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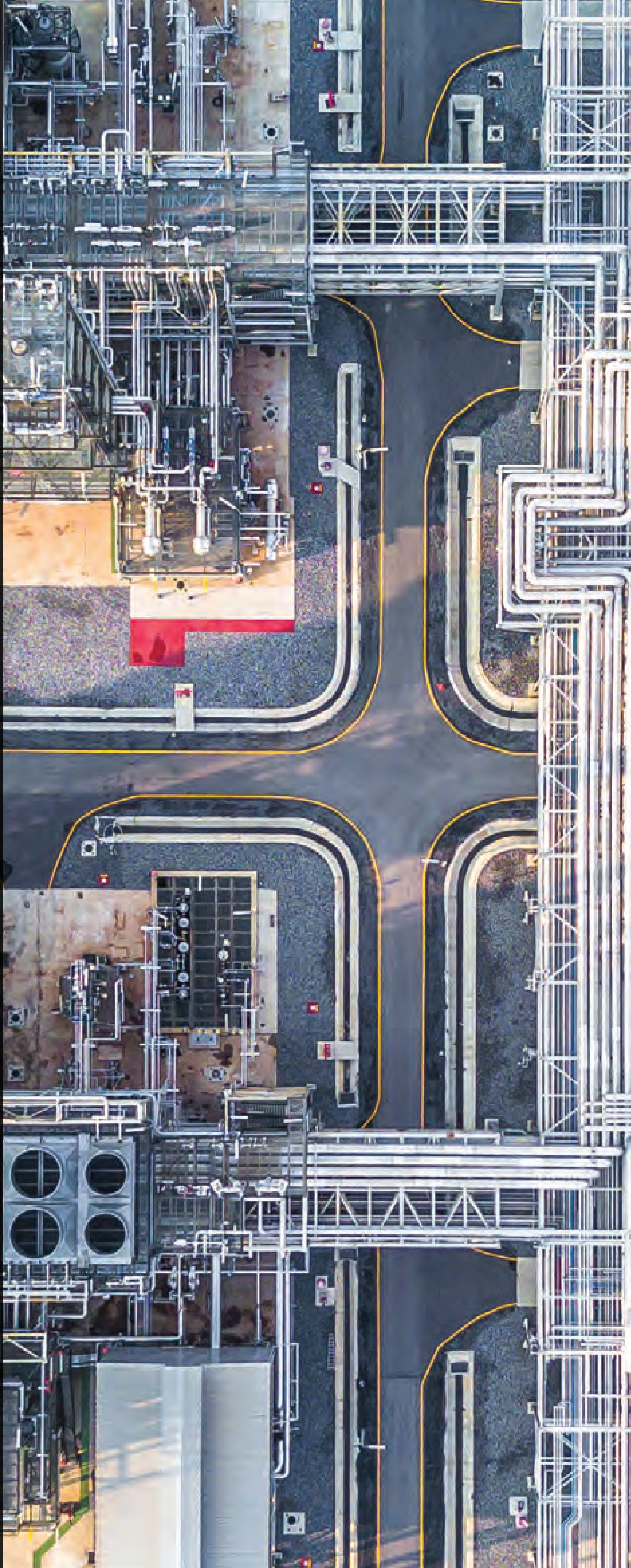
Africa Focus

Sustained, fair, inclusive growth

Contents



Sustained, fair, inclusive growth

Melissa Butler, Africa Interest Group Leader

We are pleased to introduce the third edition of *Africa Focus*. We are thrilled with this edition, which features six different topics that go to the heart of existing challenges and opportunities on the African continent.

Continuing a theme we began in previous issues of *Africa Focus* reviewing alternative ways to finance projects, we discuss "Islamic Finance in Africa" as an increasingly popular option for investors. "Powering Africa: The LNG gas-to-power option" looks specifically at the energy sector and the appeal of LNG gas-to-power projects in Africa, while "Renewable energy in Africa in the era of climate change" examines the enormous potential for renewable energy on the continent. In "Mozambique: Beyond mining," our team covers economic diversification through resource-based infrastructure by exploring progress to date in Mozambique and how the country is opening up its mining logistics infrastructure to drive diversification of its economy. "Business and human rights in Africa" presents the hugely important topic of the need for investors in African countries to be conscious of a growing focus on human rights. In addition, "The long arm of the law: Bribery and corruption enforcement investigations" discusses challenges that both individuals and companies doing business in Africa face in the form of the risks around bribery and corruption.

Many of these topics were highlighted during UK Prime Minister Theresa May's recent trip to Africa. White & Case was proud to have our partner Josh Siaw accompany the Prime Minister on this week-long trip, which included visits to South Africa, Nigeria and Kenya. Josh was the only representative from a law firm to be a part of the Prime Minister's traveling party, and allowed us to gain useful insights into key political and business issues raised during the trip's discussions. Linking to some of the themes we cover in this third edition of *Africa Focus*, strong topics that emerged during the trip included partnerships, how collaboration is essential for successful investment opportunities and the deep interest among investors in exploring different ways to finance projects on the continent. Josh also reported back on the strong link—repeatedly discussed through the week—between aid and trade, as well as the importance of achieving a healthy balance that brings benefits to all. Josh will expand on some of the themes from the visit in our next issue.

We hope you enjoy reading *Africa Focus*, and please let us know if there are topics or issues you would like us to cover in future editions.

* * *

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White & Case partner Josh Siaw, who accompanied the UK Prime Minister on a recent trip to Africa

A large oil-refinery plant with liquefied natural gas (LNG) storage tanks

Powering Africa: The LNG gas-to-power option

Current LNG gas-to-power projects could successfully pave the way for other African countries

By François-Guilhem Vaissier and Renaud Nething

Liquified natural gas (LNG) is a rapidly growing source of energy around the globe for obvious reasons: It is cleaner, cheaper and considerably reduces greenhouse gas emissions.[1]

Despite their valuable natural gas resources, African countries are straining to strike an adequate balance between their energy supply and demand. This makes it essential for African countries to capitalize on their reserves by investing in LNG projects to meet their energy needs, thereby creating sustainable economic development within the continent. Some countries, such as South Africa and Morocco, hope to successfully pave the way for other African countries, though these types of projects may not be suitable in all circumstances.

The LNG gas-to-power journey is associated with certain foreseeable risks that must be given proper consideration, notably those related to currency and state participation.

Yet a proper assessment of these risks and the implementation of adequate preventive measures, as described below, could allow them to be addressed appropriately.

LNG AS A SOURCE OF ENERGY PRODUCTION

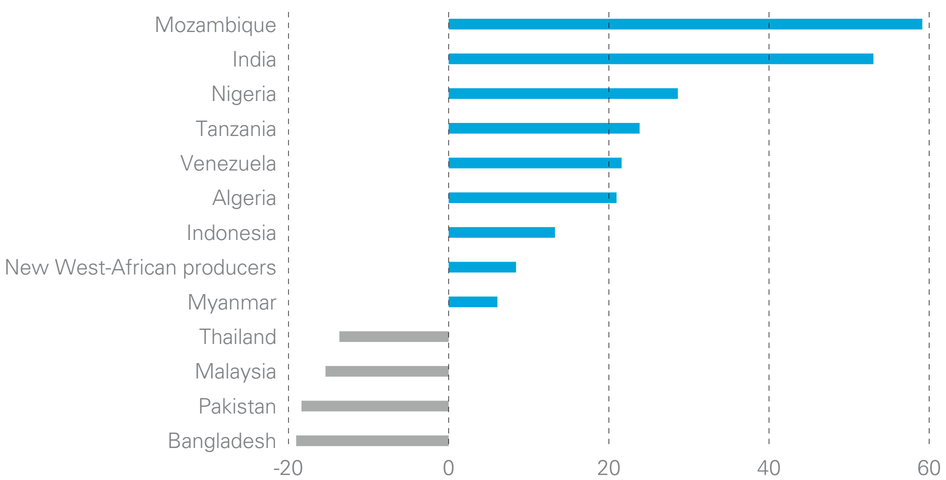
Natural gas is playing an increasingly important role in the world's energy portfolio due to the discovery and development of new gas fields. Between 1980 and 2000, global natural gas consumption doubled.[2] By 2016, natural gas accounted for 21.5 percent of world energy consumption.[3] The International Energy Agency (IEA) has predicted that natural gas consumption will continue to increase at a rate of 1.6 percent over the next five years, outpacing the growth rate of all other petrochemical sectors.[4]

This suggests how much countries recognize LNG to be cheaper than other sources of energy.[5] Its lower pollution and greenhouse gas emissions, relative to other carbon-based energy sources, makes its use consistent with the current energy transition schemes.[6]

Historically, Africa has had a relatively small portion of the global natural gas reserves, with 7.6 percent of global natural gas reserves in 2016.[7] This figure is dwarfed in comparison to that of its Middle Eastern counterparts, whose natural gas reserves accounted for 42 percent of the natural gas reserves available worldwide during the same period.[8] Similarly, Europe and Eurasia's natural gas reserves accounted for 30 percent of global reserves[9] (Figure 1).

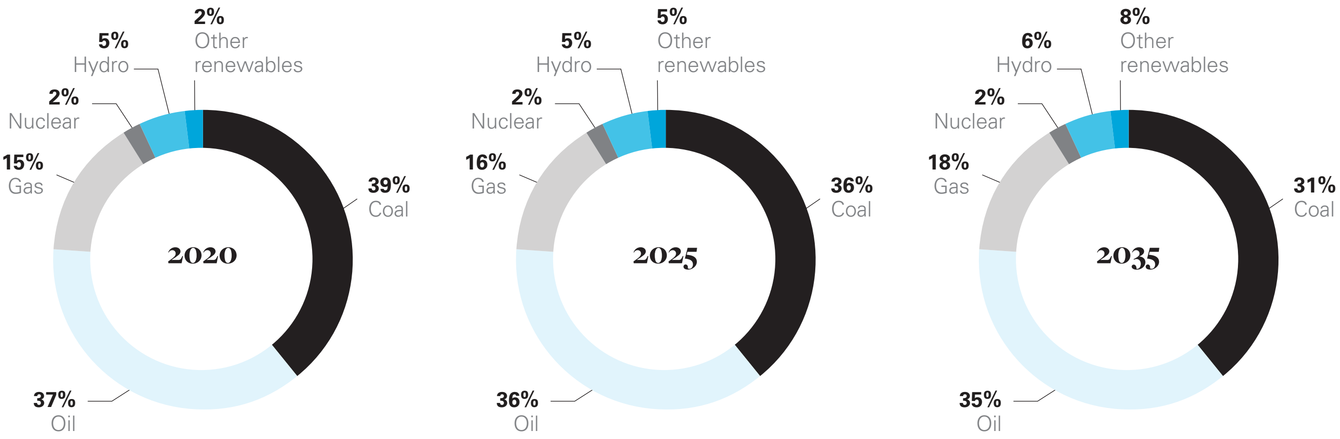
“New gas discoveries have enabled Africa to emerge as a major supplier of natural gas.

Figure 1: Projected changes in natural gas production in selected emerging market economies from 2016 to 2040 (International Energy Agency, 2018)
(percent)



Source: International Energy Agency, 2018. Outlook for natural gas, 2017. OECD/IEA, available at www.iea.org

Figure 2: Primary energy demand in Africa excluding biomass in 2020, 2025 and 2035. (Adapted from Standard Bank, 2016)
(percent)



Source: Standard Bank, 2016

Despite this, and led by Algeria, Nigeria, Angola, Egypt and Equatorial Guinea, new gas discoveries have enabled Africa to emerge as a major supplier of natural gas.

For example, Nigeria, with its estimated 5,300 billion cubic meters (bcm) of gas and rising investments in gas production, is in the process of becoming one of the largest LNG suppliers, after Qatar.[10] Recently, Mozambique, Tanzania, Mauritania and Senegal have also emerged as key players in the African gas industry in light of their newly discovered gas reserves.

These LNG discoveries have come at a critical time, as Africa is in the midst of an energy crisis.[11] Some estimate that "only 24 percent of sub-Saharan Africans have access to electricity, and the energy generation capacity of Africa (excluding South Africa) is only 28 gigawatts, equal to that of Argentina alone."[12]

Despite these shortages, Africa's demand for energy is predicted to rise with increasing population, urbanization and economic productivity. According to the World Bank, African manufacturing enterprises experience power outages on average 56 days per year.[13] Given Africa's existing power deficit, it is incumbent upon the region to address the current and future power supply, transmission and distribution needs.

LNG's share of Africa's primary energy demand (total energy demand from all sources) excluding biomass will likely increase modestly, from 15 percent in 2020 to 18 percent in 2035 (Figure 2). As a source of energy for electricity generation, LNG could grow from 10 percent of installed capacity in 2015 to 23 percent by 2030 (Figure 3).

Countries such as Mozambique are rising within the LNG sector globally. Mozambique is expected to be a future leader in the global LNG industry given its plan to develop an LNG facility on the Afungi Peninsula in the Cabo Delgado province.[14]

Other African countries are also increasingly getting involved in developing gas-to-power facilities. LNG gas-to-power projects will aim at developing the domestic production of electricity and provide for the construction of key gas and electricity infrastructure.

CURRENT ATTEMPTS IN AFRICA: A FOCUS ON MOROCCO

To date, there have been very few gas-to-power initiatives in Africa.

In 2016, South Africa launched an LNG-to-power program involving 3,000 MWs allocated between two gas-fired power generation plants.

Morocco intends to develop a gas-to-power project that is the first of its kind in Morocco and more generally in the French-speaking areas of Africa. Morocco is highly dependent on imported energy and remains one of the largest net importers of hydrocarbons in North Africa.[15] More than 90 percent of its energy comes from other countries, including coal and oil arriving from world markets (such as gas from Algeria and imported electricity from Spain and other African countries).[16]

Encouraged by the increasing need for electricity, Morocco has recently decided to expand the use of LNG through a gas-to-power project. Despite delays in the initial timeline, the government has mentioned its full support for the project on several occasions. The project involves the construction of a new LNG terminal within five years at Jorf Lasfar port, near the western city of El Jadida. It will allow up to 7 bcm of gas to be imported by 2025, substantially diversifying energy imports. The terminal, along with the construction of a jetty and

56
days per year, African manufacturers experience power outages

World Bank

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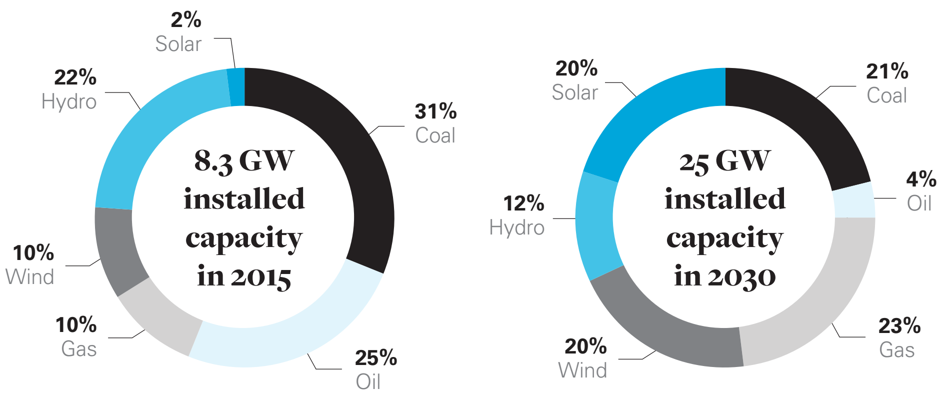
Morocco intends to develop the first gas-to-power project in French-speaking Africa.

