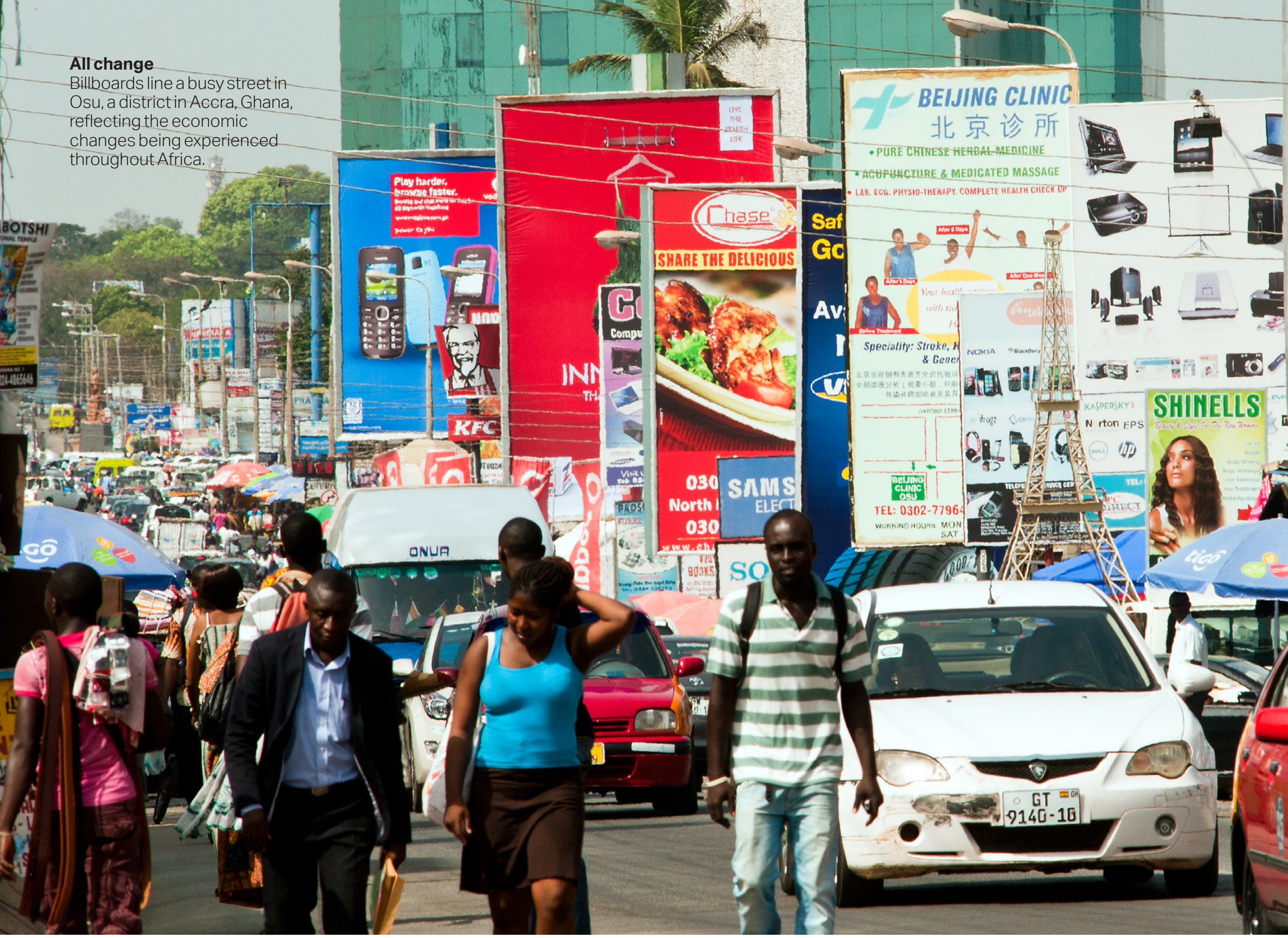


All change
Billboards line a busy street in Osu, a district in Accra, Ghana, reflecting the economic changes being experienced throughout Africa.

Africa: closer to home

Faced with an influx of foreign investors interested primarily in Africa's natural resources, countries throughout the continent are taking steps to ensure their economies capture sustainable benefits from the boom.

The pursuit of natural resources in Africa has been one of the defining political and economic trends of the past two decades. From the oilfields in the north and west to the heavy metals of central Africa, the continent has been the scene of a natural resources gold rush.

