africa deals. Partners from such firms stressed that although there may be a cliché that Chinese deals in Africa are 'back of a cigarette packet' agreements, this is far from the present reality. It may be true that the initial discussions between African leaders and PRC State-sponsored executives may be unorthodox, but when financial agreements were formed legal advice was needed that often meant looking to the larger UK and US international law firms.

Barriers to Infrastructure Investment

If the need is so apparent, why aren't African states doing more, especially as many of them now have the budgets to pay for infrastructure? One Nigerian law firm explained the central problem was a lack of 'organisation' at Government level. For example, a new gas fired power station has been built in Lagos, but a gas pipeline to feed gas to the station[43] has not been built. That kind of failure in turn puts off banks and private investors for co-funding as it undermines faith in a reliable income stream to pay back upfront project financing.

Rather than waiting for centrally planned solutions, or even major public-private partnerships, many people and businesses in sub-Saharan Africa are responding individually to the lack of infrastructure. For example, those that can afford it buy diesel generators to produce their own electricity. That may sound like a clever solution, but Africa's economy then becomes partly dependent on small generators, undermining demand for a wider electricity grid with major power projects to serve it, thereby sapping the confidence of investors who may worry about the feasibility of backing such projects.

[40] Many countries lay the groundwork for wider and more diversified economic development during a relatively short period of time when they are fast growing and cash rich. For example, much of the infrastructure and key buildings that supported Britain in the 20th century were built between 1875 and 1910, when the UK was rich from the export of manufactured goods. That trade has long since reduced, but the infrastructure it paid for and the wealthier society it supported remains, paving the way for many service industries to grow.

[41] One could draw some similarities with Australia. Although historically a country dependent on resource exports, and still is to a large extent, the economy has diversified to build a strong financial services sector.

[42] The Chinese have also built the African Union headquarters, as noted earlier, and are commissioned to build a $1.3bn mosque in Algeria that will have room for 120,000 people. It is important to note that a large part of the labour is carried out by Chinese workers who are 'exported' to Africa to carry out the work, which perhaps undermines the benefits to Africa's economy of using Chinese companies.

[43] Akwa-Ibom power station.

The use of diesel engines to power factories in Africa also adds to manufacturing costs, making 'Made in Africa' products far more expensive than those 'Made in China', even though labour is far cheaper. One might say central Governments in Africa are fiddling while a myriad of opportunities burn. This is another emblematic problem of Africa. Four other challenges projects specialists will have to grapple with in Africa are:

- Short term horizons of Governments – most African Governments are now democracies. This good news has ironically produced a serious problem: short termism. As most major projects will take many years to plan and complete, many political leaders and their parties will likely be out of power before completion and thus are deterred from embarking on large scale projects as they will not be credited by the electorate.
- Lack of legal guarantees and a stable Public Private Partnership (PPP) framework – foreign banks and investors can be understandably put off investing in long term projects in African nations where agreements are not clearly supported in local law. Some fear that without legal guarantees reinforced by statute they may see the terms of their agreements with Government changed at a whim and when expedient.
- Vested interests – some believe there are stakeholders working against development for short term gain and who do not want to see integrated solutions to Africa's infrastructure, as providing one-off solutions such as diesel generators is a lucrative business[44].
- Geography and scale – Africa's size makes regional projects difficult to implement. In some regions there are clusters of small nations that complicate agreements on major projects[45]. In other cases, transcontinental highways or pipelines must cross huge distances, often through inhospitable terrain. The huge Sahara also complicates any large scale regional/multi-nation projects. Twelve nations overlap the Sahara. The desert also effectively splits the wealthier and more developed North from the rest of Africa preventing a regional sharing of infrastructure.

There now follows an overview of some of the key areas where we expect to see significant infrastructure development in Africa.

Transport

None of the top 50 airports of the world[46] are in Africa, even though it makes up 15% of the world's population and parts of Africa are well placed to serve as air hubs. For, example Egypt is on the North America-Europe-Asia flight path the Gulf emirate of Dubai currently exploits. Through investment Dubai Airport is now the 14th busiest in the world despite its own economy's small size. A city such as Cairo could perhaps become a major transport hub to rival Dubai, or at least offer some serious competition, especially as flights into Africa from the rest of the world increase.

Cairo is already the second busiest airport[47] in Africa after Johannesburg[48], and is seeing rising investment to improve its terminals and facilities, including a Metro link to the city centre. Further development is entirely possible, especially given the strong underlying growth in demand within Africa itself for more air transport.

[44] Similar accusations were levelled in the past at US vested interests for ensuring that integrated transport networks failed to develop. For example, even though Los Angeles has an efficient metro rail system that serves part of the city and was planned to link to LAX, the LAX plan was lobbied against and the line terminated several miles from the airport, making it effectively useless for air passengers. The LA Times called the line a train service that goes 'from nowhere to nowhere'. 8 Oct 2008, LA Times.

[45] The Sahara desert is the largest desert in the world with an area of 3.6 million square miles, or the area of the US. Huge dune seas and temperatures that can swing daily from around 38 C, to zero at night, make building work in the deep desert challenging to say the least. This creates a hurdle to mass land transport from Central and Southern Africa to the North, and from East to West Africa.

[46] Airports Council International, ranked by passenger numbers.

[47] The German airport management group, Fraport AG, currently holds the management contract for Cairo International Airport, indicating the potential African air transport sector opportunities for foreign companies.

[48] South African Airways has this year launched its first direct flight to Beijing from Johannesburg. SAA chief executive Siza Mzimela said in December. "This new route is in line with SAA's strategy to expand its network to Asia, the fastest growing market in the world."

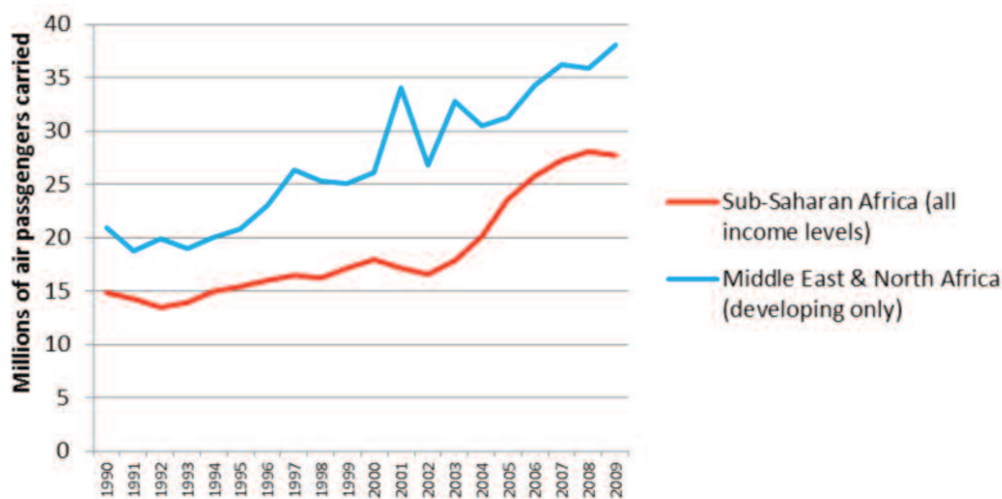


Table 6: Millions of air passengers per year in Africa. Data, World Bank to 2009.

As can be seen in table 6, demand for air transport in Africa is growing rapidly, rising by 70% from 2002 to 2009 in the sub-Saharan region. Few other markets can claim such a rapid rise in air traffic. As more Africans join the ranks of its 'global middle class' and more business trips into Africa occur, this demand will accelerate. The sheer size of Africa will also be a contributing driver to aircraft use, just as the size of the USA helped to inspire the growth of business air travel in the 1960s. This development has not been lost on Virgin Airline's Richard Branson, who recently[49] commented: "African flights are so full, they are among our most profitable." We can therefore expect the number of operators of flights to Africa to increase steadily in the years ahead.

Growth here is also attracting the interest of other Western airline investors, such as Stelios Haji-Ioannou, the founder of EasyJet. He is now developing a new budget airline focussed on Africa in hand with an investment vehicle known as Rubicon[50]. The plan is linked to the pan-African, but UK-listed, Lonrho group which announced it is planning to build a network of 50 hotels across Africa[51]. Lonrho already operates the Fly540 budget airline in East Africa with 300,000 passengers annually and it is understood that the EasyJet-founder's plan will involve this group. In an interview with the Financial Times, Mr Haji-Ioannou said: "This new venture (is going) to bring low-cost air travel to the people of Africa."

But, aside from hotels, what Africa will need is better airports, more finance for fleets of new aircraft and investment from private companies to improve facilities and maintenance services. Such growth will in turn attract greater investment from logistics companies that will make use of better air transport facilities and higher domestic demand in Africa for goods.

The road network is perhaps not as interesting an area, but no less vital. Here, Africa is improving rapidly. Chinese investment in this sector has been especially significant, if only to improve the ease with which it can remove resources out of Africa. This will matter as the World Bank has estimated that improvements to the continent's highways could decrease transportation costs by 10%, which in turn would result in a 25% increase in intra-continental trade.

[49] The Sunday Times, 26 Feb 2012.
[50] The Guardian, 5 December 2011.
[51] The Telegraph, 5 December 2011.

The rail network in Africa has languished despite the need to transport resources across countries to the ports. As can be seen in table 7, rail has not grown as a means of transportation, despite economic growth, even in North Africa. There are a number of reasons[52] for this:

- Lack of continental coverage: 14 out of 54 African nations have no railway network.
- Very low density of track: just 2.7 km of track per 1000km² of land area.
- Incompatible rail systems: at least three different gauges are used across Africa. E.g. the lines built by French and English colonial powers are different and so neighbouring Franco-phone and Anglo-phone[53] nations cannot always connect their rail links, thereby reducing cross-border trade in heavy goods and raw materials.
- Weak rail stock, few reliable engines, and low weight bearing capability of rolling stock: all reduces use of rail for goods transport.
- Few trans-national rail policies: hinders joined up transport policy, which is essential in a continent with so many separate nations.
- Low levels of support and maintenance services/capability: leading to frequent train breakdown and lack of confidence in this means of transport.

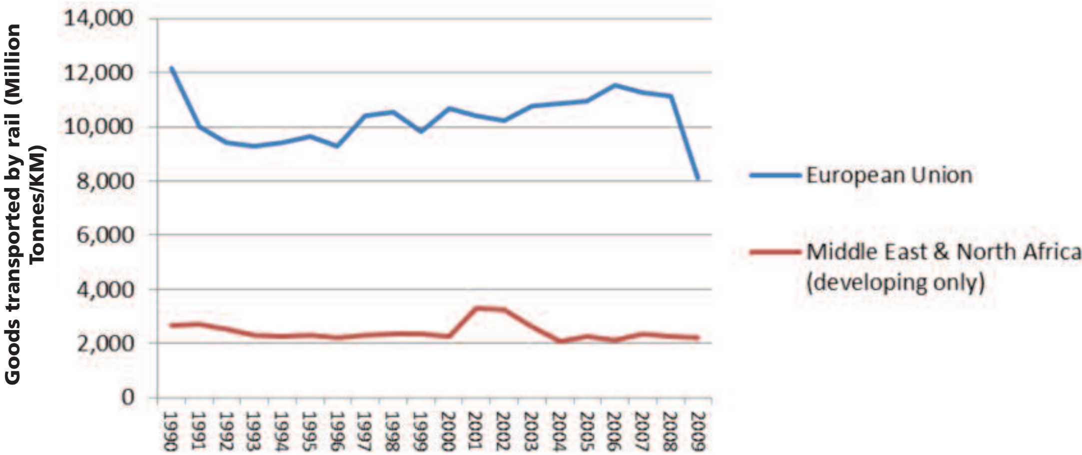


Table 7: Goods transported by rail, developing Middle East and North Africa versus EU. World Bank Data (data valid to 2009).

But, there are some positive steps being taken, which in turn may create interesting work for law firms. Kenya has spearheaded the use of a standard gauge across East Africa. It has also signed an agreement with Uganda to build a new high capacity line between the two countries. Tanzania is also looking to improve rail links. Egypt, at least up to the revolution of the Arab Spring, was contemplating a 120 km high speed rail line between Cairo and Alexandria. While Nigeria has set in motion a programme to build 8,000 km of new track.

[52] African Union: 'Rail Development in Africa'.

[53] Aside from some contested regions, the majority of people in India, Russia and China live within a single set of borders, with for the most part a single transport policy. This one nation benefit has also greatly helped the US. One can only imagine how different Africa would be today if it had been unified into a single state, with a single Government. We would estimate it would have been far more economically developed too.

But, perhaps the most exciting development is the plan for what is called[54] 'The Great Equatorial Land Bridge'. This project will not only use rail, but include a pipeline and fibre optic cables that will span from Kenya in the East to Cameroon on the Atlantic coast in the West, creating a lateral African spine for transport, energy and telecoms/digital data. It will be a mammoth project that will need finance and contractual agreements from dozens of parties, from banks, to Financial Development Institutions, to construction companies, to the national Governments whose territory will benefit. And, to be frank, it may not happen for some years to come. However, it shows that African leaders do have ambition, and the kind of ambition if successful that will transform the African economy. Sometimes having the idea is the most critical step of the journey. But, they will also need a good deal of expert advice.

Ports are also of vital importance to Africa, especially for its export partners such as China which need to be able to ship huge volumes of raw materials from the continent to Asia. As has been seen elsewhere in Africa's infrastructure, its ports must be improved. However, there are new investors, foreign and local, planning to upgrade these key transport nodes. One local example is the Dangote Group, the Nigerian company that is planning to float its cement business on the LSE. Dangote is now planning[55] to build a $1.5bn port, "the biggest deep-sea port in West Africa", near Lagos, Nigeria. This is good for Dangote and its export of cement and other goods, but also very positive news for West Africa as a whole. In Kenya, in East Africa, the story is not so positive, where the main port, Mombasa, is regarded as not up to modern standards and cannot accommodate the world's largest transport ships. Port logistics are also weak and underfunded transport links into and out of the port create a challenging log-jam for containers[56]. Whether Mombasa will see the same Dangote-style investment remains unclear.

