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Africa Focus

Transitioning to new priorities
in a post-pandemic era



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Transitioning to new priorities in a post-pandemic era

Our seventh edition of *Africa Focus* focuses on the potential for transformative changes within Africa during a time of historic global transition—not just from a COVID-19 to post-COVID-19 world, but against the backdrop of the United Nations Climate Change Conference COP26 in Glasgow, Scotland.

Issues around balancing greenhouse gas emissions against the development and use of natural resources as Africa industrializes and seeks to overcome roadblocks and challenges to growth (of which COVID-19 is only one) and climate change-related challenges and vulnerabilities against GDP growth and increasing prosperity will be seen increasingly across sectors, industries and geographies in Africa. These discussions are already defining the way in which governments, investors, lenders and other stakeholders view opportunities in Africa and will do so more directly and more frequently in the coming years.

What does this mean for the world of business? Litigation related to climate change, a now well-established trend in Europe and North America, seems to have reached Africa, too. In “Climate change litigation in Africa: Current status and future developments,” we outline signature cases and examine climate-related matters that might trigger challenges and disputes across Africa.

Equally, we all recognize that there are increasing investment opportunities when it comes to renewable energy. Seven of the ten sunniest countries in the world are in Africa, and wind power is no longer a novel feature in the increasingly sophisticated energy landscape in Africa. In “Renewable energy in Africa: Update in the era of climate change,” we explore the significant opportunities for wind, geothermal and hydropower, too.

US foreign policy toward Africa has undergone significant shifts under the Biden administration. In “US government agencies focus on Africa,” we provide an overview of the US government agencies active on the continent and their focus and how that ties in with both energy transition and renewable energy. In “Debt: Outlook for Africa brightens after challenging first half to the year,” we discuss recent successful loan and bond issuances by African borrowers, investor resilience and lender interest in high-quality credits throughout the region.

Africa is experiencing a boom in M&A. In “M&A transaction terms: Comparing Africa to Europe,” we contrast terms that typically apply to African M&A transactions, with those in Europe. And “African M&A stages a comeback” explores how African transactions appear to be highlighting a renewed sense of confidence among dealmakers. Acquisition and divestment strategies in Africa have become highly sophisticated. As a case study, “Acquisition financing in an era of energy transition” describes the January 2021 sale of a 45 percent stake in Nigerian Oil Mining Lease 17 (OML 17) and related infrastructure assets, using an innovative, first-of-its-kind hybrid financing structure.

Finally, “Southern Africa’s PGMs are on the rise” explains how platinum group metals (PGMs) are increasing in southern Africa mining, on the back of demand for net-zero and the green economy.



Mukund Dhar
Partner, White & Case LLP
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Our seventh edition of *Africa Focus* focuses on the potential for transformative changes within Africa during a time of historic global transition.

Climate change litigation in Africa: Current status and future developments

Climate change litigation is increasing steadily worldwide, but few cases have been filed yet in Africa

By Markus Burianski, Mark Clarke, Federico Parise Kuhnle and Gwen Wackwitz

Climate change litigation covers a range of different proceedings. Generally, it is defined as claims that expressly raise an issue of fact or law relating to the causes or impacts of climate change.

Due to increased global urgency to tackle climate change, climate change litigation has dramatically increased in recent years, particularly in the US and Europe. More than 1,000 climate cases have been filed globally since 2015 (approximately the past six years), compared to 834 cases filed in 1986 – 2014 (approximately 28 years).¹ Despite this global increase, only a few cases specifically related to climate change have been filed in Africa.

The African continent is particularly vulnerable to the impact of climate change, as global warming is expected to increase droughts, desertification and flooding across the continent.² However, only ten climate change cases have been raised in African jurisdictions to date.³

This situation is unlikely to remain this way. As the scale and scope of climate change litigation continue to grow, with a notable rise in the number of strategic claims now intending to influence government policies and corporate investment decisions, litigation related to climate changing activities or effects on the African continent could increase significantly in the coming years.

THE EVOLUTION OF CLIMATE CHANGE DISPUTES

Historically, climate change litigation principally focused on claims for

damages against large oil & gas companies, mainly on the basis that these companies produce and distribute products that directly relate to greenhouse gas (GHG) emissions. For instance, several US states and municipal authorities—including authorities from California, Colorado, Delaware, New Jersey, Rhode Island, South Carolina, Washington State and Maryland—have commenced proceedings against energy companies, seeking compensation for the alleged damages caused to local communities as a result of climate change. However, these claims have struggled to succeed against the complex energy sector, where myriad supply chains and consumer choices can make it difficult for claimants to establish direct causal links between the alleged harm and a specific company's GHG emissions.

Consequently, claimants have sought to increase the scope of climate change claims by bringing claims for relief other than damages and basing their claims on alternative causes of action, which do not require them to prove a chain of causation between the defendant's GHG emissions and the specific climate-related injury that is alleged. Indeed, one of the most significant trends in climate change litigation has been the emergence of rights-based claims, in which claimants invoke their human rights as a means of trying to hold governments and corporations accountable for their climate change commitments.



Only ten climate change cases have so far been raised on the African continent.

Urgenda Foundation's claim against The Netherlands⁴

The well-publicized success of the Urgenda Foundation's claim against the Netherlands, which was originally brought before the District Court of The Hague in 2015, has been triggered for other wide-reaching rights-based claims. The Urgenda Foundation (a Dutch environmental group) claimed that the government of the Netherlands had failed to take sufficient action to reduce its carbon emissions, in violation of the government's duty of care to its citizens under Articles 2 (Right to life) and 8 (Right to respect for private and family life) of the European Convention on Human Rights. This was the first decision by any court in the world to order a nation to limit its GHG emissions for reasons other than statutory mandates. The case was appealed twice, and the Supreme Court ultimately confirmed the decision in December 2019, ordering the government to reduce its GHG emissions by at least 25 percent (compared to 1990 levels) by the end of 2020.⁵



Following this landmark judgment, national courts of at least four other European countries—including Ireland, France, Germany and Belgium—have held that their governments failed to implement their climate commitments, in breach of human rights standards.⁶ Following a March 2021 decision by Germany’s Federal Constitutional Court,⁷ the German legislature released an amended Climate Change Act with stricter emission targets.⁸ A further action of this nature was filed against the UK Prime Minister in May 2021.⁹ These claims show no sign of abating. Claimants are not only challenging governments and their climate commitments, but are increasingly advancing strategic litigation against large corporations in order to hold them accountable for their global activities, too.

Claimants are not only challenging governments and their climate commitments, but also are increasingly advancing strategic litigation against large corporations in order to hold them accountable for their global activities.

Milieudefensie et al. v. Royal Dutch Shell

In May 2021, a group of seven Dutch non-governmental organizations (NGOs) (*Milieudefensie et al.*) successfully managed to extend the principles established in the *Urgenda* decision against a private corporation. Specifically, the District Court of The Hague found that Royal Dutch Shell (the UK-incorporated parent company of the Shell Group with its headquarters in the Netherlands) had a duty of care under the European Convention on Human Rights to do more to reduce carbon emissions, and thus ordered the company to reduce its carbon

dioxide emissions by 45 percent by 2030, compared to 2019 levels.¹⁰ The Court also found that Royal Dutch Shell has a best-efforts obligation to reduce the emissions of its suppliers and customers. This decision could require a significant organizational commitment from Royal Dutch Shell and substantial engagement with all the companies in its global supply chain and business network, across all of the 70 countries in which the group operates.

This decision marks a critical turning point for global climate change litigation.

For the first time, a climate change-related claim has successfully targeted the business of a corporation and its operations worldwide, focusing on a corporation’s obligations to society generally. The District Court of The Hague specifically noted that, as the policy-setting body for a major player in the global oil industry, “much may be expected of” Royal Dutch Shell by way of active steps to safeguard human rights in relation to climate change.¹¹ Thus, the Court distinguished between the activities of Shell and its parent company, recognizing that Royal Dutch Shell’s responsibility for emissions from the Shell Group was higher than for emissions from the wider group of entities.

INCREASED SCOPE FOR AFRICAN CLAIMANTS TO BRING CLIMATE CHANGE LITIGATION

This recent shift toward parent company liability for climate change and/or human rights violations has increased the potential for claimants in Africa to take legal action against entities based in Europe, as demonstrated by a recent decision before the UK Supreme Court (albeit only in relation to jurisdiction).

Okpabi and others v. Royal Dutch Shell

In this claim, brought by 40,000 citizens in the Niger Delta against Royal Dutch Shell, the claimants sought to hold the parent company responsible for the alleged environmental damage and human rights abuses by its Nigerian subsidiary, Shell Petroleum Development Company of Nigeria Ltd (SPDC).¹² Specifically, the claimants alleged that oil spills and pollution from pipelines operated by SPDC caused substantial environmental damage, with the result that natural water sources cannot safely be used for drinking, fishing, agricultural, washing or recreational purposes.

While the merits of this claim are yet to be decided, the UK Supreme Court determined that it was at least arguable, based on the degree of control and de facto management, that the parent company owed a duty of care to the claimant Nigerian citizens with respect to alleged environmental damage and human rights abuses by Shell’s Nigerian subsidiary.

Lluya v. RWE AG

Corporations could also be sued in the country where they are registered for climate change-related damage caused elsewhere in the world.

One case, in principle, could provide a precedent for claims concerning climate change-related damage in Africa. In 2015, a Peruvian farmer sued the German energy company RWE before the District Court of Essen for damages caused by the melting of a glacier near his hometown of Huaraz, Peru. Although RWE did not operate near Huaraz, the claimant argued that worldwide GHG emissions caused climate change, which had resulted in the glacier melting, and pursued RWE for only 0.47 percent of the adaptation costs needed to contain the floodwater from the melting glacier (a percentage said to correlate to RWE’s contribution to global GHG emissions).¹³ Although the District Court rejected the claim (on the basis that the claimant had not proven a causal link between RWE’s emissions and the alleged damage), an appeals court has allowed the



Historically, climate change litigation principally focused on claims for damages against large oil & gas companies.

Aerial view on the green islands of Zambezi River



claim to proceed and is now receiving evidence on causation.

Pending a decision on the merits of the case by the appeals court, this case demonstrates that German courts are prepared to accept jurisdiction of cases against domestic corporations concerning climate change-related damage resulting in other, distant countries.

The same principle could apply equally to countries in Africa.

Friends of the Earth v. Total

In addition to the widening scope of parent companies' duty of care, newly enacted legislation in many European jurisdictions is also increasing the scope of potential liabilities for companies with activities in the developing world.

For instance, in 2017, France introduced the Law on the Duty of Vigilance, which requires French companies to identify and prevent risks to human rights and the environment that could occur as a result of their business practices.

In 2019, following the introduction of the Law on the Duty of Vigilance, six non-governmental organizations including Friends of the Earth commenced legal proceedings against Total, alleging that Total had failed to adequately

assess the human rights and environmental impact of an oil project operated by Total in Uganda and Tanzania.¹⁴ In particular, the claimants alleged that Total's vigilance plan did not properly account for the project's potential life cycle of GHG emissions. In January 2020, France's Nanterre Civil Court declined jurisdiction to hear the claim on the basis that it was not competent to determine issues relating to the internal corporate management of the company with respect to the vigilance plan.

Notre Affaire A Tous v. Total

However, in a separate litigation brought against Total in February 2021 under the same law,¹⁵ the Nanterre Civil Court took the contrary view and ruled that it did have jurisdiction to determine the climate change-related claim. The Court noted that, although the vigilance plan affects the operations of a company, its purpose and the risks it is intended to prevent extend beyond this. Although the Court did not rule on the merits of the claim against Total, the fact that it confirmed its jurisdiction to do so is a major development, which is likely to encourage the

commencement of further claims against French companies related to the environmental impact of their operations, both within France and elsewhere in the world.

The increasingly international harmonization of domestic legislation, in combination with the recent spate of unprecedented judgments that seek to bind governments and companies to their climate change commitments, could potentially have far-reaching consequences.

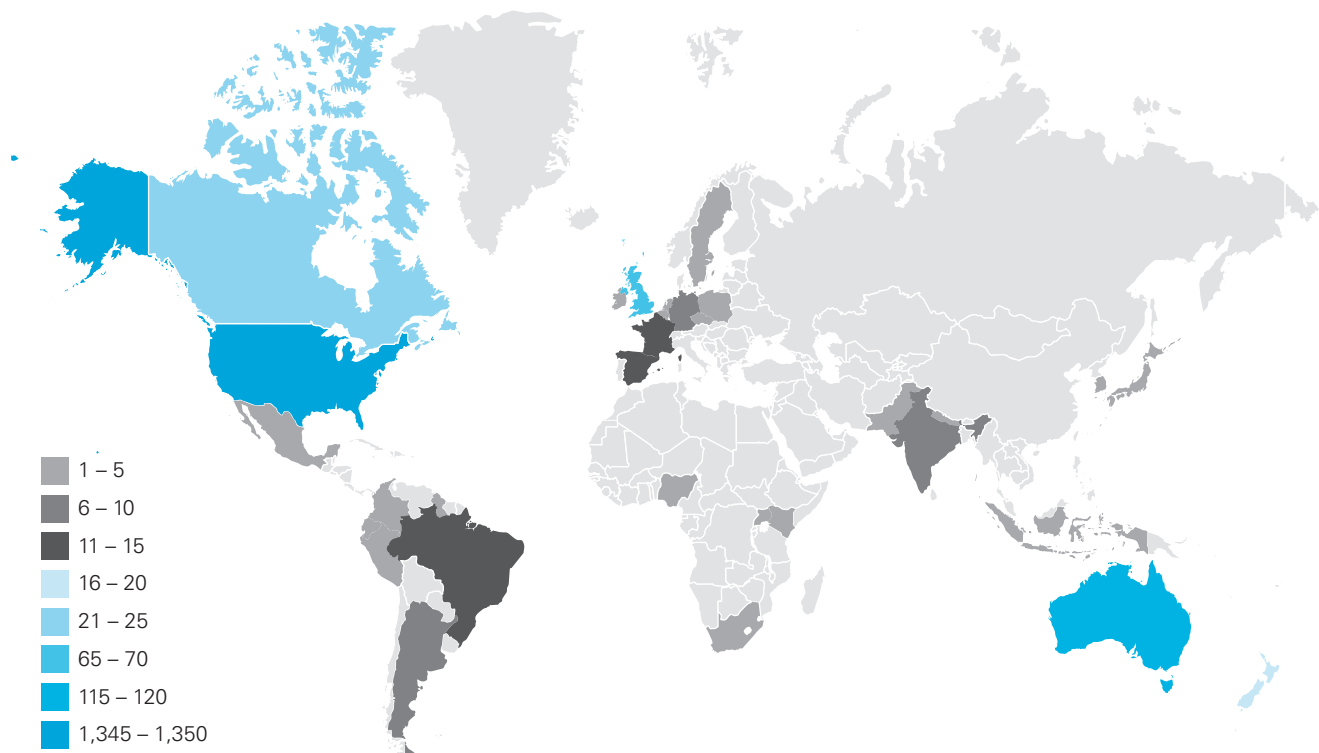
This may also hold true for the development of climate change disputes on the African continent, which so far has lagged behind other regions of the world.¹⁶

CLIMATE CHANGE DISPUTES IN AFRICA

Despite the high levels of vulnerability of its people and ecosystems to climate change, to date, there have been relatively few climate change-related claims brought before the courts of African countries.¹⁷

There are two main reasons for this. First, many African countries have weak or functionally nonexistent legislative frameworks in relation to climate change. Second, prospective claimants in

Figure 1: Number of cases around the world, per jurisdiction, to May 2021



Notes: Cumulative figures to May 2021. Map created with mapchart.net
 Source: Authors based on CCLW and Sabin Center data

these countries often face obstacles, such as a lack of standing and limited access to financial resources to fund their claims.¹⁸

While there are ongoing efforts to improve the legislative frameworks, and civil society activism is growing in many African countries,¹⁹ climate change is not typically regarded as a standalone issue, but rather a secondary consideration in broader environmental disputes concerning issues such as land use, natural resources conservation and environmental protection in general.²⁰

Environmental impact assessments

That said, a number of noteworthy climate change disputes have been brought before the courts of certain African countries. The majority of these cases revolve around environmental impact assessments (EIAs), often for the construction of coal-fired plants. This has been the case, for example, in the cases of *Save Lamu et al. v. National Environmental*

*Management Authority & Amu Power Co Ltd*²¹ in Kenya, and *Earthlife Africa Johannesburg v. Minister of Environmental Affairs*²² in South Africa.