Figure 3: By 2030, gas-fired energy generation could account for 23 percent of Morocco's installed capacity
(percent)



Source: Ramboll

> **Gas-to-power projects are complex and face a few significant challenges, particularly in nations where these projects are the first of their kind.**

necessary pipeline infrastructure, is estimated to cost US$4.6 billion. The Moroccan government also launched an international tender seeking foreign investments for the LNG terminal, which attracted bids from more than 93 companies, including French, British, Spanish and American companies.

By 2020, Morocco aims at deriving more than 40 percent of its electrical capacity from renewable sources, strengthening both energy security and sustainability. By 2035, this is expected to grow to 52 percent, with LNG accounting for 23 percent of the total. The project's goals are to:

- Meet electricity needs by increasing the electricity generation capacity
- Secure the long-term gas supply
- Develop a downstream gas market
- Expand the use of energy in the industrial sector

The gas-to-power project will rely on:

- A maritime jetty land, an onshore LNG regasification unit with a total capacity of 5 billion normal cubic meters (nm3)
- LNG storage tanks
- 400 kms of gas pipelines
- New combined-cycle gas turbines (CCGTs with a combined capacity of 2,400 MWs)
- Ancillary infrastructures

To attract foreign investment, Morocco has adopted a modern legal framework, conducive to the development of infrastructure projects.

Morocco's energy policy is set independently by two government agencies: the Office National de l'Electricité et de l'Eau Potable (ONEE), which sets electricity-related policies; and the Office National des Hydrocarbures et des Mines (ONHYM), which sets domestic oil & gas policies. These agencies have created sector-specific laws, such as law No. 48-15, aiming to liberalize the Moroccan energy sector. Notably, law No. 48-15 strives to ensure fair competition, continuity of service and compliance by the electricity industry participants with regulatory requirements. These sector-specific laws work in tandem with Morocco's new public-private partnerships law No.86-12 (the PPP Law).

The PPP Law is essential, because it introduces the concept of a partnership contract into the Moroccan legal framework, thereby enabling private partners to be remunerated by the relevant public authority while taking into consideration standard markets that are implemented in international project finance.

By 2030, it is anticipated that gas will account for 23 percent of Morocco's installed electricity generation capacity and renewables (wind, solar and hydro) for another 52 percent.[17]

POTENTIAL MAJOR LEGAL ISSUES

Gas-to-power projects are complex and face significant challenges, particularly in nations where these projects are the first of their kind.

The major challenges associated with gas-to-power projects in Africa relate to:

- **Commodity and currency risks.** LNG procurement takes place in a commoditized global market, which exposes the project company to the significant risk of price volatility. Furthermore, the procurement of LNG faces currency risks, because LNG market price dynamics are driven by competition for LNG cargoes denominated in US dollars. As such, the strength of the US dollar affects the purchasing power of different currencies
- **Participation of the state (as guarantor or gas aggregator).** State participation exposes the project company to political and economic risks, including the risk of expropriation, the risk that the government will enact fiscal measures that are not favorable to the project, and the risk that the government will enact regulations that make it burdensome or impossible to receive necessary approvals
- **Sovereign ratings, currency volatility and foreign currency reserves.** There is a risk that a

Oil & gas processing plant

sovereign will fail to meet debt repayments, thereby lowering its credit rating and increasing the risk to the lender. Additionally, hard currency loans can create a currency risk if revenues are in local currency. For example, a power plant located in Africa may be financed in US dollars, but if electricity tariffs are in local currency, then this may create an asset-liability currency mismatch.[18] If the local currency depreciates against the US dollar by 10 percent, revenues remain unchanged, but liabilities have increased by 10 percent. By contrast, if the US dollar depreciates against the local currency and the country welcoming the power plant had a large supply of US dollars in its foreign reserves, there is a risk that the host African country's foreign currency reserves would be depleted, thereby limiting government policy options.

TYPICAL REMEDIES

To avoid or respond to the aforementioned risks and other key challenges, particular attention should be paid to contractual frameworks, tariff structures, government support, financing frameworks, fuel flexibility and corporate social responsibility (CSR).

Contractual frameworks

Establishing a solid contractual framework helps project companies protect themselves against commodity and currency risks, risks associated with state participation, sovereign risks and risks associated with the project's social impact.

Given the broad range of stakeholders involved with gas-to-power projects, it is important to adapt the usual forms of contracts to each project, especially with regards to the following provisions:

- **Treatment of unforeseeable event/unforeseeable conduct.** These concepts and related relief may need to be extended to cover the entire LNG-to-power value chain (from import to regasification and supply)
- **Change in law.** Relief offered related to additional capital expenditure, operational expenditure or in relation to consents might apply only in relation to the power plant or to the entire value chain, including LNG procurement, regasification, transportation and even distribution or third-party access-related matters
- **System events.** Stakeholders will want to know if, in case of system events affecting the project, relief will extend beyond the grid, potentially also to port and gas transmission-related events
- **Force majeure.** If the gas-to-power project is developed as a fully bundled project, specific attention should be paid to defining the circumstances and conditions under which parties will be excluded from performing their obligations if a force majeure event occurs

Tariff structures

Establishing an effective tariff structure is particularly important for managing foreign exchange risks. The tariff structure should be largely cost-effective and should be able to support the project funding. The manner in which foreign currency costs are passed through under the Power Purchase Agreement (PPA) should be a key area of focus:

- **Pass-through of base project (fixed and variable) costs.** Since there is no guarantee that day-one "acceptable" third-party users or industrial gas users will exist, the costs associated with sizing infrastructure and contracts to accommodate possible third-party users or industrial gas users may need to be accommodated under the PPA in the first instance (unless sponsors are willing to bear this risk). Presumably, as third-party users or industrial gas users come on-stream, to the extent that these new users bear a portion of the costs, this will result in an appropriate abatement of costs and expenses being passed through to the energy purchaser
- **Foreign exchange risk.** The currency retained by the public electricity entity will be of great

Oil & gas refinery

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importance in assessing the tariff structure. The cash flow generated by the revenue under the PPA will be used by the project company(ies) to, among others: (i) service the debt; and (ii) pay for the LNG purchases. As imported LNG is most likely to be priced in US dollars, there is a potential currency risk if the PPA revenues are denominated in a different currency

State support

Receiving state support will be essential for managing risks associated with the state's participation in the project. Both the nature and extent of a government's involvement will be of major importance in the gas-to-power project's success.

- **Financial support.** It is critical to receive government financial support if the national power buyer or the state itself is unable to fulfill its payment obligations under the PPA. In some countries, such as Morocco, the government traditionally offers support in the form of a letter addressed to the sole project company covering specific instances (mainly the payment of termination indemnities). However, it is likely that sophisticated lenders will require a much more developed contract with the state based on direct agreements developed by international practice. Since the PPA is the only revenue stream for the gas-to-power project, the support of the state will be of great importance for the analysis of the lenders' risk allocation
- **Political support.** Though political risks invariably exist, seeking government political support will help to mitigate the risk of property expropriation, lend legitimacy to the project, promote public confidence in the project, and limit the likelihood that the government will enact fiscal or other measures that discriminate against the project[19]

Financing frameworks

Establishing a strong financial framework is important for limiting currency and sovereign risks and for hedging general project risks.

Financing the gas-to-power project will involve a typical suite of finance agreements. Depending on the final corporate structure and financing terms, on-loan agreements and cross-guarantees by each of the project companies (if several) may be required.

Fuel flexibility

Promoting fuel flexibility enables project companies to reduce supply risks. This makes it vital for project companies to focus on:

- **Managing LNG storage effectively to ensure flexible dispatch.** While an increasing degree of buyer flexibility is available to potential LNG buyers in the current buyer's market, unlimited and instantaneous flexibility is rarely possible under long-term LNG sale and purchase agreements (SPAs). Given the limited storage that a floating storage regasification unit (FSRU) offers and the possibility of industrial sales and third-party access, parties should consider how LNG is sourced and managed when the power plant experiences high plant load factors, especially on short notice
- **Allocating LNG-related liability.** Gas-to-power projects may involve one or several project companies, depending on the scheme retained for the development of the project. Analyzing and structuring LNG arrangements involves understanding how take-or-pay or failure to take cargo-related liability is allocated to the gas company and passed on to other entities, such as the energy purchaser (especially when multiple failures of different parties cumulatively result in liabilities under the LNG SPA). The retained scheme will have to outline a minimum annual dispatch level (expressed as an annual average plant capacity factor) and a maximum monthly dispatch factor, both of which will be reflected in the PPAs
- **Planning for back-up fuel.** Structuring a project to operate on back-up fuel and entering into related arrangements will have upfront and ongoing cost and efficiency implications. Given an emphasis on bidders' proposed solutions to optimize a plant's specification at the lowest cost, prospective bidders in a gas-to-power project should ensure that the project scheme is prescriptive as to the nature and extent of back-up facilities and arrangements—so that all bidders are held to the same standard.

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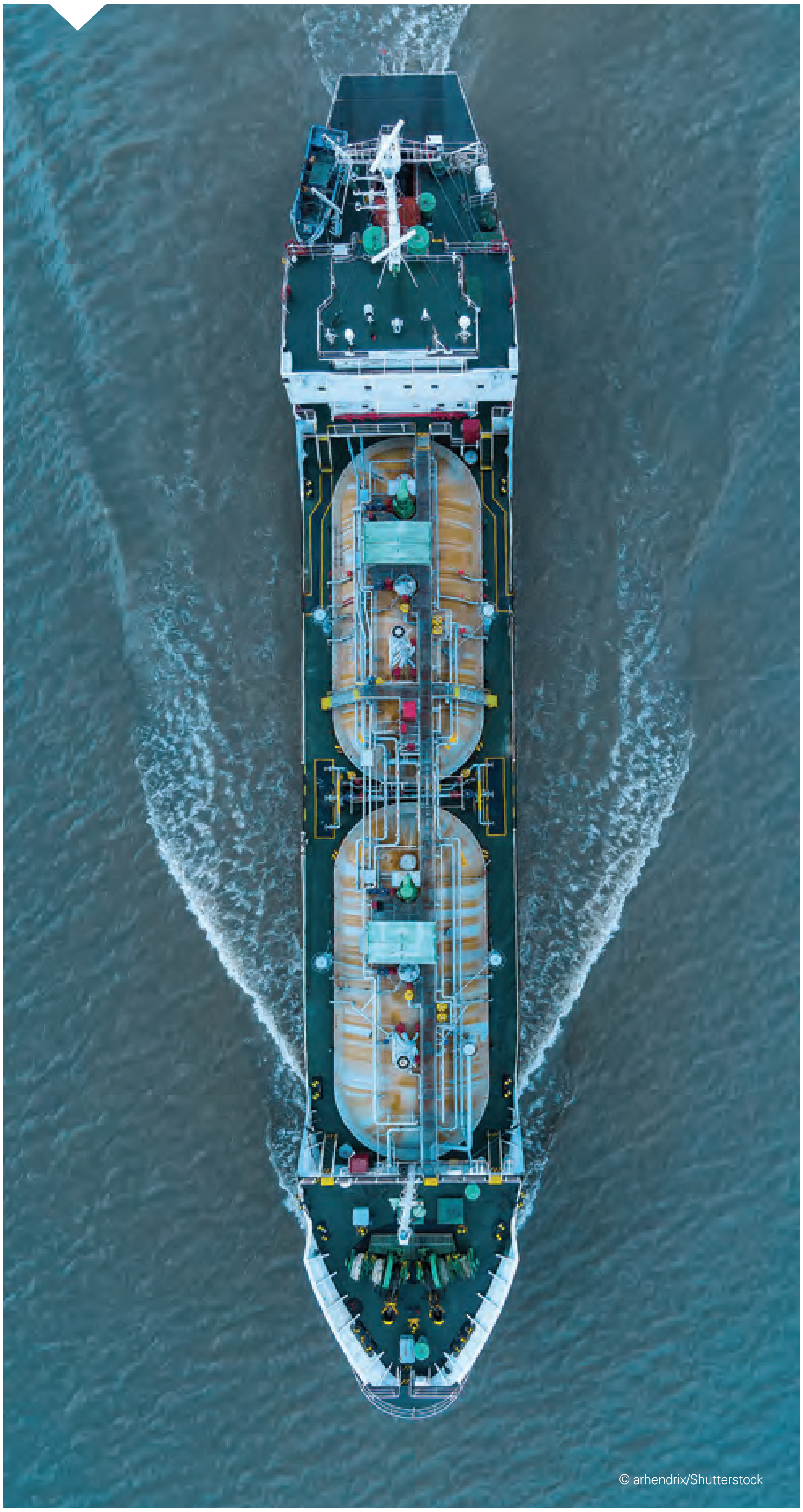
Receiving support from the state will be essential for managing risks associated with the state's participation in the project.

Corporate social responsibility

- **Channeling benefits directly to local communities.** Direct and indirect employment, contributions toward poverty alleviation, education, training and maintaining open communications and good relationships with local communities can reduce the likelihood of friction and even work disruptions by protest actions. To ensure that CSR obligations are properly fulfilled, the mechanisms by which project personnel engage with local communities need to be explicitly included in the contract documentation and the obligations themselves included formally in the project plan

With new discoveries of natural gas in Africa, large projects could be developed in several parts of the continent, including cross-border and remote areas. States and private developers will therefore need to work together to develop projects onsite. This will also mean achieving a fair split of the costs, risks and benefits. Despite these significant challenges, the future seems bright for African LNG, as gas-to-power projects are likely to expand due to strong demographic growth and an ever-increasing demand for electricity.

Gas tankers traveling at sea to transport gas to destinations



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Inside King Hassan II mosque, Morocco

Islamic finance in Africa: Opportunities and challenges

Shari'ah-compliant financial products are needed to enhance financial inclusion in Africa

By Debashis Dey and Xuan Jin

Although Islamic finance assets still represent less than 1 percent of global financial assets, and growth slowed somewhat in 2017, the global Islamic asset base grew from approximately US$200 billion in 2003 to an estimated US$2 trillion at the end of 2016. It is projected by some industry experts to surpass the US$3 trillion mark by 2020.[1]

Unsurprisingly, Islamic banking and finance assets have concentrated historically in the Middle East and Malaysia. These markets currently account for more than 80 percent of industry assets. In the past five years though, stakeholders from traditionally non-Islamic majority jurisdictions—including Europe and East Asia—have also entered the Islamic finance market or indicated their intention to participate in Islamic finance transactions.

Africa, in particular, is a region in which Islamic finance could and, indeed, should thrive. The continent has a Muslim population of approximately 636 million, representing almost 53 percent of Africans.[2] The Muslim population in sub-Saharan Africa is projected to grow by nearly 60 percent from 242.5 million in 2010 to 385.9 million in 2030[3]. Furthermore, a vast infrastructure development deficit creates financing needs, towards which Islamic finance could make a significant contribution.