Energy and Renewables[57]

Africa holds around 10% of the world's proven oil reserves. There are also significant gas reserves, and South Africa especially has huge coal deposits. Yet few African countries have reliable power supplies and those that do have the fuel resources often focus on facilitating extraction by foreign companies, not domestic power generation.

Renewables may therefore be a partial answer to the problem. Africa has one of the best potentials for renewables of any region in the world. Its coastline is 19,000 miles long and most of its largest cities are located on, or near, the coast. A large coast line supports both tidal generation of power and off-shore wind farms. Large parts of Africa are understandably ideal terrain for solar power, and not just for small aid-led efforts in villages, but major projects on an industrial scale to help support whole cities.

South Africa is a case in point. The initial plan is to produce 4% of electricity by 2013 via renewables. To do this South Africa has been building wind farms and is investigating the implementation of a 5 GW solar park[58]. From there it will seek to steadily grow renewables. It is a model other African nations are looking at with interest. This has excited a number of lawyers. One managing partner of a global law firm commented that renewables could prove to be a great opportunity for US and UK firms that are already well-versed in renewable development and financing in Europe and America.

Another country that could see exciting opportunities for law firms in terms of renewables is Morocco. It has already built the 470 MW Beni Mathar solar power plant, which is now supplying to the national grid. The aim is to build more solar plants over the next eight years. One of the more ambitious projects[59] in Morocco is backed by the Desertec

[54] The Kenya Engineer, 'The Great Equatorial Land Bridge'. Feb 2011.
[55] FT, 1 April 2012.
[56] FT, 3 April 2012.
[57] As it is such a major subject the oil and mining sectors have their own section, Chapter Three.
[58] Norton Rose briefing paper, 'Scaling-up renewable energy in Africa: South Africa, Nov 2011'.
[59] The Guardian, 2 Nov 2011.

Industrial Initiative[60], a coalition of German companies including E.ON, Siemens, Munich Re and Deutsche Bank. Their plan is to build an approximately $2.1bn solar plant near the desert city of Ouarzazate.

What makes this consortium's plan especially interesting, and especially so for lawyers in the energy sector, is the aim for the energy from this, and several similar projects planned to roll out, to be half consumed domestically and half to be exported to Europe via cables to Spain and Italy. As more solar plants are developed and more North African nations join the project, more power lines will be connected to Europe, creating a huge Euro-African electricity grid. Tunisia and Algeria have also shown interest in similar schemes backed by Derestec. Again, like the 'Great Equatorial Land Bridge' idea, this is high in ambition and also high in risk. But, the German group is serious about achieving the project. It may not be the only grand scheme to appear in the years ahead.

Telecoms

Over 80% of people in North Africa and 40% in Sub-Saharan Africa have mobile telephone subscriptions (see table 8), despite the low levels of income. This coverage is a huge achievement. Yet, at the same time, the majority of phone calls between African countries are still routed through Europe. This is another story that sums up Africa's unique economic position.

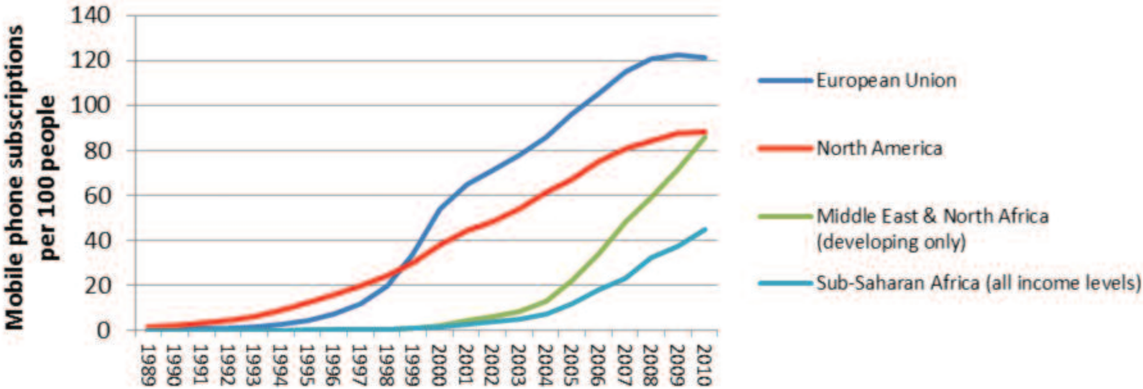


Table 8: Mobile Phone Contracts per 100 people[61]. World Bank.

Africans have sidestepped the industrial revolution and come out in the early 21st Century with advanced technology in their hands. The story of internet use is similarly positive. As can be seen in table 9, internet connectivity is rocketing in Africa. There are also a series of new undersea data cables being laid now and over the coming years that will bring the continent up to the same speeds as the rest of the world in terms of data transfer.

[60] http://www.dii-eumena.com/work-areas/rollout-plan.html.

[61] Higher than 100 figures may be gained by multiple mobile device use, e.g. office Blackberry, plus a personal phone. North America data include US, Canada and Mexico.

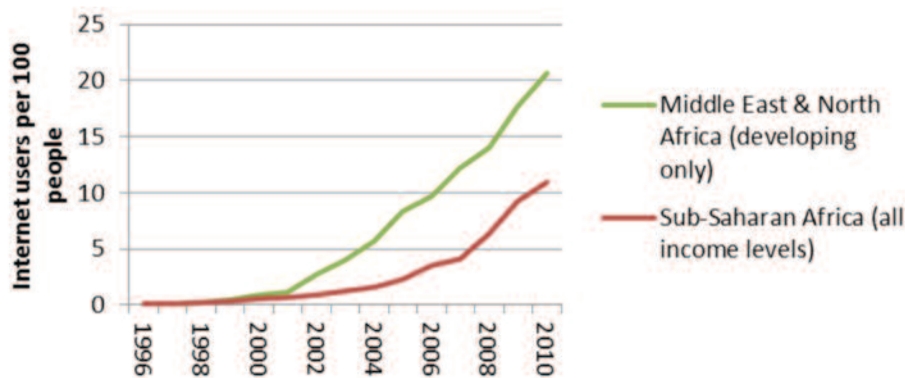


Table 9: Internet users per 100 people World Bank.

We have already examined in some detail the development of the M-Pesa mobile phone banking in Africa in an earlier report[62], although it is worth adding here the Kenyan-initiated system has now launched in South Africa. But this is not the only major TMT-related development in Africa.

The continent is coming online and embracing mobile connectivity at a rapid rate. One sure sign of change is the building of data centres, which are the hubs for all internet traffic and a good measure of the TMT development in a region. Data centres are now springing up all over Africa. Although the highest number[63] are in South Africa, others are being built in Nigeria, Morocco and other fast growing nations such as Kenya, where Hewlett Packard and the Clinton Foundation have rolled out a series of data centres to link the country's health centres and laboratories together. South Africa is also building an IT hub to be called Smart City in Gauteng that will focus on internet and telecoms manufacturing. A number of IT companies are supporting the development, including as one might now expect, a number of Chinese companies[64].

Internet growth has been supported by local and global companies that have also spent heavily on a growing number of high speed undersea fibre optic cables that now link Africa at to the rest of the world. Telecoms masts and other TMT infrastructure have also been rapidly put in place. From India's Bharti Airtel, to giants such as UK-based Vodafone, which owns numerous African subsidiaries including in Ghana, Egypt, South Africa and Tanzania, there is serious and growing interest in the African TMT sector. This is in part because there are very few markets that have potential to grow as much as Africa's TMT market. This in turn opens up opportunities for Western lawyers, from telecoms regulatory specialists, to IP experts and licensing lawyers, to the corporate and finance lawyers who will help these businesses fully expand their networks across the continent.

[62] 'New Frontiers: Law Firms in 2020' Part Three, Jomati Consultants LLP report.
[63] Datacentres.com, 27 Feb 2012.
[64] Ibid.

Chapter Three: Mining and Oil

African Resource Wealth and its Legal Risks

Current proven stocks of extractable energy resources in Africa (such as oil, natural gas, coal, and uranium) are estimated[65] to be worth between $13 trillion and $14.5 trillion. But, this is just the tip of Africa's resource iceberg. To go into all its commodities in detail one would need a separate report. But here are some key facts worth noting[66]:

- Africa produces around 46% of the world's diamonds and 21% of its gold.
- Nigeria holds the 8th largest gas reserves in the world, at 5.3 trillion m^3.
- South Africa has the 9th greatest coal reserves in the world, 3.5% of total.
- Four of the top 20 oil producers in the world are African, (in order of reserves): Libya (9th), Nigeria (10th), Algeria (16th) and Angola (18th).
- Namibia, Niger and South Africa produce 16% of the world's uranium.

Yet the stories of corruption hang heavily above the African resource sector as a reminder of what can go wrong when huge amounts of money and an insatiable demand meets poverty and a weak civil society. As anti-corruption legislation grows ever stricter and far reaching energy lawyers will increasingly have to grapple with clients' greater demand for investment in Africa twinned with a growing number of legal trip wires.

The following factors will need to be taken into consideration when advising resource clients in Africa:

- The UK Bribery Act, the US Foreign Corrupt Practices Act, and key amendments to the US Dodd-Frank Act that requires due diligence on 'conflict minerals' from contested resource concessions as well as its Section 1504 that demands company disclosure of all payments related to resource development abroad.
- Planned EU legislation[67] that will demand companies reveal how much they pay Governments in individual oil, gas, mining and logging projects.
- Voluntary codes, such as the Extractive Industries Transparency Initiative or EITI, operated via a global public-private body that is pushing for fuller disclosure of transactions between resource companies and Governments.

More stable Governments with greater oversight and more diversified economic development will hopefully reduce the corruption and bribery here. But corporate risk in Africa is only likely to increase as Western Governments become ever more stringent in this sector.

Resource Nationalism

African Governments are growing in confidence and seeking to ensure more revenue related to oil, gas and mining remains in the country. While this may be an essential step to ensure greater economic development others regard this movement as 'resource nationalism'. These efforts have come in the shape of higher taxes on foreign concession incomes, to new laws demanding local suppliers manage drilling contracts, to even raising the spectre of nationalisation, as occurred recently in South Africa after the ruling ANC conducted a review of national resource wealth[68]. Nationalisation has since been batted away as a threat, but even the mention of the subject made several investors in South African mines extremely nervous.

[65] 'African Wealth Cheque Report' from Africa Investor, July 2011. Although, in reality no one really knows, and it is likely to be far higher than this as mining operations explore further and deeper, and global demand rises due to wider economic development in the BRICs and other emerging nations, not the least of which will be African economies themselves.

[66] Various sources, including: Minerals Year Book and CIA Factbook.

[67] FT, Oct 24, 2011. Understandably, resource companies are lobbying hard to prevent this happening.

[68] Reuters News, 8 Feb 2012. 'ANC mine study seeks new taxes, buries nationalisation.'

One example is Ghana's plan to raise corporation tax on resource companies from 25% to 35%, plus an extra 10% tax on mining profits. But with demand for Ghana's resources at record highs the politicians are unlikely to listen to complaints. Moreover, with commodities prices so high, mining companies are not likely to back out of their ventures either. These mining companies may also turn to major law firms for sophisticated tax advice to soften the blow of these higher taxes through novel structures.

Another example can be found in Nigeria where around 90% of goods and services[69] delivered to foreign oil companies are provided by other foreign entities. Estimates place the loss to the Nigerian economy in the billions of dollars, which could support thousands of much needed local jobs. The response has been the Nigerian Content Act, which demands local contractors handle oil-related work unless it absolutely cannot be done locally.

But, this new wave of energy and resource legislation can also work the other way and seek to attract further foreign investment at the cost of political support at home. A case in point is Nigeria's plan to greatly increase electricity prices for the largest users[70], such as factories and businesses to encourage foreign investors into Nigeria's troubled power sector. It is also seen as a key step in preparing the way for the privatisation of 18 state-run power companies[71]. Its recent failed attempt to double the domestic retail price of oil, which created a major backlash, was also partly to stimulate investment in the sector by boosting the retail margins[72] and to stamp out loss of income due to illegal oil trading to neighbouring countries.

The most extreme resource nationalism though is not legislative, but outright expropriation. This is increasingly rare in Africa, but isolated incidents still occur. African Governments are now more likely to revoke licences than confiscate resource assets, although it could be argued revoking a licence to a mine once it has been developed at great cost to a foreign company is effectively expropriation. For example, in 2007 the Angolan Government revoked a number of mining company licences, allegedly without compensation. In 2011 South Africa[73] revoked licences for an Australian mining company, claiming it had not consulted sufficiently with local people. Local corruption may of course be a factor here.

We expect more African nations to resort to 'resource nationalism' even as their economies develop. This is not because they are protectionist, but simply because until commodity prices drop significantly they will have the ability to dictate terms to extraction companies. In turn this may increase demand for expert tax and legal advice.

Beyond Institutional Clients

The resource sector in Africa can at first appear to be dominated by a handful of mining giants such as BHP Billiton, Barrick Gold and Rio Tinto, or the global oil companies. They have close links to certain law firms in the US and UK, in some cases the links go back decades. This may be off-putting to some lawyers who are not close to such clients. They may believe they cannot win work from here even if they open in Africa.

[69] AllAfrica.com, 4 May 2010.
[70] FT, 12 Feb 2012, 'Nigeria power rates to rise up to 88%'.
[71] Ibid.
[72] The problem was that aside from local people's anger about a price rise, many traders illegally export the subsidised petrol into neighbouring countries that do not produce oil for a huge profit. By raising prices the Government also sought to stamp out oil smuggling.
[73] Mining Review, 8 June 2011.