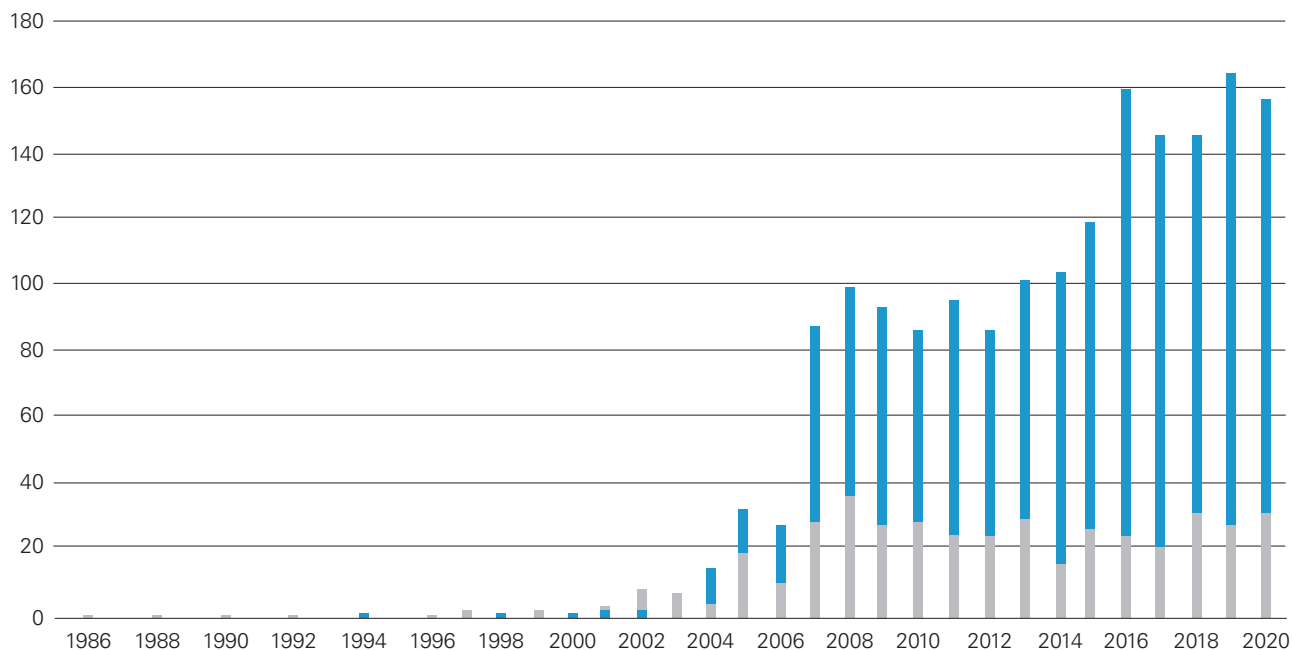
In *Save Lamu*, which was brought before Kenya's National Environmental Tribunal in November 2016, a community-based organization representing Lamu County and other individual claimants challenged the issuance of a license by the Kenyan National Environmental Management Authority (NEMA) to a power company for the construction of the first coal-fired power plant in Kenya. The claimants argued that the Kenyan NEMA failed to conduct a proper EIA, and therefore contributed to the adverse effects on human health and biodiversity caused by climate change. In June 2019, the Tribunal set aside the license issuance and decided that the Kenyan NEMA had violated the EIA regulations by granting it without proper and meaningful public participation in the process. The Tribunal also ordered that the power

company would have to conduct a new EIA study in compliance with the recently enacted EIA Regulations (the Climate Change Act 2016, the Energy Act 2019 and the Natural Resources Act 2016) if it chose to pursue the project.

In *Earthlife Africa Johannesburg*, which was commenced before the High Court of South Africa in March 2017, an environmental NGO brought a claim against the Minister of Environmental Affairs, the decision-makers of the Department of Environmental Affairs in charge of granting the environmental authorizations, and the companies intending to build the 1,200 MW coal-fired Thabametsi power plant. The claimant argued that the EIA failed to adequately consider the climate change-related consequences of the project under the National Environmental Management Act 107 (South African NEMA) of 1998. Although the South African NEMA does not expressly contemplate climate change, the High Court held that such considerations are relevant and their

Figure 2: Total climate change litigation cases recorded (1986 – 2020)

Of the climate change litigation cases recorded up to 2020, 50 percent were filed between 2015 and 2020



Source: CCLE and Sabin Center data

■ All other countries
■ US

absence from the project’s EIA made its approval unlawful. The High Court cited several reasons, especially South Africa’s commitments under the Paris Agreement.

Following the High Court’s decision, the Minister of Environmental Affairs reconsidered the permit application in light of a newly finalized climate change impact assessment and again approved the plant’s authorization in January 2018. In March 2018, the NGOs Earthlife Africa and Trustees for the Time Being of the Groundwork Trust challenged the Minister’s decision, asking the court to set aside the decision for failing to consider site-specific climate change impacts associated with the project. In November 2020, the High Court, following an agreement between applicants and defendants, issued an order setting aside all governmental authorizations for the coal-fired power plant.

Rights-based claims

A number of rights-based claims have been brought before African

courts, including *SERAC et al. v. Nigeria, Gbemre v. Shell Petroleum Development Company of Nigeria Ltd. and Others*, and *Mbabazi & others v. The AG in Uganda*, some of which were among the first cases addressing rights-based issues.

In *SERAC*, two NGOs brought a claim in the African Commission on Human and Peoples’ Rights in 1996 alleging that the government of Nigeria was guilty of violations of the right to a clean environment, owing to its condoning and facilitating the operations of oil corporations on Ogoniland. In May 2002, the Commission ruled that the Nigerian government was in breach of the African Charter on Human and Peoples’ Rights and that the Ogoni people had suffered violations of their right to health (Article 16) and right to a general satisfactory environment favorable to development (Article 24) owing to the government’s failure to prevent pollution and ecological degradation.

While not strictly related to climate change, this case is noteworthy as it recognized the



The success of rights-based litigation in Europe is likely to influence the future of climate change-related disputes in Africa as well.

right to a healthy environment and established a range of qualitative human rights standards that the country must observe in order to protect its citizens. There is no reason why those standards cannot be applied, by extension, to climate change issues.

In *Gbemre*, Mr. Jonah Gbemre, a representative of the Iwherekhan community in the Niger Delta, filed a claim in the Federal High Court of Nigeria in July 2005 against the Nigerian government and Shell. Mr. Gbemre alleged that, in the course of their exploration and

Figure 3: In coming years, Africa will carry a disproportionately large share of the impact of climate change, likely triggering more disputes

West Africa



Several major West African coastal cities are highly vulnerable to sea-level rise. Monsoon-like rainfall could cause flooding. Existing conflicts could escalate.

North Africa



The highly populated Nile Delta is highly vulnerable to rising sea levels. Famine and conflict could cause a new wave of migration, including to Europe. Existing conflicts in Libya and across the Sahel could escalate.

Central Africa

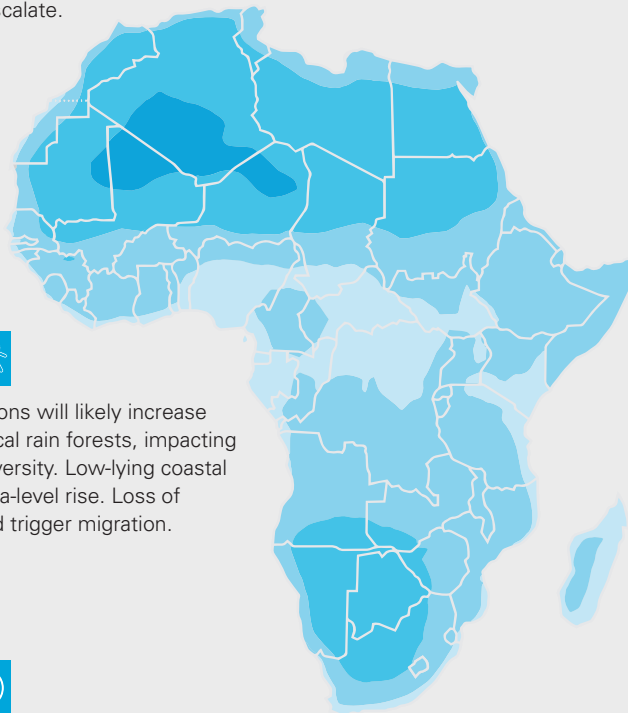


Pressure on adjacent regions will likely increase pressure on Africa's tropical rain forests, impacting CO2 emissions and biodiversity. Low-lying coastal areas are vulnerable to sea-level rise. Loss of agricultural potential could trigger migration.

East Africa



The East African Coast is vulnerable to sea-level rise, severe weather events including tropical cyclones, flooding and drought. Increased pressure on protected areas could threaten biodiversity. The Zambezi Delta and other low-lying areas are especially vulnerable to rising sea levels. Increased temperatures and lower rainfall would threaten agriculture.



Southern Africa

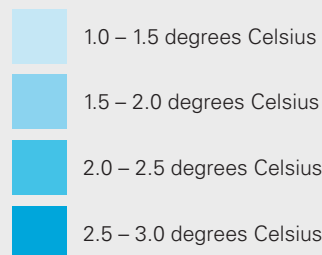


Reduced rainfall in Botswana and southern Angola threaten the Okavango Delta; coastal areas are vulnerable to sea-level rise and more severe tropical cyclones. Severe reduction in agricultural potential would be expected across the region.

Key climate change risks

-  sea-level rise / coastal degradation
-  Loss of agricultural potential / drought
-  Tropical cyclones / extreme weather
-  Loss of biodiversity
-  Migration
-  Conflict and warfare

Simulated annual mean temperature change (°C) relative to 1850 – 1900 at 2.0°C global warming



production activities, the defendant oil companies had engaged in massive and unceasingly intense gas flaring in the Iwherekan community, without considering the consequences, and alleged that these activities poisoned and polluted the environment, contributing to adverse and potentially life-threatening climate changes, including acid rain. On that basis, the claimant argued that the actions of the oil companies constituted a gross violation of the guaranteed fundamental rights of life and dignity of human persons provided in the Nigerian Federal Constitution and the African Charter on Human and Peoples' Rights. In November 2005, the Court agreed with the claimant's allegations and ordered the oil companies to stop flaring gas in the Niger Delta.

Finally, in *Mbabazi*, in September 2012, four citizens and a Ugandan NGO brought their claim against the Attorney General of the Republic of Uganda and the National Environment Management Authority (Ugandan NEMA) before the Ugandan High Court. The claimants alleged that various damage and loss of life resulting from extreme weather events were linked to climate change inaction on the part of the government. They argued that (i) the Ugandan Constitution makes the government of Uganda a public trustee of the national resources, including its atmosphere, and imposes a duty to preserve those resources from degradation for present and future generations; and (ii) unless action is taken immediately, the current climatic patterns of prolonged droughts, floods, hurricanes and crop losses will escalate into human catastrophe for both the present and future generations. After a preliminary hearing, the High Court ordered the parties to undertake a 90-day mediation process but since then has taken no further action.

Nevertheless, this case is noteworthy because it involved the invocation of the public trust doctrine, which has also been used by claimants in climate change disputes in other common law jurisdictions, for example, in the US in *Juliana et al. v. the United States*.²³

THE FUTURE OF CLIMATE CHANGE DISPUTES IN AFRICA

The success of rights-based litigation in Europe is likely to influence the future of climate change-related disputes in Africa as well, particularly in light of the precedents established by the SERAC and Gbemre cases.

The growing number of African nations that are seeking to introduce specific climate change legislation could further boost this development.

Human rights will likely continue to be intrinsic to future cases, considering the increasing acceptance of the impacts of climate change on health, livelihoods, access to clean water and other fundamental rights. Moreover, if the public trust doctrine gains traction in other large common law jurisdictions such as the US or the UK, it could also become an argument for plaintiffs in African common-law jurisdictions such as Nigeria, Ghana or Kenya.

In any event, as the world's attention becomes increasingly focused on climate change mitigation and adaptation strategies, climate change-related litigation concerning economic activity or detrimental effects in African countries will inevitably increase.

This could take many forms. Claims could be brought in courts outside the African continent in relation to operations of multinational corporations within the continent, whether those corporations are incorporated within Africa or elsewhere. Equally, claims could be brought in African national courts in relation to the physical impacts of climate change on the continent. Rights-based claims could be brought against governments or corporations in African countries, based on national or transnational conventions and treaties protecting the rights of the relevant country's citizens.

Recent developments in climate change-related litigation in Europe have provided precedents for each of these categories of claims. So any business with material levels of GHG emissions should be aware of the risks of lawsuits and potential liability. Therefore, it is imperative that all such businesses carefully consider their climate strategies.

- 1 https://www.lse.ac.uk/granthaminstitute/wp-content/uploads/2021/07/Global-trend-s-in-climate-change-litigation_2021-snapshot.pdf, p. 4.
- 2 Kotzé, L. J., & Du Plessis, A. (2020). Putting Africa on the Stand. *Environmental Law*, 50(3), 615-663 (616-617).
- 3 According to the search engine on www.climatecasechart.com (accessed on 3 August 2021).
- 4 *Urgenda Foundation v. The Netherlands* C/09/456689 / HA ZA 13-1396.
- 5 *Urgenda Foundation v. The Netherlands*, 19/00135.
- 6 *Friends of the Irish Environment v. Ireland* 2017 No. 793 JR (2017); *VZV Klimazaak v. Kingdom of Belgium & Others* (June 2021); *Neubauer, et al. v. Germany*, Germany Federal Constitutional Court (2021); and *Notre Affaire à Tous and Others v. France*, No. 1904967, 1904968, 1904972, 1904976/4-1, Paris Administrative Court (February 2021).
- 7 *Neubauer, et al. v. Germany*, Germany Federal Constitutional Court (2021).
- 8 See Burianski, M., Hoffmann, S., & Parise Kuhnle, F. (2021). The German Federal Constitutional Court on the German Climate Change Act. *Environmental Law & Management*, 32(1), 12-17 (15).
- 9 *Plan B Earth and Others v. Prime Minister*.
- 10 *Milieudefensie v. Royal Dutch Shell* C/09/571932 / HA ZA 19-379.
- 11 <http://climatecasechart.com/climate-change-litigation/non-us-case/milieudefensie-et-al-v-royal-dutch-shell-plc/> p. 29, para 4.4.16.
- 12 *Okpabi and others v. Royal Dutch Shell Plc and another* [2021] UKSC 3.
- 13 *Lliuya v. RWE AG, Higher Regional Court of Hamm* [2017] 5 U 15/17.
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- 17 Kotzé, L. J., & Du Plessis, A. (2020). Putting Africa on the Stand. *Environmental Law*, 50(3), 615-663 (615).
- 18 Adelman, S., in: Alogna, I., I., Bakker, C., Gauci, J. P. (eds.), *Climate Change Litigation: Global Perspectives*, 2021, Chapter 12, p. 274.
- 19 Kotzé, L. J., & Du Plessis, A. (2020). Putting Africa on the Stand. *Environmental Law*, 50(3), 615-663 (618); Rumble, O., & Gilder, A. (2021). *Climate Change Litigation on the African Continent*. Konrad-Adenauer-Stiftung. Available at: https://www.kas.de/documents/282730/0/Climate_Litigation_Africa.pdf/1450e939-d100-a70e-8a9d-315161f96024?version=1.0&t=1624360880407 (last visited on 3 August 2021), p. 6.
- 20 Adelman, S., in: Alogna, I., Bakker, C., Gauci, J. P. (eds.), *Climate Change Litigation: Global Perspectives*, 2021, Chapter 12, p. 274.
- 21 See case summary at <http://climatecasechart.com/climate-change-litigation/non-u.s.-case/save-lamu-et-al-v-national-environmental-management-authority-and-amu-power-co-ltd/> (last visited on 3 August 2021).
- 22 *Earthlife Africa Johannesburg v. Minister of Environmental Affairs and Others* (65662/16) [2017] ZAGPPHC 58; [2017] 2 All SA 519 (GP) (8 March 2017).
- 23 *Juliana et al. v. United States, United States District Court, District of Oregon, Eugene Division*, docket no 6:15-cv-1517.