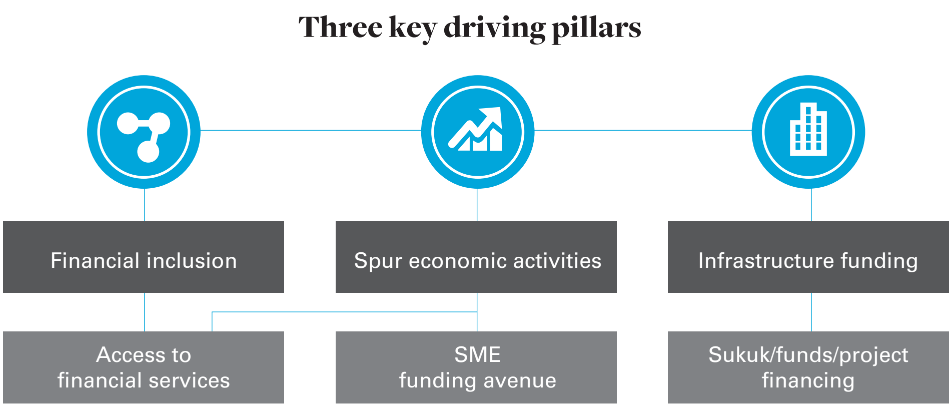
Some African countries have already started taking steps to support the local uptake of this financing mechanism.

Among others, South Africa, Nigeria, Kenya, Senegal, Djibouti, Uganda and Morocco have all introduced legal and regulatory frameworks to promote the development of Islamic finance products in their respective jurisdictions. Examples include recent changes to Kenya's stamp duty and VAT regulation to create a more level playing field between Shari'ah-compliant and conventional products. Nigeria, Tunisia and South Africa are now home to Islamic banks and takaful (Islamic insurance) companies. Several traditional banks across the continent have also started to offer Shari'ah-compliant banking products through "Islamic windows."

Also, in the public sector, regional governments have either started issuing international or domestic sukuk or "Islamic bonds" (such as South Africa, Senegal, Nigeria, Côte d'Ivoire and Togo) or have at least commenced preparatory work for their debut sovereign sukuk issuances (such as Tunisia and Morocco).

These developments are also encouraging from a macro-economic perspective generally. Islamic finance presents African nations with a unique and (to date) relatively underutilized mechanism to help address two of the most prevalent development issues pervading the continent: the needs to increase financial inclusion among the domestic population and to bridge the funding gap required for needed infrastructure (Figure 1).

Figure 1: Islamic finance in Africa



Source: Bank Negara Malaysia (2017)

> **Africa has a chance to be a true innovator for the Islamic finance industry.**

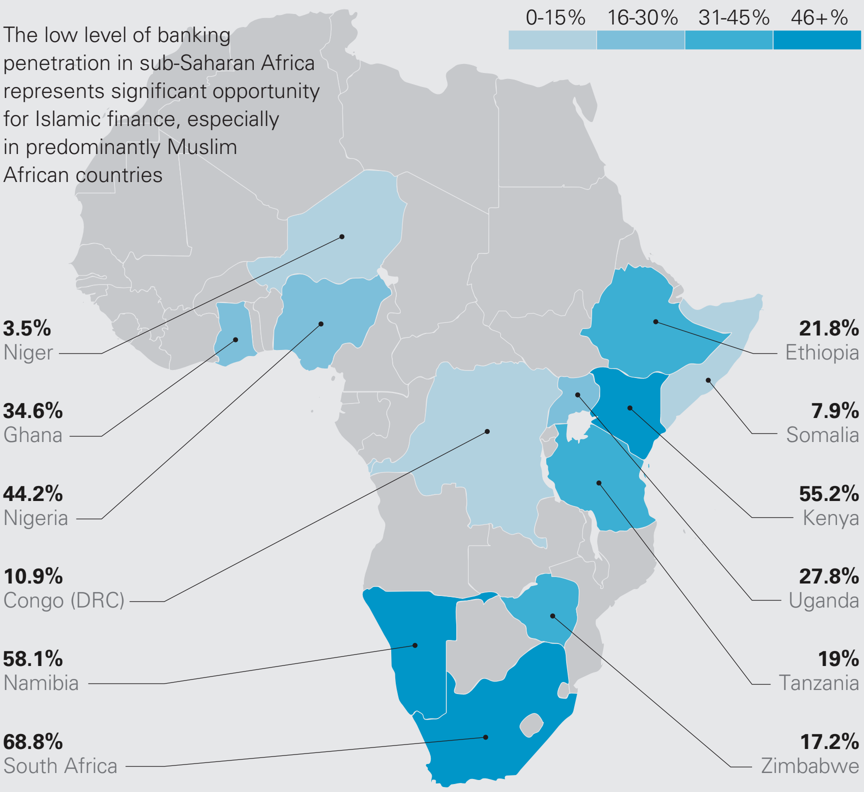
Countries with the largest projected increase in number of Muslims (2010–2030)

Countries	Estimated Muslim population 2016	Projected Muslim population 2017	Projected numerical increase 2018
Nigeria	75,728,000	116,832,000	**41,104,000**
Niger*	15,627,000	32,022,000	**16,395,000**
Ethiopia	28,721,000	44,466,000	**15,745,000**
Burkina Faso*	9,600,000	16,480,000	**6,881,000**
Mali*	12,316,000	18,840,000	**6,525,000**
Senegal*	12,333,000	18,739,000	**6,406,000**
Somalia*	9,231,000	15,529,000	**6,298,000**
Tanzania	13,450,000	19,463,000	**6,013,000**
Guinea*	8,693,000	14,227,000	**5,534,000**
Ivory Coast	7,960,000	12,977,000	**5,017,000**

*Muslim-majority country as of 2010.
Population estimates are rounded to thousands. Figures may not add up exactly due to rounding.
Source: Pew Research Center's Forum on Religion & Public Life *The Future of the Global Muslim Population*, January 2011

Financial inclusion in sub-Saharan Africa
Percentage of people aged 15 and over with a bank account

The low level of banking penetration in sub-Saharan Africa represents significant opportunity for Islamic finance, especially in predominantly Muslim African countries



Source: World Bank, data accessed 2018

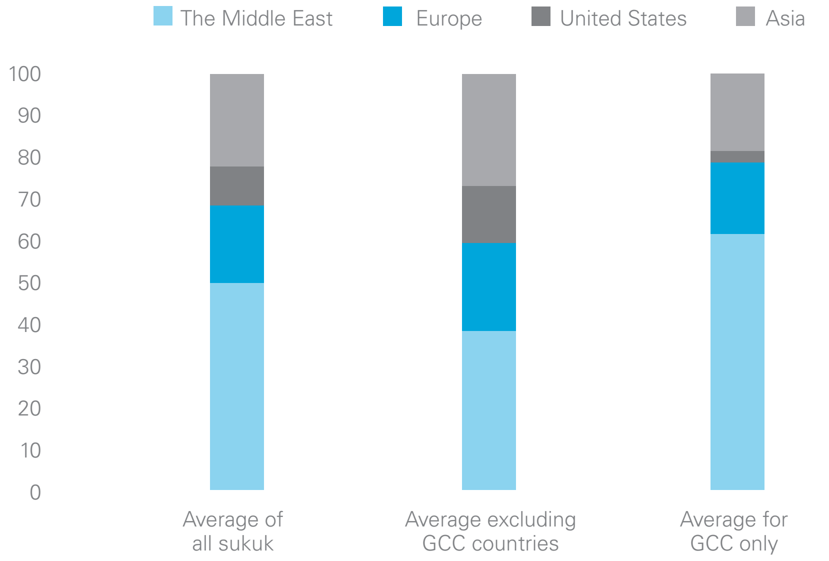
Regarding financial inclusion, The European Investment Bank estimates that in 2017, as many as 350 million Africans did not have formal bank accounts.[4] Therefore, the development of Islamic finance products—both together with and as an alternative to conventional banking and insurance offerings—could significantly increase Africa's financially underserved population's access to finance. That members of Africa's Muslim communities may be reluctant to accept financial services provided by conventional banks on religious grounds, makes the need for Shari'ah-compliant financial products even more pressing.

Regarding Africa's infrastructure gap, foreign and domestic investments through Islamic finance provide significant opportunities to diversify the sources of funds to meet the African Development Bank's projected requirement of US$130 to US$170 billion per year until 2025.[5] Sukuk issuances tied to tangible assets and projects—such as roads, bridges, water and sanitation works and hospitals—provide cost-efficient means for African governments to address this infrastructure development demand. As can be seen in Figure 2, Islamic Finance is essential for unlocking investment from the Middle East but it also attracts investors from other parts of the world.

They also increase these governments' ability to tap the significant pools of liquidity held by Islamic investors based in the Gulf Cooperation Council (GCC) countries and Asia who are looking for viable investment opportunities in Africa.

Despite the above legislative and practical steps taken towards growing Islamic finance in Africa and the relatively untapped macroeconomic opportunity it represents, Islamic finance is still some way from being a mainstream form of finance across Africa. Here are some of the underlying structural issues that pose challenges to Islamic finance in Africa. These are not country-specific, but rather permeate the entire continent's markets, to a greater or lesser degree.

Figure 2: Investors in sukuk span the globe, although about 50 percent are from GCC countries
(percent)



GCC —Gulf Cooperation Council. Data are based on 29 sukuk issues in US dollars during 2014 – 2016.

Source: S&P Global Ratings and Sukuk.com

REGULATORY GAP

The existing laws of most African countries were not designed to cater to interest-free financings based on the sharing of economic risks and rewards, and achieving returns by reference to the performance of Shari'ah-compliant assets. These principles are fundamental to Islamic finance.

The need to create economically viable structures that do not rely on interest makes Islamic finance arrangements more complex than their conventional/non-Islamic equivalents, and they tend not to fit neatly within existing civil or common law frameworks. For example, while African governments may regularly issue local currency treasury instruments, these are typically conventional interest-bearing instruments. Structural amendments required to make these instruments acceptable to Islamic institutions and investors need to be carefully designed to avoid conflict with domestic tax rules and to maintain equality with traditional treasury instruments.

Similarly, general considerations for unsecured sukuk financings (which do not arise in conventional unsecured bond issuances) include:

- How the laws of the relevant jurisdiction (including any foreign ownership restrictions) treat asset transfers, especially where onshore assets are to be contractually sold to foreign special-purpose vehicles
- Whether the tax code (and any exemptions and reliefs laid out therein) of the relevant jurisdiction applies to sukuk issuances in the same way it does to bonds
- If the tax code does not apply to sukuk issuances in the same way it does to bonds, how the regulatory treatment of sukuk (or other Islamic finance products for that matter) can be afforded equivalence to its conventional/ non-Islamic counterparts under the applicable laws

Without amendments to existing tax codes, the asset-based nature of Islamic finance may trigger various tax payment obligations from country to country that are not involved in conventional financings. These could include registration tax/stamp duty land tax, VAT, capital gains tax and withholding tax. Regulatory consideration is required to harmonize these issues.

Clarity is crucial regarding the legal enforceability of Islamic finance products. And the increased costs of funding due to taxes need to be mitigated.

Without these, it will likely prove difficult to reach the critical mass necessary for Islamic finance to flourish. Public sectors will continue to borrow using traditional debt products. Commercial banks will find the legal risk and potential additional costs of Islamic finance unappealing. The establishment of specialist Islamic banks and other financial institutions will not be viable.

Overcoming these challenges requires that African governments continue to promote change in their regulatory systems to facilitate Islamic finance products and enhance their attractiveness to domestic and international stakeholders alike.

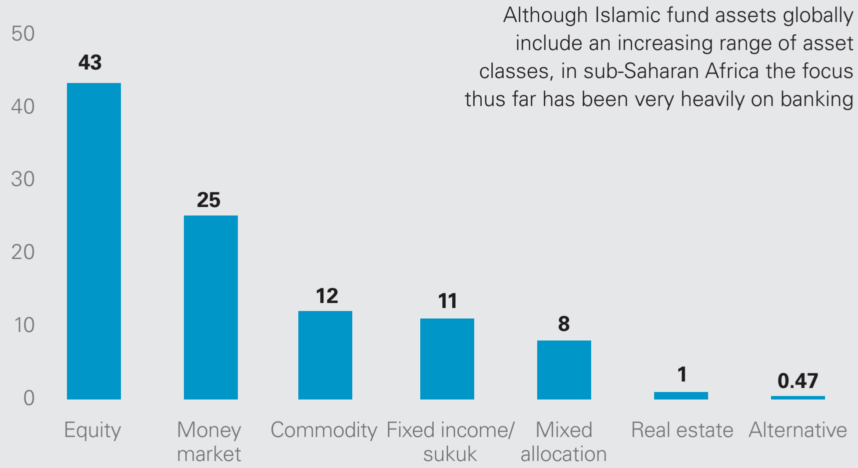
KNOWLEDGE GAP

Islamic finance remains poorly understood across many markets, not only in Africa. With some validity, it is frequently considered to be more challenging to implement than conventional/ non-Islamic finance techniques. Traditional aspects of modern commercial banking and capital markets practices have existed for many decades, but modern Islamic finance is—in relative terms—very new and niche. It comes as no surprise that potential end-users of Islamic finance, both in the public and private sectors, when given a choice, will often favor conventional over Islamic financing, just because it is more familiar.

Knowledge gaps are often a consequence of the applicable regulatory framework (or lack thereof) in the relevant jurisdiction. So, they can be bridged by the introduction of the relevant regulations, as certain African governments are now doing.

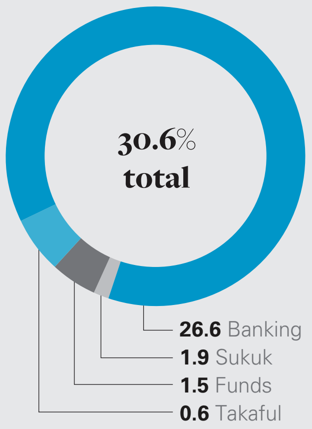
Standardization of products, documentation, business practices and the question of what is and is not Shari'ah-compliant will also inevitably improve awareness of Shari'ah-compliant products and also increase the efficiency with which they can be deployed to meet public and private sector funding needs. This type of standardization is already present in other regions where Islamic finance is more widely

Distribution of global Islamic fund assets (2016)
By asset class (percent share of funds)