But, such a view would be too pessimistic. First, with more UK and US law firms entering Africa the old means of serving these giant clients remotely in Africa may change. Law firms with their own staff, or at least allied local firms that share the same brand, in Africa may be able to differentiate themselves from other advisers to the resource sector. General counsel (GC) at even the larger miners may be interested in a law firm that can do more than fly-in/fly-out of Africa.

The second reason why law firms should not believe the African resources sector is 'sewn up' is because of the growing number of clients moving into Africa as resource demand increases globally. We would note that beyond the large oil companies such as BP and Shell, and the miners mentioned above, Africa has a number of potential client streams:

- African oil and mining companies – African nations are increasingly developing their own resource companies, such as Algeria's Sonatrach and Angola's Sonangol, and South African conglomerate Sasol, which is also listed in New York. While privately owned Famfa Oil Ltd in Nigeria, states its aim is to be 'the leading indigenous Nigerian oil and gas exploration and production company'.
- Smaller oil and mining companies – Beyond the big names are a variety of smaller companies, often those with a taste for risk and exploration. US companies Vulcan Energy Corp. and Torch Petroleum are planning[74] to invest around $3.8 billion and $1 billion respectively in Nigeria.
- Non-Western miners and oil companies – while the focus is often on British, American, European or the handful of large South African companies, global resource needs and developing markets are driving new entrants to Africa and include:
  - China National Offshore Oil Corporation (CNOOC)
  - China National Petroleum Company (CNPC).
  - Korea Resources Corp. (KORES)
  - Brazil's Petrobras
  - Malaysia's Petronas

Also, as noted above, many of these energy and resource companies are looking at diversifying into renewable energy, which also offers opportunities to those law firms that have strengths in these areas and may stretch some GC to seek new legal advisers.

Developing Future Demand?

We touched on Africa's place in the global economy in Chapter One, but global growth and demand for resources is so critical to the future interests of many clients in Africa it is worthy of a deeper examination. What will be unique about the next ten years of economic development will not be that the West has slowed, or that tens of millions of Chinese will buy cars and apartments, and start consuming more oil and electricity. It is that literally dozens of other far smaller countries' populations will also be doing that, effectively becoming an army of little Chinas. The traditional BRIC analysis has tended to focus everyone's, including law firms', attention on a handful of the world's 150-plus developing countries. But that is to overlook the combined effect of every other emerging nation. These countries may not be so large that they will attract investment banks, but they will see domestic demand increase, and that includes most of Africa's 54 nations.

[74] AllAfrica.com, 1 Feb 2012.

When one looks at the world this way one can appreciate that although China is a major part of global demand, it is only one seat at the table. Likewise, the West with its high level of development is also being caught up by these dozens of smaller nations. They are far behind, it is true, but the direction of travel is clear. All this means greater resource demand, from minerals, to energy sources, to agriculture (which we will examine later).

To get an idea of how powerful the force of the massed ranks of the developing world will become consider this: worldwide GDP is around $77 trillion[75], but less than half of this output comes from the top developed nations of the US, EU and Japan[76]. And China may only have India as a competitor in terms of scale, but it has plenty of company in terms of growth (see table 10).

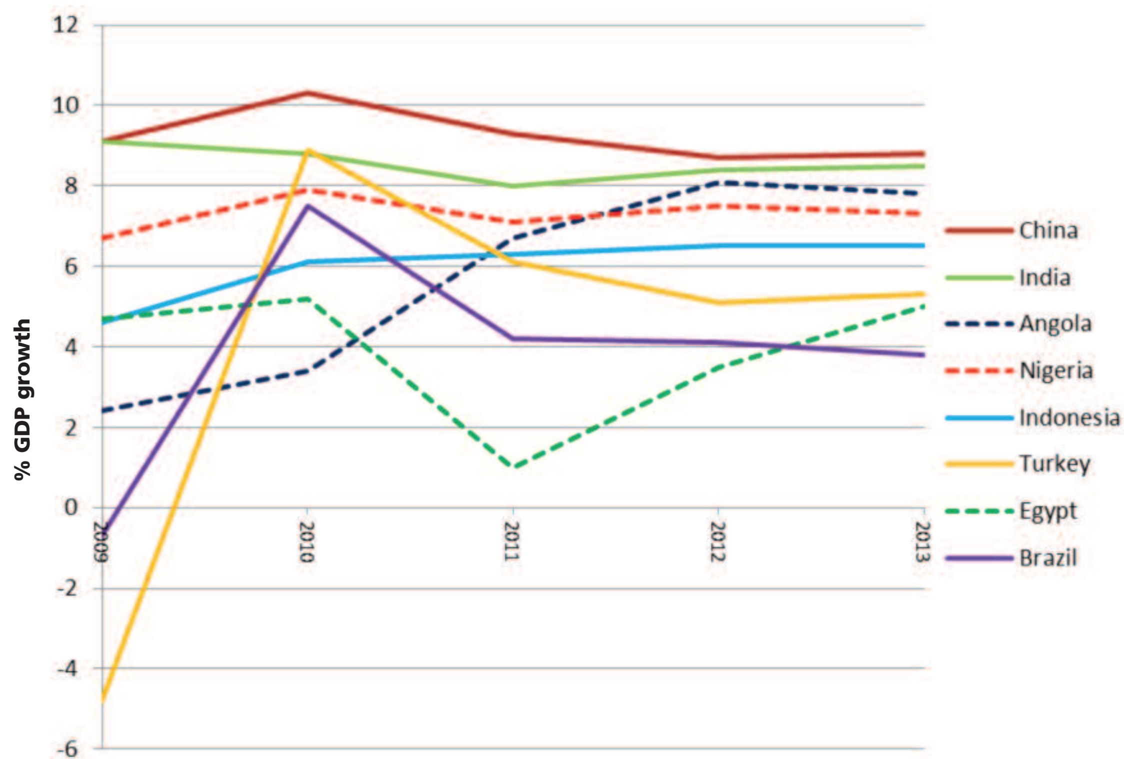


Table 10: GDP growth among selected developing countries, (ranked in right margin by growth rate in 2013), World Bank data and estimates to 2013. African countries have dotted lines.

As can be seen, Nigeria, Indonesia and Egypt keep growing at a healthy rate. But, this is only a sample of fast growing developing countries, one could add more from South America and South East Asia, and indeed from Africa.

[75] Using international dollars and the PPP method, World Bank data.
[76] See Appendix E for comparison of BRICs, developing world and developed world.

Chapter Four: African Capital Markets

Introduction

While development institutions[77] in Africa are important, they are not the whole story when it comes to the continent's financial sector. From inward investment by hedge and private equity funds, to the development of investment banking, to African corporates issuing commercial paper, Africa is fast becoming integrated into the mainstream of global financial markets.

Debt and Equity Markets

African companies are tapping the international capital markets for investment to fund further growth. On the debt side, corporate issuances in sub-Saharan Africa were approaching $5bn in 2011. Ten years before in 2001 they had been only a tiny fraction of this. Total debt issuance in Africa, excluding the North, was up 17% to $12.4bn in total in 2011 and included around $6bn in new sovereign debt. These figures are small compared to the Western bond markets, but these are early days.

One reason why the bond market is growing here is partly because of the risk premium. Yields for sovereign debt across Africa are still routinely higher than 8%, a level many would regard as unsustainable in a flat growth region such as Europe. But in Africa, investors see a positive risk. Going to the market also instils greater financial discipline[78] among African issuers who are increasingly sophisticated. While no African leader relishes negotiating debt relief with the World Bank or IMF, they may find a legal battle with a US hedge fund far more unpleasant and costly if they defaulted.

On the equity side, there are interesting developments, not the least the planned London listing of Nigerian cement company, Dangote Cement[79]. But domestically, data from the World Federation of Exchanges shows there has not been a major increase in the number of listed companies in Africa. In South Africa, the total has actually declined from a peak 10 years ago. The tax haven of Mauritius has become an important junior market for equities, with around 60 companies listed on its local exchange. In Morocco there are now 74 listed companies with a total market cap of around $70bn. As one can see, this is not yet the large and liquid market investors usually target. But the companies that have listed are a foundation for future equity market growth and in some cases companies listed in Africa have seen extremely healthy share price increases. While South Africa is the leading centre for African equities, Morocco in the North is seeking to take some of its market share with the development of the Casablanca Finance City (more about this in Chapter Six).

As can be seen in table 11, South Africa's main exchange is by far the largest by market capitalisation, even if the number of companies listed has fallen. Market cap has reached around $925bn, making it the 20th largest stock market in the world by capitalisation[80]. It is slightly smaller than Russia's MICEX, but larger than both Taiwan's and Singapore's main exchanges. This is impressive and underlines just how much capital is pooled in some of South Africa's largest companies, many of which are mining companies. Although, to put that in context, the NASDAQ, the far smaller sister exchange to the NYSE, had a market cap in January 2012 of $4,400bn. But then, South Africa, and Africa as a whole, is not seeking to compete directly with London and New York, it is competing with the BRICs and other large developing countries. In this respect its equity markets are encouraging, though do need to see greater confidence from new potential entrants to increase liquidity.

[77] For example, the World Bank has been discussing a $1bn loan to Egypt to support post-Revolution public finances, while the IMF has been courted to offer Egypt a $3.2bn 'standby facility'. FT, 2 Feb 2012.

[78] This is one of the key findings of African economist Dambisa Moyo in her book 'Dead Aid', and actively encourages African officials to move toward market-sourced credit, rather than aid. There are many reasons for this, one obvious one is that aside from keeping financial discipline front of mind, private investors cannot dictate how the money must be spent, nor can they demand that the loans are in return spent on buying goods or services from the lending nations. Ultimately, the markets can be severe if wronged, but if treated with respect in return reward a nation with economic freedom.

[79] FT, 1 April 2012. 'Dangote Cement plans London listing'. The $11bn company plans to list on the LSE. It is run by Nigeria's (if not Africa's) richest man, Aliko Dangote.

[80] World Federation of Exchanges.

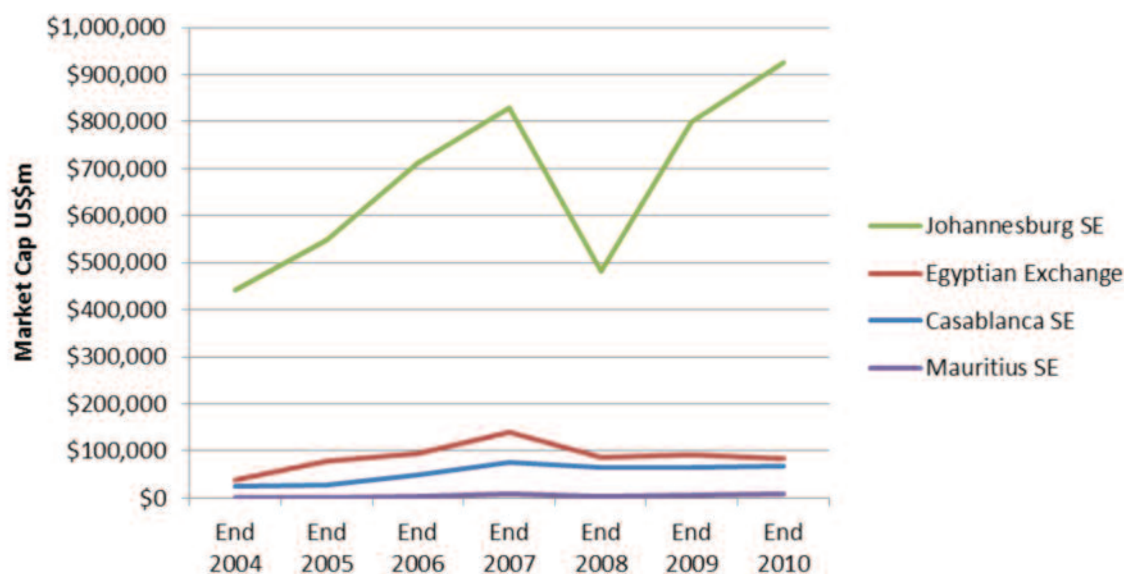


Table 11: Market capitalisation within key African stock exchanges. Latest data to end of 2010. WFE.

The other three main exchanges recognised by the WFE in Africa are far smaller, but if examined closely, in the seven full financial years from 2004 to 2010 the WFE has accounts for, Egypt more than doubled by market cap and Casablanca grew two and a half times. Mauritius, starting at a very low base of just $2.1bn, almost quadrupled by 2010 to $7.8bn in market cap.

This tells us a number of things. IPOs in Africa are relatively rare given the low growth of new listings. But, it also says that demand for African company shares has massively increased, i.e. market cap has risen but the number of listings is relatively static. Larger, better capitalised companies may become more sophisticated and also be in greater need of equally more sophisticated legal support.

Another area of interest is the recent alliance of exchanges between the four BRIC nations and South Africa. Exchanges from the five nations announced in 2011 an initiative to cross-list equity index derivatives on each other's boards, in an effort to expose investors to opportunities in a wider market[81].

Funds

Given the huge potential for African companies to grow from such a low base, interest among hedge funds and private equity managers is growing. As noted earlier, Renaissance Capital was one of the early movers into Africa, back in 2007. Now there are dozens[82] of funds with stakes in Africa operating a variety of strategies, from taking major positions and buy-outs, to equity trades, to currency speculation. With a small but growing African pension industry we are also seeing indigenous hedge funds developing. The centre of indigenous hedge fund activity is South Africa and funds there are estimated to have around $4.25bn under management. This is tiny compared to the US and Europe, but African institutions are only just starting to look to this form of investment to widen their portfolios. Again, the mantra of 'from a low base' is relevant here too. One should also consider that many African corporate assets are relatively cheaper than the equivalent companies would be in the West. In short, hard currency goes a long way in Africa.

