PATHS TO AFRICAN PARTNERSHIPS

WITH THE INTERESTS OF THEIR PEOPLES IN MIND, AFRICAN LEADERS ARE STRIVING TO MOVE FROM THE VICIOUS CYCLE OF EXTRACTION TO THE VIRTUOUS CIRCLE OF ENGAGEMENT. IN TURN, INTERNATIONAL ACTORS ARE LIKELY TO RECOGNISE AND SEIZE OPPORTUNITIES TO ENGAGE – AND PARTNER WITH – AFRICANS OVER THE LONG TERM. BY PARTNERING TOGETHER, AFRICAN AND INTERNATIONAL STAKEHOLDERS WILL REDUCE RISKS AND SHARE THE REWARDS ULTIMATELY DERIVED FROM THE VAST AND VARIED NATURAL RESOURCE ENDOWMENTS ACROSS THE CONTINENT. BY JASON KERR, PARTNER, WHITE & CASE, JOSHUA APEADU-SIAW, A LAWYER AND DIRECTOR OF THE FIRM'S AFRICA PRACTICE, AND ANTHONY ELGHOSSAIN, AN ASSOCIATE WITH THE FIRM.

In recent years, African stars have soared. Governments, investors, and citizens have driven – and benefited from – booms in banking, construction, retail, and telecommunications. All along, of course, African states have developed their natural resources segments. Indeed, natural resources have spurred or enabled much of the growth across Africa.

As global hunger for commodities has persisted, African states have reaped the revenues – and experienced the related pressures – needed to expand their economies. By selling raw resources or leveraging them in commodities-backed borrowings, moreover, African governments will continue to derive dollars to support their aspirations (and appurtenant appetites for revenues).

Even so, African leaders have not always translated dollars into development. Natural resources investment has not necessarily generated widespread employment, developed skills, or promoted industry and commerce. Taken alone, such investment may not even yield development within related sectors (such as petroleum-refining or diamond-cutting). Although derived dollars may prop up certain jobs and commerce in the short term, development will depend on much more than pay and privileges.

Looking beyond the near horizon and towards the far future, African leaders seem to believe that they must do more: add value domestically, nurture all sectors of their economies, deliver reliable services, and empower their citizens – be they Ghanaians, be they Mozambicans – to improve their lives and livelihoods.

Partnership, between policies and profits

To pursue progress, African leaders will promote partnership. They will encourage local involvement in international enterprises, engage in and enable public-private partnerships (PPPs), enter into or encourage joint ventures, and foster domestic participation more generally. And they will do so, in large part, because they must.

Notwithstanding recent strides, Africans – leaders, entrepreneurs and citizens in various states – lack the know-how, technology, infrastructure, services, and capital to maximise the value of their resources. In their efforts to begin high-risk and capital-intensive projects, governments in Tanzania and Mozambique have discovered that their policies and plans will require significant international investment – and other forms of participation – to succeed.

Without pragmatism and patience, policies may have counter-productive effects. After all, local content laws, royalty and dividend arrangements in joint ventures, and performance benchmarks in PPPs create costs for international corporations that may not exist in other regions of the world – or even in other African states. In a competitive global market, African leaders must avoid deterring prospective participants with the funds, technology, and expertise necessary to achieve their goals.

As African leaders find the balance between progress and pragmatism, international participants may recognize – and seize – opportunities to engage. Instead of injecting dollars and extracting resources before ultimately exiting an endeavour, they will increasingly establish partnerships that help add value domestically, throughout the product chain, and in related sectors of the relevant economy. Instead of balking at initial costs of African initiatives, they may embrace the enduring rewards of engagement: legitimacy, stability, related revenues, and access to emerging markets.

Industries vary in terms of necessary expenditures, technical thresholds, relevant infrastructure, and destination markets. Initial costs, and perceived feasibility, will vary too: oil is not gas, gas is not coal, and coal certainly isn't cocoa or coffee.

But partnerships are partnerships – and opportunities, if perceived properly, are opportunities. Some opportunities for partnerships are apparent. Lawmakers may pass legislation to enable public-private partnerships (PPPs) between a government and

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companies in sectors such as transportation, telecommunications, and natural resources. Governments may enter into joint ventures with non-African governments or with international companies.

Other opportunities, meanwhile, are relatively hidden – in part because potential participants perceive hurdles and burdens: local content, training and education, repatriation rules, and consultations with communities. These initiatives and policies carry certain costs, particularly up front, but they will allow all involved parties to reap rewards and sustain success over time.

The paths to partnership

African leaders have led efforts to extract more value from their resources (and have done so in part because of demands from domestic constituencies). Even so, notwithstanding the tensions of any transition, international participants have acknowledged and increasingly internalised the need to engage Africans in the pursuit of mutual, long-term interests. As these trends continue, Africans and international participants will enter into broader, deeper, more enduring partnerships: they will initiate PPPs, form JVs, and develop related infrastructure and services.