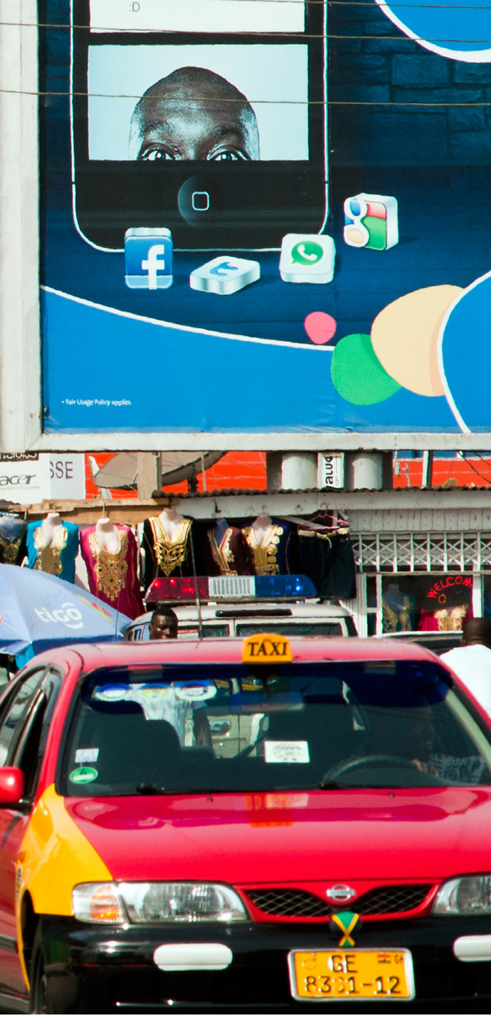
Africa now boasts around 7 percent of the world's oil reserves and almost 9 percent of natural gas reserves. A slew of countries have recently joined Nigeria, Angola and Equatorial Guinea in holding significant reserves: Ghana, Ivory Coast, Mozambique, Tanzania and Uganda, to name just a few. With this comes, naturally, optimism over the financial prospects of those countries, many of which are fragile economically.

However, it also brings the fear of unchecked exploitation of valuable reserves by multinationals and investors.

The challenge for governments in these countries is twofold: design a system of regulation that removes barriers to much-needed foreign direct investment, but also ensure that the economic benefits are shared equitably with the indigenous population, both through employment and by developing the local supply chain through targeted procurement.

A third, longer-term goal also exists: to empower local engineers, designers, lawyers and executives by giving them the skills to take senior positions in the future.

According to Joshua Siaw, lawyer and director of White & Case's Africa practice, the African resource bonanza



and related opportunities and challenges have encouraged governments to act.

"Look at Nigeria: social and economic challenges remained, even as large international companies invested in certain segments and industries," Siaw says. "Where's the broader engagement between those enterprises and Nigerians?"

To address this, the government introduced a "local content" law in 2010, mandating a minimum level of local business involvement in all new foreign investment projects within the country.

"The aim is to encourage indigenous Nigerians to participate in the oil and gas industry," explains Oghogho Akpata, managing partner at Templars Law Firm in Lagos. "The law has two prongs. First, it prescribes the level to which international companies would be required to engage with local suppliers and contractors, or use locally produced goods in their operations. Secondly, it extends to local involvement in the award of oil blocks, oilfield and oil lifting licenses."

Akpata reports that, at first, the local content law was greeted with skepticism by international oil companies due to a lack of understanding of the workings of the law: "There was a belief that the law set limits and thresholds that couldn't be met, based on the skills and supplies that were available in Nigeria at the time," he says. "As a result, many foreign companies felt it was anti-business. But they are coming to grips with it now as a result of better information and proper professional advice. Companies that felt it was cheaper to manufacture a large piece of equipment in South Korea, for example, would now be happy to do that work in Nigeria, as their perspectives are beginning to change."

And where Nigeria has led, others are beginning to follow. Arthur Katende, principal associate at Katende, Ssempebwa & Co Advocates in Kampala, Uganda, reports that local authorities introduced their own local content law last year—the Petroleum, Exploration, Development and Production Act—focusing on oil and gas.