Renewable energy in Africa: Update in the era of climate change

Africa offers vast potential for renewable energy deployment and investments

By François-Guilhem Vaissier, Jennifer Stolp and Joz Coetzer

This article reflects changes in the rapidly evolving and crucial field of renewable energy in Africa.

Currently, the International Renewable Energy Agency (IRENA) estimates that with the right policies, regulation, governance and access to financial markets, sub-Saharan Africa could meet up to 67 percent of its energy needs by 2030.¹ With the right policies in place and investments secured, nearly a quarter of those energy needs could be met through indigenous, clean, renewable energy.²

Africa's contribution to greenhouse gas emissions historically has been negligible, and currently comprises less than 2 percent of the world's total.

At the same time, African countries collectively are expected to commit to reduce the continent's contribution to greenhouse gas emissions by 32 percent by 2030, through a strategy to be presented to the United Nations Framework Convention on Climate Change before COP26 in November 2021.³

Unlike its contribution to emissions, the impacts of climate change on Africa have been disproportionately severe, and it is feared that the continent will carry a large share of the burden of climate change—especially if the world fails to limit further increases in average temperatures. This article explores the current outlook for investments in renewable energy projects across Africa.

FACTORS DRIVING DEMAND FOR RENEWABLE ENERGY SOURCES

According to the Brookings Institute, climate change's impacts in Africa will likely include lowered crop yields, reduced agricultural and labor productivity, and damage to human health. An increase of three degrees Celsius (the assumption if there are no major changes in the world's social, economic and technological trends) is forecast to decrease Africa's gross domestic product (GDP) by as much as 8.6 percent per year after 2100. Limiting the increase to the 1.5 degrees Celsius specified in the Paris Agreement will do significantly less harm, decreasing GDP by only 3.8 percent per year after 2100 (see Figure 1).

Yet, Africa's energy demands are projected to triple by 2030.⁴

Lack of access to electricity is only one of the challenges that Africa faces, but it is one of the most significant obstacles to socio-economic development. And transitioning from energy generated through fossil fuels to energy generated through renewable resources contains its own challenges.

The impacts of the COVID-19 pandemic have driven African sovereign debt levels to unprecedented heights, at the very time that more investment is required in order to close the energy and infrastructure gap with renewable energy. The rationale for the developed world to help is both moral and practical: moral, because industrialization in the developed world caused the climate-induced harm that Africa is suffering; and practical, because increased

< 1%

Africa's share of global renewable energy investment.

Source: miningreview.com

instability and conflict in Africa will impact the developed world, especially Europe, with increased migration and security concerns diffusing to well beyond Africa.

The private sector is currently the driving force behind much of the renewable energy projects in Africa. However, regulatory regimes and "ease of doing business" can make these investments difficult at times. State-owned enterprises (SOEs) lag behind the private sector, and will likely continue unless more African governments reform their SOEs and their energy sectors more generally. For instance, competitive procurement for electricity supplies could offer opportunities in renewable energy to African institutions and markets and drive down the cost of power. As an example, South Africa's Renewable Energy Independent Power Producer Procurement (REIPPP) program and the World Bank and International Finance Corporation's Scaling Solar Program have driven the price of solar-generated energy to as little as US\$0.05 per kilowatt-hour.⁵

Africa currently accounts for more than one-sixth of the world's population, but it generates only 4 percent of the world's electricity.



Historically, Africa's contribution to greenhouse gas emissions has been negligible.



500kW mini-hydro plant
built into the wall of the
Katse Dam, Lesotho

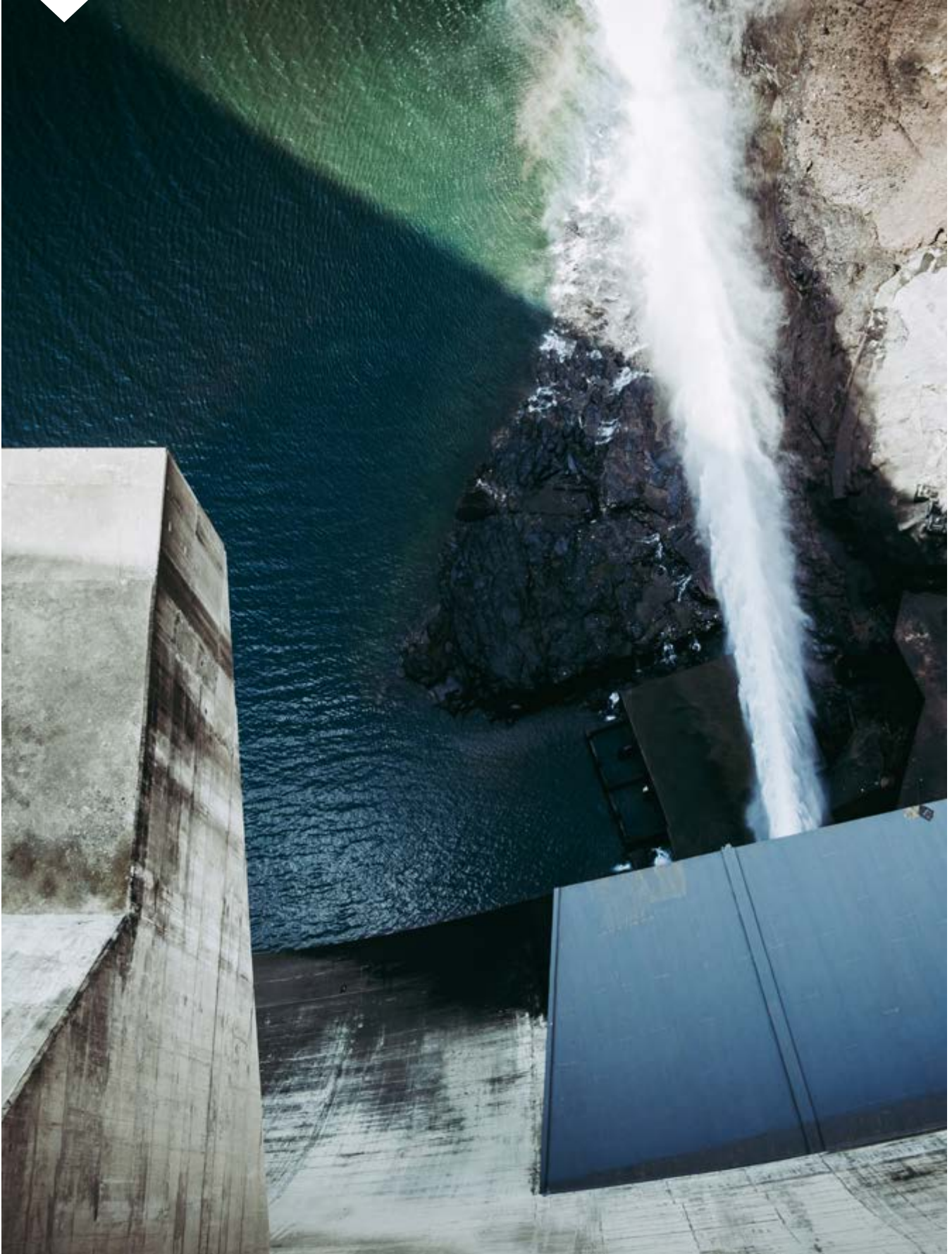
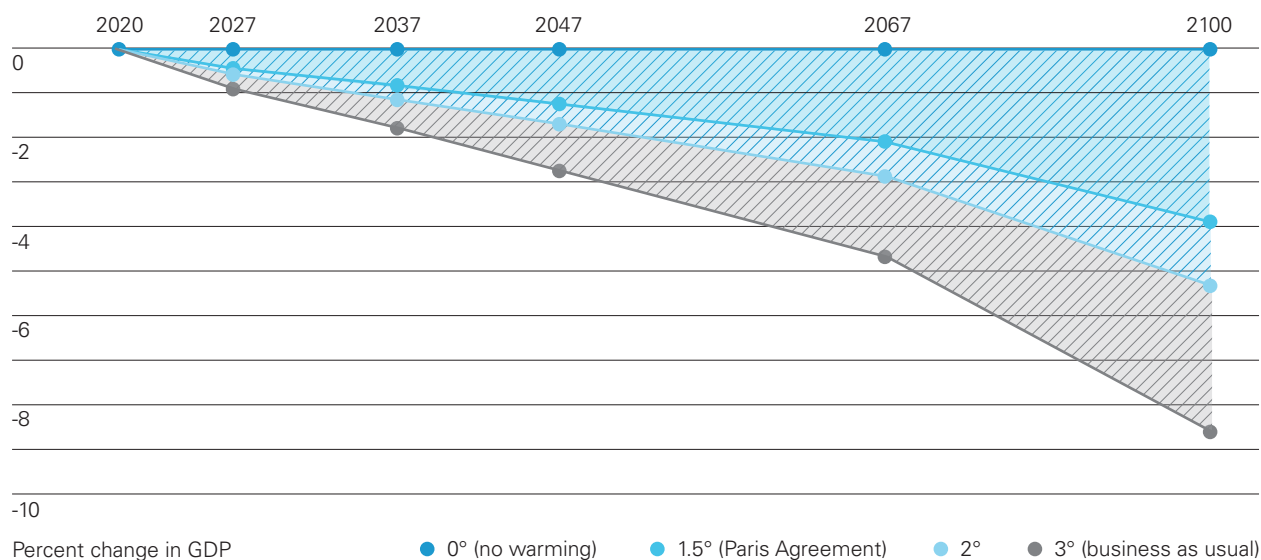


Figure 1: The impact of climate change on sub-Saharan Africa's GDP



Source: Tom Kompas, Van Ha Pham and Tuong Nhu Che, “The Effects of Climate Change on GDP by Country and the Global Economic Gains from Complying With the Paris Climate Accord,” *Earth’s Future* 6, no. 8 (2018): 1153-73.

Furthermore, South Africa and the countries north of the Sahara account for three-quarters of the continent’s energy consumption.⁶ Close to 600 million Africans have no access to electricity,⁷ and 780 million Africans rely on traditional solid biomass (mainly fuelwood and agricultural waste) for cooking.⁸ Nearly 80 percent of those lacking access to power across sub-Saharan Africa live in rural areas.⁹

OPTIONS FOR RENEWABLE ENERGY IN AFRICA

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



Africa’s adoption of renewable energy projects is accelerating.

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. Renewable energy technology has a crucial role to play in achieving these objectives (see Figure 2).

Africa enjoys considerable opportunities to deploy renewable energy. 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 (see Figure 3). Some of Africa’s most oil & gas-rich nations are leading the way in the move to renewable energy in order to diversify their economies from overdependence on and reduce demand for oil.

Hydroelectricity offers viable solutions for up to one-third of the African nations. On a continent where frequent and severe droughts plague many regions, though, using 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 both 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 future power generation planning for Africa.

As of July 2021, all but two African countries—Eritrea and Libya—have ratified the Paris Agreement within the United Nations Framework Convention on Climate Change (UNFCCC).¹¹

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 general concerns about the impact of climate change on the continent, African renewable energy initiatives are gaining momentum.

Independent power producers (IPPs) in South Africa have initiated 95 projects 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 5 issued in 2021.¹² 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.

The GET FIT Uganda initiative aims to add an installed capacity of 158 MWs of clean renewable energy to Uganda's national grid by implementing 17 projects. To date, Uganda has commissioned 14 small power plants, with the last three expected to be commissioned in 2021. Three of the projects are small hydropower plants with a total installed capacity of 36 MWs.¹³

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. The Zambian government adopted GET FIT Zambia in October 2017 with the aim of procuring 200 MWs of renewable energy projects over three years. In 2015, Namibia introduced the Interim Renewable Energy Feed-In Tariff Program, which has attracted investments mainly in solar generation.

The Batoka Gorge hydroelectric power project is one way in which African countries are partnering to develop renewable energy sources. This US\$5.2 billion hydroelectric project on the Zambezi River, that borders Zambia and Zimbabwe, is expected to generate 2,400 GWs of electricity, to be shared equally by both countries.¹⁴ 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.¹⁵ Projects such as the US\$1.5 billion Hwange Power Station, which is

Figure 2: Cumulative investment needs for African power generation, 2015 to 2030

Region	Investment US\$ billion (2015 – 2030)			
	All generation	Large hydro	Other renewables	Transmission & distribution
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

currently 65 percent completed,¹⁶ and the Kariba South expansion venture will add approximately 900 MWs to Zimbabwe's national grid.¹⁷ Once Batoka Gorge comes online, Zimbabwe is optimistic that it will generate sufficient capacity to sell power to neighboring countries, too.¹⁸

Ethiopia's main source of electricity generation is hydroelectric power stations. The Grand Ethiopian Renaissance Dam, which started the second stage of filling in July 2020,¹⁹ will be able to generate 6,450 MWs and become one of the largest hydropower dams in Africa.²⁰

Botswana imports a large percentage of its energy from the Southern African Power Pool. As Southern Africa is now experiencing a power deficit, an initiative to enable Botswana to internally generate its own electricity is prominent. A 2016 amendment to the Electricity Supply Act enables private sector participation in electricity generation. Conversely, Mozambique's installed generation capacity of approximately 3,001 MWs comes from a combination of hydro, solar, gas, wind, geothermal and coal sources, although only a third of the population has access to electricity.²¹

Morocco has targeted increasing its electricity generation from renewable energy sources to 52 percent of its total generation capacity by 2030.²² Kenya's renewable energy sector is well established since December 2019, when Kenya brought a new 50 MW solar plant online, and renewable



With an abundance of solar, wind and geothermal resources, Africa enjoys considerable advantages and opportunities for renewable energy.

energy accounts for approximately 90 percent of its power.

Geothermal and hydropower contribute the bulk of Kenya's renewable energy production.²⁴

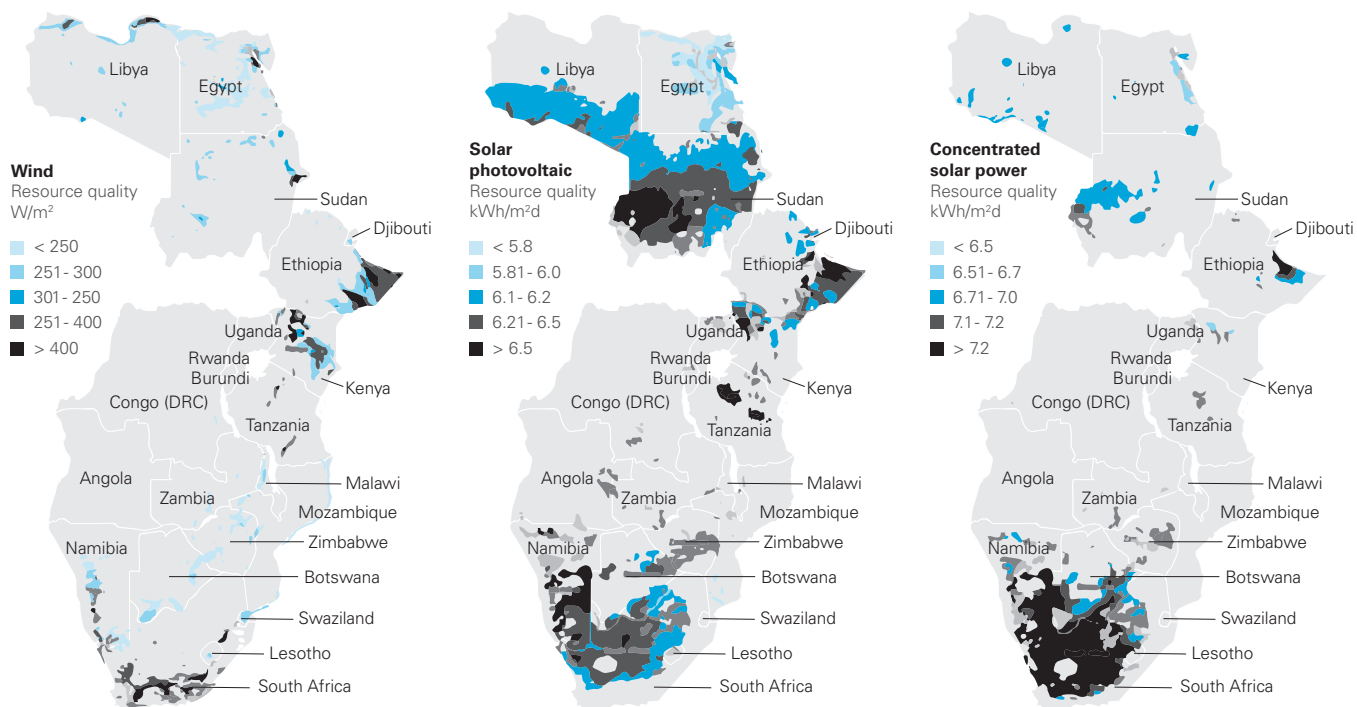
In June 2018, Gigawatt Global Cooperatief signed a deal with the 15-nation Economic Community of West African States to build US\$1 billion worth of renewable energy projects in the region, including installing 800 MWs of solar and wind farms in West Africa, beginning with Burkina Faso, Senegal, Mali, Nigeria and the Gambia.²⁵

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.