● *Public policy and private profits: PPPs in infrastructure, natural resources and other segments* – PPPs are contractual agreements between public and private sector partners to pursue common, agreed upon, and well-defined goals. Absent partnerships, many public and private initiatives have failed. Some governments have been inefficient and ineffective: they have often lacked the resources, skills, and managerial experience necessary for profitable endeavours. Some private enterprises, for their part, have lagged behind on transparency, resource management, and environmental and social concerns.

In recent years, governments – including African governments – have promoted PPPs to construct, maintain, renovate, repair, operate, and/or manage facilities (water treatment plants), systems (road and rail), or networks (telecommunications). PPPs have already succeeded in Nigeria and Lesotho, for example.

In the Nigerian state of Ekiti, which recently passed legislation to enable PPPs, the government and private participants have worked together to increase water supply dramatically (by as much as 80%) and improve power generation and distribution in rural areas. They have also entered into PPPs in agriculture — cassava and rice, among other crops - to generate jobs and revenue locally.

One partnership, which involved an international tobacco company, created nearly 4,000 jobs for Nigerians cultivating cassava. In Lesotho, the government engaged a private consortium to build, operate, and transfer a hospital under a PPP framework extending from 2009 to 2017. International and African institutions, banks, and non-governmental organisations contributed funds to the project — some as assistance, some for profit - which opened with a capacity of nearly 400 beds and more than 30 private care suites.

PPPs have penetrated mining and metals too. In Zimbabwe, the government has effectively entered into PPPs to stem the tide of illegal artisanal mining and make legal prospecting and extraction more viable. During the mid-2000s, the government granted two private companies – including a subsidiary of De Beers – prospecting concessions in Chiadzwa, a field in the eastern Marange district and now the largest diamond-mining area in Zimbabwe.

But after years of aborted private initiatives and rampant illegal diamond mining, the Zimbabwe Mining Development Corporation – a state-owned entity licensed by a relevant ministry – entered into three partnerships with private companies to invest in legal, large-scale mining: Mbada, with a Zimbabwean business; Anjin, with a Chinese construction firm; and Diamond Mining Corporation, with an Emirati diamonds company. In 2012, the partnerships – legal under Zimbabwean law and certified under applicable international standards – collectively contributed nearly US$700m in diamond exports; generated US$100m in government royalties; and enabled related businesses, such as diamond-cutting and diamond-polishing, to emerge locally.

● *What's ours is mine… Joint ventures and risk mitigation* – Joint ventures have become common across the continent, as international investors have sought to reduce risk and governments have promoted local participation. Joint ventures enable participants to share (and reduce) risks, improve operating efficiency, and increase profitability: governments offer political stability, operational security, and community buy-in, while international companies inject capital, technology and skills into previously precarious endeavours.

Governments and international companies may enter into joint ventures to share risks and rewards early on, while retaining the right to increase their ownership later. In Botswana, for example, the government and De Beers entered into a joint venture to mine diamonds throughout the state. After taking an initial stake of 15% in 1969, the government increased its share to 50% over the first five years of operations. Now the world's largest diamond producer (by value), the joint venture – Debswana – operates four diamond mines and a coal mine in Botswana; employs about 6,000 locals (over 90% of its employees); and contributes roughly one-third of GDP.

International companies may also benefit from the opportunity offered by joint ventures to spread risk while assessing the relevant market and broader operating environment before building a business.

In South Africa, Eurasia Mining PLC (an international firm) and Randgold & Exploration Company (a domestic company) formed a joint venture to explore for platinum in the Bushveld Igneous Complex, a formation in the Transvaal region holding the world's largest reserves of platinum and significant amounts of other platinum group metals, iron, and tin. Although Eurasia Mining PLC initially held and controlled 25% of the joint venture, it could increase its share to as much as 75% during a window – 12 to 15 months – after operations began.

African governments may also enter into joint ventures with governments, thereby aligning financial and commercial interests with conceivable strategic objectives. These joint ventures often involve state-owned enterprises of two sovereigns: increasingly, Africans are partnering with Africans from elsewhere on the continent – as well as with Asian or Arab state-owned enterprises.

● *All business is local. New rules, same opportunities* – In recent years, while partnering with international participants in various spheres, African states have promoted local involvement in the natural resource segment and their domestic economies more broadly. By passing local involvement laws, in particular, African states have encouraged – or, indeed, compelled – international and African businesses to train, educate, and employ citizens; include or increase local equity interests in certain enterprises; build relevant infrastructure and develop related service sectors; and repatriate or share profits.