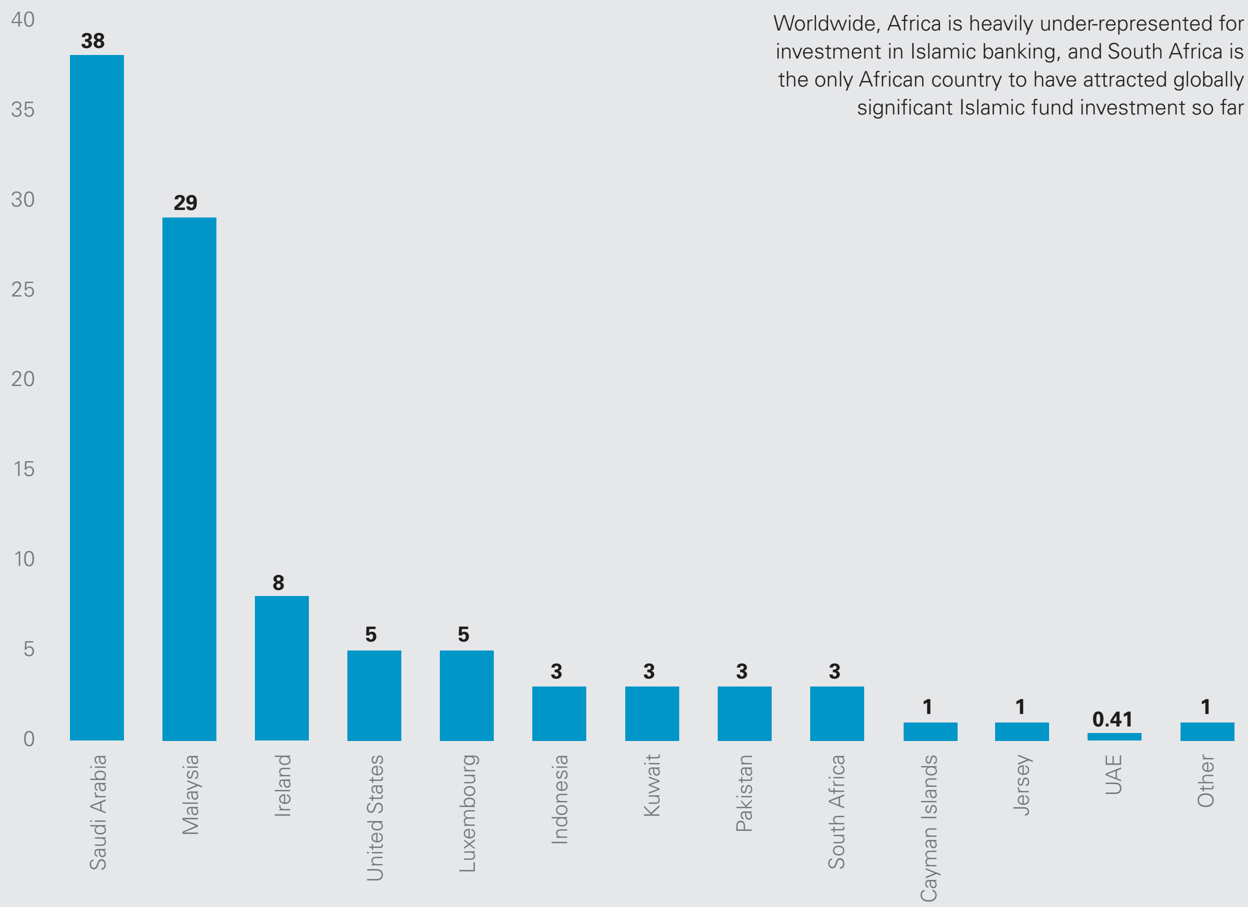
Source: Bloomberg; IFSB, Worldwide

Islamic financial services market in sub-Saharan Africa
Based on the value of assets by section (US$bn)



Source: Islamic Financial Services Board 2017

Distribution of global Islamic fund assets (2016)
By domicile (percent)



Source: Bloomberg; IFSB, Worldwide

used, such as the Gulf Cooperative Council states and Malaysia. To some degree, it will be a natural byproduct and facilitator of the growth of Islamic finance in Africa.

ACCESS TO BANKING

The relatively low penetration of formal banking services across Africa represents a barrier to entry for conventional and Islamic financial institutions offering Shari'ah-compliant banking products—such as Shari'ah-compliant personal loans, mortgages and takaful.

Much of Africa's population is accustomed to informal arrangements (such as loans from friends and family) and may be uninterested in or even actively resistant to transitioning to banking with formal financial institutions.

On the other hand, this limited financial penetration in Africa might present a tremendous opportunity for innovation in the sector. Africa is already well known as a hotbed for pioneering microfinance products and non-banking financial institutions. For example, M-Pesa is a mobile phone-based microfinance provider launched by Vodafone and Kenya's Safaricom in 2007 in Kenya and Tanzania, which has since then expanded to South Africa, Afghanistan, India, Romania and Albania and is currently used by more than 30 million customers globally.

Sub-Saharan Africa, in particular, exemplifies mobile money's potential to foster financial inclusion. According to the World Bank, while the share of adults in sub-Saharan Africa with a formal financial institution account barely moved between 2014 and 2017, the share of adults with a mobile money account almost doubled to reach 21 percent by the end of 2017 (in every other region, mobile money penetration is lower than 10 percent).[6]

It stands to reason then, as Islamic finance products and institutions become increasingly mainstream across the continent, that Shari'ah-compliant African microfinance products and institutions will also be developed to service unbanked (or underbanked) Muslim communities.

Already, Gulf African Bank and Safaricom have announced the launch of M-Sharia, a Shari'ah-compliant banking service through M-Pesa. Moreover, it is possible that such Shari'ah-compliant microfinance products and providers will, in turn, extend their reach from Africa into other jurisdictions, such as Southeast Asian countries, with large Muslim populations that cannot access the formal banking system due to low and irregular household incomes or poor credit records.

In this context, Africa has a chance to be a true innovator for the Islamic finance industry.

The above challenges are not new. The lack of access to banking may be considered a uniquely African problem only in terms of scale. Lessons from how this and other challenges were overcome in other parts of the world—from the United Kingdom to Hong Kong to the Middle East—are profoundly applicable in Africa.

Regulatory and knowledge gaps in Africa will take time to address, but positive trends are already evident.

Shari'ah-compliant regulatory frameworks are emerging in more and more African countries. African policymakers and end-users have also engaged with more developed Islamic finance markets to help them up the learning curve.

Some African financial institutions and government-related entities (such as the Kenyan Capital Markets Authority) have become members of the Islamic Financial Services Board (IFSB), a multilateral body based in Kuala Lumpur. Among other things, the IFSB issues, and facilitates the implementation of, global prudential and supervisory standards and other initiatives that foster knowledge sharing and cooperation among its members. For instance, since 2008, Bank Negara Malaysia has run more than 300 Islamic finance programs and study visits[7] for more than 25 African countries, including Nigeria, Sudan, Tanzania and Kenya.

The Islamic Corporation for the Development of the Private Sector (ICD)—the private sector arm of Islamic Development Bank (IDB) and the largest Shari'ah-compliant multilateral development bank in the world—also continues to play a role in developing Islamic finance in Africa by arranging local sovereign sukuk issuances.

How governments, organs of state and the people of Africa respond to the challenges of Islamic finance and the extent to which they adopt Islamic finance as a financing tool could have a significant impact on the macroeconomic development of the continent in the foreseeable future.

21%

The share of sub-Saharan African adults with a mobile money account by the end of 2017

World Bank

Raising stakeholders' awareness and understanding of Islamic finance products and practices and the additional financing options they present can spur public and private sector demand for Islamic finance and the regulatory reforms required to meet this demand.

Bridging the regulatory gap can, in turn, help address Africa's financial inclusion deficit by encouraging the growth of—and innovation in—Shari'ah-compliant products, thus increasing the range of financial institutions, products and services available to the populace and, accordingly, increasing financial inclusion.

Moreover, providing African governments, companies and individuals with greater access to finance can play a major role in bridging Africa's infrastructure gap and promoting economic growth and social prosperity across the continent. Considerable work is still required to overcome the challenges standing in the way of Islamic finance flourishing in Africa, but clearly, the rewards will outweigh the effort.

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Business and human rights in Africa

Companies and investors in African countries need to be conscious of the growing focus on human rights

By Clare Connellan and Tallat Hussain

Historically, human rights have been a matter between states and citizens but in recent years, the collective and legislative consciousness has shifted.

Demonstrating respect for human rights is now seen as a corporate responsibility, critical to a company's social license to operate. The introduction of the UN Guiding Principles on Business and Human Rights (Guiding Principles) has entrenched this.[1]

Under the Protect, Respect and Remedy framework of the Guiding Principles, states have a duty to protect human rights, but businesses are also expected to respect the "entire spectrum of internationally recognized human rights"[2] wherever they operate, to avoid infringing on the human rights of others and to address adverse human rights impacts.[3]

As a result, human rights look set to become an integral aspect of corporate compliance and risk management. Although companies do not have binding legal obligations in rights-related international agreements, this aspect of corporate responsibility is becoming a standard of conduct expected by investors, regulators and other stakeholders.

Operators and investors in African countries should be conscious of the human rights issues and opportunities that could arise through, or affect, their activities and business relationships, including matters relating to labor standards, socio-economics, security and environmental impacts.

STANDARDS AND GUIDELINES

Companies operating in African countries encounter human rights issues in different ways. These are addressed at various levels, from international guidelines to regional initiatives, local legislation, "soft law," industry initiatives or arising from court decisions.

The Guiding Principles set the first global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity and establishing responsibility for it. They apply standards to all businesses, regardless of size, sector, region or operational context.

The OECD Guidelines for Multinational Enterprises also reference the duty of enterprises to operate "within the framework of internationally recognized human rights." This starts with the aim of states "encouraging the positive contributions that multinational enterprises can make to economic, environmental and social progress and to minimize the difficulties to which their various operations may give rise."[4] State implementation includes having a policy commitment to respect human rights and carrying out human rights due diligence appropriate to the size, nature and context of operations, as well as the severity of the risks of adverse human rights impacts.

Many international development finance institutions have environmental and social guidelines for financing projects that include human rights issues and, in some cases, reference international conventions and agreements. Most of the IFC Performance Standards include elements related to human rights.[5]

3 PILLARS OF THE UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS

- **State duty to protect human rights.** States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication
- **Corporate responsibility to respect human rights.** Companies are expected to respect human rights and to address adverse human rights impacts with which they are involved
- **Access to remedy.** As part of their duty to protect against business-related human rights abuse, states must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that when such abuses occur within their territory and/or jurisdiction, those affected have access to effective remedies. Business enterprises should also make grievance mechanisms available to facilitate the identification of adverse human rights impacts and to address any identified impacts

Source: www.ohchr.org

Welding technician in South Africa

Export Credit Agencies also apply this benchmark of human rights due diligence for financings they support. For some commercial lenders, heightened scrutiny of human rights-related impacts of their financings are seen as essential to their corporate social responsibility commitments.[6]

At a regional level, the European Union has passed legislation requiring importers of certain raw minerals and metals from conflict-affected and high-risk areas to carry out supply chain human rights due diligence in accordance with the OECD Due Diligence Guidance.[7]

ACCOUNTABILITY FOR THE EFFECTS OF BUSINESS OPERATIONS

Transnational businesses often operate in Africa through subsidiaries.

Some African states are working toward implementing the Guiding Principles through national action plans that promote a country-level multi-stakeholder approach and other sustainable development frameworks.

Many African states have focused on the implementation of human rights initiatives more broadly, establishing national human rights institutions for handling complaints and raising awareness.[8]

NAVIGATING HUMAN RIGHTS ISSUES

Navigating the complexity—and potentially the inconsistencies—of international and national standards can be a challenge.

By identifying and minimizing risks, companies can fulfill human rights-related governance and compliance obligations.

Many sectors with a high risk of human rights impacts are important in African economies, including commercial agriculture, manufacturing, the extractives industry, infrastructure projects, utilities and power generation. Companies operating in African countries should fully understand the local context where projects or business operations are planned or undertaken, as well as in their supply chains.

The legal, financial and reputational consequences of inaction can be wide-ranging.

REGIONAL HUMAN RIGHTS LAW AND INSTITUTIONS IN AFRICA

African Charter on Human and Peoples' Rights 1981:

- Ratified by all 55 Member States of the African Union
- Includes socio-economic, civil and political rights

African Court of Justice and Human Rights:

- Established in 1998 as a pan-African judicial body
- Jurisdiction over disputes concerning the interpretation and application of the Charter and other relevant human rights instrument (e.g., African Charter on the Rights and Welfare of the Child)

African Commission on Human and Peoples' Rights:

- Established in 1987 to promote protection of human rights in Africa
- Any person may bring a complaint to the Commission alleging that a state party to the Charter has violated Charter rights

For example, courts around the world have begun to consider complex jurisdictional and legal arguments in proceedings against parent companies for human rights issues involving their foreign subsidiaries—many of which have been in Africa.

RISKS AND OPPORTUNITIES

In African countries where the balance between sustainable development and human rights is gaining prominence, respecting human rights makes business sense.

Potential benefits for companies include:

- Reputational benefits, employee retention and market leadership
- Compliance with corporate social responsibility commitments
- Compliance with local laws, including laws related to worker health and safety, environmental protection, company law and non-financial disclosure
- Reduced risks of non-compliance and remedial action, claims and penalties

Careful assessment of opportunities can foster procedures to ensure that human rights are respected in the operations of a business and can have a positive impact on its social license to operate.

> **"The governance landscape in Africa is changing rapidly, and a quick scan of the advancement in our governance structures and processes over the years shows a clear advancement in the quality of good governance, democracy and human rights in Africa.[9]**
>
> – H.E. Dr. Aisha Laraba Abdullahi, Commissioner for Political Affairs Department of the AUC

ENGLISH COURT DECISIONS ON PARENT COMPANY ACCOUNTABILITY

General

Chandler v Cape PLC [2012] EWCA Civ 525: General principles from this decision have been used in claims against UK parent companies for human rights issues arising from the actions of their subsidiaries in Africa. The Court held that in appropriate circumstances, the law might impose responsibility on a parent company for the health and safety of its subsidiary's employees. This will depend on factors such as the relationship between the business operations of the parent and subsidiary and the level of knowledge and control of the parent.

Zambia

Lungowe and Ors v Vedanta Resources Plc and Konkola Copper Mines [2017] EWCA Civ 1528: In this decision, Zambian citizens sought jurisdiction in the English courts, alleging personal injury, damage to property and loss of income, amenity and enjoyment of land, due to alleged pollution and environmental damage caused by discharges from the Nchanga copper mine. The Court of Appeal held that a parent company will not automatically owe a duty of care to someone affected by the actions of its subsidiary, but a duty could arise where a parent company has taken direct responsibility for devising the relevant health and safety policy, or controls the operations giving rise to the claim.

Nigeria and Kenya

Okpabi and others v Royal Dutch Shell Plc and another [2018] EWCA Civ 191 and *AAA & Ors v Unilever Plc and Unilever Tea Kenya Limited* [2018] EWCA Civ 1532: In both of these cases, third parties brought claims for damages against UK parent companies in relation to actions by their subsidiaries in Africa (in Nigeria for damage from oil pollution and in Kenya for protection from violence on a tea plantation). The Court declined to find jurisdiction to hear the claims against UK parents in both cases, indicating that the threshold to establish liability for a parent company remains high. In *Okpabi*, the Court clarified that mandatory group policies will not automatically mean that a parent has taken control of the operations of every subsidiary to a degree that will give rise to liability. However, a policy for a specific subsidiary or the assumption of functional responsibility by a parent could establish a duty of care. In *Unilever*, the Court of Appeal reiterated and affirmed the principles established in *Chandler, Vedanta and Okpabi*, and found that the UK parent in that case did not owe a duty of care to the employees of its Kenyan subsidiary because the UK parent was neither involved in the management of the subsidiary nor did it advise the subsidiary on how to manage political risk.