Funders are proving less inclined to finance coal-fired power stations, driven by their own corporate governance concerns and the proven economic viability of renewable resources. Consequently, Africa's adoption of renewable energy

Figure 3: The location and energy potential of African renewable energy resources in selected African countries
(terawatt hours)



Source: UC Berkeley

projects is accelerating.

The World Bank has estimated that US\$43 billion per year of investment is required for infrastructure in the power sector, while the African Development Bank estimates a need for US\$230 to US\$310 billion until 2025, with an additional US\$190 to US\$215 billion required for 2026 to 2030.²⁶

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 committed more than US\$12 billion worth of investments to the sector between 2016 and 2020.²⁷ The World Bank's implementation of the Africa Climate Business Plan includes a plan to apply US\$16 billion toward renewable energy projects in Africa.²⁸ Over the past decade, the World Bank has financed close to US\$2.3 billion of investments in

infrastructure and reforms to support the West Africa Power Pool. As recently as June 2021, it provided US\$465 million to expand energy access and renewable energy integration in West Africa.²⁹

The Green Climate Fund (GCF), the world's largest climate finance fund dedicated to supporting developing countries to mitigate and adapt to climate change, is extremely active in Africa. As of July 2021, it had committed US\$3.29 billion to 70 approved projects in Africa, 52 of which are already being implemented. This constituted 37.2 percent of GCF's global portfolio.³⁰

Nevertheless, more investment is required.

Significant potential exists for investors to invest in renewable energy technologies in Angola. Angola's 2025 goal is to provide modern electricity to approximately 60 percent of its population, and the country has approximately US\$18 billion of renewable energy investments underway as part of that strategy.³¹ The new Angolan

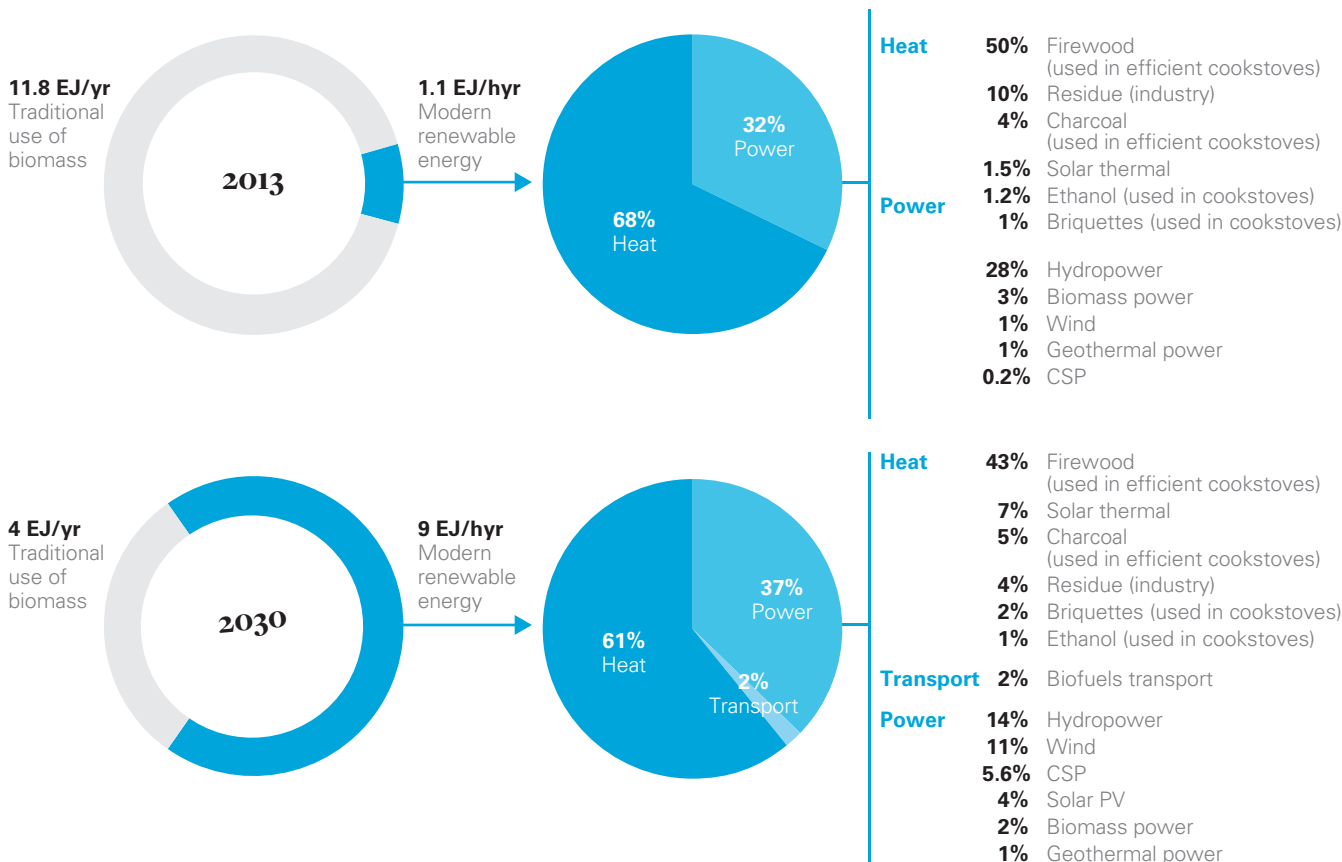
US\$1 trillion

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

government is taking steps to enhance the country's attractiveness for foreign direct investment, including reforming its legislative framework to attract funding from the International Monetary Fund and other multilateral investment organizations. According to the African Development Bank Group's estimate, Angola has substantial opportunity to develop solar power and wind power, as well as huge hydropower potential: 18.2 GWs, of which currently only 20 percent is being utilized.³²

Morocco is another example of an African country taking active steps to enhance investment in renewable energy projects. Morocco is liberalizing its renewables sector, including by increasing the minimum threshold for hydropower 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.³³ The country has also begun projects to amend its renewable energy law.³⁴

Figure 4: Africa's use of renewables is expected to significantly displace biomass as an energy source by 2030, compared to 2013



EJ/yr = Exajoules per year (1 Exajoule = 1018 joules of energy)

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

Investor confidence is recovering in Zimbabwe under President Mnangagwa's administration. Opportunities exist in many industry sectors for both developers and financiers, particularly in renewable energy, although they should take care to minimize investment risks, especially where regulatory reform is at an early stage.

Additional 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, creating a stable environment for funding institutions and investors to undertake projects, and becoming more environmentally sustainable in the long run.

Regulatory frameworks are an important lever for developing the

renewable energy sector in Africa. Regulatory reforms have been the first step in the reform process for most African countries, through the creation of an electricity regulatory authority. In addition, establishing an independent regulatory authority can create a level playing field for producers, consumers and private operators in the renewable energy sector through clear rules and mechanisms for supervising the sector and cost-reflective tariffs for utilities.³⁵

Many countries have extensive legislative movements. For example, Gabon initiated legislative reforms to develop codes related to its water and electricity sectors, in order to take into account challenges related to climate change and Gabon's international commitments, by promoting clean and renewable energy.³⁶ Senegal is considering a new Electricity Code, which could facilitate universal access to electricity by 2025 by creating a reference framework

that takes into account energy conservation, rural electrification and renewable energy.³⁷

Mali's government supports several projects whose expected or evaluated impacts will contribute significantly to achieve objectives of the SEforALL Action Agenda.³⁸ The World Bank largely supports Mali's efforts to promote the use of renewable energies and to improve access to quality electricity services in rural areas.³⁹ And in order to achieve the renewable energy objectives, a smart grid revolution is underway in Ivory Coast. These new technologies should allow the country to take a major step forward in terms of energy by focusing on renewable energies.⁴⁰

Despite the number of projects being commissioned and the number of initiatives 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 taking action to implement the necessary reforms to make foreign investment possible, opportunities for investment in Africa will continue to expand. Progressive regulatory reforms, especially establishing independent power producer programs, would accelerate that momentum. Attractive investment returns coupled with steadily decreasing risk profiles suggest that Africa will continue to attract investment into its renewable energy sector in the coming years.

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M&A transaction terms: Comparing Africa to Europe

Significant differences exist between terms that typically apply in M&A transactions in Africa and Europe

By Kenneth Barry, Gary Felthun, Oji Adoh and Shannon Neill

Although the underlying fundamentals of M&A transactions in Africa and Europe are essentially similar, significant differences exist. These reflect how the respective markets have developed and continue to develop, as well as investors' risk appetites in light of where they source funds.

Acquirers tend to view European markets as more seller-friendly than African markets. A range of geo-economic and socio-political factors underpin this perception, including that a wider variety of purchaser protections are typically open to negotiation in African markets. This applies to both public and private investments but can be especially significant to private equity (PE) investors.

One of the key drivers behind the development of a more seller-friendly market in Europe is the impact that PE has had on the broader European market. A longer track record of PE transactions exists in Europe, and PE sellers have taken more aggressive stances to minimize deal conditionality and transaction tail risk. This has influenced non-PE sellers, who have begun adopting PE's approach to exits. Access to cheap credit and significant amounts of available dry powder have also contributed to a seller-friendly market for private investors in Europe. This stands in marked contrast to African markets, where exits have been difficult to achieve, particularly in the PE space.

European M&A and PE investments dwarf those of African markets. Still, Africa represents good opportunities for investors that understand the market realities and can mitigate risks. PE deal value for

targets in Africa contracted sharply following the end of the commodity boom, from a record US\$12.02 billion in 2014 to just US\$1.44 billion in 2017. With the onset of the COVID-19 pandemic, 2020 saw such transactions contract further, to just US\$1.25 billion.¹

History teaches us that when deal activity is depressed through external influences, and those influences dissipate, then a period of buoyant deal flow typically follows. In Africa, even though emerging from the COVID-19 pandemic is taking longer than in Europe, a recovery in deal flow is expected soon, hopefully persisting into 2022 and 2023.²

This article outlines some of the key differences between M&A transactions that are implemented in Africa and those that are implemented in Europe.

CONDITIONALITY

In European deals, the only conditions typically included in transaction documents are for mandatory regulatory filings (such as those relating to antitrust).

In Africa, conversely, deals tend to be far more conditional. Provisions frequently include:

- Material adverse change clauses, which allow the buyer (but also sometimes the sellers) to walk away from the deal upon the occurrence of certain specified future events that would have a material impact on the business and/or its valuation
- The ability of buyers to walk away from a deal in the event of the breach of material terms, including gap controls or warranties given on the signature date

- Change-of-control conditions, where counterparties to key contracts are required to consent to the implementation of the deal as required in terms of the underlying agreements

In addition, in African markets, obtaining regulatory approvals is far more unpredictable in terms of timing and, to a lesser extent, outcome. For example, ministerial consents are often required to implement mining transactions. In South Africa, it can take three to 12 months (or even longer) to receive this consent.

Antitrust approvals in a number of African jurisdictions can take similarly long periods to be granted. The parties should bear this in mind when drafting transaction documentation, and ensure that a sufficiently long time period is provided to obtain these approvals. Otherwise, they run the risk that the deal will fail due to not obtaining approvals within the prescribed time period.

LOCKED BOX VS. COMPLETION ACCOUNTS

Locked box mechanisms—where there is a fixed price based on financial accounts prepared prior to completion, with no post-completion



Acquirers tend to view European markets as being more seller-friendly than African markets.



Communications tower silhouette, South Africa



adjustment—are standard in European deals.

In African deals, though, the picture is much more mixed. These deals use both completion accounts—where an estimated price is agreed pre-completion, with post-completion accounts prepared and the transaction consideration adjusted accordingly—and locked box mechanisms.

SCOPE OF WARRANTIES

The scope of warranties provided differs from deal to deal, regardless of where transactions take place. They are also affected by risk appetite of the parties involved. Still, the warranty protections offered by sellers to purchasers does differ between Africa and Europe.

Generally, it is common in both

Africa and Europe for a broad range of substantive warranties to be offered across most relevant business areas.

However, African deals between parties based on the continent focus less on anti-money laundering (AML) and anti-bribery and corruption (ABC) issues, whereas foreign investors investing into the continent usually seek strong warranty protection in these areas, as well as general compliance with law warranties. This is usually a result of foreign investors' fund requirements and well-established internal compliance teams.

In European deals, it is rare that PE sellers offer any warranties other than those relating to title and capacity, with the sellers who are also members of management

giving broader, business-related warranties. The typical rationale is that PE investors are not involved in the day-to-day running of businesses and therefore are not in a position to give substantive, business-related warranties. However, in African deals, it is not uncommon for PE investors to offer limited business warranties in addition to basic title and capacity warranties.

LIMITATIONS ON LIABILITY AND WARRANTY, AND INDEMNITY INSURANCE

In Europe, a seller's financial liability with respect to warranties is usually capped at 10 to 25 percent of the total transaction consideration.

However, this is far from standard in African deals, where a seller's financial liability with respect to

IN H1 2021, AFRICAN TELECOMMUNICATIONS, MEDIA AND TECHNOLOGY (TMT) DEAL FLOW BY VALUE OVERTOOK ENERGY, MINING AND UTILITIES, MEASURED BY DEAL VALUE

Global M&A deal value targeting African investments expanded by 131 percent during 2009 – 2015, but then contracted by 19 percent during 2016 – 2020.³ In 2020, investments in technology-enabled companies accounted for 55 percent of the overall deal volume recorded in Africa, overtaking the energy, mining, utilities and consumer sectors.⁴ US\$16.06 billion was invested in TMT deals in Africa from 2016 to 2021 (YTD).⁵ While technology-focused funds represented 2 percent of the total value of final closed PE and venture capital funds in Africa in 2015 – 2017, this had increased to 7 percent by 2018 – 2020.⁶

Factors that have proved important to attract deal flow over the years include natural resources, gross domestic product size and growth, financial market maturity, urban agglomeration and regulatory considerations. This has tended to concentrate deal flows in South Africa, Kenya, Nigeria and North Africa.

Interestingly, though, recent M&A in the TMT sector involves a wider spectrum of countries. Ethiopia stands out, following Prime Minister Abiy Ahmed's initiatives to liberalize various sectors of the economy, including the telecommunications sector. Rwanda is also noteworthy for its Kigali Innovation City, a multi-purpose knowledge and innovation hub established in the country's capital. The number of technology hubs in Africa is growing rapidly, from 442 in 2018 to 643 in 2020.⁷

Mobile tower networks are also expanding rapidly across the continent. Africa reached 33.1 active mobile broadband subscriptions per 100 inhabitants in 2019, far behind the world average of 75 per 100 inhabitants. On the other hand, active mobile broadband subscription rates per 100 inhabitants in South Africa, Ghana, Gabon, Seychelles, Botswana, Mauritius and Cabo Verde exceed the global average. Twelve African countries already have greater mobile telephone penetration than the global average, and in some of the lagging countries, subscriptions are growing rapidly.