Of course, international participants may assess that local involvement – whether mandated by law or achieved through the regular course of business – adds costs that could otherwise constitute profits. But what of the added costs and lost revenues associated with assets that have underperformed, in part because neither local leaders nor concerned citizens have had a seat at the table? By responding well to community concerns and building on their domestic relationships, local companies have already reduced the interruptions that plagued international oil companies' operations in the past. In a sense, then, local participation has yielded benefits that would not have been possible otherwise – benefits, importantly, that have outweighed the added upfront costs of such arrangements.

Since 2010, Nigerian, Ghanaian, and Ugandan lawmakers have passed legislation to increase local involvement in the oil and gas industry. Angola and Tanzania has passed similar measures too. In Nigeria, a state with a relatively long history of engaging international companies in oil and gas, relevant laws and regulations establish preferences in favour of domestic actors.

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Under Nigerian law, government agencies must grant Nigerians and Nigerian-owned businesses "first consideration" while awarding "oil blocks, oil field licences, and all projects for which contracts will be awarded". Businesses must give Nigerians similar preference for "employment and training in any project by any operator or project promoter in the [oil and gas] industry". All "operators and companies" moreover, must employ "only Nigerians" in the "junior and intermediate" levels of their onshore enterprises.

With a relatively nascent but rather sophisticated oil and gas sector, Ghana has also mandated more local involvement in terms of employment, training and services. Beyond that, Ghanaian legislators have established minimum levels of indigenous equity participation: no petroleum-related agreement or licence can be valid if the relevant enterprise does not meet the threshold.

International companies operating in Angola must contribute training fees to the government: oil producers must pay US$0.15 per produced barrel of crude, whereas downstream companies must contribute 0.5% of their annual turnover. In Tanzania, under a law dating back to 1980, applicants for exploration and development licences must design and disclose programmes to employ and train Tanzanians. Only entities incorporated in Tanzania can hold interests in petroleum licences, and companies in the sector must – to the maximum extent possible – give preference to Tanzanian goods and services.

In Nigeria, with international oil companies divesting some of their assets, partnerships between local businesses and junior oil companies have grown in the upstream sector. Since 2010, a half-dozen partnerships and joint ventures – including Shoreline Natural Resources Ltd and Niger Delta Exploration & Production PLC – acquired leases, oil-producing blocks, and other assets previously owned by international oil companies. Disruptions are down; discontent has dissipated. Production is up by as much as 40% in some fields and has increased significantly across the board.

Ghana's experience has been similarly successful. Since passing local content laws in 2013, Ghana has awarded several oil blocks to consortia including Ghanaian companies. Related services, in insurance and finance, have grown too. Within a few months, the government expects to award more oil-related concessions to enterprises with significant Ghanaian participation.

Meanwhile, the Ghana National Gas Company (GNGC) has partnered somewhat informally with Chinese state-backed enterprises to build a US$1.4bn gas-processing plant and supply the domestic market with natural gas from the adjacent Jubilee Field. The Ghanaian state now spends US$1bn a year importing crude oil to fuel power plants. To reduce reliance and allow public and private entities to benefit from cheaper power, the GNGC procured a loan from the Chinese Development Bank to fund the gas-processing plant's construction.

Building the plant pursuant to an EPC contract with the GNGC, the Sinopec International Petroleum Service Corporation (Sinopec) expects to complete the project and related infrastructure within a few months. Running the plant for a year under a separate O&M agreement, Sinopec will employ and train Ghanaians to operate the plant over its life; Chinese and other international businesses may stay on as technical advisers after the O&M expires.

States have also passed broader legislative standards for local equity participation, managerial responsibility, and employment. To meet these requirements, international companies have sometimes acquired or merged with well-established African businesses. In doing so, these companies have protected existing interests while entering new markets and sectors. Renault – the large, Paris-based car manufacturer – recently entered into a joint venture with Imperial Holdings Ltd, the largest transportation company in South Africa, to sell cars in-country. For an initial cost of US$10m, Renault came to own 51% of the joint venture, which now operates around 50 dealerships in South Africa and controls 7% of the national market.

Another global firm specialising in tax and accounting has recently merged with the largest domestically-owned accounting practice in a southern African state.

In addition to satisfying local requirements, the new company – with global reach and a local reputation – is poised to enter neighbouring markets.

The promise of partnerships

Partnership is not a panacea. Every endeavour has its risks. Moreover, partnerships – express and institutionalised, or implied and informal – may impose their own burdens, including higher upfront costs and ongoing transactional costs, on prospective partners.

And, yet, partnerships will prevail. Across Africa, leaders, entrepreneurs, and citizens will continue to increase their involvement in the natural resource segment and related spheres. Many Africans continue to lack expertise, technology, services, and financing. But they possess commodities that the world craves. Africans and their counterparts around the world need resources, perhaps in different senses, and so will partner together in mutual pursuits. ■

Vehicles cross on a bridge in the Malian capital of Bamako, January 12, 2013.