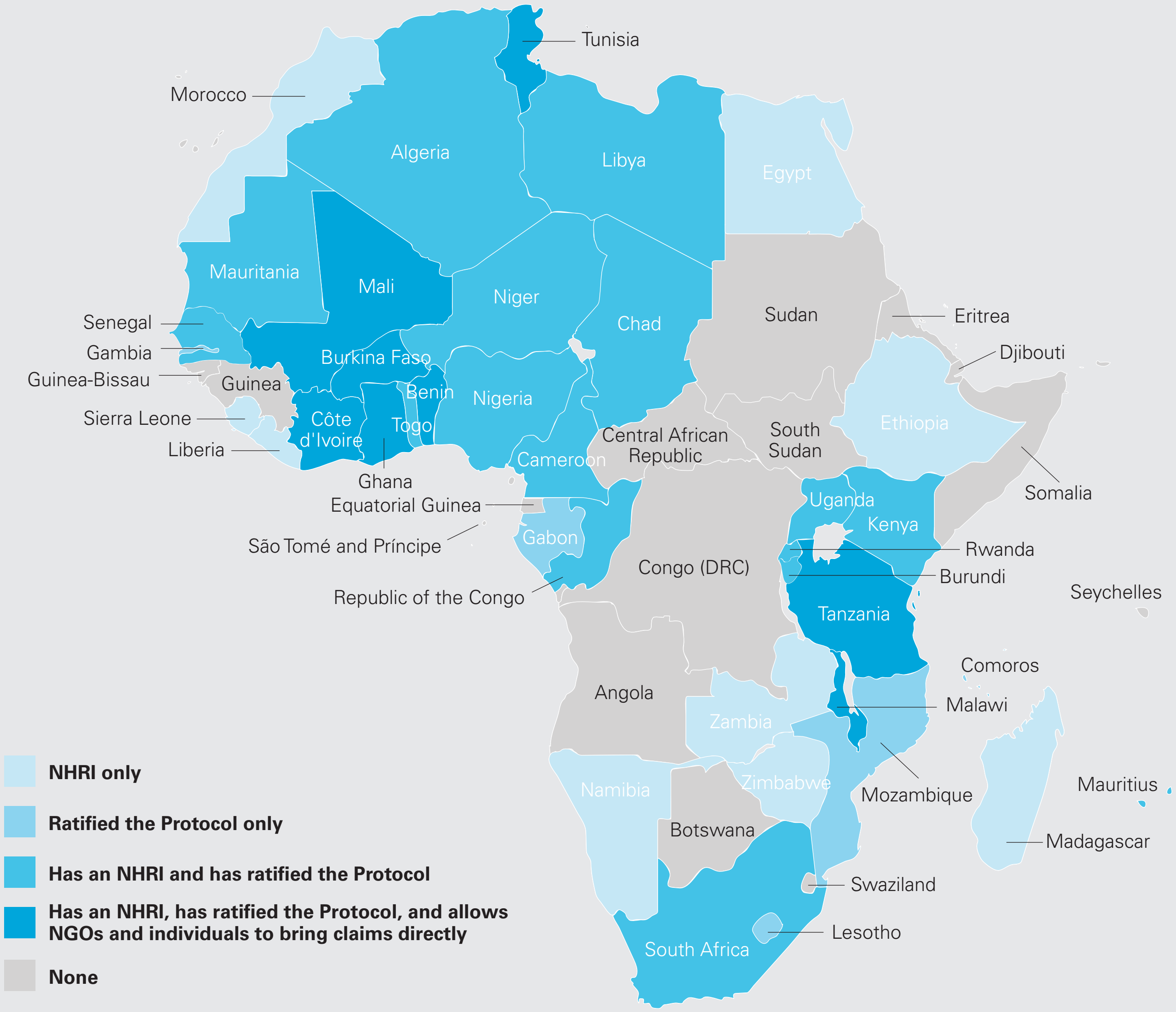
Industrial worker inspecting machinery, Nigeria

© Johnny Greig/Getty Images

REGIONAL HUMAN RIGHTS LANDSCAPE

This map illustrates the following questions:

1. Does the state have a National Human Rights Institution (NHRI) that is either fully or partially compliant with the Paris Principles for NHRI?
2. Has the state ratified Protocol 1 to the African Charter on Human and Peoples' Rights (Protocol), submitting to the authority of the African Court of Human and Peoples' Rights?
3. Has the state allowed NGOs and individuals to bring claims directly in the African Court of Human and Peoples' Rights?



Source: National Human Rights Institutions as of February 21, 2018 https://nhri.ohchr.org/EN/Documents/Status%20Accreditation%20Chart%20(21%20February%202018.pdf.

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SPOTLIGHT ON GOVERNMENTAL FOCUS ON HUMAN RIGHTS: SELECTED EXAMPLES

Ghana

The Constitution of Ghana mandates that the fundamental human rights and freedoms it enshrines must be respected and upheld by all natural and legal persons, government and the judiciary, and are enforceable by the Courts.

Ghana was the first African country to participate in the Voluntary Principles on Security and Human Rights Initiative for extractive sector companies, recognizing that although governments have the primary responsibility to maintain law and order, security and respect for human rights, companies in industries such as mining have an interest in ensuring the protection and promotion of human rights.[10]

Kenya

The Kenyan Constitution protects various human rights, including labor rights and the right to a healthy environment.

Kenya was the first African country to announce its commitment to developing a national action plan for business and human rights in 2016, which is currently in progress, led by the Department of Justice.[11]

Various initiatives have also been developed to guide businesses investing in Kenya, such as the Nairobi Process, an initiative that works with government, businesses and civil society to address key areas of human rights concerns in the extractive sector and more generally in East Africa.[12]

Morocco

The Moroccan Constitution guarantees various human rights and, in 2016, Morocco enacted legislation providing protections for free expression, workers' rights, victims of human trafficking and persons with disabilities.

Morocco has integrated a chapter on business and human rights into its 2018–2022 National Action Plan for Democracy and Human Rights.[13] The first planned measure is the elaboration and adoption of a human rights national action plan through engagement with all stakeholders. Other non-legislative measures proposed include encouraging business enterprises to adopt internal human rights policies, integrating human rights in business into law and practice, awareness-raising and capacity-building.

Mozambique

The Mozambican Constitution guarantees many human rights including equality of citizens before the law; and the Labor Code and related regulations also prohibit discrimination, establish rights for migrant workers and establish minimum labor standards.

Many companies operating in Mozambique are undertaking due diligence and other initiatives to raise awareness and protect human rights. Mozambique has recently launched a business and human rights initiative, including plans to develop a national action plan.[14]

Nigeria

The Nigerian Constitution guarantees fundamental rights such as the rights to life, freedom of expression and freedom from discrimination, forced labor and inhumane or degrading treatment.

The Nigerian National Human Rights Institution, Human Rights Commission and Nigerian civil society are leading efforts to develop a national action plan for Nigeria, and a draft plan was produced in 2017.[15] It proposes several recommended state policies relating to human rights, including: that the state require clauses in its contracts with other entities specifying human rights obligations of the contracting parties and sanctions for violations; that banks operating in Nigeria should include a duty in respect of human rights in loan agreements; and that companies should be required to show evidence of human rights compliance for imports and exports.

Tanzania

The Tanzanian Constitution contains provisions safeguarding human rights, and these rights are enforceable under the Basic Rights and Duties Enforcement Act 1984 and other local laws. Domestic laws also protect labor rights, health and safety and land rights. Tanzania has legislation relating to environmental protection and management and corporate transparency.

In November 2017, Tanzania released a national baseline assessment on the status of implementation of the Guiding Principles in advance of developing a national action plan for business and human rights.[16]

South Africa

The South African Constitution contains a Bill of Rights upholding basic civil and political rights as well as rights to privacy, labor rights and the right to a healthy environment. There is also a specialist Constitutional Court tasked with interpreting and hearing constitutional rights cases.

Members of civil society have conducted a "shadow" national baseline assessment of current implementation of business and human rights frameworks.[17]

Some commercial operations in South Africa have undertaken high levels of community engagement and produced mutually beneficial outcomes. For example, a community living in 29 villages surrounding the world's largest platinum reserve—the Merensky Reef—owns 13 percent of the mining company.[18] A trust was created in 2004 to manage the community resources derived from these assets and to invest them in infrastructure, health, education and security.

Malawi

The Constitution of Malawi protects and recognizes human rights, and several laws apply to human rights issues.

Malawian employment law also imposes legal requirements relating to labor standards and discrimination, with a specialist Industrial Relations Court mandated to investigate labor disputes and employment issues.[19] Malawian law includes statutes relating to environmental management, land ownership and title, and gender equality.

Several public and private initiatives are underway towards development of a national action plan in Malawi. There is also a Malawian Human Rights Commission, with a mandate to receive individual, group and institutional complaints regarding alleged human rights violations.[20] Malawi Tea 2020 is a coalition of stakeholders from across the entire tea value chain, established to improve human rights throughout the industry.[21] The coalition aims to promote gender equality and women's rights, as well as labor rights. The initiative, which involves the entire Malawian tea industry, is led by the Tea Association of Malawi, the Ethical Tea Partnership, German Development Agency, the Sustainable Trade Initiative and Oxfam.

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1 http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

2 For example, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the ILO conventions in the Declaration on Fundamental Principles and Rights at Work. UN Guiding Principles, Part II A. (section 12).

3 UN Guiding Principles, Part II A. (section 11).

4 http://www.oecd.org/investment/mne/

5 https://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/Sustainability-At-IFC/Policies-Standards/Performance-Standards.

6 For example, the Equator Principles (June 2013), which are 'A financial industry benchmark for determining, assessing and managing environmental and social risk in projects' (www.equator-principles.com).

7 Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas.

8 https://nhri.ohchr.org/EN/Documents/Status%20Accreditation%20Chart%20(21%20February%202018.pdf.

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Commercial port of Beira, Mozambique

Mozambique: Beyond mining

Economic diversification through resource-based infrastructure

By Caroline Miller Smith, Carina Radford, Luiz Aboim and Bruna Beloso

Figure 1: GDP growth forecasts

Subject descriptor	2016	2017	2018	2019	2020	2021	2022	2023
Nominal GDP, USD billions	11.272	12.681	14.321	15.017	15.698	16.378	17.055	19.081
Real GDP growth, %	3.763	2.95	2.955	2.5	2.369	2.269	2.189	9.938
GDP per capita, USD	392	429	472	482	491	499	506	551

Source: International Monetary Fund-World Economic Outlook Database, April 2018

Economists have long recognized infrastructure development projects to be one of the most potent levers for economic growth.[1] Infrastructure built to support development of a country's natural resources can provide access to previously inaccessible areas and open trade routes, and generate investment into new sectors. Where that infrastructure crosses national borders, as is the case with several of Mozambique's current portfolio of development projects, it can also promote regional socio-political integration, economic growth and diversity.

Against the backdrop of Mozambique's improved economic outlook starting from 2018, this article focuses on how the country's opening of its mining logistics infrastructure can drive diversification of Mozambique's economy and its regional integration with landlocked neighboring countries that can use Mozambique as an import and export route. Especially in cross-border and regional infrastructure projects, investors can combine traditional and more creative treaty mechanisms to assist infrastructure financing and development.

In this context, Mozambique has been willing to support cross-border projects through intergovernmental agreements, and is now participating in its first two investment arbitration cases. These are positive indications that the country understands investors' need for wider stakeholders' engagement and risk management tools, which make projects viable.

POSITIVE OUTLOOK IN THE MINING SPACE

After a challenging 2017, with the country's total indebtedness expected to reach 113.1 percent of its GDP (the highest in sub-Saharan Africa), Mozambique's economy is showing positive signs in 2018. Mozambique is stabilizing its currency and lowering inflation, suggesting a more optimistic economic cycle ahead. Mozambique's real GDP grew by 3.3 percent in 2017 and the IMF projects it to grow on average 2.5 percent per annum in nominal US dollars until 2022, then to climb to 9.9 percent in 2023 (Figure 1). Measured in meticals, the local currency, economic research firm BMI forecasts that the Mozambique economy will grow on average 6.6 percent per annum over the next ten years.[2]

Mozambique's coal and natural gas resources accounted for approximately 52 percent of the value of its total domestic export trade in 2017.[3]

An increase in coal production is expected to result in an average growth of 10.1 percent in the value of its exports between 2017 and 2021.[4]

This increase will likely come from Mozambique's coal reserves of about 1.8 billion tons,[5] most of which is high-quality coking coal, with primary deposits in the Tete province. To achieve its forecast growth, Mozambique will need infrastructure to support exploration and development of its reserves in the Moatize, Lower Zambezi and Mucanha-Vusi basins, as well as the deposits in Changara, Cahora Bassa and Magoe districts.

The country has already taken some positive steps to attract the investment required.

52%

Mozambique's coal and natural gas resources accounted for approximately 52 percent of the value of its total domestic export trade in 2017

ITC Trade Map

In recent years, the Government of Mozambique has made concerted efforts to enhance the country's business environment and thus attract trade and investment, particularly into the mining sector. Current mining legislation aims to ensure greater competitiveness and transparency, defining clear obligations and protecting national interests, while also protecting the rights of mining companies. Law No. 20/2014 (Legislação Mineira) and Decree No. 31/2015, for example, introduced clear rules for mining prospecting, research operations, development and exploration.

Some external market factors are likely to play an important role in raising foreign investors' interest in Mozambique's mining sector. Strong and sustained demand for coking coal in India, the uncertain socio-economic environment in Zimbabwe and the expected cost increase of mining in South Africa all place Mozambique at a regional competitive advantage.[6] Mozambique's large coal reserves, high-quality product and strategic location relative to Asian markets create the potential for the country to become a key player in global coal markets.

Notwithstanding these positive factors, Mozambique needs to invest heavily in infrastructure to achieve its forecast growth, in particular roads, railways and ports, so that several planned projects become viable and existing projects are optimized.

OPENING MOZAMBIQUE'S LOGISTICS INFRASTRUCTURE

Most of Mozambique's civil infrastructure was built during the country's colonial period. In 1931, the colonial state created the industry entity Portos e Caminhos de Ferro de Moçambique (CFM) to centralize the management of railways and ports in Mozambique.

Independence in 1975 was followed by a period of civil war that destroyed most of the country's transport network. By the restoration of peace in 1992, Mozambique faced financial difficulties and was unable to invest in rebuilding and expanding its infrastructure. The country was unable to cope with the needs of the growing coal export demand, yet the capital derived from coal sales was pivotal to national building following the civil war.[7]

In the 1990s, the Government of Mozambique approved the participation of private capital in the rehabilitation, exploitation, and management of rail and port infrastructure and services, ceasing the exclusivity regime of the operation of the railways and ports to state-owned entities.

In 2011, with the promulgation of Law No. 15/2011, the guidelines were established for contracting, implementing and monitoring public-private partnerships (PPPs), large-scale projects (LSPs) and business concessions (BCs). Under Law No. 15/2011, PPPs, LSPs and BCs are defined as:

- **PPPs** – All projects that involve an agreement between public entities in Mozambique and private entities under which the latter contracts to implement and manage public interest projects, services and activities, bearing some or all of the financial and other risk involved
- **LSPs** – All investment projects authorized or contracted by the Government of Mozambique, the value of which exceeds 12,500 million meticals at value date January 1, 2009 (roughly US$500 million at prevailing exchange rates at the time)
- **BCs** – Projects carried out under contracts aimed at prospecting, exploring, extracting or exploiting natural or other resources or other assets belonging to the state

The enactment of this law was a landmark in Mozambique's quest to attract private investment and promote efficiency and transparency with these types of projects. Notwithstanding these trends toward a broader participation of the private sector, CFM continues to play an important role in Mozambique's infrastructure development. It continues to control the management of some principal railways and ports. These include the Sena-Beira railway, which is used for the transportation of coal produced in the Tete province to the coast, and the Beira port, which is an important export exit for the country's interior and landlocked Zimbabwe, Zambia and Malawi.

CFM's portfolio of development initiative includes infrastructure and logistics projects across a range of industries, such as the reconstruction of the Machipanda railway connecting the Beira port to Zimbabwe, creating opportunities around the transport of fertilizers, wheat, rice, granite and fuel, and the development of a new coal terminal in Beira (Figure 2).

The Sena-Beira railway is not sufficient for the export of the volumes of coal being produced in the Moatize area. This has forced larger mining companies to look for more efficient alternative routes and integrated logistics solutions to transport coal from the inland basins to seaports for export.