Global technology giants are investing in African digital infrastructure assets, especially data centers and cloud projects.⁸

Investment into a wide range of digital sub-sectors is likely to continue as Africa's digital transformation unfolds. This expansion of the TMT sector across Africa creates potential for digital dividends in other industries, too, in turn creating further attractive investment opportunities.

warranties is typically far more extensive. The applicable financial cap is usually 50 percent or more of the total transaction consideration and, in some occasions, is even 100 percent of the total transaction consideration.

A similarity in both African and European deals are the financial thresholds before a purchaser can bring a claim with respect to warranties. Generally, the de minimis and basket thresholds are 0.1 percent and 1 percent of transaction consideration. In addition, the time periods within which a claim can be brought are similar: 12 to 24 months for breaches of business warranties or other claims under a sale, and purchase agreement and seven years for breaches of tax warranties.

Warranty and indemnity (W&I) insurance is commonly used in European deals, particularly in PE. W&I insurance allows sellers to exit divestments cleanly with limited tail liability and allows purchasers to claim against insurers.

W&I insurance is less common in African deals, but it is becoming increasingly more prevalent for PE sellers, particularly in South Africa. However, insurers typically charge higher premiums with African deals (2 to 3 percent of consideration compared to approximately 1 percent in European deals), and they exclude ABC from the scope of the W&I policies.

EXITS

In the African and European markets, exits most commonly take

place through auction processes, resulting in sales to either trade buyers or financial sponsors. Exits occasionally also take place through bilateral negotiations between two parties. However, exits in the form of a listing or initial public offering are rare in Africa, while public M&A markets are more active in Europe.

CONCLUSION

On the whole, the M&A market in Africa is generally more buyer-friendly than the market in Europe, particularly in the PE space.

In Africa, unlike Europe, PE sellers are often expected to provide general business warranties, and the limit on the financial liability of sellers for breach of warranty is far higher. This makes it more difficult for PE sellers to make a "clean exit" from an African deal, although it is becoming easier to do so with the increasing prevalence of W&I insurance on the continent. In addition, unlike in Europe where seller-friendly locked box mechanisms are the norm, African deals frequently use completion account mechanisms as well.

At the same time, there is less deal certainty with African deals, compared to deals in Europe. Some of this conditionality works to the benefit of buyers, such as material adverse change conditions and walkaway rights.

¹ White & Case M&A Explorer.

² El Fihri, S., Omary, O., Nielsen, J., Dupoux, P. and Bour, A. (2021) What's new and next for M&A in Africa. Boston Consulting Group at <https://www.bcg.com/en-gb/publications/2021/five-mergerand-acquisition-trends-in-africa>.

³ See White & Case Merger Explorer.

⁴ AVCA's 2020 Annual African Private Equity Data Tracker.

⁵ See White & Case Merger Explorer.

⁶ African Private Equity and Venture Capital Association (2021) Sector Snapshot: Technology.

⁷ The Africa Report, 2020. Tech Hubs Across Africa to Incubate the Next Generation.

⁸ Based on the ITU WTI Database, December 2020 edition.

African M&A stages a comeback

H1 2021 dealmaking within the continent appears to be turning a corner

By Kenneth Barry, Mukund Dhar, Gary Felthun and Lionel Shawe

Last year was a challenging one for M&A in Africa, with both deal value and volume dropping to their lowest figures on record. Yet 2021 has shown signs of a resurgence, with H1's total of 87 deals marking a 15% increase compared to H1 2020.

Deal value shot up to US\$56.7 billion in the first half of the year, largely thanks to the US\$46.1 billion share swap agreement between South African multinational Naspers and its Dutch-listed investment unit Prosus. The deal pushed African deal value to its highest H1 total on record.

Even without the Naspers deal, H1 2021 deal value would stand ahead of 2020's record low annual total of US\$9.7 billion—highlighting a renewed sense of confidence among dealmakers.

SOUTH AFRICA STORMS AHEAD

South Africa continued to be the most active country for dealmaking, in terms of both value and volume. A total of 41 deals in South Africa worth US\$46.56 billion were announced during the first half of the year—already higher than any annual value total on Mergermarket record (since 2006).

Deal value was pushed up due to the highest-valued deal of the year—Prosus' acquisition of a 45.4% stake in Naspers—which was the highest-valued deal targeting a South African firm on Mergermarket record.

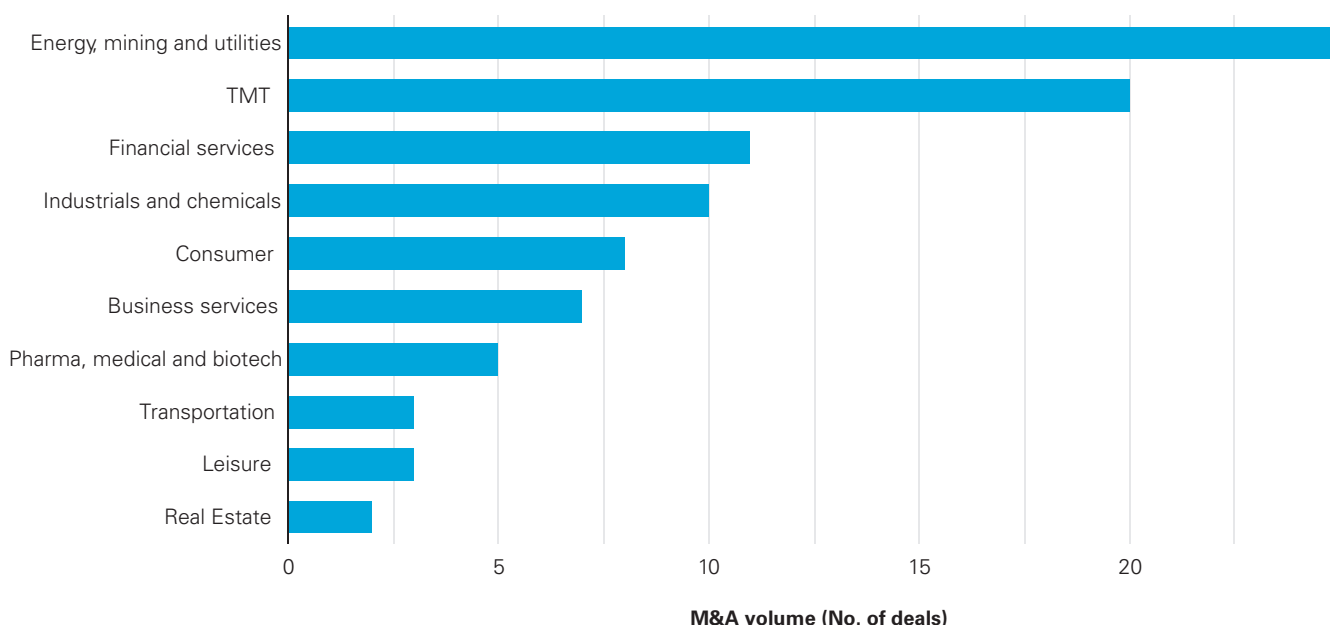
The deal between Naspers and its Dutch-listed investment unit was structured via a share swap agreement, in a move aimed to reduce the impact of its 29% holding in Chinese internet giant Tencent on local financial markets.



2021 has shown signs of a resurgence in deals in Africa.

Figure 1: M&A activity: Top sectors by volume Q1 2021 – Q2 2021

Target location: Africa Bidder location: Global Sectors: All



Source: White & Case's M&A Explorer



Copper rock





While the Naspers deal stood far above the rest of the pack in terms of value, deal volume also saw an uptick year-on-year, reflecting a strong foundation of activity in the South African deal market. A total of 41 deals were announced during H1 2021—an increase of six deals year on year.

Telecommunications, media and technology (TMT) was the most active sector for South African dealmaking, with a total of 10 deals recorded—almost overtaking the 11 deals announced throughout the whole of 2020. South African TMT deal activity had been on the rise before COVID-19 hit, reaching a peak of 24 deals in 2019. H1's activity is a promising sign of the beginning of a potential dealmaking resurgence.

The highest-valued South African TMT deal in H1 was Volaris Group's US\$88 million acquisition of software and IT firm Adapt IT. The Canadian software group was forced to increase its offer following competition from rival suitor Huge Group, a South African telecommunications firm.

ENERGY, MINING & UTILITIES DEALMAKING BOUNCES BACK

Energy, mining and utilities (EMU) dealmaking displayed an impressive rebound in the first half of the year. The sector generated the highest number of deals in Africa across all sectors, with a total of 24 announced deals—up by 14 year on year. A total deal value of US\$5.8 billion, meanwhile, has already overtaken 2020's annual figure of US\$2.6 billion.

Performance was boosted by some big-ticket domestic tie-ups, including Zambia Consolidated Copper Mine (ZCCM)'s acquisition of a 90% stake in the Mopani copper mines owned by Swiss mining giant Glencore. Global demand for copper is rising, with the metal trading at over US\$8,000 per ton, according to reports. Demand is being driven by decarbonization—the boom in electric vehicles (EVs) has boosted the need for copper as the metal is used widely in EV production.

Another EMU deal to make the top five of the year was Eni, Shell and Total E&P's US\$800 million sale of a 45% stake in oil mining lease (OML) 17 to Nigerian investment company Heirs Holding and its affiliate Transnational Corp.

OVERSEAS DEALMAKERS TURN TO AFRICA

Inbound interest in African assets dropped to a record low in 2020 as the COVID-19 pandemic put deals on hold across the globe. There are signs that international confidence in African deals is on the rise. A total of 46 cross-border deals took place in H1—an increase of 12% year on year.

While the Prosus/Naspers deal ensured that the Netherlands was on top in terms of deal value, the UK topped the volume table chart, having been involved in seven deals valued at US\$1.24 billion during the first half of the year.

The largest of these deals was Cairn Energy Plc and Cheiron Petroleum Corporation's purchase of Shell's Egypt-based upstream oil and gas assets, valued at US\$646 million.

OUTLOOK

Dealmaking within the continent was undeniably hit hard by the global pandemic. Many dealmakers who would have previously viewed Africa as a growth opportunity were suddenly forced to grapple with extreme logistical challenges and unprecedented economic uncertainty.

Now dealmaking within the continent is on the rise, with international interest in Africa's energy and mining assets a promising sign of things to come. Domestic tie-ups are also a sign of growing confidence, as local firms look to take advantage of high-growth assets.



Dealmaking on the continent is on the rise, with international interest in Africa's energy and mining assets a promising sign of things to come.

US government agencies focus on Africa

Africa is a priority for several Biden administration agencies working in development finance

By Martin Menski and Suzanne Perry

This article examines recent initiatives by US government agencies to strengthen their presence in African markets.

A broad array of US agencies actively support the development and financing of large energy and infrastructure projects in Africa (see Table 1). This article focuses on the United States International Development Finance Corporation (DFC), the US lead development finance agency, and the Export-Import Bank of the United States (EXIM), the US lead export credit agency, in supporting private sector investment in Africa.

RECENT US AGENCY INITIATIVES

Africa is a priority for a number of different US government agencies working in development finance. In particular, DFC and EXIM have undertaken various initiatives to build their presence and offerings in Africa.

As of the end of 2020, DFC had invested approximately US\$8 billion (approximately 25 percent of its total portfolio) across more than 300 projects on the continent. These investments include building critical infrastructure; expanding access to healthcare, energy and technology; and advancing financial inclusion, particularly for small businesses and women entrepreneurs. Africa is also the focus of multiple DFC initiatives, including Connect Africa, 2X Africa and the Health and Prosperity Initiative.

In the past two years, DFC's deal-making capabilities in Africa have improved in multiple ways:

1. The BUILD Act provided DFC with new capabilities for equity investments and for partnering with other US agencies to



Africa is a leading priority for a number of different US government agencies working in development finance.

provide technical assistance. DFC's predecessor, the Overseas Private Investment Corporation (OPIC), provided mainly senior debt products and political risk insurance, both of which were well suited to relatively mature companies and projects that can provide immediate cash flow for repayment. OPIC nonetheless found ways to help entrepreneurs and early-stage innovators, including through loans to investment funds (which, in turn could invest in innovative companies) and the Portfolio for Impact, which allows smaller and higher-risk loans for highly developmental projects.

DFC has continued these programs, and now can also provide technical assistance to scope out and test innovative ideas, and provide equity, to help a company get on its feet.

2. DFC and its peer agencies have increased their collaborations, lately driven by COVID-19 concerns. Historically deal-sourcing in Africa has been a challenge, with development finance institutions (DFIs) from various countries pursuing a limited number of high-quality infrastructure and energy projects. However, during the COVID-19 crisis, DFC began

meeting weekly with peer DFIs to coordinate approaches and leverage their combined resources, with concrete results. Evidence of DFC and European DFIs working together include transactions arranged by the International Finance Corporation (IFC, the private sector arm of the World Bank Group) and DFC on-lending to Africa Finance Corporation (AFC), an Africa-based multilateral, to tackle infrastructure deficits on the continent. This partnership combines DFC funding with AFC's regional know-how and builds on the collaborative approach the two agencies have taken in the past, including to help source deals for the Power Africa initiative.

3. DFC has increased its on-the-ground presence through the Africa Investment Advisors Program. DFC deploys regional officers across Africa to provide a local presence for deal origination. Meanwhile, the agency continues its efforts to better pursue a "whole government" approach, building on the past decades' work with other US agencies, such as Millennium Challenge Corporation (MCC), US Agency for International Development



DFIS AND ECAS AS TOOLS OF STATECRAFT

Development finance institutions (DFIs) and export credit agencies (ECAs) are “soft power” tools of global influence with differing missions.

A DFI’s goal is to support economic development in countries that face challenges. Their results are evaluated not only on their ability of investments to return capital but also on the way in which the investments strengthen the target country’s economy.

An ECA’s goal is to support job growth in the agency’s home country by providing financing support for exports (in this case exports into Africa). In 2020, ECAs provided US\$35.3 billion in overall lending for projects in Africa.

Notably, both DFI and ECA financing in Africa have increased financing for water and sanitation, healthcare and hospitals, and green loans.

(USAID) and US Trade and Development Agency (USTDA), including in the Power Africa initiative.¹ More recently, DFC’s Chief Development Officer, a veteran of the Power Africa program, has coordinated closely with US embassy and consular staff to connect town halls with business leaders across Africa.² These programs raise awareness of DFC’s activities and provide the agency with insights into local financing needs.

4. DFC has refocused its priorities to encompass not only lower- and lower to middle-income countries but also sectors that show great potential across the continent. These include healthcare, information, communications & technology, off-grid energy and women-led investments.

As a result, Africa is the focus of multiple DFC initiatives, including:

- **Connect Africa**—Through Connect Africa, DFC seeks to invest US\$1 billion to strengthen connectivity to further Africa’s integration with the global economy. Areas of focus include telecommunications and internet access,³ value chains that connect producers of raw materials with end-users and essential infrastructure such as roads,

railways, ports and airports.⁴ One notable project is a recent US\$100 million loan to Africell to increase mobile phone and internet service in the Gambia, Sierra Leone, Uganda and the Democratic Republic of the Congo.⁵

- **2X Africa**—DFC seeks to catalyze US\$1 billion of investment in projects that are owned by, led by or provide a product or service that empowers African women.⁶ Notable projects include loans that help small-holder farmers (more than half of whom are women) improve their yields, insure their crops, bring products to market and increase resilience in the face of climate change and the COVID-19 crisis.

- **Health and Prosperity Initiative**—Through its Health and Prosperity Initiative, the agency is working to invest US\$2 billion worldwide in projects that bolster health systems, support infrastructure development and expand access to clean water, sanitation and nutrition.⁷ Examples include a US\$781,000 guarantee for Embu Water and Sanitation to improve the water supply for 100 schools, 15 clinics and 50,000 people in rural Kenya,⁸ a US\$5 million loan for dialysis centers across East Africa,⁹ loans for entrepreneurial companies supporting innovations in vaccine distribution¹⁰ and multi-lender-supported facilities to support medicine production.

EXIM

EXIM is the export credit agency (ECA) for the United States. Its mission is to support US jobs by financing the export of goods and services from the US to international markets.

During 2009 – 2019, EXIM supported US\$12.4 billion of transactions to sub-Saharan Africa,¹¹ and the region is home to EXIM’s largest commitment to date. Moreover, EXIM is a long-time player in Africa, with experience dating back to the 1940s. The agency is currently open for business in 44 of the 49 countries across sub-Saharan Africa. Its products include export credit insurance, working capital loans and term loans.