[81] Market Watch, 12 Oct 2011.

[82] A survey of 40 Africa-focussed funds found a wide variety of strategies and domiciles, (source: Novare Investments, Nov 2010). Half of the sample surveyed were managed in South Africa, with the other half roughly split between the UK and US, with a handful managed from Zimbabwe and Mauritius. A notable number of the funds surveyed focussed on long term equity investments, although some had diversified into shorting and currency trades.

What may be more surprising is that a fund set up in London by two Nigerians[83], known as the Helios Private Equity fund, saw a 2011 road show and funding round close with $900m of funds and was over-subscribed to $1bn. What had started out as a fund that worked closely with the UK Government's Commonwealth Development Corporation (CDC), has now become what some investors believe to be the leading light in African investment opportunities.

Other investors in Helios include George Soros and Lord Rothschild. One of their strategies has been to develop a company, such as one that provides telecoms towers, in one country and if this works to then roll this same model out across several African countries[84]. This seems a sensible strategy adapted to the large number of small, but relatively similar African nations. It has also participated in some major single investments, such as a $400m investment into Shell's downstream oil project covering 14 African countries and $100m stake in Nigerian company Interswitch, which operates a chip system for bank cards. The test will naturally be in the fund's exits in the coming years. But, there is a high degree of optimism and Helios is by no means the only major private equity fund interested in Africa. Other funds with a strong interest in Africa include:

- London-based Actis, which has $4.6bn under management with significant interests in Africa. The fund was interestingly also a spin-off from the UK Government's CDC in 2004.
- China's Hony Capital, which is raising a new $2.6bn fund, and has previously invested in Africa, notably a $100m investment in an iron ore mine in Madagascar[85].
- Africa-based Fusion Capital Ltd, which is owned by the UK's Fusion Investments. The fund operates across Africa with offices in Kenya, Uganda and Rwanda. The fund seeks to invest in SMEs rather than larger businesses.
- NextEngeryCapital, a UK-regulated fund with European and African managers, with a strong interest in renewable energy. It recently launched a $550m fund for African renewables investments.
- The Duet Group, with bases in London, New York, Tokyo, New Delhi and Dubai, has made a number of investments in Africa including in December 2011 into ExpatHealthCare International Ltd, a Health Maintenance Company in Nigeria.
- Saudi Arabia-based MIDROC Ethiopia fund, run by Sheik Mohammed al-Amoudi, which is planning to invest $3bn in Africa over the next three years, mostly in Ethiopia via textile, oil, metal, marble and cement factories[86].

Hopefully this gives a taste of the growing investment appetite there is for Africa.

One other group of funds that also needs to be considered are the Sovereign Wealth Funds (SWFs). Chinese SWFs are already operating in Africa, such as the region specific China-Africa Development Fund and the well-established China Investment Corporation. Home grown SWFs, or at least funds made from national resource revenues, have been emerging in Africa. Examples include: the Revenue Regulation Fund of Algeria, the Excess Crude Account of Nigeria, the Pula Fund of Botswana and the Fund for Future Generations in Gabon. Although, these home grown funds are not necessarily investing in Africa. One major outward-looking fund that temporarily halted investments was the Libyan Investment Authority fund with $65bn in assets[87], most of which was invested abroad, including in the UK. The recent revolution has raised disputes over ownership and management of these assets, but these issues are expected to be resolved in the coming months.

[83] Helios Investment Partners was founded in 2004 by Tope Lawani and Babatunde Soyoye.
[84] Africa Report, October 2011.
[85] privateequityafrica.com.
[86] Africa Report, 8 Feb 2012.
[87] FT, 30 Aug, 2011. 'Dispute over control of $65bn Libya fund'.

In South Africa the idea of launching new SWFs appears to be building too. The Government is considering calls[88] for the creation of a fund that would receive $5.2bn a year in resource wealth via new taxes on the sector. The plan is part of a wider scheme to support local manufacturing and employment that could also see requirements for resources such as steel to be sold to the internal market to help African manufacturing develop, rather than purely for the export market.

One last area, especially on the disputes side of funds work, is the so-called vulture funds which have been involved in a barrage of litigation, mostly heard in London and New York. These funds which have bought the debts of African nations from the former lenders have been widely castigated in the media. However, as the general counsel of the African Development Bank, Kalidou Gadio, which provides a £14m fund to Governments to fight these claims admits, '99% of cases are lost to the funds'. This is because the funds are simply exercising their legal right to recoup purchased debts, as they would in any other situation.

Mr Gadio stresses he would prefer African Governments receive better advice in the first instance on borrowing, rather than trying to fight what are usually unbeatable claims in the UK courts after contracts have already been agreed. Hopefully the 'inequality of arms' among African Governments when it comes to legal advice on debt agreements will be addressed and in turn generate remunerative work for major law firms advising on the borrower side. For example, one global firm we spoke to said they were now advising an African Government on just such a matter. It is probably a false economy of African nations to spurn what appear to be expensive law firms when the borrowed sums involved enter into the hundreds of millions of dollars and the repercussions of default are severe.

African Banks

The African banking sector can be divided into three main groups: the indigenous and mainly domestic banks, many of which are in private hands and sometimes among the smaller ones still family run; the larger transnational African banks, many of which are Nigerian and South African; and the UK, French and American banks that over many years have developed local operations in Africa.

One could then add a fourth layer of foreign banks, which one might call the fly-in, fly-out banks, that focus on a few specific deals but do not have a significant, or in many cases any, presence on the ground in Africa. For example, Goldman Sachs has pioneered the thinking on developing markets more than most other financial institutions but only has one office in Africa[89] and that is in Johannesburg, which one might say is rather an unadventurous location on the continent for such a ground breaking bank.

Another example is Morgan Stanley that opened in South Africa in 1994 and which claims was the first global investment bank to open in the country. It currently has a joint venture with the local Rand Merchant Bank. Morgan Stanley acted as adviser on NTT's $3.4bn acquisition of South African IT company Dimension Data, proof that there are major transactions for New York's top banks here, although one needs to be realistic about the volume of such deals in Africa.

We should not forget the ambitious African specialist banks, such as Investec, either. The South Africa- and UK-based bank is listed locally and in London, although a key strand to its strategy is to expand into developed markets such as the UK, rather than build branches across Africa. But, it does maintain branches in the southern African states of Namibia and Botswana, as well as Mauritius.

[88] FT, 8 Feb 2012. 'South Africa looks at ways to use mineral wealth'.
[89] Goldman Sachs website. That said, it only has two offices in India, one of the key four BRIC nations.

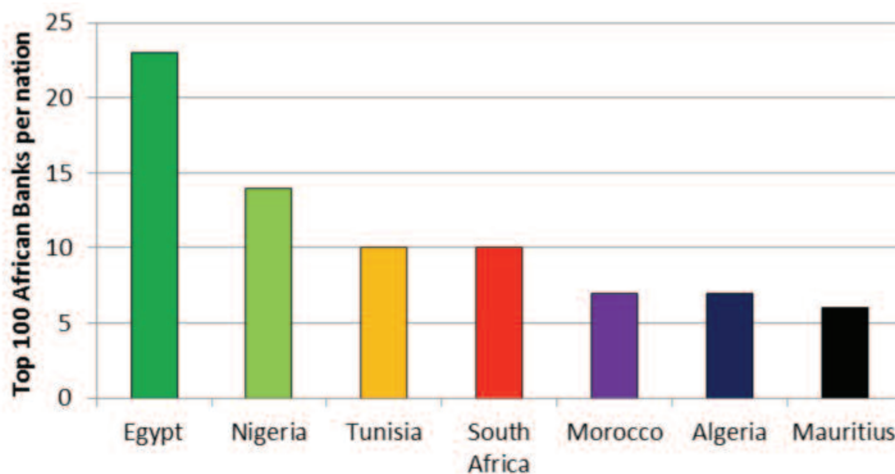


Table 12: Countries with most Top 100 African banks, participation in Top 100 based on ranking by total assets. Africa Report data.

Returning to the main retail and commercial banks in Africa one can quickly see where the main centres are (see table 12). The retail banking market splits into four main segments, the North African banks which are the biggest group in the top 100, followed by Nigeria which stands alone as a major West African banking centre, and then the far more consolidated market of South Africa and the island tax haven of Mauritius.

While Egypt and Nigeria may have the most major banks, their scale is dwarfed by South Africa's handful of major players such as Standard Bank, ABSA and Nedbank[90]. While the majority of Nigeria's top 100 banks each have assets of between $3bn and $7bn, Standard Bank's operations in South Africa have assets of around $115bn. The Standard Bank Group as a whole is closer to $200bn in assets[91].

Among foreign retail banks, while America's Citigroup does have a significant role in Africa, UK-based banks such as Barclays and HSBC, as well as France's Calyon Credit Agricole, Societe Generale and BNP Paribas are increasingly entrenched in certain African countries. Understandably, the major French banks tend to dominate in Franco-phone Africa, especially North Africa. The British banks are in locations such as Kenya and Mauritius. But, the nominally British-based[92] Standard Chartered is the undisputed leader in pan-African banking, at least in terms of coverage, with at least 15 offices spread across the continent.

Finally there are the micro-finance initiatives or MFIs. We have examined these in detail in our previous report[93]. However, suffice it to say they play an important role in developing Africa's alternative banking market. With time[94] smaller businesses supported by MFIs may graduate to more traditional retail banking services.

[90] Originally founded in the Netherlands in 1888.

[91] Assets for African banks are difficult to gauge as many of their holdings are related to a number of key commodities, such as oil or gold, where prices vary significantly.

[92] Standard Chartered Bank was formed in 1969 through the merger of two separate banks, the Standard Bank of British South Africa and the Chartered Bank of India, Australia and China. The predecessor Standard Bank was founded in the Cape Province of South Africa in 1862 and found success in financing the diamond fields of Kimberley, and then gold mines in what was then a new town in 1885 called Johannesburg. Source: bank website.

[93] 'New Frontiers: Law Firms in 2020' Part Three. Jomati Consultants LLP report.

[94] Although, as Muhammad Yunus, a pioneer of modern micro-finance said recently the focus for many MFI borrowers is how they can move from having one cow to produce and sell milk with, to having two cows, not about wider business issues. We cannot expect a too rapid development from this level of borrowing to a proliferation of SMEs of the likes we would recognise in the West.

Corporate Investment and African M&A

Mining deals are highly significant in Africa. One new potential deal mooted by Africa experts is the Xstrata-Glencore merger with Anglo American, the South African company founded by Sir Ernest Oppenheimer, once the Xstrata-Glencore merger is completed. High resource prices are raising the possibility of many more deals in the sector. For example, gold, where Africa is a major producer and is seeing high prices of $1,650 an ounce is especially attractive. The targets are not all in South Africa, but spread across the continent, such as Ivory Coast and Burkina Faso[95]. PwC said in a recent report[96] it expects to see 'substantial' acquisition volumes in the mining sector in Africa in part because Africa still has a number of small mining companies yet to be taken over by the mining giants.

This reflects a long term positive picture, and not just in mining. While M&A levels have not been uniformly positive across Africa, with the financial crisis having an impact on investment from abroad, the underlying picture looks strong. South Africa in particular, which has a large number of well-developed corporates, saw 110 major deals totalling $16bn in 2011.

Another encouraging sign is the approach taken by global food and beverage companies. As noted earlier, KFC is launching 1,400 branches across Africa. Other food companies are likely to be attracted too, and this may demand taking over local businesses, or creating new African subsidiaries. For foreign beverage companies the object has been to buy local brewing and distribution capability. For example, when Ethiopia privatised its breweries in 2011 Heineken purchased two for $160m. SABMiller has also invested heavily in Africa already and continues to, so too has Diageo. Analysts see Africans' growing wealth, twinned with the ability to source raw materials locally will create a huge new consumer market for beverages.

Another reason for optimism in African M&A is precisely the same reason why Africa has developed so slowly up until now: its patchwork of small nations has only just begun to create significant corporates. Those that do succeed and build up into national players are then quickly faced with a stark challenge: accept the fact they have to operate in a country with a population perhaps with around 20 million people[97], or cross the border into new territory and new markets. A pessimist could argue this is a permanent barrier to major African companies forming. An optimist could say it acts as a driver for pan-African business as growth will demand cross-border mergers and new greenfield operations abroad to take African market share.

Let us consider an example of the need to expand 'abroad' inside Africa. Nigerian banks operate in a large economy, but some have chosen to expand beyond the limits of the local market to build pan-African market share. As the Helios fund (see above) has discovered, one strategy for building in Africa is to succeed in one country then roll out the model in other similar markets.

The Nigeria-based United Bank for Africa[98] now has operations in 17 African countries and a total of 750 branches. It claims to have more than six million customers. The locally listed bank has gone far beyond retail banking into trade finance and investment banking. Because of the huge variety of currencies used in Africa is has also pioneered cross-border payment systems. A product of three banking mergers itself, such a bank may well in the future look to take over others, or itself become a target. Such a large and complex, multi-national bank clearly cannot rely on the services of just Nigerian law firms, as very few have more than small offices outside of their country.

[95] Reuters, 7 Mar 2012, 'Africa emerges as new frontier for gold M&A'.
[96] Ibid.
[97] As noted earlier average nation size in Africa is only around 18m people.
[98] United Bank for Africa Plc (UBA) is the product of the merger of Nigeria's third (3rd) and fifth (5th) largest banks, namely the old UBA and Standard Trust Bank Plc, and a subsequent acquisition of Continental Trust Bank Limited. (UBA website).

Then there are the hybrid companies that have their foundations in Africa but are led by foreign majority stakeholders. French companies are especially prevalent in this space. One example would be Maroc Telecom, or Itissalatt Al Maghreb as it is known locally. The leading Moroccan telecoms provider is controlled by France's Vivendi, which is understood to own 54% of the share capital. It is listed locally and in Paris. But, this is not simply a Franco-Moroccan strategy.