The need for a more efficient solution underpinned the landmark project for the connection of brownfield and greenfield railways in Mozambique and Malawi sponsored by Vale S. A., the Brazilian mining company, and the Japanese company Mitsui & Co., which also included the construction of a new deep-sea coal terminal in Nacala-a-Velha in Mozambique (the Nacala Project).

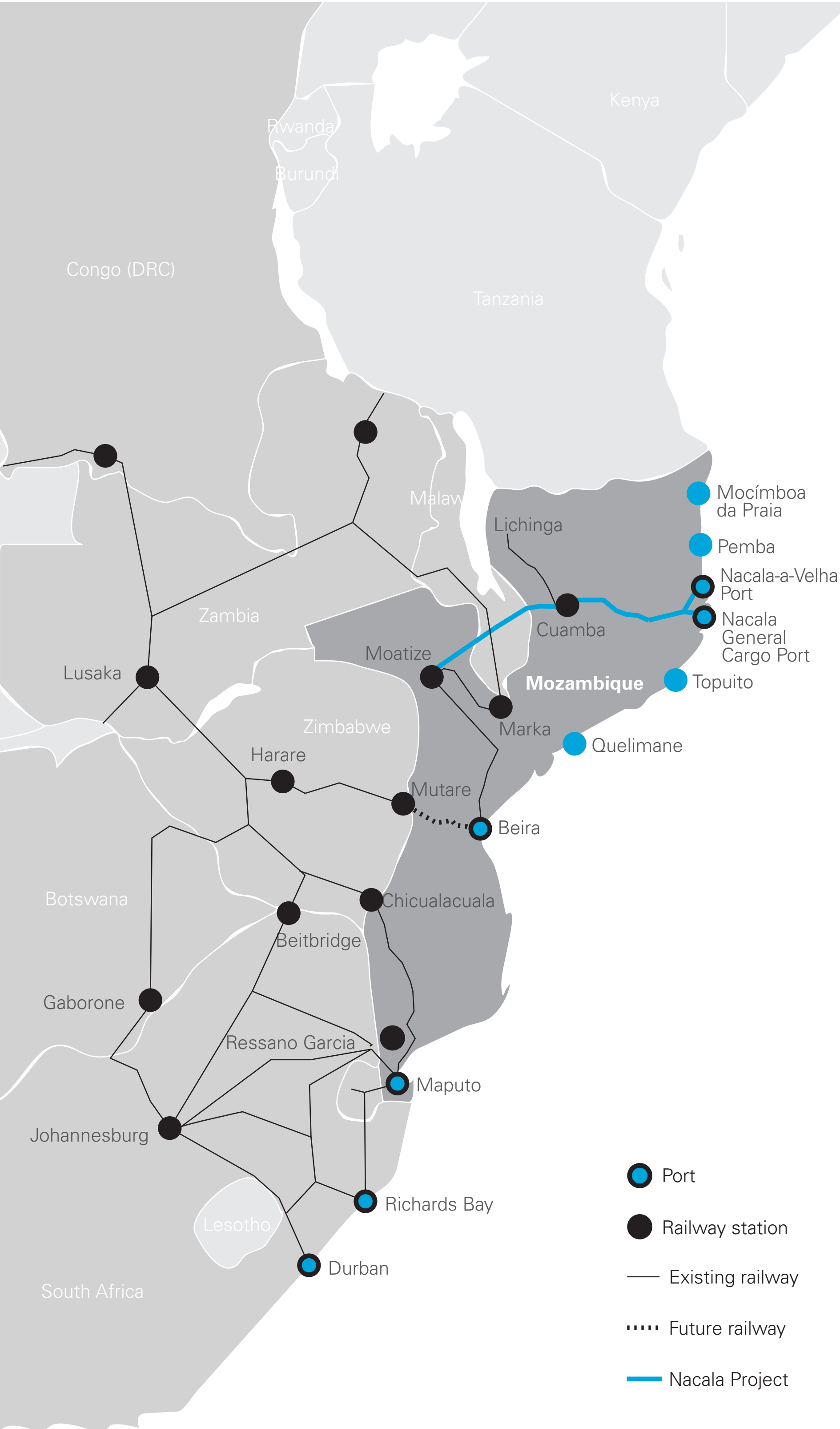
CROSS-COUNTRY PROJECTS AND REGIONAL DEVELOPMENT

The infrastructure needed for Mozambique's growth in coal production can have a much wider economic, political and social impact and be more attractive to investors if it is developed based

Coal transportation

© djedzura/Getty Images

Figure 2: Existing and planned civil transport linkages in Mozambique and adjacent countries, driven by mining projects



Sources: Sharemap,[8] Vale, CFM[9]

on a regional strategy, bearing in mind the country's many landlocked neighbors.

Infrastructure development projects that cross national borders can result in stronger regional economic growth and integration. Economic connectivity reduces the likelihood of conflict between countries, fosters the increase of GDP per capita and enhances education levels in the workforce, creating a virtuous cycle of economic growth, stability and socio-economic development.

In the case of Mozambique, cross-border infrastructure is vital for the integration of landlocked economies and the facilitation of trade in goods and services. Cross-border road and rail infrastructure can help address logistics bottlenecks to regional integration and facilitate economic transformation of Mozambique and those economies, because local and foreign investors can look at opportunities from a regional perspective.

The Nacala Project is a good example of this type of cross-jurisdictional project. It starts in the Moatize area in the western part of Mozambique, crosses Malawi and terminates in two seaports: one for general cargo and one for coal in Mozambique's Nacala-a-Velha. The project enables landlocked Malawi to use the railway to import goods and export its production of cotton, tobacco, pigeon peas, sugar and other products. Importantly, it also improves the transport of passengers between the two countries, giving the project a much wider base of stakeholders.

TRADITIONAL AND NEW INVESTMENT PROTECTION MEASURES

Cross-border projects naturally give rise to investment protection issues, usually covered by bilateral investment treaties (BITs), and to legal issues relating to the different and often conflicting jurisdictions where two or more countries are involved.

Mozambique is party to 27 BITs. But with the exceptions of South Africa and Zimbabwe (in which BITs have been signed, but are not yet in force), the country has

Main railway station
and bus terminal of
Maputo, Mozambique

© Gregory Maassen/Alamy Stock Photo

no such treaties with neighboring countries, all of which have their own and differing regulations. This requires tailor-made solutions to manage typical investors' risks specific to the countries involved in a particular project.

In the case of the Nacala Project, there was no Mozambique-Malawi BIT, and differing rail infrastructure regulations meant that the countries had to find specific solutions to enable cooperation. A key part of the solution was to establish an intergovernmental agreement (IGA), setting out guidelines for the interaction of both countries during the operation of the project. In the IGA, the countries recognized the need for adequate and efficient routes for regional and international trade and the desire to promote good neighborliness and peaceful cooperation for the benefit of their people. Interestingly from the investors' point of view, Mozambique and Malawi were prepared to amend an initial IGA when the Nacala Project was project financed.

Similar opportunities exist in several other parts of southern Africa and in other parts of the continent, where infrastructure projects could benefit from similar legal hybrid structures, incorporating innovative instruments such as IGAs to provide comfort for sponsors and lenders that local legal specificities will be carefully thought through and addressed in advance, thus reducing project risks for investors and host states.

In Mozambique, there is clearly further opportunity for the country to offer its landlocked neighbors—such as Zambia, Zimbabwe, Malawi and Botswana—export and import routes via its railways and seaports.

For example, Botswana has an estimated 200 billion tons of coal reserves in the east side of the country in the Selebi Phikwe coal region. Botswana also benefits from good political and economic stability, and the government is eager to finance construction of trans-regional highways and railways to create capacity to transport general cargo, minerals, fuel and passengers through Zimbabwe to a Mozambican port in the south of the country.

MOZAMBIQUE'S INVESTMENT PROTECTION MECHANISMS TESTED FOR THE FIRST TIME

The spring 2018 edition of *Africa Focus* described Mozambique's well-developed investor protection landscape, which is generally available to investors from countries that have a BIT in force with Mozambique. Mozambique's BIT system is being tested for the first time in two investor-state disputes: *Oded Besserglik v Republic of Mozambique*, concerning investments in the fishing sector, and C*ementisti CMC Di Ravenna SOC Coop v Republic of Mozambique*, concerning road construction projects in Mozambique.

The first BIT case ever filed against Mozambique was brought pursuant to the Mozambique-South Africa BIT 1997.[10] The claimant, a South African national with investments in shrimp fishing and trading operations in Mozambique, claimed that the indirect expropriation of prawn-fishing quotas adversely affected its investment in a fishing operation. Although there is limited publicly available information on the dispute, Mozambique seems to have contested jurisdiction on the grounds that the BIT is not yet in force, pending ratification by both houses of parliament in South Africa.[11] While this first case is well advanced, there were no jurisdiction or merits awards issued at the time of publication of this article.

The second BIT case filed against Mozambique commenced in July 2017, pursuant to the Italy-Mozambique BIT 1998.[12] The claimant is an Italian construction company, which has been involved in large-scale highway construction and other infrastructure projects in Mozambique.[13] The proceedings are still in their initial phase and will take a number of years to be concluded.

Mozambique's participation in those two proceedings demonstrates that the country is engaging with the systems in place to protect foreign investment.

Mozambique's engagement in BIT disputes, combined with its potential willingness to assist cross-border investments through the signing of IGAs, is good news for investors who wish to invest in the country's infrastructure and have regional aspirations.

RESOURCES INFRASTRUCTURE AS LEVERS TO ECONOMY DIVERSIFICATION AND INTEGRATION

While the short- to mid-term economic development of Mozambique and many other African countries remains linked to exploration of natural resources, the development of infrastructure to exploit those resources will remain a crucial enabler of that development, economy diversification and regional integration.

Infrastructure projects associated with exploration and extraction of mining resources can promote economic and social impacts for the countries involved. In addition to traditional project documentation, BITs and other well-known treaties and conventions, investors in cross-border or regional projects could also look into creative structures such as IGAs, which place their projects in the context of a wider cooperation between two or more states.

In some cases, these creative structures will make the difference between whether a project can proceed or not.

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1 World Development Report 1994: Infrastructure for Development.

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3 ITC Trade Map.

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8 http://sharemap.org/jkan/railway/Railways_in_Mozambique.

9 http://www.cfm.co.mz/index.php/pt/sobre-o-cfm/cfm-na-regiao.

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13 Z. Williams, 'Mozambique faces another investment treaty arbitration', IA Reporter, 17 July 2017.

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The long arm of the law: Bribery and corruption enforcement investigations

The bribery and corruption risks facing individuals and companies in Africa

by Joanna Dimmock and Fred Kelly

There is no doubt that corruption remains a serious issue in Africa, as it does worldwide.

Successive governments have pledged its eradication, but it continues to plague society as a whole. There is huge political and popular support for corruption investigations where companies or individuals are deemed to have profited unfairly from such practices. These investigations regularly come to the attention of the press, with significant reputational damage to those involved, and in a number of cases resulting in criminal prosecutions (including fines and imprisonment).

While many of the high-profile corruption cases are investigated and prosecuted by the US and the UK, other jurisdictions—such as France and Kenya (referred to below)—are strengthening their anti-corruption enforcement.

In this era of increasing globalization, there are more joint multijurisdictional investigations, and more information is being shared through mutual legal assistance requests.

Those operating in Africa should be aware of the risks they face when conducting business, and their exposure on both a corporate and an individual level.

THE US APPROACH

In 1977, the US led the way in criminalizing bribes paid to foreign government officials by enacting the Foreign Corrupt Practices Act (FCPA).

For many years, the US Department of Justice remained the principal law enforcement agency pursuing companies and individuals for overseas corruption. The FCPA's jurisdiction is wide: it applies not simply to US corporations and citizens, but also to foreign companies and individuals whose corrupt activity takes place within the US.

The FCPA penalizes bribery of foreign public officials, and African states have been featured in a number of FCPA investigations over the years.

Currently among the FCPA resolutions with the largest total penalties is Och-Ziff Capital Management Group LLC (Och-Ziff), a New York–based hedge fund that settled for more than US$400 million in 2016[1] and entered into a three-year deferred prosecution agreement (DPA) for bribing foreign officials in the Democratic Republic of Congo (DRC) and Libya. Och-Ziff's subsidiary, OZ Africa Management GP, LLC, a company incorporated in Delaware, also pleaded guilty to an FCPA violation relating to extensive bribery in the DRC.

The "long arm" of the FCPA also extends to non-US citizens. A "fixer" for Och-Ziff, Samuel Mebiame (a Gabon national, and the son of the former Prime Minister of Gabon), was prosecuted and sentenced to two years' imprisonment for his part in Och-Ziff bribery schemes in Niger, Guinea and Chad. According to the US authorities, Mr. Mebiame repeatedly traveled to and from the US during the period of the criminal activity, and used facilities in New York and Florida to further the conspiracy. Specifically, he controlled US bank accounts that received funds from co-conspirators and entered into telephone and email correspondence about the corrupt scheme.

It is not simply US citizens that face exposure under the FCPA. The US can and will prosecute foreign nationals if US authorities feel that there is a sufficient territorial link.

> **Corruption is indeed one of the greatest evils of our time. Corruption rewards those who do not play by the rules and also creates a system of distortion and diversion, thereby destroying all efforts at constructive, just and fair governance.**
>
> – President Buhari of Nigeria and Champion of the African Union's Theme of the Year for 2018: "Winning the Fight Against Corruption: A Sustainable Path to Africa's Transformation"

THE UK APPROACH

Not quite hot on the heels of the US, the UK has been investigating and prosecuting corruption cases with vigor over the past decade, generating a level of fines never before seen in UK criminal courts.

In 2010, the UK updated its existing bribery regime and passed extremely wide-reaching legislation (the Bribery Act).