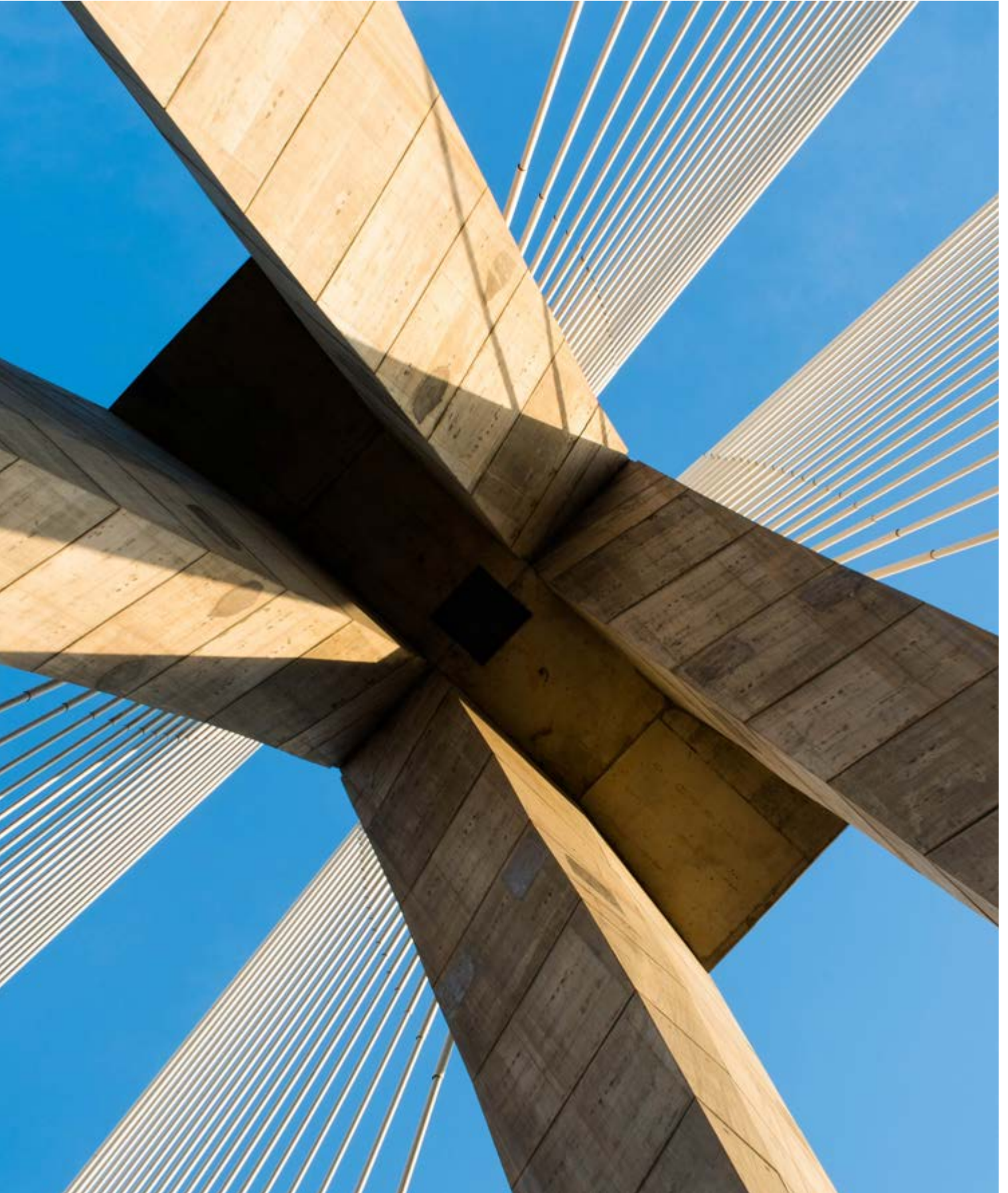


Table 1: US agencies active in Africa

Agency and function	Key capabilities
<p>Export-Import Bank of the United States (EXIM) Assists in the financing of US goods and services to international markets</p>	<p>Issues fixed-rate financing to credit-worthy international buyers in both the private and public sector</p> <p>Provides loan guarantees for financiers of foreign buyers in the purchase of US capital equipment and services</p> <p>Supports export credit insurance to cover risk of buyer non-payment for commercial risks (e.g., bankruptcy) and certain political risks (e.g., war or the inconvertibility of currency), US government support capabilities, project development, project structuring, project financing, post-financing support and policy reform</p>
<p>Millennium Challenge Corporation (MCC) Partners with developing countries that are committed to good governance, economic freedom and investing in their citizens, to reduce poverty through economic growth</p>	<p>Increases access to electricity by investing up to US\$1 billion in African power systems through MCC grants</p> <p>Motivates partner countries to implement regulatory, governance and utility reforms to improve the commercial viability of the power sector</p> <p>Provides technical assistance and management support for ministries, regulators and utilities</p> <p>Utilizes country-led solutions and implementation to provide financial support for energy infrastructure projects</p>
<p>US African Development Foundation (USADF) Funds African-owned and managed enterprises, cooperatives and community-based organizations to build capacity and expand economic activities</p>	<p>Awards grants for seed funding, capacity building and expansion of up to US\$250,000 to catalyse groups for future growth by funding technical, managerial and organizational improvements</p> <p>Provides due diligence research, project design and business planning, and monitoring and evaluation oversight</p> <p>Through the Off-Grid Energy Challenge, in partnership with GE Africa, grants of up to US\$150,000 are awarded to African-owned and managed organizations for off-grid solutions that deploy renewable resources and stimulate economic activity through productive uses of energy, including in vulnerable and displaced communities like refugee settlements</p>
<p>US Agency for International Development (USAID) Provides targeted technical assistance, grants, program support and risk mitigation to advance specific development objectives</p>	<p>Posts transaction advisors in Power Africa countries to assist in advancing agreements between public and private sector partners</p> <p>Contributes to multi-donor funds such as the African Union’s Geothermal Risk Mitigation Facility, the African Legal Support Facility and the African Development Bank’s Sustainable Energy Fund for Africa</p> <p>Helps governments adopt and implement policy, regulatory and other reforms necessary to attract private sector engagement in the energy and power sectors</p> <p>Provides technical assistance to support mission-led energy initiatives in Power Africa countries</p>
<p>US Department of Agriculture (USDA) Promotes sound policies and provides technical assistance to support national and international agriculture, energy, environmental and trade issues</p>	<p>Conducts assessments, reviews, capacity building and training for host-country governments, for the development and management of infrastructure including hydropower</p>
<p>US Department of Commerce (Commerce) Facilitates global trade and strengthens the international economic position of the US</p>	<p>Assists US companies in researching and selecting overseas markets for export of goods and services by identifying market barriers and expanding the availability of trade financing</p> <p>Provides trade data and methodology to expand international sales and marketing</p> <p>Identifies potential foreign agents, distributors, and buyers for US companies</p> <p>Commercial Law Development Program – Improves the legal environment for doing business in sub-Saharan Africa by serving as a resource for federal agencies, US businesses, foreign governments and foreign businesses on complex issues such as power purchase agreements (PPAs), project finance agreements, and more</p> <p>Advocacy Center – Coordinates US government interagency advocacy efforts on behalf of US exporters bidding on public sector contracts with overseas governments and government agencies</p>

Agency and function	Key capabilities
<p>US Department of Energy (DOE) Provides technical expertise to US agencies and African governments to improve energy systems and help better meet emerging needs</p>	<p>Provides technical expertise supporting the development and modernization of energy systems in developing countries, through both bilateral cooperation and multilateral initiatives</p> <p>Provides expertise in policy planning, energy market analysis, energy system modeling, and technical analysis to incubate enabling environments that encourage US private sector investment</p> <p>Promotes development and application of innovative energy technologies in Africa through collaboration with its National Laboratory system, and helps move these technologies to commercialization</p> <p>Undertakes assistance for regulatory reform by fostering relationships between appropriate focus-country agencies and US national and state regulators</p>
<p>US Department of State (DOS) Advances the political and economic dialogue on transformational energy policies through diplomacy, trade & investment-promotion services, technical assistance, partnerships and bilateral programs</p>	<p>Conducts diplomacy at all levels with host governments to advance legal, regulatory and institutional reforms that contribute to robust enabling environments to encourage private sector trade and investment</p> <p>Encourages good governance and revenue management, which leads to economic growth and attracts private sector investment</p> <p>Provides technical assistance to support regulatory and legal reform through the Energy Governance and Capacity Initiative (ECGI) and promotes reliable and affordable energy supply through power sector reform and development through the Power Sector Program (PSP)</p> <p>Increases electricity access in both urban and rural areas through on- and off-grid connections by promoting advances to the enabling environment through engagement with governments and utilities</p> <p>Utilizes public diplomacy resources to highlight and share US expertise through in-person and virtual visits of Africans to the US and US experts to Africa to promote dialogue and sharing of best practices</p>
<p>US Department of Treasury (Treasury) Works bilaterally and through multilateral institutions to promote policies and institutional capacity that lay the foundations for economic growth and financial sustainability</p>	<p>Provides technical assistance to finance ministries and central banks to strengthen their ability to manage public finances and safeguard their financial sectors, including in the areas of budget, revenue, debt management, infrastructure finance and financial services</p> <p>Leads engagement with the World Bank, African Development Bank and the International Monetary Fund, which support countries to promote inclusive growth, poverty reduction, sound economic management, debt sustainability and good governance</p>
<p>US International Development Finance Corporation (DFC) Provides financing and insurance for private companies developing projects in developing markets</p>	<p>Provides direct equity financing and support for investment funds</p> <p>Provides direct loans and guarantees of up to US\$1 billion for tenors of as long as 25 years, with specific programs targeting small and medium-size US businesses</p> <p>Provides political risk insurance coverage of up to US\$1 billion against losses due to currency inconvertibility, government interference and political violence including terrorism; also offers reinsurance to increase underwriting capacity</p> <p>Provides feasibility studies and technical assistance to accelerate project identification and preparation, and to better attract and support private investment in development outcomes</p>
<p>US Trade and Development Agency (USTDA) Provides grant-based project planning assistance to mobilize capital for infrastructure in developing and middle-income countries</p>	<p>Supports feasibility studies and pilot projects to provide the required comprehensive analysis for major infrastructure projects to achieve successful financing and implementation</p> <p>Offers gap funding to support late-stage development needs, such as front-end engineering design, lender's due diligence and other components to move an infrastructure project to financial close</p> <p>Provides technical assistance to support legal and regulatory reform related to commercial activities and infrastructure development, the establishment of industry standards and other market-opening activities</p> <p>Hosts reverse-trade missions to the US for overseas project sponsors to observe the design, manufacturing, demonstration, and operation of American products and services that can help the officials achieve their development goals</p> <p>Organizes sector and region-specific events to connect US firms with foreign buyers, highlight upcoming infrastructure projects overseas, and showcase US goods and services</p>

Aerial view of roads amid forest in Langeni, South Africa



Promptly following its re-authorization, EXIM approved two prominent deals in Africa.

In March 2020, it approved a US\$91.5 million transaction for electrification in Senegal.¹² Two months later, the agency approved its largest transaction to date: a US\$4.7 billion credit (direct loan) supporting exports of US goods and services with more than 60 US suppliers to assist the development and construction of an integrated liquefied natural gas project on the Afungi Peninsula in northern Mozambique.¹³ EXIM made its commitment alongside those from almost 20 other ECAs and DFIs, which offered an aggregate of US\$16 billion in loans.

Africa also is a key to EXIM's

program on Transformational Exports, which was established by law in December 2019 and provides the agency with tools to help US exporters compete more effectively with Chinese exporters.¹⁴ The program's aim is to support US innovation, employment and technological standards globally in ten transformational export industries, including artificial intelligence, 5G, quantum computing, biomedical sciences, biotechnology and renewable energy. The law charges EXIM with a goal of reserving at least 20 percent of the agency's total financing authority (i.e., US\$27 billion out of a total US\$135 billion) for support made pursuant to the program.

In announcing the Mozambique transaction described above, EXIM noted that this type of support was important to help counter Chinese and Russian influence in Africa.¹⁵

This program shows great promise. Its realization will require some adjustments though, notably a re-thinking of US content requirements that make it hard to support high-tech solutions, the value of which includes globally sourced computer code and know-how.

Cloud computing, mobile payment solutions and similar technologies have great potential in Africa, as do technological advancements in energy storage and smart infrastructure. But it can be difficult

to properly value the role of US content in many of these projects. EXIM staff have been actively reviewing the agency's policies in this area, but they do not yet have high-level political appointees or board members in place, and bold action seems likely to take place only once those milestones are achieved.

Another challenge for EXIM is to source deals without a presence on the ground on the African continent.

The agency overcomes this challenge by working closely with staff in US embassies, and EXIM plays a leading role in whole-of-government initiatives, including Prosper Africa and Power Africa. The agency also benefits from guidance from a sub-Saharan Africa Advisory Committee, made up of government and industry representatives with extensive experience in Africa.¹⁶ This committee meets two times a year to examine EXIM's programs and policies designed to support the bank's engagement in sub-Saharan Africa.

CONTINUITY AND CHANGE: EVOLUTION OF AGENCY FOCUS UNDER THE BIDEN ADMINISTRATION

Given the considerable changes taking place in US politics, it can seem as if every federal agency's outlook is bound to change significantly from one presidential administration to another. This would present a challenge for securing funding from US agencies for infrastructure in Africa, since it takes a good deal of time to develop any project.¹⁷

Fortunately, both DFC and EXIM have shown continuity in their focus on African deals, with a gradual building of momentum and improvement in inter-agency coordination from one recent administration to another.

In particular, the Prosper Africa initiative during the end of President Trump's term built on, and did not supplant or replace the Power Africa initiative started under the Obama Administration. And all signs point to the Biden administration's continued support for the principles underlying both of these programs and to the goal of better aligning various US agencies—including DFC, EXIM, USAID, the MCC, the USTDA and others—to address challenges

in the region. Moreover, these agencies have demonstrated that they are reliable partners in closing commitments that originated during a different prior administration.

This trend continues today.

The Biden administration's focus on climate change has ambitious goals, including DFC achieving net-zero by 2040. Unlike some peer DFIs and ECAs in Europe, both DFC and EXIM will likely continue supporting some carbon-intensive projects, while seeking to increase investments in renewable energy and climate resilience. Recent statements from DFC's Chief Operating Officer suggest that the agency will continue to support, on a selective basis, highly developmental, high-quality fossil fuel-based projects through 2030, mostly in Africa. He also stated:

"Sub-Saharan Africa is not part of the climate problem. If you take the entire sub-Saharan African region, and you tripled electricity consumption tomorrow, and all 100 percent of that came from natural gas, sub-Saharan Africa would only contribute 1.2 percent of global carbon emissions. ...gamers in California consume more electricity in a year than the entire country of Ethiopia consumes in a year."¹⁸

This approach can be compatible with the International Energy Agency's much-heralded recent advice on the narrow path to net-zero,¹⁹ although it is not easy. This approach requires hard work. For example, calculating expected emissions over the future life of legacy projects as well as new ones can leave the agencies open to criticism from both ends of the political spectrum.

Still, this balanced approach, coupled with the gradual building of momentum across multiple administrations toward investing in Africa, suggests that US agencies may play more of an active role in promoting industrial growth in Africa across a broader range of sectors than they did historically.