Maroc Telecom Group also owns 51% shares Mauritania's Mauritel, Burkina Faso's Onatel, Gabon's Gabon Telecom, and Mali's Sotelma. This expansion is paying off and in 2010 alone it increased mobile subscriptions by 60%. In this case, the end client is Vivendi, and any law firm wanting to be part of its African acquisition programme may need to be close to the French company first. But, this is just one example of the depth of investment with which foreign-backed African corporates are growing now.

To conclude, it may be some years before African M&A tables begin to receive attention in the business press, but for those law firms prepared to examine the opportunities here there are major clients and interesting work to be found.

Chapter Five: New Sectors: Manufacturing and Agriculture

Manufacturing Potential

Africa is not a major centre for manufacturing. Yet, it could be, and some say it should be. Africa has a huge work force with low labour costs. It has plenty of raw materials. It is also close to key export markets, Europe primarily, but is also joined to the Middle East. The Suez Canal and eastern seaboard also make shipping access to Asian ports relatively direct. Africans are becoming richer and therefore could become an internal market for manufactured goods. This could matter to Western law firms as plenty of work could stem from manufacturing moving to Africa, just as it did as production moved to China over the last 20 years.

Today, foreign companies using Africa as a manufacturing hub are small in number (see more below). Home grown African companies' manufactured goods barely compete in the world market either, especially against Chinese goods. At home such goods fare better, but still face serious price competition from cheap imports from China. For example, the African textile trade, which could be a major source of income for African countries, especially given their ability to produce their own cotton, has been decimated by cheap Chinese imports. As can be seen in table 13, sub-Saharan Africa's share of manufacturing has actually declined in the last 30 years, even though overall GDP has grown, largely due to resource exports.

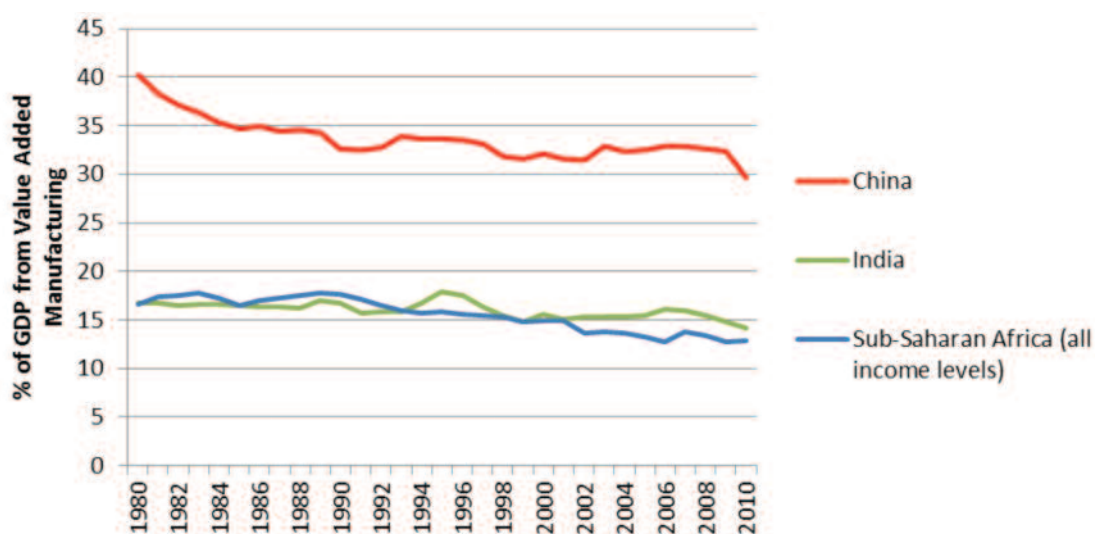


Table 13: Percentage of GDP derived from value added manufacturing. World Bank data.

At present, value added manufacturing only accounts for about 13% of the sub-Saharan economy[99]. China's share has also declined over the long term, down to 30%, in part because of increases in the service sector. But this belies its overall impact, especially as China's total GDP has risen rapidly for many years. If Africa wants to become an exporter of goods then it is China, its current benefactor, which it will have to compete with. With Chinese manufacturing costs rising and African nations actively seeking to attract manufacturers we may start to see the first signs of change.

[99] This manufacturing data is also heavily dependent upon South Africa, whose national manufacturing output significantly out-performs all other sub-Saharan nations.

It is also interesting to note that India's value added manufacturing is also relatively low, and is perhaps surprisingly equal in GDP share to sub-Saharan Africa's, although this is partly due to India's success in building a services-based economy where Africa has not.

Becoming a Manufacturing Centre

The main historical reasons for foreign corporates to not set up African factories have been: Government instability; lack of infrastructure such as power and transport; and a weak internal market for goods. But, all three of these challenges are now starting to be met, suggesting there may be work for law firms advising everything from SMEs looking for cheaper manufacturing, to global corporations such as car companies, seeking new factory locations.

Africa is by no means a desert in terms of manufacturing, it is just that major factories are small in number for such a huge continent. But some major car makers are here, although mostly in South Africa. Examples include, BMW, Ford, Volkswagen, Mercedes-Benz and Toyota which have production plants in South Africa, along with a number of global component manufacturers.

In Morocco, Renault has just completed a huge factory complex that it has equally huge ambitions for in Africa, with the targeted car buyers more likely to be domestic. With an initial capacity of 170,000 vehicles, but expected eventually to reach 400,000 vehicles per year, the Tangiers factory will primarily develop its low-cost Dacia brand[100] and export them around the continent. Other examples include, Japan's industrial conglomerate Sumitomo which has also set up factories in Algeria, Cameroon and Kenya. American packaging company, Sealed Air, has also opened a facility in South Africa.

Some African Governments have sought to learn from Asia's successes in manufacturing and a number of Export Processing Zones (EPZ) have been set up, such as in Egypt and in Zambia, to promote investor interest. The Zones offer improved tax rates. For example, Kenya's EPZ provides investors with a 10-year tax holiday. Cameroon's zones give investors 100% tax exemption for 10 years, followed by a 15% tax and free repatriation of profits. Investors also have "flexible labour laws", and an exemption from standard wage classification schemes. Again, if the flow of investment here increased to such Zones it could produce some interesting work for international law firms.

One additional barrier in Africa that manufacturing clients may need to consider is education. Manufacturers need a skilled workforce, perhaps not educated to degree level, but certainly skilled at using modern manufacturing techniques. Underfunded local schools are unlikely to be able to provide this kind of industrial skills training, even if there is currently a boom in private schools in Africa[101]. Instead, foreign companies may need to invest in their own training programmes for employees and make up for deficiencies[102] in public sector education. African cities may be swelling with people, often with those leaving agricultural work behind for an urban existence, but only around 6% of sub-Saharan African adults[103] pass through tertiary education. This is an increase of 50% in just ten years, but shows just how small the 'brain trust' of the educated workforce has been and how far it will need to grow to help Africa's advance to where it could be.

[100] AFP, Feb 10 2012. Also, it was noted that unions in France were very unhappy with this development.

[101] FT, 14 Feb 2012. 'South Africa's private schools are booming'. Over the past decade, independent school enrolments grew by 76 per cent in South Africa. Fees for many are below $800 a year.

[102] Although, even in the developed world employers often complain even young graduates are so weak in English and mathematics they must train them themselves in order to make them productive. '36% of UK businesses said the education system was not meeting their needs.' FT, 21 Feb 2012

[103] World Bank data, adults in this context counted as 15 and over. Tertiary education goes from 'college' to university level education, i.e. study beyond that which is usually mandatory in the West.

Agricultural Investments

McKinsey & Co estimates 60% of the world's undeveloped arable land is in Africa. In a world where the population is going to move from seven billion today to around nine billion by 2040 with food demand naturally growing[104], tapping Africa's agricultural potential appears to be an obvious play for any investor. Land prices are very low, at least compared to Europe or America. Although this sector is not without its challenges, few environmentalists want to see savannah and rain forests turned into corn fields. That said, Africa's scale is vast and there must be regions of under-used or poorly irrigated land that can be developed without having a negative impact on wildlife.

Hedge funds have taken an interest and some investment groups have made major land purchases. Not all of these deals have been without controversy. One of the most notorious investments is that of Dallas-based Nile Trading and Development which obtained a 49-year lease on 1.5 million acres of land in South Sudan, reputedly for a very small sum[105]. The group is understood to have the right to exploit all natural resources there, including hardwood trees, oil and natural gas and biofuel crops. The apparent one-sided nature of the deal gave rise to criticism from several sources. But, as with many other aspects of business in Africa, the problem lies not in the enterprise itself, but the inequality of arms when it comes to negotiation and framing contracts. A lack of knowledge among land owners of the potential value of their land is another issue.

Another major development is that of Africa-focused conglomerate Lonrho which has planted 200,000 fruit trees[106], such as peaches and nectarines, across a number of African nations. But critics argue again these are a cash crop produced mainly for export to European supermarkets and don't help African farmers. But, critics cannot have it both ways, they want Africa to become self-sufficient for food, but condemn foreigners that invest here. One might say investment has to start somewhere, and cash crops for export may not be ideal, but they begin the process of turning unproductive African land into productive farms. Equally, one might add, there is no law against local agri-businesses developing too.

Whatever side of the argument Africans are on, they need to act here. Food output in sub-Saharan Africa is lower today than it was in the 1970s. This is due to chronic under-investment. Under-investment leads to low crop yields and the need to import food, or ask for food aid. However, imported food and food aid both undermine[107] the local agricultural sector, leading to further under-investment. It is a painful cycle that Africa needs to escape. Hedge funds may not be their desired solution, but an answer may be to enlist international law firms to improve the deals with foreign investors or help put together local agri-conglomerates, rather than spurn the opportunity.

That said, some nations are already embracing agri-business. Ethiopia for example, whose name is inextricably linked to images of starvation[108], is now exporting agricultural produce[109], including coffee, wheat and maize. Critics will ask whether this benefits the country, especially given its last major famine was only in 2008. The answer appears to be

[104] Sheer numbers are not the only demand issue. As the BRICs become richer their populations' diet will widen and will demand the import of more meat, cereals and fruit from abroad.

[105] All.gov.com, June 10, 2011.

[106] FT Nov 7, 2011.

[107] Ironically the World Food Programme (WFP) is now facing criticism for buying $78m worth of wheat from Glencore, the commodities trader. Critics said that aid money should not be given to the private sector to feed Africa. But, the deeper irony is that if the WFP and commodities investors could work together to develop large scale, well run, farms in Africa that sold a significant proportion of their produce within Africa's borders, then there would be far less need for food aid. In effect the WFP should become a not-for-profit agri-business, not a charity that actually undermines local markets.

[108] Ethiopia experienced its worst famine in 1985 due to severe drought. However, more recently in 2003 there was another major famine killing thousands, and in 2008 famine again occurred. Erratic rainfall and small, under-funded farms are a key cause of the problems. Critics also blamed lending practices to small farmers of credit to buy seeds, who after rains failed could not pay loans and so their farms were abandoned.

[109] Sunday Times, 26 February 2012.

yes. First, around 40% of the country's GDP[110] is related to agriculture so this employs many people, and secondly it brings in much needed hard currency. And it could grow a lot further. Only around 7% of GDP comes from exports, with a large majority of people still living in agricultural subsistence. But without sufficient finance to develop and provide vital infrastructure for farms such as modern irrigation then Ethiopia's agri-business potential is limited. Foreign investors may therefore be a vital component in supporting Ethiopia's current 10% GDP growth rate, in part the result of rocketing population growth. Infrastructure in general is also key to the future success of agri-business in Africa. For example, without suitable road and rail infrastructure fresh produce cannot be transported in time to market, especially not foreign markets. To that one can add refrigerated vehicles and containers and packing and processing plants. Again, Africa has a lot of catching up to do to be competitive in the world markets.

A second area of interest to lawyers that is vital to African agri-business are global trade, tariff and subsidy issues that act as a major barrier for African exports of food and raw materials such as cotton. In many cases Western subsidies to their own farmers, especially in Europe and America, make it extremely difficult for African nations to export their agricultural goods. In this respect there is another inequality of arms between the farmers and investors in Africa and those in Europe and America that demands expert advice.

In future, African nations as well as industry groups perhaps bolstered by agri-business investors, may be more willing to pay for major law firms to lobby and advise on World Trade Organisation issues in order to expand the agri-business sector on the continent.

[110] US State Department.

Chapter Six: Five Key African Markets

Overview

The following five markets represent four of the largest African economies and hence the likely main future legal markets, as well as far smaller Ghana that is seeing increased investment due to discoveries of resource wealth and is indicative of many of the smaller African nations that are attracting attention[111]. Their comparative strengths in terms of GDP and Per Capita GDP are shown in tables 14 and 15.

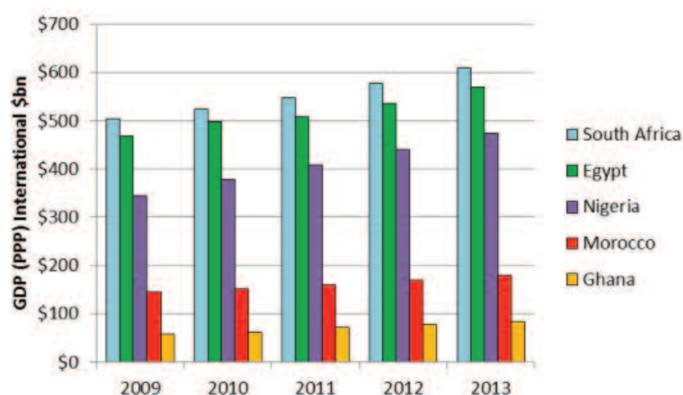


Table 14: GDP PPP method, international dollars, IMF data and estimates for 2012/3.