"The law mandates that preference should be given to goods that are produced or available in Uganda, and services that are rendered by Ugandan citizens and companies. If such goods or services are not available in Uganda, the law stipulates that they should be procured from a company that has entered into a joint venture with a Ugandan company, and that the latter should have a share capital of at least 48 percent in the joint venture," he says. The law focuses on secondary contracts and boosting the supply chain of local businesses, but Katende points out that most of the local industry does not yet have the capacity to supply the industry or enter into a joint venture of at least 48 percent because of the substantial capital investment required. As such, "it is a law that is well-intentioned, but difficult to follow."

Meanwhile, the Ghanaian oil and gas industry is well aware of Nigeria's struggles, as it tries to ensure its own resource boom benefits a broader set of stakeholders. Ghana introduced a version of the local content law in 2013 that goes beyond the Nigerian model: there needs to be local ownership and management representation. Foreign businesses have to localize their operations, with more management roles for local executives, partnerships with local professional service firms, and so on.

Nii Odotei, a partner at Fugar & Company in Accra, is well placed to observe how the country is addressing the challenge of boosting local involvement and effective participation not just in oil and gas, but also in the wider economy.

"It works on two levels. In industries like oil and gas, specific legislation has been introduced, while there is local content policy in other areas," says Odotei. "A foreign company working on a new project would need to demonstrate that it has included local content, how it is going to use local manpower, the training it will provide, and how knowledge and skills transfers will

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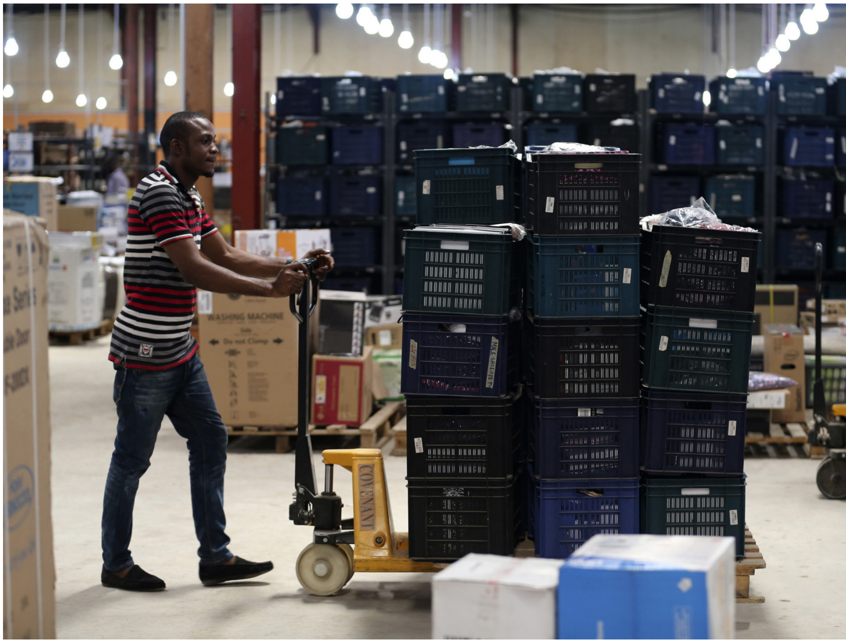


take place." In his view, this content policy also extends to the local procurement of goods and services for the new project.

For oil and gas, the provisions run the gamut from local goods to insurance and financial services. There's a comprehensive list of what international companies can and cannot do: "It's very detailed and outlines the expectation of what local participation should be over the life of the project," Odotei says. One encouraging aspect has been the recognition by regulators that this cannot be achieved overnight.

"So far, this has been applied realistically to the greatest extent possible. The regulator understands that, no matter how hard you try, it's almost impossible to find local providers of certain goods or services. And if you can, quantities are likely to be very limited, so the thresholds take that into account. But properly trained local workers should be brought in for skilled and semi-skilled labor. The government doesn't want to see an international oil company flying in someone from Aberdeen, Houston or Stavanger, or any other oil city for that matter, only to do a job that a Ghanaian can be trained to do."

Local links in the chain

For Kevin Dadzie, group manager for business development at Chase Petroleum, one of Ghana's leading oil companies, the new law builds on the efforts of regulators to encourage foreign investors to include local elements in every new project plan.

"It has already begun here, indeed the government has always encouraged this," he says. "Take a look at the downstream sector, the regulator—the National Petroleum Authority (NPA)—has always insisted that foreign companies with interest in the downstream supply chain business must have a local partner of equal interests, and this has increased local participation in the downstream sector significantly."

This was originally a regulatory guideline, not a law. It was developed by the NPA as a way to ensure Ghanaian involvement in the downstream business—importing products, building terminals, distributing to the local market, and so on.