- 1 <https://www.usaid.gov/powerafrica>.
- 2 COO David Marchick discussed this program in his April 23, 2021 debrief with the Center for Global Development. <https://www.cgdev.org/event/elevating-dfcs-climate-ambition-debrief-coo-david-marchick>.
- 3 Investments in mobile connectivity have important follow-on effects (see, e.g. <http://documents1.worldbank.org/curated/en/178701467988875888/pdf/102955-WP-Box394845B-PUBLIC-WDR16-BP-Exploring-the-Relationship-between-Broadband-and-Economic-Growth-Minges.pdf>) and this is particularly true in Africa, where mobile payments solutions have increased financial inclusion but availability is uneven and still out of reach in some of Africa's poorest countries and communities. See, e.g., <https://www.bcg.com/publications/2020/five-strategies-for-mobile-payment-banking-in-africa> (approximately 400 million consumers in sub-Saharan Africa use mobile payment banking systems to handle US\$300 billion worth of mobile money transactions).
- 4 <https://www.dfc.gov/our-work/connect-africa>.
- 5 <https://www.dfc.gov/investment-story/expanding-mobile-connectivity-sub-saharan-africa-0>.
- 6 <https://www.dfc.gov/our-work/2x-womens-initiative>.
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- 9 <https://www.dfc.gov/media/press-releases/dfc-advances-covid-19-response-africa-5-million-investment-africa-healthcare>.
- 10 <https://www.dfc.gov/investment-story/supporting-vaccine-distribution-remote-locations-developing-countries>.
- 11 For examples of projects supported, see, e.g., <https://www.youtube.com/watch?v=tMZQRz3FF9g&list=PLpDj5ohdwyYctbsdijjEq8DOZSsST63Xt0&index=9> (Case Study – Africa: How the USG Helped an Illinois Small Business Succeed, US-EXIM Annual Conference September 2020).
- 12 <https://www.exim.gov/news/exim-board-approves-915-million-export-financing-for-renewable-energy-rural-electrification>.
- 13 <https://www.exim.gov/news/exim-board-unanimously-approves-amended-financing-exports-mozambique-ling-project-and-support>.
- 14 <https://www.theafricareport.com/29796/US-EXIM-we-have-a-new-mandate-to-take-china-on-around-the-world/>.
- 15 <https://investableuniverse.com/2020/10/19/exim-china-transformational-exports-5g-renewable-energy-belt-and-road/>.
- 16 <https://www.exim.gov/news/exim-announces-members-2020-2021-exim-sub-saharan-africa-advisory-committee>.
- 17 Cf. Emphasis on the need for patience in discussion from Kyle Jackson of US-EXIM, minutes 41-43, Case Study – Africa: How the USG Helped an Illinois Small Business Succeed (US-EXIM Annual Conference September 2020) <https://www.youtube.com/watch?v=tMZQRz3FF9g&list=PLpDj5ohdwyYctbsdijjEq8DOZSsST63Xt0&index=9>.
- 18 Elevating DFC's Climate Ambition, Debrief by David Marchick, US DFC Chief Operating Officer, April 29, 2021, hosted by the Center for Global Development. <https://www.cgdev.org/event/elevating-dfcs-climate-ambition-debrief-coo-david-marchick> (remarks around minute 26).
- 19 <https://www.cnbc.com/2021/05/18/stop-investing-in-fossil-fuels-to-meet-net-zero-targets-iea-says.html>.

Debt: Outlook for Africa brightens after challenging first half to the year

Lender caution following Zambia's debt repayment default in 2020 has weighed on African debt issuance, but successful raisings by high profile borrowers show that investor appetite remains resilient

By Sherief Rashed and Sibusiso Zungu

African loan and bond issuance fell by just under 10% in the first half of 2021, year-on-year, with lenders still jittery after Zambia missed a bond repayment in November 2020 to become the first African sovereign to default since the onset of the pandemic.

North and Sub-Saharan African issuance of bonds, high yield bonds, leveraged loans and non-leveraged loans totaled US\$40.6 billion in H1 2021, down by 9.7% from the US\$45 billion recorded in H1 2020.

The dip in issuance reflects the concerns of investors that the same factors leading to the Zambian default—high levels of indebtedness and falling commodity prices due to reduced global demand following COVID-19—could put other African sovereigns and companies under financial pressure.

Despite these concerns, several high-profile African issuers have continued to successfully access international capital markets, showing that there remains lender appetite for high quality credits from the continent.

In February, Ecobank Nigeria, a subsidiary of pan-African bank Ecobank Transnational Incorporated, successfully priced a US\$300 million bond maturing in 2026. The notes priced at 7.125%, tightening from initial pricing indications of 7.75%, and the issue was more than three times oversubscribed.

South African financial services company Absa Group and real estate player MAS also closed

successful financings in H1 2021. Absa raised a US\$500 million senior unsecured perpetual bond with a coupon of 6.375% while MAS secured a €300 million senior unsecured bond priced at 4.25%, maturing in 2026.

Outside of sub-Saharan Africa, Moroccan chemicals and materials group OCP secured a US\$1.5 billion bond consisting of two installments. The installments will mature in 20 and 30 years and priced at coupons of 3.75% and 5.125%, respectively. The two installments were more than four times oversubscribed and proceeds will be used to improve the company's capital structure. The National Bank of Egypt, meanwhile, closed a US\$1 billion package from international lenders for development and investment projects.

Appetite from domestic lenders for quality credits has also been strong, with telecoms operator MTN Nigeria securing a ₦110 billion (US\$266 million) bond on local capital markets. Proceeds from the oversubscribed bond will be used for refinancing and infrastructure investment.

Sovereign bond issuance also progressed through H1 2021, despite the hangover from the Zambian default. The governments of Senegal and Kenya were among the state issuers to lock in funds, with Senegal closing a €775 million bond maturing in 2037 and Kenya landing a US\$1 billion bond maturing in 2034.

MOMENTUM BUILDS IN SECOND HALF

The ability of African companies and sovereign borrowers to raise capital on international and local markets in H1 2021, as well as successful bond issues from regional institutions including the African Development Bank and Africa Finance Corporation, have boosted lender and issuer confidence.

After observing successful capital raisings by peers through the first six months of 2021, African governments and companies that put off borrowing in 2020 because of the risk of unfavorable terms due to COVID-19 are preparing to launch their debt offerings in more stable debt markets.

The pipeline for H2 2021 deals already looks promising. For example, Egypt Aluminium Company (Egyptalum) is in early discussions



Several high-profile African issuers have continued to successfully access international capital markets, showing lender appetite for high quality credits.



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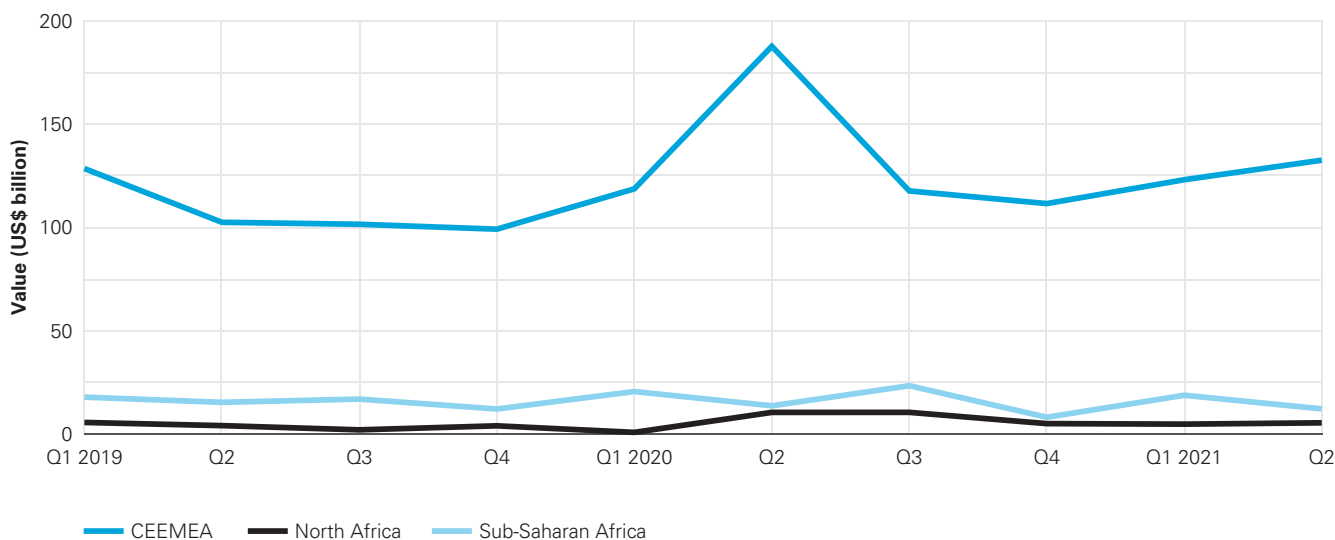
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Figure 1: Overall Issuance by value Q1 2019 – Q2 2021

Instrument type: All Use of proceeds: All
 Location: CEEMEA, North Africa and Sub-Saharan Africa Sectors: All Market Size: All



Source: White & Case's Debt Explorer powered by Debtwire Par



The combination of innovative structures, rising social and sustainability debt issuance and the return to market of African borrowers that deferred debt plans in 2020 could support a busy period of activity.

over securing a possible US dollar loan, according to sources speaking to Debtwire Par.

On the sovereign side, Debtwire Par reports that Tunisia's government is seeking project finance of up to €340 million for investment in water desalination and waste treatment infrastructure. Tanzania, Togo and Uganda are also expected to seek financing on international capital markets before the end of the year.

African issuers are also adopting more innovative structures and looking to access new pools of capital, which could support a further uplift in activity.

Ghana, for example, is planning to issue green and social bonds worth up to US\$2 billion before the end of this year, which would make it one of the first African countries to raise debt specifically to fund environmental, social and governance (ESG) development programs. Proceeds from these bonds will be used to refinance borrowings on social and environmental projects, and to invest in education and health.

Ghana also took a pioneering position in mainstream lending markets after raising a US\$3 billion zero-coupon bond tranche with

a four-year maturity. The novel structure, believed to be the first issued by an African borrower, will mean Ghana does not have to make periodic interest payments on the borrowing. Instead, the bond is issued at discount to its value at maturity.

Issuing zero coupon bonds is not without risks, but if discounts to fair value are deep enough to attract investors, Ghana's example could open the way for other African issuers to access additional capital by taking a different approach to debt structures.

After a tentative first six months, it is hoped that the combination of innovative structures, rising social and sustainability debt issuance and the return to market of African borrowers that deferred debt plans in 2020 will support a busy period of activity through the rest of 2021.

A high angle view over downtown city Dar es Salaam Business District, Tanzania



Acquisition financing in an era of energy transition

An innovative, first-of-its-kind hybrid acquisition financing in Nigeria*

By Jason Kerr, Mukund Dhar and Deji Adegoke. Sam Nwanze and Nnamdi Azubuikwe of Heirs Holdings Oil & Gas Limited, Ade Adeola and Dapo Akinpelu of Standard Chartered Bank, and Chike Obianwu and Yemisi Awonuga of Templars contributed to this article.

Over the past decade, international oil majors have been pivoting their investment strategy to offshore assets and divesting their stakes in onshore assets in West Africa. This process has been accelerated by the need of the majors to refocus on their gas-rich assets as part of a portfolio optimization process linked to energy transition.

In January 2021, Shell Petroleum Development Company of Nigeria Ltd., Total E&P Nigeria Ltd. and ENI sold a 45 percent stake in Nigerian Oil Mining Lease 17 (OML 17) and related infrastructure assets to Heirs Holdings, a related company of Heirs Holdings Limited and Transnational Corporation of Nigeria Plc. The deal is notable for the extensive cast of players involved on the financing side including international and local banks, multilateral financing institutions and asset managers, as well as technical partners and crude offtakers.

OML 17 is located near Port Harcourt, Nigeria, and features 15 oil & gas fields, six of which are currently producing. OML 17 is in one of the most prolific oil & gas field clusters in Nigeria, and has the potential to double production in the short to medium term through STOGs and workovers. OML 17 was first discovered in the 1960s and, at its peak in the 1970s, production of 120,000 barrels of oil-equivalent (boe) was being achieved—current production is equivalent to 27,000 boe per day. OML 17 is estimated to have proven and probable reserves (2P reserves) of c. 1.2 billion boe (NNS), with potential exploration

upside of one billion boe. OML 17 is supported by a comprehensive infrastructure network including an installed liquid processing capacity of 240 kbpd, six flow stations and two gas processing plants with c. 240 mbpd capacity (Obigbo North & Agbada gas plants) supplying energy to the industries and power plants in Southern Nigeria.

As part of the acquisition, Heirs Holdings has been granted sole operatorship of OML 17. This is a resounding endorsement of the company's operational plans, as well as its management team, strategic partners and service providers, including Schlumberger, and is a critical element in Heirs Holdings' stated intention to quickly ramp up production.

See Figure 1 for an overview of the parties to the transaction and the key commercial contracts that have been put in place.

CONTRACTUAL OVERVIEW

Heirs Holdings has negotiated agreements with the sellers (Shell/Total/ENI), Schlumberger and other counterparties to create a structure that both maximizes performance and reduces risk for all parties.

1. Offtake agreement

- Long-term offtake agreement with Shell and Total to ensure regular revenue and minimize payment risk
- In addition, offtake agreements include flexibility to raise additional capex facilities against incremental production from third parties under certain circumstances

2. Technical services agreement

- Strategic cooperation with Schlumberger to implement an accelerated field development plan, designed to support on-the-ground execution capacity, people and training for Heirs Holdings to optimize operations
- Revolving oil service funding facility designed to de-risk and underpin expansion of O&G production

3. Crude handling and terminal agreement

- Heirs Holdings to pay SPDC JV a fixed tariff charged on throughput and capacity for use of the Trans-Niger Pipeline
- Heirs Holdings to also pay tariff for use of the Bonny Crude Oil Terminal

4. Gas handling, sale and purchase agreement (GSPA)

- Gas sale and purchase agreement for an agreed portion of the gas production from the asset

FINANCING OVERVIEW

With more than US\$1 billion in financing raised, this acquisition represents the largest M&A transaction in Nigeria since 2014. The financing for the acquisition of OML 17 utilizes a highly innovative hybrid structure and comprised the following:

- A senior debt facility, including a term loan A (TLA) facility, a term loan B (TLB) facility and a senior revolving credit facility (RCF). The TLA is an amortizing facility,