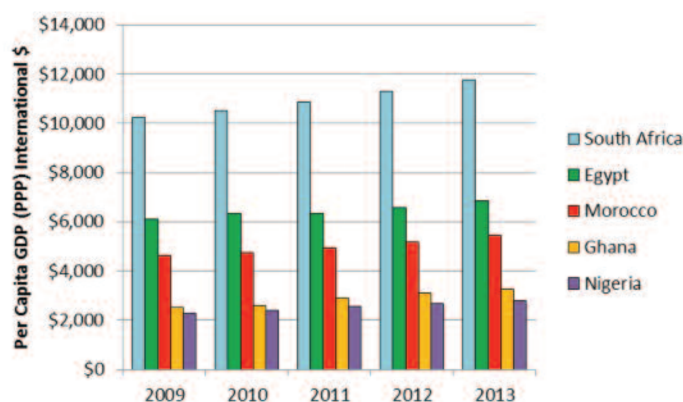


Table 15: GDP Per capita, PPP[112] method, international dollars, IMF data and estimates for 2012/13.

Even among this group of five nations there is considerable variation. As can be seen, while Nigeria and South Africa have similar GDPs, their per capita results are very different[113], in part because of the former's far larger population. Also, while Morocco has been the target of a number of UK firm foreign offices, it is one of the smaller African economies in size.

The other immediate finding from this overview data is that growth in these five key economies is very healthy, even if Egypt has suffered temporarily from the recent revolution. For example, South Africa's economy is expected to achieve around a (PPP) GDP of $610bn by 2013, an increase of 21% from 2009. The IMF expects to see Nigeria's GDP rise 38% by 2013, compared to its level in 2009.

[111] Jomati Consultants LLP is able to research particular markets of interest to law firms that are outside this key sample group, or provide greater insight into the ones already listed.

[112] The PPP method is based on local currency prices and cost of living. International dollars are a hypothetical currency used to better understand comparative wealth between countries. PPP figures are therefore at best approximations, but are perhaps the most logical metric in a world of such varied economies.

[113] Such low GDP per capita figures may be a little off-putting. But they do not take into account concentrations of wealth among certain groups (see Appendix D).

Country Overviews

Below are some key details of each of the five countries and some of the most pressing issues law firms entering the market may face. Naturally, these overviews are limited in scope, but hopefully give an indication of the opportunities available.

SOUTH AFRICA

Population	49m
GDP (PPP)	$577bn
GDP per capita (PPP)	$11,292
Top Companies	SABMiller, Sasol, Metro (supermarkets), Standard Bank of South Africa, Telkom SA, Anglovaal Mining, DiData, AngloGold Ashanti, Impala Platinum.
Main Exports	Gold, diamonds, platinum, machinery and equipment.
Main Trading Partners: Export	China 13.7%, US 10.1%, Japan 8.7%, Germany 7.3%, UK 7.1%, India 4.3%.
Main Trading Partners: Import	China 13.4%, Germany 11.2%, US 7%, Saudi Arabia 5.3%, Japan 4.7%, Iran 4.3%, UK 4.3%.

South Africa is currently the most developed economy in Africa with a strong corporate and banking and finance sector, as well as very strong mining groups. Yet it is probably the continent's most unusual economy. Apartheid ended 18 years ago, but the shared future hoped for is still some way off. There is a growing black middle class, and the ruling party is the African National Congress (ANC), but substantive change is slow. Despite hosting the 2010 World Cup and the high GDP and hence hypothetical high per capita incomes, the percentage of people living in real poverty is not far from many other sub-Saharan countries.

South Africa's peculiarity has not stopped its corporates developing, nor from expanding abroad into the rest of Africa. Beyond the mining giants such as Ashanti which operates in Guinea, Ghana, Tanzania and Mali, there are a range of other companies opening in the wider African market. One example is wholesaler and retailer, Metro, which has expanded into Malawi and Namibia, though could perhaps go a lot further. As mentioned earlier, South Africa's banks have also expanded outside of the country. And as noted, foreign corporates such as car companies are setting up factories here making it the leading manufacturing centre in Africa.

South Africa's legal market is dominated by a small group of leading firms, including Werksmans and Edward Nathan Sonnenbergs, which have around 300 to 400 lawyers and understandably very strong links to the local South African client base. Although some of the leading firms have developed their own networks of African firms, most have not opened offices outside of South Africa, which is perhaps a missed opportunity. This is largely due to the fact that inter-African deals are often framed under English or French law. Other reasons African lawyers gave included: other African corporates do not necessarily want their legal agreements framed in South African law, restrictive local bar rules in other African countries and a degree of unwillingness among Afrikaans lawyers to be based elsewhere in Africa. Many such lawyers may also believe there is sufficient interesting work at home to avoid setting up 'abroad'. But, that may change if more US and UK law firms develop pan-African practices, and especially if they open in South Africa.

The biggest two changes in the market have been the merger of Norton Rose with local firm Deneys Reitz in 2011 and the hire of a team of partners from Werksmans by US firm Dewey & LeBoeuf[114]. UK firm Eversheds operates there through Eversheds Routledge Modise and White & Case also has an office. DLA Piper has an affiliated member of its global grouping, Cliffe Dekker Hofmeyr. Canada's Fasken Martineau also has an office in Johannesburg. For now, the Magic Circle has stayed out of the market in terms of people on the ground, although they have publicly expressed interest in the past in merging with leading local firms. That said, it is possible that some global firms may approach South Africa as they have Australia, by either forming alliances that may lead to mergers, or putting together their own local firm through specific hires and boutique acquisitions. (See more on building an Africa practice in the following chapter).

EGYPT

Population	83m
GDP (PPP)	$536bn
GDP per capita (PPP)	$6,575
Top Companies	Suez Cement, Bank of Alexandria, Banque du Caire, Delta Textiles, EGAS, Egyptian American Bank, Menatel, the Orascom conglomerate.
Main Exports	Crude oil and petroleum products, cotton, textiles, metal products, chemicals, processed food.
Main Trading Partners: Export	US 7.6%, Italy 7.3%, India 6.1%, Spain 5.4%, Saudi Arabia 5.4%, France 4.7%, Libya 4%.
Main Trading Partners: Import	US 11.8%, China 10.4%, Germany 6.5%, Italy 6.4%, Saudi Arabia 4.1%

Egypt has more potential than many other African countries to become a major economy, despite its relative lack of natural resources compared to South Africa and Nigeria. Its large workforce, proximity to Europe and the Middle East, as well as its obvious access to the Suez Canal to reach Asia, gives the country huge strategic potential as a regional and export-based commercial centre. Tourism and processed commodities are not enough to lift Egypt up to the next level of development. If it could receive sufficient investment to become a manufacturing base its potential might be realised. Its domestic consumer market also has potential to attract foreign retailers and manufacturers given its size and relatively high proportion of middle class[115] of around one third of the population. Egypt developing as a regional financial centre is another future possibility, especially for Sharia-compliant products and investment into the rest of Africa. However, its banks and institutions will face increasing competition from Morocco which is rapidly pushing ahead with its plan to become North Africa's financial gateway (see below).

Egypt's political revolution in 2011 is still not over, even if former president Mohamed Hosni Mubarak has been deposed, and the final outcome is unclear. The West fears Islamists taking control if the military steps back and open democracy is achieved, yet this is not necessarily the end of economic development, or foreign investment. Egypt's new ministers may well need a relatively popular mandate to rule and create stability. That may demand more concessions to Islamic groups. Indonesia and Malaysia are examples of thriving capitalist societies with a strong Islamic culture, not

[114] At time of going to press Dewey & LeBoeuf had lost numerous partners and appeared likely to dissolve.
[115] As per African Development Bank criteria, see Appendix D.

to mention the UAE. Greater economic development and greater integration with the global economy may also moderate any swing to the religious right from the wider population[116]. That said, a degree of instability will have to be accepted by any law firm entering this market for some years to come.

Foreign law firms have been based in Egypt for many years. SNR Denton's legacy UK firm Denton Wilde Sapte opened in Cairo in 1964. Another UK firm, Trowers & Hamlins opened in 1999, and last year merged with local firm, Nour Law Office. Global firm Baker & McKenzie also has a longstanding presence via Helmy Hamza & Partners, and DLA Piper operates via its DLA Piper Group member, Matouk Bassiouny. Many other law firms are keeping an eye on the market, as are their corporate and banking clients. Some will no doubt want to wait until the current political soul searching has come to an end and Egypt has a stable Government. Yet, others may see the benefit in moving sooner.

NIGERIA

Population	155m
GDP (PPP)	$441bn
GDP per capita (PPP)	$2,677
Top Companies	Dangote, Malabu Oil & Gas, Nigeria Airways, Nitel, Nigerian National Petroleum Corp.
Main Exports	Petroleum and petroleum products cocoa, rubber.
Main Trading Partners: Export	US 37.4%, India 10.5%, Brazil 7.8%, Spain 6.9%.
Main Trading Partners: Import	China 15.4%, Netherlands 9.7%, US 9.3%, France 4.8%, UK 4.2%.

Nigeria is by far the most promising sub-Saharan country, other than South Africa. The Government is now trying hard to simultaneously ensure its huge oil wealth is used for the benefit of the nation, often through new taxes in what some see as 'resource nationalism' (see earlier), while encouraging new foreign investment in areas such as infrastructure and power generation. Nigeria needs to diversify its economic base, increase employment and per capita incomes otherwise it may be faced with growing wealth inequality that could lead to instability and reverse the last 10 positive years. The recent attacks by Boko Haram from the Muslim North of the country are understood to be far more about a lack of participation in national politics and a share of the oil wealth than just religion.

Nigeria is in a Catch-22 situation. If it drives up taxes and regulation on foreign companies to redirect wealth to local projects to boost economic development it could scare investors away. If it allows the status quo to remain it risks stoking civil strife. This period will require steadfast leadership and perhaps a more long term vision from foreign companies whose interests are best served by a stable Nigeria.

One fact about Nigeria that cannot be avoided is the entrenched belief that the country is overwhelmingly corrupt, to the point where it is a 'no-go' for foreign law firms and their clients. Fraudulent scam emails, sometimes even using the names of law firms in the West, and sent to millions worldwide have not helped its image. International surveys of fraud, bribery and corruption routinely confirm that Nigeria does indeed have a problem. But, it is very important to recognise its level of corruption puts Nigeria in the same risk group as many other developing countries, i.e. it is not exceptionally more corrupt than dozens of other countries corporates do business with every day. Of more importance to those gauging risk is the rule of law and confidence in the local legal system especially to protect property rights of

[116] Democracy twinned with a failure to see economic development will be an open invitation for more Islamic hardliners. Egypt may have removed an unaccountable leader, but it now faces a far more complex problem, creating a diversified and progressive economy, and in a short space of time.

investors. Here, Nigeria does far better than Russia or China[117]. One might say, foreign investors can cope with the prospect of corruption in developing nations whilst remaining compliant with ever more stringent anti-bribery legislation at home, but they cannot easily put up with the idea that their legal agreements are worthless.

In terms of foreign law firms in Nigeria local Bar rules are restrictive, but are not an impossible barrier for foreign firms as in India. Captives and alliances would, it appears, be possible. 'Consulting' offices, which firms have used in Brazil, could also be an area to explore. However, for now there are no major UK or US law firms with such arrangements in Nigeria. Instead, they rely on 'remote working' and local advice is gained from a handful of small and generally well respected firms, sometimes through alliances.

The local law firms are small for such a large country. Even the leading firms are rarely over 50 lawyers. But these few top firms have worked closely with the Magic Circle and leading US firms. One drawback is that their reputations are very much dependent on a few senior partners, rather than the whole firm. Despite their size, some Nigerian firms have expanded abroad. One example is AELEX which has opened an office in Ghana.

Some of the South African firms which operate branded Africa networks normally have a Nigeria member. In some cases the links between these firms appear relatively weak and are far behind the tighter cultural glue that one sees in US or UK firm groupings, such as the DLA Piper Group of allied firms.

Morocco

Population	32m
GDP (PPP)	$168bn
GDP per capita (PPP)	$5,183
Top Companies	Maroc Telecom, Ona, Artlander, Attijariwafa Bank, Azitex, BMCI, Bymaro, Casablanca Energy, Casablanca Water, Centrale Laitière, Cofarma, Delassus, DMS, Jet4you.
Main Exports	Clothing and textiles, electric components, chemicals, minerals, fertilizers, petroleum products, citrus fruits, vegetables.
Main Trading Partners: Export	Spain 19.7%, France 17.8%, India 5.8%, US 4.2%, Brazil 4.1%.
Main Trading Partners: Import	France 16.9%, Spain 14.2%, China 7.9%, US 6.2%, Saudi Arabia 6.1%, Italy 5.9%, Germany 5.4%.

Central to the growing interest in Morocco is the Kingdom's openness to foreign investment and the recent creation of the Casablanca Finance City (CFC), a 'financial gateway for investors looking to access the fast-growing markets of Africa'[118]. It will have the obligatory tax incentives and promises of quality infrastructure to attract investors. The CFC aims to attract corporate banking, private equity funds, insurance groups and professional services such as auditors, rating agencies and, of course, lawyers. Of particular interest to international law firms is the plan to encourage global and regional companies to see Casablanca as the best place for their HQ in Africa, or at least for North Africa, just as many foreign companies see London as the optimal base to cover Europe. If this happens, and it certainly is possible as no other country has yet made as compelling an offer to the Fortune 500 sector, then we could be seeing many more law firms coming to Morocco than before in order to service corporate clients' regional bases.