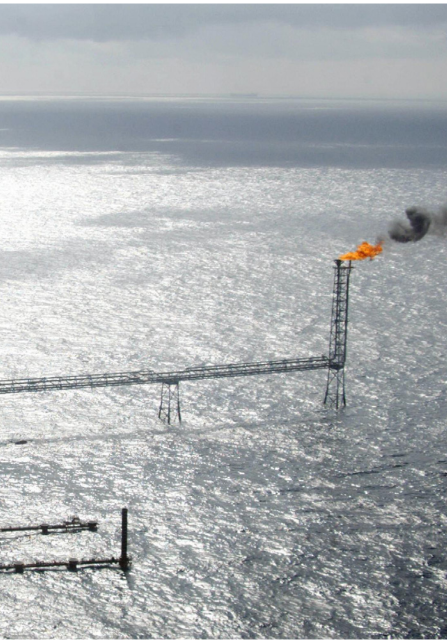
"Prior to that, oil and gas multinationals were the major players, with one or two Ghanaians as their agents," says Dadzie. "The government's intention has always been to encourage true local participation, and the NPA has championed that by encouraging 50-50 arrangements. The law, as it is established, is not just about using a front. It's about active involvement in the businesses that international companies establish. As a result, it has empowered more local businesses to work in partnerships."

In Nigeria, however, Akpata points out that one of the challenges faced by investors has been the significant amount of due diligence necessary to find partners that meet local content criteria.

"They have to make sure they do not enter into partnership with local companies or entities that will expose them to risk of violation of any bribery laws, or foreign and corrupt practice laws," he reports. "There's a lot of work involved in finding and checking local partners and structures."

Local content laws have also been passed by a number of other African countries and, while they are broadly similar in their aims, they do differ in detail.

For example, Angola requires any company operating in the petroleum sector



Building a new tomorrow
Ivorian Prime Minister Daniel Kablan Duncan addresses the International Forum for Investments, one of many efforts to encourage growth throughout Africa.

to employ Angolans, and to provide them with necessary technical and professional training. It also requires the company to contribute 15 cents for every dollar per barrel produced to a training fund administered by the Ministry of Petroleum.

Without doubt, though, how foreign investors react to these changes is critical. For Paule Biensan, partner and head of White & Case's Energy, Infrastructure, Project and Asset Finance, Privatizations group in Paris, the issue is one of good business practice for foreign investors. She has already seen how involving local manpower and expertise can deliver real benefits for foreign investors.

"Let me give you an example: one of my power sector clients has been doing business in Ivory Coast for the past 20 years. It was a foreign investor and, to begin with, the executives of the local company were expat engineers. But this company has been training local people, and now it's managed by a local who was trained as an engineer.

"Today, local management is around 90 percent Ivorian. This is an example of how clients can work within these laws. In most cases, the obligation exists to a certain extent in the investment or mining code, but whenever possible, it also makes sense to ensure, even beyond the legal obligation, that local executives manage local operations," says Biensan.

Opportunities from top to bottom

Amid the optimism, a note of caution not only for Ghana but also for those countries with fledgling resource industries looking to mandate local involvement: "It's one thing passing the law, it's another to enforce it," Dadzie says.

"I think even greater effort is required in order to enforce it successfully, otherwise the full objective remains difficult to achieve. In Ghana, the government has made a start on this, and, since the law was passed, the government has approved a number of petroleum agreements for exploration and production activities. This reflects, to a large extent, the objectives of the law. These contracts have significant Ghanaian participation, and that's a good thing."

Most involved in the development and implementation of laws like Ghana's admit that some bumps in the road are inevitable. Nigeria's progress, for instance, has been slower than originally envisaged, according to Akpata: "Initially, the skill sets of local workers and the capacity of local banks and professional advisers were never going to match the thresholds put in place," Akpata says. "You could say they aimed for the sky but settled for the highest tree."

For Dadzie, the real benefits of increasing local involvement in international projects will be felt not just by indigenous populations in the long term, but by international investors themselves: "The transfer of knowledge and capacity building will build the local industry successfully. It tends to work out cheaper to have local partners. The people cost is optimized, and knowledge of the local market is enriched and used to enhance strategy. I think, at some point, there will be competition for local content as we have seen in some of the industries around the world. It will be challenging at first, but worthwhile: from an oil company perspective, the more local content you have, the better," he says.