Even more stringent than the FCPA, as well as redefining a number of substantive bribery offenses, the Bribery Act created a new type of corporate offense: "failing to prevent bribery." This targets companies that have a "close connection to the UK"—such as foreign companies that operate fully or partially in the UK—


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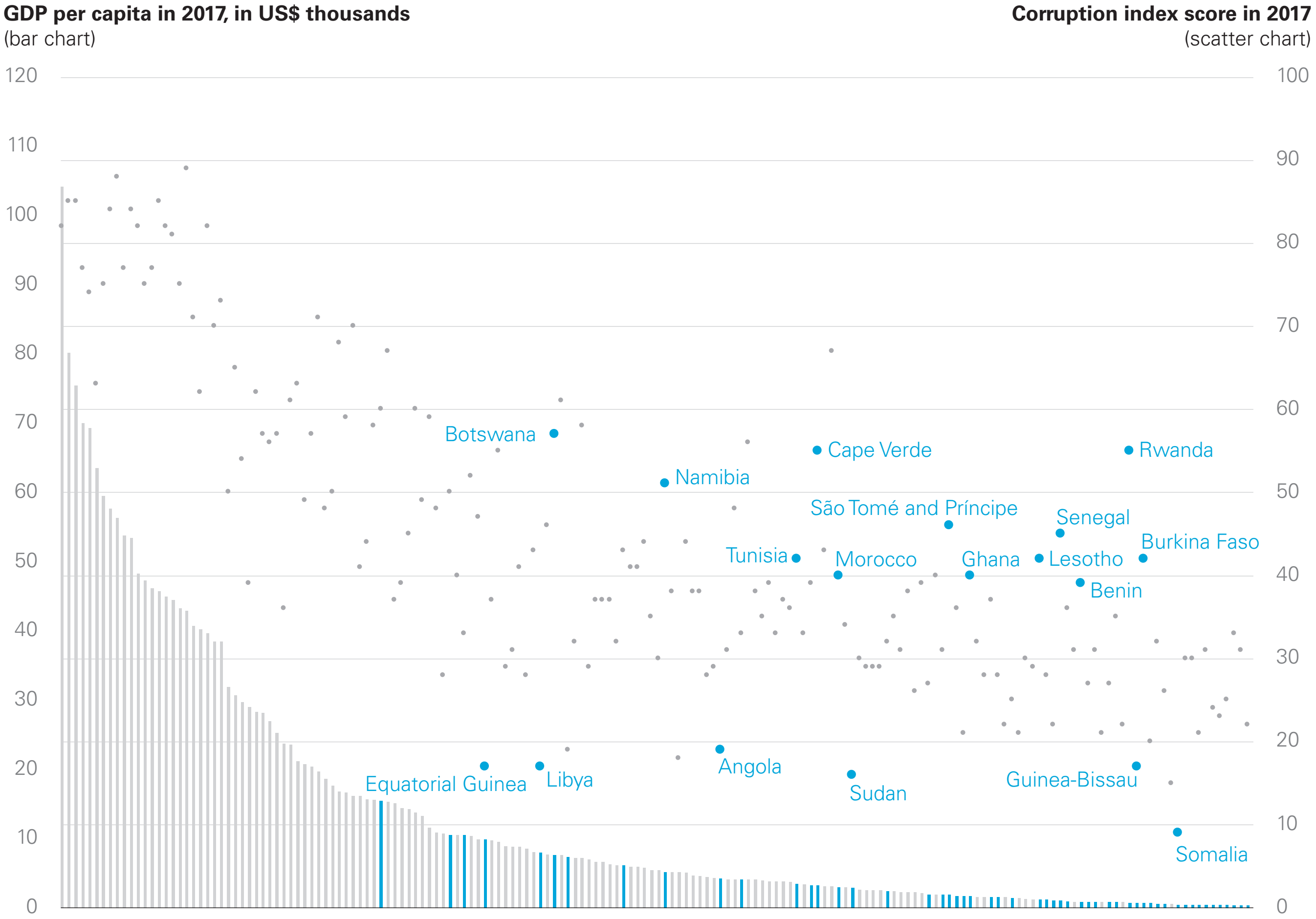
Figure 1: Several African countries significantly outperform expectations in eradicating corruption
Data sources show a strong correlation between enhanced GDP per capita (typically through economic growth and investment) and reduced corruption among countries worldwide. However, a number of African nations succeed in achieving strong governance and receiving high scores on Transparency International's Corruption Perceptions Index—despite their relatively low GDP per capita.



Notes:
1. All countries globally included where 2017 data is available for both GDP per capita and Corruption Index (i.e., excludes some countries in which wars or serious socio-political unrest exists).
2. African countries are colored blue in both bar chart (GDP per capita) and scatter chart (Transparency International Corruption Perceptions Index), and are highlighted on the scatter chart if they score significantly better or worse than might be expected on average, given their GDP per capita levels.
3. The 2017 Corruption Perceptions Index ranks 180 countries and territories by their perceived levels of public sector corruption, according to experts and businesspeople, from 0 ("highly corrupt") to 100 ("no corruption")

Source: IMF (GDP per capita data) and Transparency International (corruption index data); Cambridge Strategy Group analysis

even if the corrupt activity itself takes place entirely outside the UK.

Therefore, in principle, an African company could be prosecuted under the Bribery Act for corruption taking place anywhere in the world, as long as it had a footprint in the UK. No other link would be required.

UK citizens and those with a "close connection" to the UK are exposed to potential prosecution even if the corruption took place wholly outside the UK. Non-UK citizens also fall under the UK's jurisdiction under both the Bribery Act and earlier legislation, if part or all of the conduct in question occurred in the UK. In practice, this extra-territorial reach of the Bribery Act has been used by UK law enforcement agencies to investigate and prosecute both individuals who have minimal connections with the UK and conduct that has little or no nexus to the UK.

It is important to remember that facilitation payments (also known as small-level "grease" payments—more common when crossing borders) are wholly outlawed under the Bribery Act, whereas they are permitted within certain circumstances under the FCPA. Companies operating in jurisdictions where this type of payment is more prevalent should be aware of the risks that they might face in terms of exposing them to UK criminal liability.

A number of the UK's recent enforcement cases have concerned allegations of corruption in Africa.

The first use of the "failing to prevent" offense was against Standard Bank in 2015, when (as part of a DPA) the company agreed to pay a US$16.8 million fine, US$8.4 million in disgorgement of profits and a further US$7 million in compensation to the Government of Tanzania. This concerned a corrupt arrangement to make payments to Tanzanian public officials in relation to a private placement scheme. Standard Bank was alleged to have failed to prevent one of its subsidiaries, Stanbic Bank Tanzania Limited, and other individuals associated with it, from committing bribery on its behalf.

More recently, in 2017 Rolls Royce PLC entered into a DPA and was ordered to pay almost £500 million as a result of corrupt arrangements in a number of countries, including Nigeria, as part of a push by Rolls Royce to sell aero-engines and energy systems. There is as yet no decision as to whether individuals will face charges in the UK.

Of the current corruption cases being pursued by UK authorities, the Rio Tinto investigation relates to mining activities in Guinea. British American Tobacco faces inquiries into its conduct in Kenya. Most recently, defense company Ultra Electronic Holdings is under the spotlight for business conducted in Algeria.

MULTILATERAL DEVELOPMENT BANKS

Development banks—such as the World Bank and the African Development Bank—are committed to fighting corruption in any of their projects.

Complaints can arise from a number of sources, including whistleblowers, and disgruntled competitors who feel that improper practices have been deployed in awarding one or more contracts.

Where the allegations are substantiated, companies involved in the misconduct are likely to be barred from engaging in future development bank-financed projects. In the past eight years, the World Bank alone has debarred more than 350 firms and individuals. Then, the investigation findings are passed on to the relevant law enforcement authorities. Over the years, a number of criminal corruption cases have commenced following a Development Bank investigation.

AFRICA

In January 2018, the African Union announced that it was dedicating 2018 to combating corruption.

This follows the implementation of anti-corruption legislation by many African states in recent years. For example, in Kenya a new Bribery Act came into force in January 2017, extending Kenya's anti-corruption laws to the private sector (similar to the UK Bribery Act) and requiring private entities operating in Kenya to have procedures in place to help prevent bribery.

Recent enforcement cases also illustrate that both foreign and domestic companies are increasingly facing prosecution from African authorities for breaches of anti-corruption legislation. For example, in 2015 Algerian authorities fined seven foreign companies and jailed 14 individuals after they were found guilty of corruption and money laundering in the completion of a highway project. The range of penalties included fines for each company and ten years' imprisonment, and a US$35,000 fine for an adviser to a Chinese firm.

Separately, the Nigerian Economic and Financial Crimes Commission (EFCC) has recently brought a case against several oil companies alleging that they secured the purchase of an oilfield through a US$1.3 billion corrupt deal. Current and former senior managers of the companies have been charged. The EFCC has also been asked to investigate payments made by a Geneva-based oil company to four local law firms in Nigeria, as well as the use of company funds to pay for gifts for Nigerian ministers.

Most recently, in June 2018 the offices of one of Africa's largest mobile telecommunications companies, and those of its legal counsel, were raided by representatives from South Africa's Directorate for Priority Crime Investigation (the Hawks). The raids were reportedly part of the Hawks' investigation into allegations that the telecommunications company bribed Iranian officials in relation to the award of a license to operate in Iran.

In addition, significant collaboration occurs between African states and the US and UK authorities as a means of fighting corruption.

At the UK's 2016 Anti-Corruption Summit, both Nigeria and Tanzania formally agreed to partnerships between local and UK authorities to build existing capacities. In another example of collaboration, in May 2018 the UK High Commission in Nigeria announced that it had provided special IT software to the EFCC in Nigeria.

Collaboration with overseas authorities also extends to enforcement actions. For example, in 2015 the US SEC was assisted by the Integrity and Anti-Corruption Department of the African Development Bank and the South African Financial Services Board in its investigation into Hitachi. This led to the charging of Hitachi and a subsequent US$19 million settlement agreement.

This recent increase in enforcement activity shows that African authorities themselves are serious about tackling bribery and corruption.

Companies operating in Africa should therefore be aware that if they breach any applicable anti-corruption legislation, they face a real risk of not only being investigated by authorities in other jurisdictions—such as the US and UK—but also being investigated and prosecuted by African authorities.

CONCLUSION

In this age of international cooperation and collective enforcement action, there is an increased risk that any misconduct on behalf of individuals or companies operating in Africa is likely to be uncovered.

Both companies and individuals who fall afoul of the wide-reaching anti-corruption legislation described above face significant criminal penalties, including large fines, debarment from government contracts and even jail time. In addition, other collateral consequences of enforcement actions include potential reputational damage as a result of negative publicity and financial damage to shareholders and employees.

Companies and individuals either investing or operating in Africa therefore need to be vigilant in their business practices and should ensure that they have carried out a proper risk assessment and that their anti-bribery and corruption policies and procedures are appropriate and well designed.

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1 A combination of civil settlement and criminal penalties.

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Renewable energy in Africa in the era of climate change

Africa offers great potential for renewable energy deployment and investment

By Joz Coetzer and Smita Vassan

Concerns about carbon emissions from traditional coal-fired power stations coupled with a projected tripling in African energy demand by 2030[1] make renewable energy essential to power generation on the continent. Lack of access to electricity is only one challenge that Africa faces, but it is one of the most significant obstacles to socio-economic development.

Africa currently accounts for one-sixth of the world's population. However, it generates only 4 percent of the world's electricity. Furthermore, South Africa and the countries north of the Sahara account for three-quarters of the continent's energy consumption. Close to 600 million Africans have no access to electricity, and 780 million rely on traditional solid biomass for cooking (mainly fuelwood and agricultural waste). Nearly 80 percent of those lacking access to power across sub-Saharan Africa live in rural areas.[2]

With its good supply of wind, sunshine, hydropower and even geothermal resources, Africa offers great potential for renewable energy deployment and investment.

Enhancing access to power generally across the continent is a core objective of both the African Union's Agenda 2063 and the national development plans of nearly all African nations. Clearly, renewable energy technology has a crucial role to play in achieving these objectives.

A study by the University of California, Berkeley mapping out the location and energy potential of renewable energy sources in eastern and southern Africa shows that, although the energy generation resources are vast, they are not evenly distributed. The study indicates significant possibilities for wind, solar PV and solar CSP technology.

Figure 1: Cumulative investment needs for African power generation, 2015 to 2030

	Investment US$ billion (2015–2030)			
Region	**All generation**	**Large hydo**	**Other renewables**	**T&D**
North Africa	342	2	218	186
West Africa	89	36	31	52
Central Africa	32	13	17	14
East Africa	72	36	21	49
Southern Africa	145	18	94	74
Total	**681**	**106**	**381**	**375**

Source: International Renewable Energy Agency (IRENA) (2015), Africa 2030: Roadmap for a Renewable Energy Future. IRENA, Abu Dhabi. www.irena.org/remap

Hydro-electricity offers viable solutions for up to one-third of the African nations. In a continent where many regions are plagued by frequent and severe drought, though, the use of rivers for power generation can be controversial. Environmental and socio-economic impacts of inundating large catchment areas also mitigate against large hydropower projects where other viable options exist. As with other models of centralized power generation, distribution networks associated with large hydropower projects are expensive to construct and maintain. They also represent security risks in parts of the continent where social unrest exists.

Smaller, micro-hydro projects and other regional and local renewable power generation projects—including wind, solar and geothermal—present alternatives that may become more prominent in African power generation planning in the future.

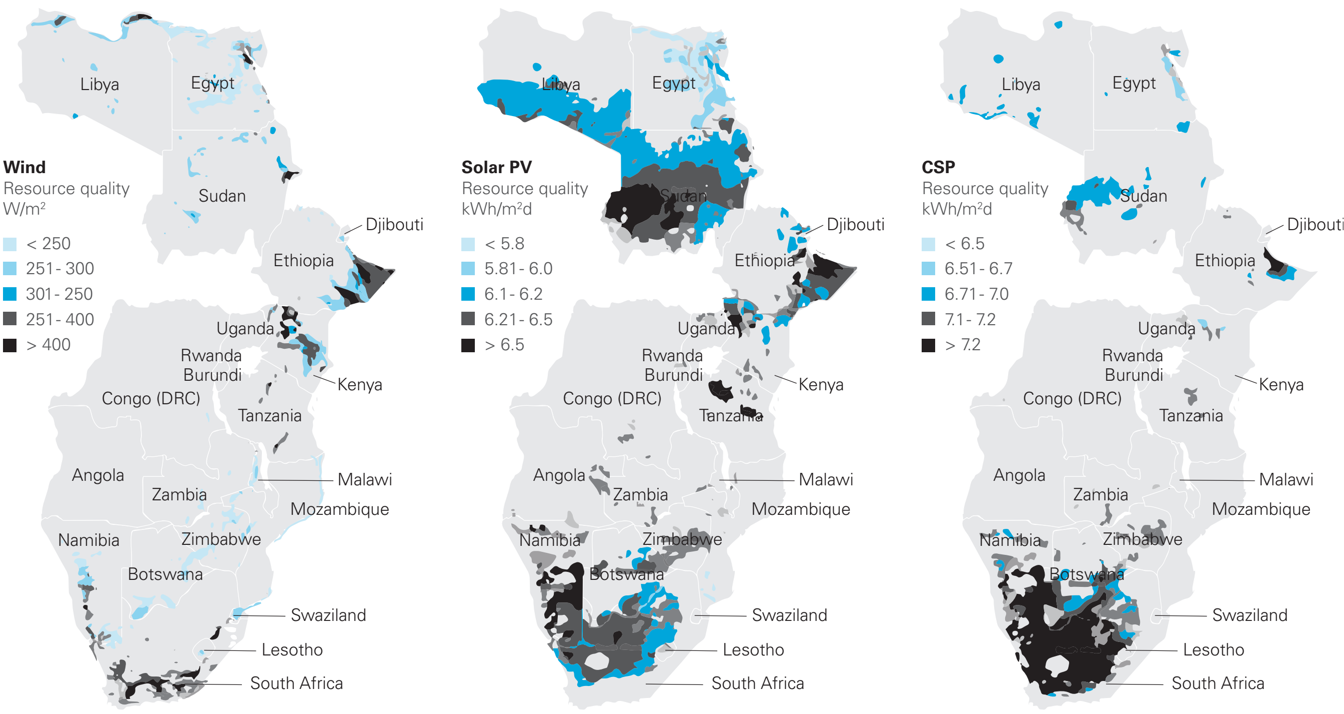
Climate change is now at the forefront of discussions globally and widely recognized as a problem demanding coordinated global action. Concern has mounted as its effects have become more evident across the northern hemisphere, with parts of Europe and North America experiencing some of the warmest summers on record and traditionally cold regions like Siberia experiencing unprecedented heatwaves. In many parts of the world, including Africa, movements promoting environmental sustainability and environmental consciousness are gaining momentum.

> **Africa has a significant supply of wind, sunshine, hydropower and even geothermal resources.**

With many parts of the continent already arid, the implications of global warming for Africa are especially dire. The gradual yet dramatic disappearance of the glaciers on Mount Kilimanjaro is a highly visible, symbolic manifestation of climate change in Africa. According to the

Solar panels above old town and tanneries in Morocco

Figure 2: The location and energy potential of African renewable energy resources in selected African countries
(terawatt hours)



Source: UC Berkeley

United Nation's Intergovernmental Panel on Climate Change,[3] an estimated 82 percent of the ice that capped Mount Kilimanjaro when first recorded in 1912 had already disappeared by the year 2000.