Morocco is one of the richer African nations and although with a strong French influence, both via the colonial past and now today via economic links, the dominant language is Arabic. English is also fast becoming the language of

[117] See Appendices F and G.
[118] Clifford Chance briefing paper, December 2011.

choice for many Moroccan business people. The country is primarily Islamic, but is increasingly open to Western investment and tourists[119]. In 2011 Morocco signed an agreement[120] with Qatar, Morocco, Kuwait and the United Arab Emirates on the creation of a $2bn tourist investment fund in the country. Some of that capital will also be spent on improving infrastructure needed to support tourism growth. This indicates we may also see growing numbers of tourists from the Middle East to Morocco.

For now, the legal market is split into three groups. The local Moroccan firms still play a major role, which like in other parts of Africa are dominated by a small number of respected senior partners who are understandably very close to local clients and regulators. The second group, which are more established than the recent influx of UK firms, are the French and Spanish firms. Although they receive little press coverage in the English-speaking media these firms are numerous, from Gide Loyrette Nouel and Lefèvre Pelletier & Associés in France, to Spain's Garrigues and Cuatrecasas. At last count there were at least 10 European firms in Morocco, not including the UK. There is also the Arabic-speaking regional IP specialist, Saba & Co. Therefore, English and American lawyers who are just starting to build permanent bases should not believe Morocco is by any means a virgin market.

The third group, is the newly arrived UK firms (see Appendix C). The main strategy has been to hire leading local lawyers, often from French firms which have already developed a practice in Morocco. Allen & Overy, for example, hired senior lawyers from Gide's Casablanca base and also relocated a partner from Abu Dhabi to launch the office. Bird & Bird has taken a different strategy and formed an association with Casablanca's El Amari & Associates. There is often a strong French element to the work the UK firms are handling in Morocco, with the Paris offices of their international networks playing an important role in workflows. (See more on how to open in Africa in Chapter Seven).

GHANA

Population	25m
GDP (PPP)	$78bn
GDP per capita (PPP)	$3,108
Top Companies	Stanbic Bank, Scancom, Toyota Ghana, Kasapreko, UT Financial Services, Ghana Rubber, CFAO, The Trust Bank, Intercom Programming & Manufacturing, Ghana Oil
Main Exports	(Oil), gold, cocoa, timber, tuna, bauxite, aluminum, manganese ore, diamonds, horticulture.
Main Trading Partners: Export	Netherlands 11.7%, UK 7%, France 5.7%, US 5.6%, Ukraine 5%, Belgium 4.6
Main Trading Partners: Import	China 16.6%, Nigeria 12.7%, US 8.4%, Cote d'Ivoire 6.2%, UK 4.5%, France 4.2%

Of all the countries in this group Ghana is both the smallest and poorest. That may disqualify it as a target for some firms, but it also a good example of an African nation that is in rapid development mode. While firms and investors like to focus on the Big Four of Nigeria, Egypt, Morocco and South Africa, the majority of the continent's countries are like Ghana. Hence, to gain credibility in Africa, a firm will also need to manage working in much smaller economies, even if it does not have a fixed presence on the ground.

[119] The country is host to international film festivals and many wealthy Westerners own riads, or large traditional houses, in the more touristic centres such as Marrakesh.
[120] www.moroccotomorrow.org

What makes Ghana especially notable is the discovery of oil[121]. It has long been known to be rich in minerals, but the 2007 discovery of the offshore Jubilee field by London-based Tullow Oil changed things dramatically. Production began in late 2010 and now many other companies have arrived, from Spain's Eni and Royal Dutch Shell, to Russia's OAO Lukoil. Meanwhile, Lohnro is to invest up to $1bn to develop special ports to service the oil industry. The home grown Ghana National Petroleum Corp is also prospecting inland around the Volta River basin. The plan[122] is to see production rise to 500,000 barrels a day by 2017.

The oil boom has not been without problems. Disputes with local stakeholders over payments and compensation, and rising fears that oil revenues are not supporting wider economic development are mounting. At the same time the Government is rushing through new legislation to catch up with its resource finds, such as a Marine Pollution Bill[123]. Pragmatically, such a scenario offers interesting opportunities to law firms.

In terms of foreign law firms Nigeria's AELEX is here, and those international firms with local alliance groups also have coverage, such as SNR Denton which works with Bentsi-Enchill & Letsa, although many other firms would also argue they work with this firm too[124]. South African firms with networks also have allied firms in Accra. But, like Nigeria, the market remains without major US or UK law firms with an integrated presence on the ground.

[121] Ghana's oil industry is only just developing, but once in full production oil is likely to become a major export.

[122] Ghanaoilinfo.com, 8 Feb 2012.

[123] Ibid. 12 Feb 2012.

[124] The firm is also a member of Lex Mundi, but also is the Ghana member for Lex Africa, which is the pan-Africa network of leading South African firm Werksmans. On the firm's website it also advertises the fact that they receive "regular referrals of work from major international law firms such as Clifford Chance, Linklaters and (Hogan) Lovells and have a good working relationship with Stephenson Harwood". This perhaps underlines the challenges with having a branded network in Africa. The few top tier firms are in great demand from a number of different directions and it may be hard to demand any kind of exclusivity. (source: belonline.org).

Chapter Seven: Developing an Africa Practice

Key Questions

The challenges that foreign firms face in setting up on the continent, or covering Africa remotely, are similar to those experienced in any region. Certain key factors will need to be considered by management:

- **Have the days of remote coverage of Africa come to an end?** Initially all law firms manage their needs in a foreign market by doing as much work from their 'home base' as possible and then flying in and out as and when necessary. This is tolerated by the client because few other law firms they know have offices in the new market. Also, because such deals in a new market may largely be one-sided inward investments and run from the same location as the 'home base' there is little client objection. But this changes over time. Three factors change: the new market develops offering more than just straight forward inward investments/project financings and clients begin to set up operations there on a permanent basis; rival law firms start to develop local capability, or alliances and associations in the new market; management sees that it could increase its revenues and profits by offering a better service and clients eventually demand a proper office there in part because other law firms are now offering this (see table 16 below). We have seen this pattern emerge in Eastern Europe, the Middle East, Asia and South America. Africa may be no different.

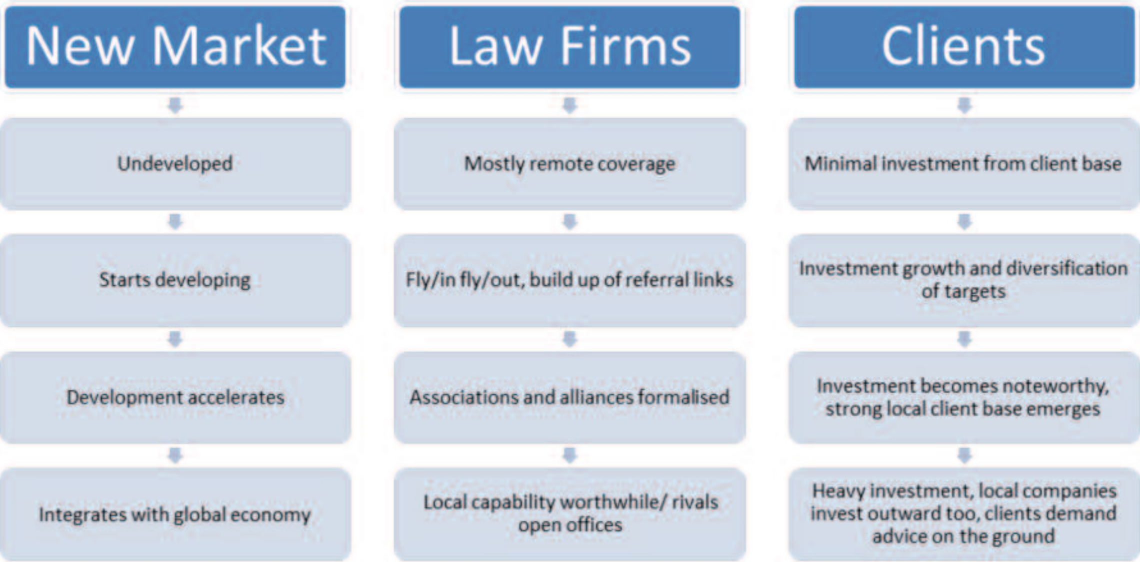


Table 16: Development path taken by law firms in new markets.

- **Do we need local legal capability?** If many deals are structured under English or French law why bother with local capability in Africa? One reason is that as commercial law becomes more complex in Africa it will not be enough to rely on expatriot African lawyers to know everything about local African law, which inevitably will have some impact on any deal no matter how much it is managed outside the continent. Local lawyers who are up to speed with every new, or expected, development and are integrated into the local regulatory and political culture will be needed. Another reason is financial. Referring out the local end of every African matter means losing that income. Rates are clearly lower in Africa than in the West, even so, if a foreign office can be run profitably and helps the clients then

it needs to be considered. Local partners may have to remain just that, locally structured partners perhaps operating through a verein. The other reason is credibility. Global firms tell their clients they offer joined up, integrated legal support. To say this can't be the case in Africa because of some special, but rather vague, reason may not appear credible especially when other law firms are entering the market.

- **Top local partners may be good, but what about the rest of the African firm we work with?** This dilemma is no different to that faced by law firms entering developing markets all over the world. Law firms will have to invest time and money training local lawyers they work closely with. Africa will be a long term play and UK and US firms need to invest in the future here. Seconding local lawyers to major offices in Europe and America will be a key part in this strategy.

- **Local Bar Rules Prevent us from Merging with a Local Firm/Hiring Locally.** Again, this is not unique to Africa. Captives and the use of consultancy structures can often get around that problem. Other possibilities are joint ventures, or working in association with some profit sharing. As yet firms have not tested the regulatory barriers in Nigeria and other sub-Saharan countries. Local Bars may well take a hostile stance, as in India, but perhaps with careful approaches that do not feel like an 'invasion' foreign firms may find ways to set up in restricted jurisdictions in Africa. In some cases the local Bar officials may have never even considered the possibility of foreign firms opening there, and so the key is to not frighten the local market with overly ambitious plans, as has sadly happened in Brazil where aggressive expansion from some firms has now seen local regulators turn against foreign law firms.

- **Can we cover Africa from just one office?** Africa is 54 markets with (as seen below) very different legal systems. It would be unlikely that any firm could credibly cover Africa from just one office in the long term, no more than you could cover continental Europe with just a small office in Paris. Coverage will need to grow as demand builds. But we would envisage two to three African offices becoming the norm for global law firms in the medium term. In the long term, perhaps five.

- **How fast should we go in terms of African investment?** The answer to that is relatively easy: a firm should seek to match the geographical growth of its clients' legal needs. There is no better guide. Note: this client demand should also take into account African client demands too.

- **Are there opportunities to make use of South Africa as a process centre for commoditized legal work?** Some LPOs already use South Africa as a base for process work[125]. There is no reason why UK or US law firms could not develop their own process bases here too, perhaps operating alongside a higher level legal practice.

Choice of Law

The choice of law your Africa-focused clients wish to frame the agreements of their deals under will be a factor in determining your strategy on the continent. As can be seen below, Africa is not just a patchwork of different states, but also a region of overlapping legal influences. Below are a number of issues to consider:

- **Local law in general** – naturally no matter how international a deal is, such as a project finance deal arranged in London, backed by a syndicate of US and UK banks, and framed under English law, there will still be local law issues to grapple with. This is increasingly so as African Governments make significant alterations to laws governing taxation of foreign companies and the regulation of resource companies. Trusted, quality local counsel will become increasingly vital.

[125] Some LPOs are also based in South Africa, for example the LPO Exigent is a South African company and handles matters for a number of law firms including Australia's Blake Dawson, which has combined with the UK's Ashurst. 20 Feb, 2012, LawyersWeekly.com.au.

- **English law versus French law and OHADA** – While English law appears to have become the framing law of choice for many major transactions in Africa, and certainly many of the major financings, French law and the Francophone legal framework in Africa known as Organisation for the Harmonization of Business Law in Africa or OHADA play an important role. To some degree OHADA offers universal norms for commercial contracts under French-influenced civil law. It also provides a central court to hear any cases framed under OHADA principles. Today it covers 16 African nations[126], but importantly it does not include the former French colonies of North Africa such as Algeria, Morocco and Tunisia. In other cases, French investors may simply demand the framing law in any agreement to be national French law.

- **Regional complexity** – This English law/common law and OHADA/civil law split can be complicated when arranging a regional deal[127]. For, example, Nigeria, the largest nation in West Africa and nominally a common law system based on English law principles is surrounded by Francophone nations operating under the OHADA system, with a default dispute resolution clause for cases to be heard in the OHADA court, known as the Common Court of Justice and Arbitration based in Ivory Coast.

- **South African law** – as Africa's most developed economy and with the largest and most sophisticated domestic law firms one might think South African law held sway over large parts of Africa. But, it does not. Aside from a handful of culturally linked neighbours, such as Namibia, South African law is understood to hold little external influence. In some cases African nations actively try to avoid legal agreements where disputes must be settled in South Africa, as attested to by African partners we spoke to. The exact reasons for this are unclear, but one reason could be a fear companies from other African nations would not get a fair hearing in South Africa.

- **Islamic Law** – across North Africa to East Africa, and also in parts of West Africa, Islamic legal culture is part of doing business. Sharia finance and its strict regulations, such as are often used in the Gulf, have a lesser role in Africa than the Middle East. The lack of application of Sharia finance laws here may simply be because of a lack of financial centres in general. As these nations develop the opportunity for Sharia-compliant products will increase. South Africa already offers Islamic sukuk bonds, and Egypt is developing new rules for Sharia finance. While in Kenya the nation's first Sharia-compliant insurance company has been launched[128]. For law firms with Islamic finance practices this offers new opportunities, and for those without it adds an extra layer of complexity to Africa's patchwork of framing laws.

[126] Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Comoros, Republic of the Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea-Bissau, Mali, Niger, Senegal, Togo and Democratic Republic of Congo. (OHADA.com).