Africa, as a continent, clearly needs to contribute to mitigating the impact of climate change, too. Key to this is switching, wherever possible, from coal-fired generation to renewable energy generation.

As of July 2018, all but three African countries (Algeria, Angola and South Sudan) had ratified the Paris Agreement within the United Nations Framework Convention on Climate Change (UNFCCC).

The Paris Agreement deals with greenhouse-gas-emissions mitigation, adaptation and finance, starting in the year 2020. It requires that each country determine, plan and regularly report on the contribution that it will make to mitigate global warming. Although no mechanism exists to compel nations to set specific targets by a particular date, the expectation is that targets should exceed those previously established.

Driven by the Paris Agreement and also general concern about the impact of climate change on the continent, African renewable energy initiatives are gaining momentum.

South Africa's Renewable Energy Independent Power Program (REIPPP), viewed as a major success for renewable energy procurement globally, has been an influencing and guiding factor for other African countries in their development of similar renewable energy programs.

Ninety-five projects have been initiated by independent power producers (IPPs) since the commencement of the REIPPP. Existing projects concluded under the earlier bid rounds are now fully operational, with a new tranche of projects under Round 4 now heading toward financial closure. A report by the South African National Energy Regulator indicates that these projects will have an achieved capacity of 3271.25 MWs when they are fully operational.[4]

In Uganda, the GET FiT Uganda initiative aims to achieve an installed capacity of 158 MWs of clean renewable energy added to their national grid through the implementation of 17 projects under this initiative. To date, Uganda has commissioned six of the 17 projects, three of which are hydro-power plants with a total installed capacity of 18.1 MWs, two grid-connected solar PV projects totaling 20 MWs and a 20 MW Kakira co-generation plant.[5]

The main objective of the GET FiT Program is to assist East African nations in pursuing a climate-resilient low-carbon development path to promote growth, reduce poverty and assist in the best way possible with climate change mitigation. GET FiT Zambia was adopted by the Zambian government in October 2017 with the aim of procuring 200 MWs of renewable energy projects within the next three years. The Interim Renewable Energy Feed-In Tariff Program was introduced in Nambia in 2015 and has attracted investment mainly in solar generation rather than other sources of renewable energy.

<1%

Africa's share of global renewable energy investment

miningreview.com

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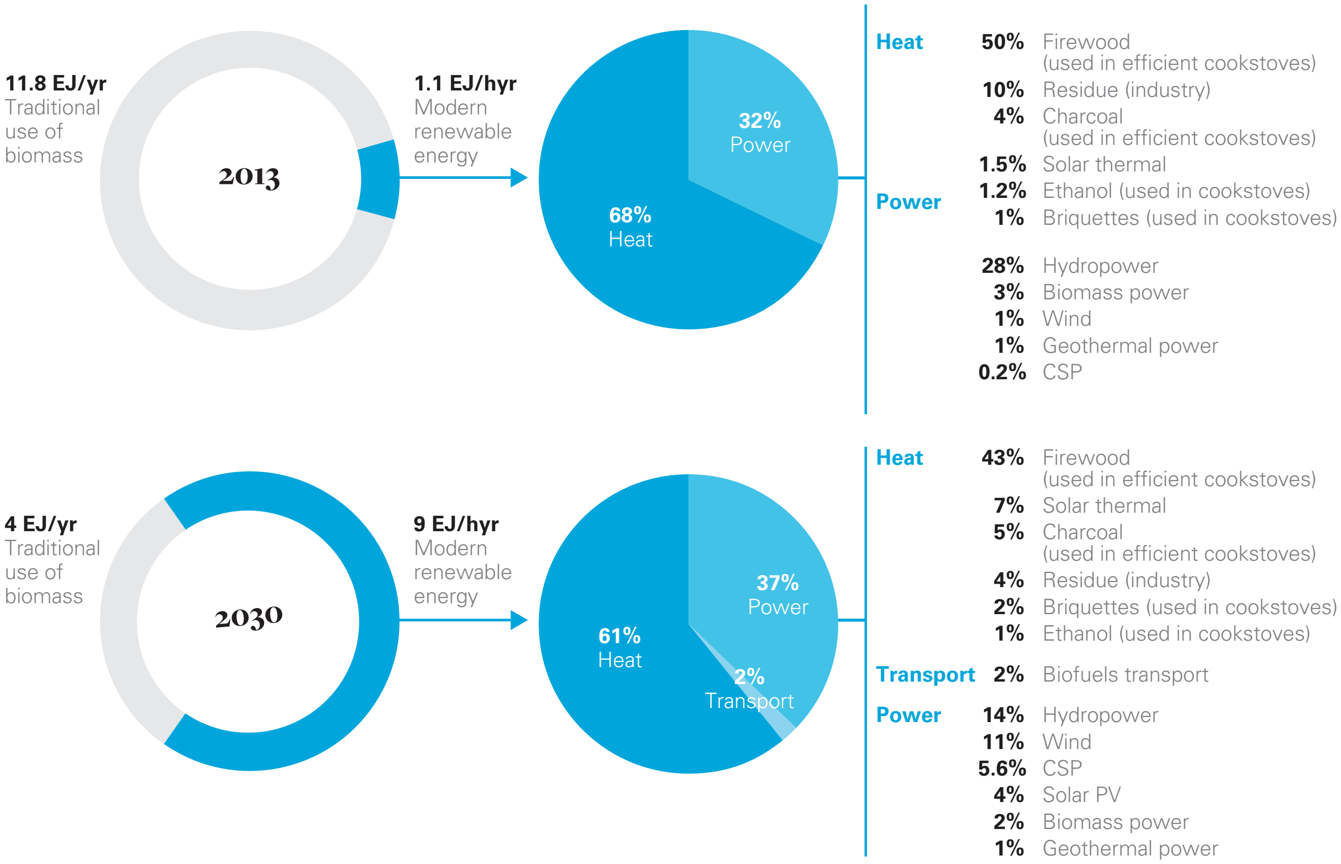
Africa's adoption of renewable energy projects is accelerating.

Figure 3: Modern renewable energy use in 2013 and 2030



Source: International Renewable Energy Agency (IRENA) (2015), Africa 2030: Roadmap for a Renewable Energy Future. IRENA, Abu Dhabi. www.irena.org/remap

The Batoka Gorge hydroelectric power project is just one way in which partnerships by African states are emerging in the renewables space. This US$4.5 billion hydroelectric project on the Zambezi River that borders Zambia and Zimbabwe is expected to generate 1,600 MWs of electricity, to be shared in equal portions among both states.[6] The Zimbabwe Electricity Supply Authority's (ZESA) generation capacity was measured in February 2016 as producing at only 845 MWs, against a projected national demand of 2,200 MWs and an installed capacity of approximately 1,940 MWs.[7] Projects like the US$1.5 billion Hwange Power Station and the Kariba South expansion venture will add around 900 MWs to the Zimbabwean national grid.[8] Once Batoka Gorge comes online, Zimbabwe is optimistic that sufficient generation capacity will exist to sell power to neighboring countries, too.

Ethiopia's main source of electricity generation is from hydroelectric power stations. Once completed, The Grand Ethiopian Renaissance Dam will be able to generate 6,450 MWs, being one of the largest hydropower dams in Africa.[9]

Botswana imports a large percentage of its energy from the Southern African Power Pool. With the Southern African region now experiencing a power deficit, the initiative to get Botswana to internally generate its own electricity is now more prominent. Private sector participation in electricity generation was enabled by the amendment to the Electricity Supply Act during 2016. Conversely, Mozambique has an installed generation capacity of around 2,905.45 MWs from a combination of hydro, solar, gas, wind, geothermal and coal sources, though only a quarter of the population has access to electricity.[10]

Morocco has targeted increasing electricity generation from renewable energy sources to 52 percent of total generation capacity by 2030. Kenya's renewable energy sector is well established and accounts for about 77 percent of the electricity purchased. Geothermal and hydro-power contribute the bulk of Kenya's renewable energy production.[11]

As recently as June 2018, Gigawatt Global Coöperatief signed a deal with the 15-nation Economic Community of West African States to build US$1 billion worth of renewable energy projects in the region, with installation of 800 MWs of solar and wind farms in West Africa beginning with Burkina Faso, Senegal, Mali, Nigeria and the Gambia.

INVESTING IN AFRICAN RENEWABLE ENERGY PROJECTS

Aligning with the 2030 vision to energize and "light up" Africa and the African Union's Agenda 2063, more renewable energy sources are being actively explored. Driven by their own concerns of corporate governance as well as the proven economic viability of renewable resources, funders are proving less inclined to finance coal-fired power stations.

Consequently, Africa's adoption of renewable energy projects is accelerating.

The World Bank has estimated that US$43 billion per year of investment is required for infrastructure in the power sector,[12] while the African Development Bank and the United Nations Environment Programme (UNEP) estimate a need for a package of US$41 billion per year to finance the development of the energy sector in Africa.[13]

So how does Africa secure these funds?

Development finance institutions have expressed great interest in addressing the renewed urgency to light up and power the continent. Energy is at the core of the African Development Bank's economic transformation agenda, and the Bank has more than US$12 billion worth of investment commitments to the sector between 2016 and 2020.[14] The World Bank's implementation of the Africa Climate Business Plan includes a plan to apply US$16 billion towards renewable energy projects in Africa.[15]

Angola's 2025 goal is to provide modern electricity to about 60 percent of its population and the country has about US$18 billion of renewable energy investments underway as part of that strategy.[16] The new Angolan government is taking steps to enhance the country's attractiveness for foreign direct investment, including reform of the legislative framework to attract funding from the International Monetary Fund and other multilateral investment organizations. Mapping studies completed by the Ministry of Energy and Water in June 2014 identified potential for 55 GWs of solar power, 3 GWs of wind power and 18 GWs in hydropower throughout the country.[17]

Coupled with current legislative reforms under way, potential exists for investors to invest in renewable energy technologies in Angola.

Morocco is another example of an African country that is taking active steps to enhance investment in renewable energy projects. Morocco is liberalizing its renewables sector, including by increasing the minimum threshold for hydro-power plants from 12 MWs to 30 MWs and by establishing the Moroccan Agency for Solar Energy to carry out programs for solar energy generation for up to 2,000 MWs.

Investor confidence is recovering in Zimbabwe, with the new administration under President Mnangagwa. Opportunities exist in many industry sectors for both developers and financiers, particularly in renewable energy. Care needs to be taken to minimize investment risks, especially where regulatory reform is at an early stage. And more attention to marketing investment opportunities in African renewable energy is key to mobilizing these projects.

African governments also need to continue to improve their ability to attract financing for these crucial projects by improving their regulatory and political frameworks, affording funding institutions and investors a stable environment to undertake projects, and becoming more environmentally sustainable in the long run.

Despite the number of projects being commissioned around the African continent and the number of project initiatives that are currently underway across Africa, the continent is still nowhere near bridging its generation deficit. As current demands are met, demand for electricity across the continent continues to grow.

With African states recognizing their renewable energy generation capacity, and in so doing taking action to implement the necessary reforms to make foreign investment possible, opportunities for investment in Africa will continue to expand. Progressive regulatory reform, especially around the establishment of independent power producer (IPP) programs, would accelerate that momentum. Attractive returns on investment, coupled with steadily improving risk, suggest that Africa will continue to attract investment into its renewable energy sector in the coming years.

US$1 trillion

needed over the next 20 years to meet Africa's power demand

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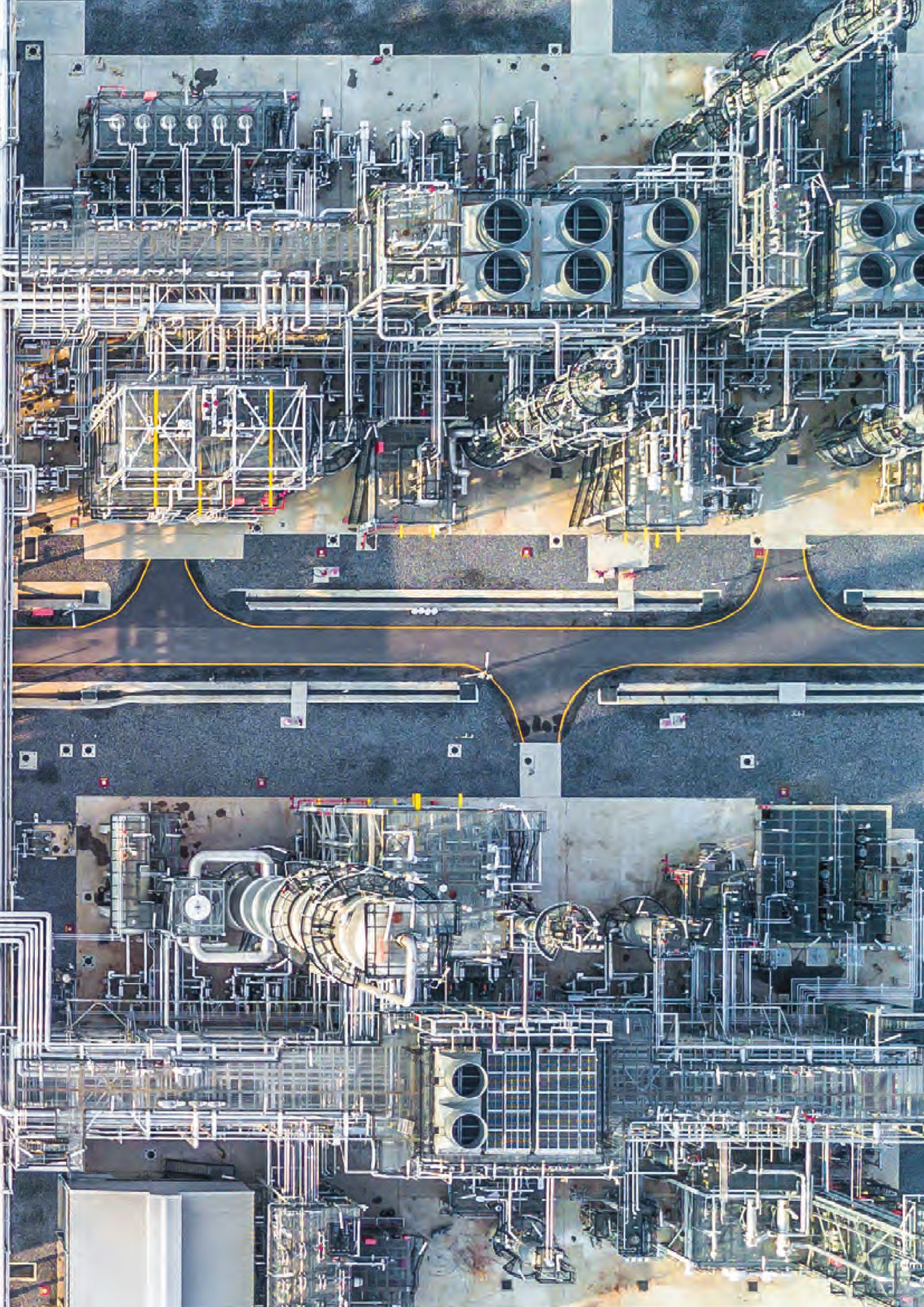

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