[127] One should also consider the additional complexity of Luso-phone nations such as Angola and Mozambique. While some UK law firms have Portuguese practices, few US law firms do, creating at least a linguistic disadvantage. Portuguese law firms have also been busy investing in relationships in Angola and have some of these firms have developed very credible coverage in Luso-phone Africa.

[128] IslamicFinance.de, 25 Jan 2011.

Conclusion

As we have said in earlier Jomati reports, law firms operate as part of a service industry and so cannot shape global legal demand, they can only follow it. Sometimes this will mean reinforcing practices in certain well-known markets, other times it will mean a voyage into the unknown. Stopping at the boundary fence of your knowledge may feel comforting, but in the long term it can also mean saying goodbye to your clients as they leave you behind.

Barriers to entry to new markets are often far more than regulatory barriers, but rather a lack of cultural understanding and an absence of reliable information about that market. Because something is strange, and especially in Africa's case heavily affected by often out of date negative presumptions, lawyers can simply fail to see opportunities when they are in fact right in front of them.

There is no a *priori* difference to the chances of success for a law firm opening in an African jurisdiction to that of any other. All business ventures must be attuned to their surroundings. The question is knowing where you are going, why you and your clients want to be in that jurisdiction and how you are going to deliver a compelling and essentially profitable capability there. This is the same in London, or New York, as it is in Casablanca. That said, if not a single client of your firm has the slightest interest in Africa then this is usually a very good indicator Africa may not be for you, no matter how good the continent may look on paper. However, some managing partners may start off on the assumption that their blue chip corporate and fund clients couldn't possibly be interested in Africa, only to find that view is very much mistaken. In our research we too were surprised to see how many major Western businesses were investing and setting up in Africa. No major law firm should therefore write off Africa before at least checking with their client base first.

If your firm advises global food retailers such as KFC, then you may need to think more carefully about Africa. If your clients include airlines, or hotel developers, again your strategic and business development plans may need to involve Africa. If your banking, insurance and private equity clients are setting up bases in Morocco or South Africa, then you will certainly need to consider a physical presence. And if your client base includes major telecoms companies, then the whole of Africa may need a credible response, even if this is only an alliance with African law firms you can vouch for and that seek to share the same quality and service standards you offer.

But, let's not kid ourselves. Africa will be tough, and it will involve risks, from facing down corruption to picking the right local lawyers. But for a growing number of firms it will be necessary. The same could have been said of Russia when it first opened up in 1989, or even today in parts of South and Central America, where the central business district may feel calm and sane, but after the streetlights run out there is poverty and lawlessness.

The truth is, while such culture clashes may worry some law firms, many investors and major corporates are not so scared. They see in Africa a simple reality: we are running out of new markets to develop, and Africa has 54 of them, more than a quarter of the world's nations. Clients want growth and so they want to be in Africa. In turn that means they want you to be there too. We hope this report helps set the scene in Africa and prepares the way for further planning on how your firm will cover the world's last great emerging market.

Appendices:

Appendix A: Map of Africa

Source: United Nations.

Appendix B: Representative Deals in Africa and Advisers[129]

Announcement Date	Bidder Company	Bidder Legal Advisor	Target Company	Target/Seller Legal Advisor	Seller Company	Deal Value (US$m)
Jan 2011	CapitalProperty (South Africa)	Java Capital Fund	Pangbourne Properties (SA)	Norton Rose	NA	1770
Jan 2011	Jinchuan Group (China)	Allen & Overy; Edward Nathan Sonnerbergs	Metorex Ltd	DLA Cliffe Dekker Hofmeyer	NA	1393
April 2011 (lapsed deal)	Vale SA (Brazil)	Fasken Martineau; Webber Wentzel	Meteorex Ltd	DLA Cliffe Dekker Hofmeyer	NA	1164
May 2011	Conoil PLC (Nigeria)	Clifford Chance (advising Standard Chartered)	Oil mining lease 30 (45% stake)	NA	Shell (Nigeria); Total (Nigeria); Agip (Nigeria)	1250
Dec 2011	KAP International (South Africa/Global)	Norton Rose; Pohl Stuhlinger; Holdings	Unitrans Holdings; PG Bison; Steinhoff Werksmans Raw Materials	DLA Cliffe Dekker Hofmeyer	Steinhoff International	1075
Jan 2012	Eurasian Natural Resources PLC (Kazakhstan)	Jones Day	First Quantum Minerals (Kolwezi Tailings, Frontier and Lonshi mines) Democratic Republic of the Congo	Fasken Martineau	First Quantum Minerals	1250
Jan 2012	Diageo PLC (UK/US, Global)	Linklaters	Meta Abo Brewery (Ethiopia)	NA	Government of Ethiopia	225
March 2012	AngloGold Ashanti (South Africa, Global)	Edwards Nathan Sonnebergs; Fasken Martineau	Mine Waste Solutions	Eversheds; Fraser Milner	First Uranium (Canada and South Africa)	335

[129] Source: M&A deal data from MergerMarket. Note, not all Africa deals are announced, nor legal advisers given. This is only a representative sample of some of the largest corporate transactions that are made public.

Appendix C: Recent developments among foreign law firms in Africa

Firm Name	Location	Report Date
Fasken Martineau	Reinforces South Africa office[130] with hire of Tanneke Heersche from White & Case (where she was joint head of the global Metals and Mining practice group).	10 February 2010
Norton Rose	Opens South Africa (via merger with Deneys Reitz)	15 November 2010
SNR Denton	Extends African links to 22 countries (via alliance with Portugal's F. Castelo Branco)	28 February 2011
Allen & Overy	Opens in Morocco	20 July 2011
Clifford Chance	Opens in Morocco	25 July 2011
Norton Rose	Opens in Morocco	28 July 2011
Bird & Bird	Morocco coverage (via association with El Amari & Associés)	7 October 2011
Dewey & LeBoeuf[131]	Enlarges South Africa base via eight lateral partner hires from Werksmans	4 January 2012
Bird & Bird	Tunisia coverage (via association with Dakhlaoui Avocats)	16 February 2012

[130] N.B. Canada's Fasken Martineau has had an office in Johannesburg since 2004.
[131] At time of going to press Dewey & LeBoeuf had lost numerous partners and appeared likely to dissolve.

Appendix D: Distribution of Wealth in Africa: The New Middle Class

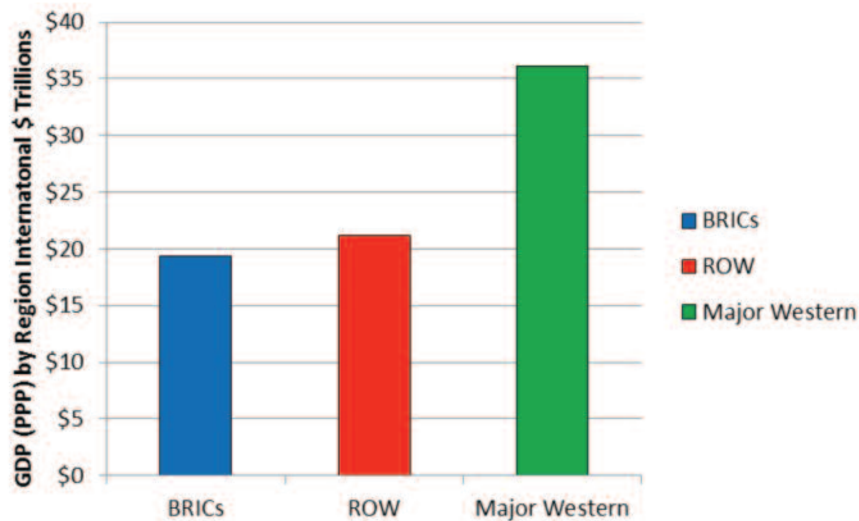
Country	Middle Class Population
Tunisia	46%
Gabon	38%
Egypt	32%
Botswana	29%
Algeria	27%
Morocco	27%
Ghana	20%
South Africa	20%
Côte d'Ivoire	19%
Kenya	17%
Cape Verde	17%
Cameroon	16%
The Gambia	16%
Djibouti	15%
Angola	13%
Senegal	12%
Lesotho	11%
Benin	11%
Nigeria	10%
Swaziland	9%
Namibia	9%
Comoros	9%
Republic of Congo	9%
Togo	9%
Ethiopia	8%
Mali	8%
Uganda	8%
Chad	8%
Central African Republic	8%
Guinea-Bissau	8%
Sierra Leone	7%
Zambia	6%
Niger	5%
Mauritania	5%
Democratic Republic of Congo	5%
Malawi	5%
Guinea	4%
Madagascar	3%
Burkina Faso	3%
Tanzania	3%
Burundi	3%
Mozambique	3%
Rwanda	3%
Liberia	2%

N.B. Yellow denotes North African nation. Nigeria and South Africa highlighted in red. Data for Libya and Sudan, South Sudan not available. Data from African Development Bank.

South Africa and Nigeria are often considered among the most rapidly developing nations on the continent. However, they clearly are still challenged by huge income inequality across the wider population. This may have an impact on some foreign investors unless it can be addressed.

Middle Class in the African context is defined by the African Development Bank as earning between \$4 and \$20 per day. Above this an African would be regarded as 'Rich' and belong to less than 5% of the population, or about 50m people spread over all 54 nations. A significant minority of these would be in South Africa. The rest of the population is divided into the 'Floating Class' who earn between \$2 and \$4 a day, and the 'Poor' who earn below \$2 a day. They make up the majority in almost all African countries. If growth maintains over the next decade, which is highly likely, those at the bottom of this pyramid may see significant improvement. Although, African governments will need to ensure inflation is kept down during this growth period for any meaningful rise in wealth to be long lasting.

Appendix E: Size of Developing, BRIC and Major Western Economies



Relative GDP totals by group, using PPP method. World Bank data. Figures accurate to 2010.

As can be seen, despite the headlines about the BRICs, the Rest of World (ROW) group is slightly greater in GDP. The challenge here is that this group is made up of literally dozens of countries, such as the 54 in Africa. However, this ROW group's GDP growth is high, its population vast and one could argue its geographical and jurisdictional variety makes it ideal territory for global firms to engage with.

Global banks and retailers will understandably seek out the largest markets first, such as in the West and then in the BRICs. But what happens after that? We would suggest the next frontier of expansion has to be beyond BRICs and into regions such as Africa. Also, large numbers of the ROW group countries are starting from a very low base, that means that in the right economic climate they have a lot further to go in terms of future growth.

Note: BRICs, includes Brazil, Russian Federation, India and China.
Major Western economies includes North America, EU (including the UK), and Japan.
Rest of World (ROW), includes every other nation (including Australia).

Appendix F: Rule of Law: Expropriation of Assets

Country	The Government does not expropriate property without adequate compensation.
Malaysia	0.33
China	0.36
Russia	0.40
Kenya	0.46
Nigeria	0.50
Italy	0.54
Brazil	0.56
Senegal	0.58
Morocco	0.61
Turkey	0.62
Indonesia	0.62
India	0.63
Hong Kong SAR, China	0.63
Uganda	0.65
South Africa	0.68
United States	0.68
Canada	0.73
United Arab Emirates	0.75
Australia	0.79
United Kingdom	0.80

Data: World Justice Project Rule of Law Index 2011[132].

Note: scores are from zero to one, with one being the best score. The selected nations are ranked from worst to best by category. Yellow highlights are African nations, Red highlights are BRICs. As can be seen, despite huge inward investment into China and Russia, they both score worse than many notable African nations. Italy, which is a key part of the EU and a G8 group member also scores very badly.

[132] The project is funded primarily by the Neukom Family Foundation, the Bill & Melinda Gates Foundation and LexisNexis, but also a number of international law firms including (among others): Allen & Overy, Winston & Strawn, Fulbright & Jaworski, Sullivan & Cromwell LLP, White & Case, Hunton & Williams and Garrigues.

Appendix G: Corruption-Free Civil Justice and Impartial ADR

Country	Civil justice is free of corruption.	ADR systems are accessible, impartial, and effective.
Kenya	0.24	0.66
Uganda	0.38	0.65
Indonesia	0.39	0.50
Morocco	0.42	0.66
China	0.47	0.59
India	0.48	0.62
Senegal	0.52	0.78
Russia	0.52	0.66
Nigeria	0.54	0.62
Turkey	0.60	0.65
Brazil	0.69	0.62
Italy	0.69	0.64
Malaysia	0.71	0.71
South Africa	0.72	0.76
Hong Kong SAR, China	0.81	0.71
United States	0.82	0.78
Australia	0.84	0.85
United Kingdom	0.86	0.77
United Arab Emirates	0.87	0.71
Canada	0.87	0.76

Data: World Justice Project Rule of Law Index 2011.

Note: scores are from zero to one, with one being the best score. The selected nations are ranked from worst to best by main category. Yellow highlights are African nations, Red highlights are BRICs. As can be seen, despite huge inward investment into China and Russia, they both score worse than many notable African nations. Italy, which is a key part of the EU and a G8 group member also scores below South Africa in these two categories. Nations that are clearly in a state of instability such as Somalia or Libya would score among the worst, but are not included here as their credentials at present are difficult to judge accurately.

Apart from Indonesia, in most cases the ability for legal disputes to be settled via ADR appears to be relatively high. However, this ironically may be because many arbitrations, settlements and mediations take place either outside the nation in question, or are managed privately with little State, or judicial interference.

The overall conclusion is that even a failure of the rule of law has not stopped investment into Russia and China, nor Africa. However, unlike small scale corruption, a corrupt judge that enforces an unfair expropriation could cause serious damage to a client. Another interesting revelation is that a functioning democracy, as seen in India, does not appear in itself to stamp out corruption or erosion of the rule of law. Yet, the UAE, which is a federation of absolute monarchies scores as well as the UK.

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