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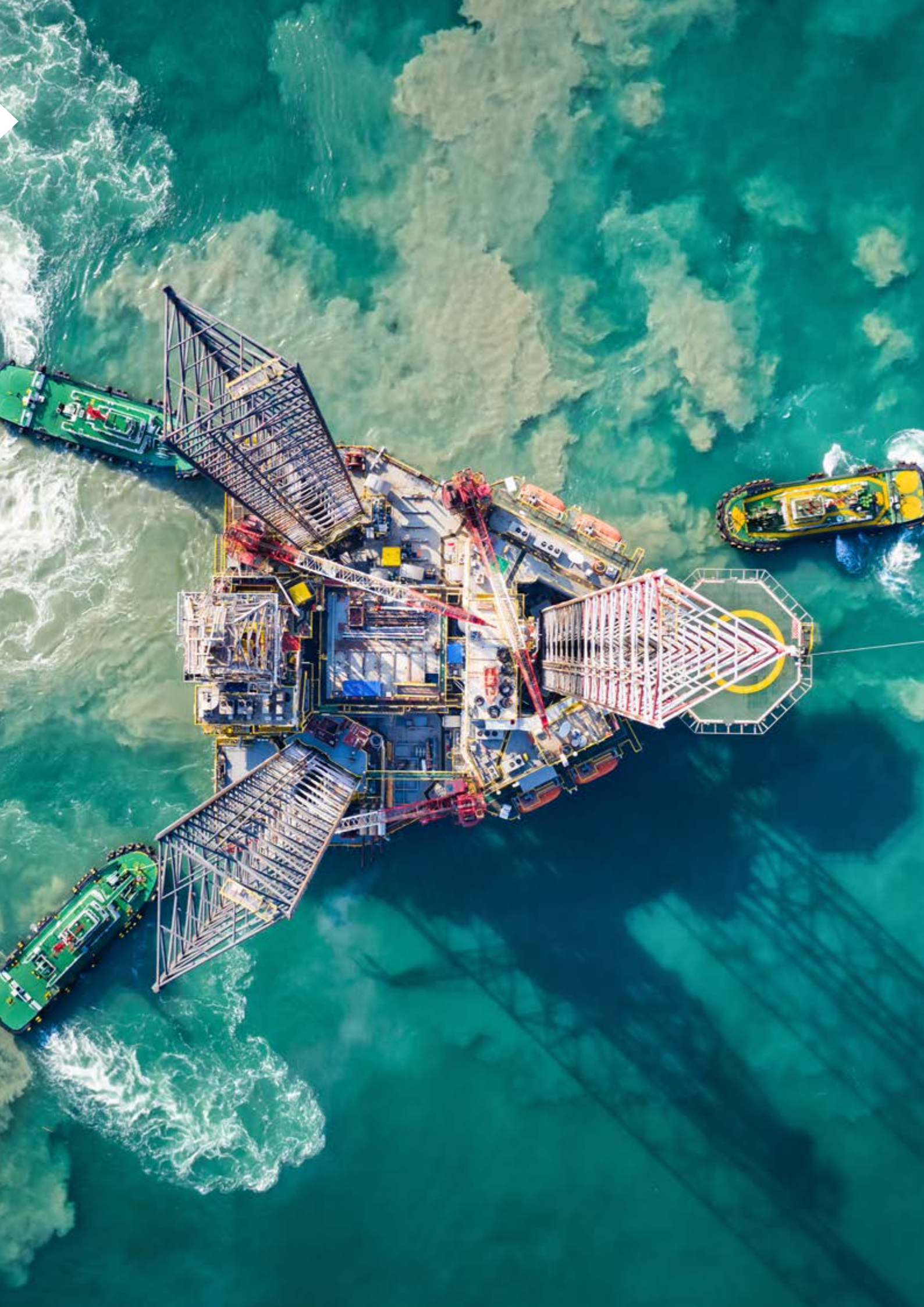
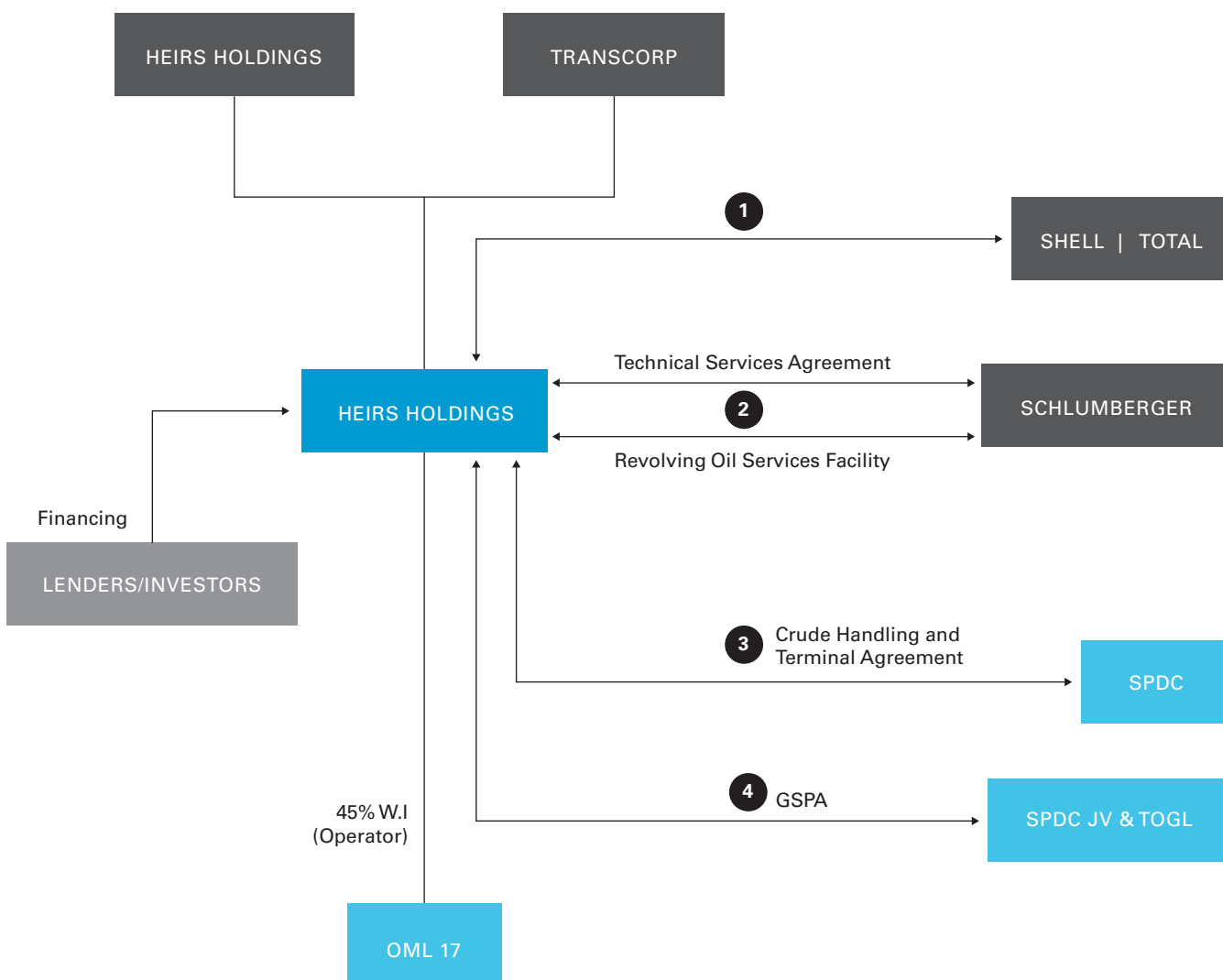


Figure 1: Transaction structure



and the TLB is repaid in a lump sum, a "bullet." Proceeds of the TLA and the TLB are required to be applied solely toward funding the acquisition, while RCF proceeds may be used to fund the acquisition, or for general corporate purposes including funding for production ramp-up

- A junior debt facility, bifurcated into a junior loan A (JLA) and a junior loan B (JLB). The junior facilities are subordinated to the senior facilities, both in terms of the ordinary course cashflow waterfall and following an enforcement, and are repaid as a bullet. As is common with junior facilities, the JLA and JLB both have longer amortization

periods than the senior facilities

- A third-ranking working capital facility, provided as a form of "vendor" financing by a syndicate of lenders primarily for funding production ramp-up
- The issuance of unsecured structured notes pursuant to individual note purchase agreements, including detachable petroleum economic participation units, which operate in a fashion similar to warrants. The proceeds of the structured notes are to be applied solely toward funding the acquisition of OML 17

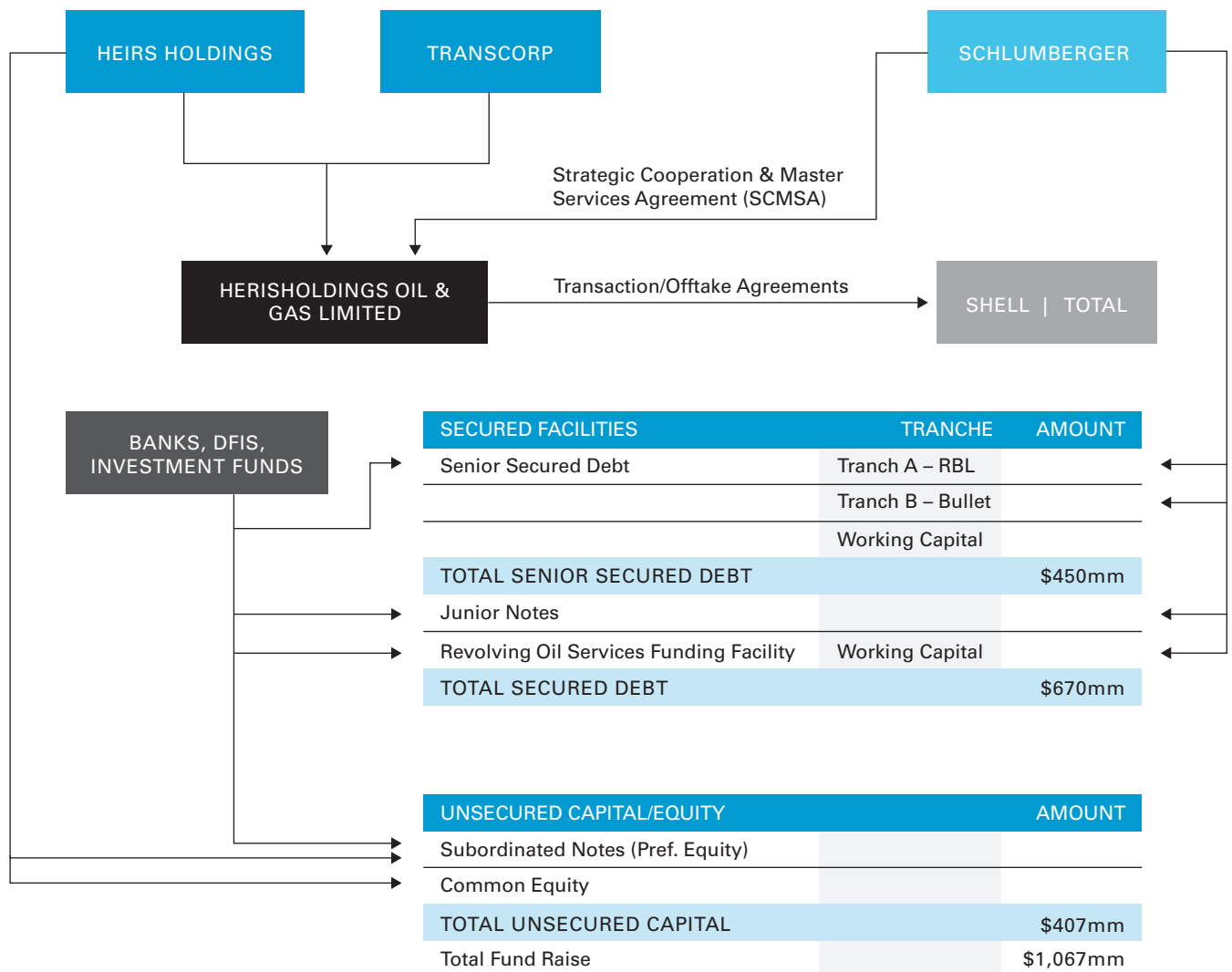
Among other key features, the structure enables Heirs Holdings to increase its lender's commitments

across the entire capital structure from time to time, subject to satisfying certain conditions. See Figure 2 for an overview of the financing structure.

STRUCTURING THE SENIOR FACILITY

The senior debt comprises three facilities (or tranches) secured on a pari-passu basis. Tranche A is a five-year, US\$300 million amortizing term facility, and tranche B is a 5.5-year, US\$50 million facility with a bullet payment at maturity. In addition, there is a US\$100 million RCF with a two-year tenor that can be renewed subject to mutual agreement between TNOG and the lenders. The senior debt capacity

Figure 2: Financing structure—Transaction structured to support production ramp-up, while reducing risk for counterparties



is calculated on a “stretched” NPV basis, using a six-year tenor which extends six months beyond the maturity of tranche B. Tranche B was designed to attract a specific investor class—non-bank financial Institutions such as asset managers and hedge funds—that are comfortable taking refinancing risk.

Tranche A, in comparison, is a traditional reserves-based loan (RBL) facility, whose lender base comprises banks that are typically active in the RBL market (such as Standard Chartered Bank, ABSA and African Import Export Bank) and Nigerian banks that are familiar with the domestic oil & gas sector. The repayment of tranche A will be prioritized in relation to tranche B;

mandatory prepayments and senior cash sweeps will be allocated to tranche A on a 100 percent basis until this tranche is fully repaid, after which such prepayments will apply to tranche B.

In addition to other accordions set out in the senior facility, there is also an uncommitted facility made available via an accordion of up to US\$300 million. The purpose of this accordion is to prepay the junior debt on a cashless basis and to fund capital expenditures (in this order of priority). This accordion will be in place throughout the five-year tenor of tranche A. Please see further below a more detailed discussion on the cashless redemption mechanism.

The senior facility includes a

principal repayment grace period that enables Heirs Holdings to spend the initial months after closing the acquisition deploying its resources solely toward ramping up production. The grace period mechanism is an important point of distinction from a traditional RBL and was a key element of this financing.

The RCF offers Heirs Holdings the flexibility to use the proceeds of disbursements under this facility to fund the acquisition and for general working capital purposes.

The SFA has been structured to enable Heirs Holdings to incur additional indebtedness through a variety of means. In addition to the cashless redemption accordion, referenced above, the SFA provides

for a petroleum asset accordion, which enables Heirs Holdings to request an increase in the commitments, with existing facility lenders having a right of first refusal.

The right to exercise the accordion is subject to a number of conditions, including:

- A specified minimum amount of the junior tranche must have been converted to senior prior to the exercise of the accordion (there is a more detailed explanation on the junior conversion concept below)
- No default is to be continuing, or could reasonably be expected to result from the increase and
- Specified projected debt service coverage ratio tests must have been satisfied

In addition to the petroleum asset accordion, Heirs Holdings is permitted, after the first TLA principal repayment date, to incur additional indebtedness from third-party senior secured lenders. The proceeds of such third-party indebtedness are required to be used for acquiring new oil & gas assets.

Incurring additional indebtedness in such circumstances is subject to satisfaction of a number of conditions, including:

- Completion of satisfactory economic, technical and legal due diligence and
- A requirement that the new lenders accede to the intercreditor agreement and that the existing lenders are granted security over any new assets acquired pursuant to such additional indebtedness and
- A proviso that Heirs Holdings is only permitted to grant security to the new lenders over revenues generated from assets acquired utilizing such additional debt indebtedness

The benefit of the above arrangement from the Heirs Holdings perspective is that it can offer senior secured security to new prospective lenders, making this facility attractive to potential lenders and broadening the scope of potentially interested parties. From the existing senior lenders' perspective, the benefit of this arrangement is that the existing

senior lenders will have the benefit of security over the new assets acquired, and the new senior lenders coming into the financing will have recourse only to the newly acquired assets. As such, there is no dilution in the value of the pre-existing security from the perspective of the existing lenders.

The SFA also provides for a junior redemption accordion. The junior redemption accordion is an accordion that can be utilized to convert amounts outstanding under the junior facility to senior debt. Upon exercise of this accordion, amounts outstanding under the JFA are deemed to have been incurred as new senior loans; in effect, the relevant junior lenders become senior lenders with respect to the converted amounts.

The SFA also includes a requirement that Heirs Holdings take out hedging in accordance with a pre-agreed hedging policy and with a pre-agreed criteria of hedging counterparties. Heirs Holdings is required to hedge a minimum amount of its quarterly production against oil price fluctuations for the first few years of operations. This insulates senior lenders against adverse oil price changes and offers Heirs Holdings stability in its forecast revenues, which is a critical requirement in a borrowing-based RBL facility.

STRUCTURING THE JUNIOR FACILITY

The junior debt comprises two tranches—A and B—of US\$100 million and US\$70 million, respectively. The tenor of junior facility A is six years, and the junior facility B has a seven-year tenor. Both facilities have a bullet repayment at maturity and are subordinated to the senior debt both in terms of cash waterfall payments and security. The junior debt is expected to be refinanced within 24 to 36 months of closing by way of exercise of the senior debt accordion that prioritizes prepayment and cancellation of the junior debt by way of transfer of those commitments to the senior facility.

The junior facility agreement (JFA) was targeted at strategic industry investors. The JFA is repaid as a bullet, and has a longer maturity than the facilities provided under the SFA.

When the junior tranche was first explained to potential lenders during the market sounding process, it was described specifically as not a “true” junior, but as a facility more akin to a “stretched senior” instrument. The junior facility incorporates an accordion, (this accordion dovetails with the junior redemption accordion set out in the SFA) and provides that upon the exercise of the accordion, the amount requested by Heirs Holdings to be converted shall be deemed to have been repaid on a cashless basis and converted to senior debt. This accordion can be exercised if specified economic and technical conditions are met. To ensure that Heirs Holdings does not incur additional indebtedness under the SFA without first converting any outstanding amounts under the junior, the SFA includes a requirement that prior to incurring additional indebtedness at the senior level, a specified minimum amount of the amounts outstanding under the junior facility shall have first been converted to senior.

Given that junior lenders are subordinated to senior lenders, the JFA carries a margin uplift relative to the SFA. Consistent with its ranking, the JFA offers greater flexibility to the obligors relative to the SFA in terms of applicable covenants and representations. Similarly, as the JFA is not a borrowing base facility, it does not incorporate the same periodic economic and technical assumption update and projection approval provisions found in the SFA.

Both the junior facility A and junior facility B are repaid as bullets, but the junior facility A is required to be converted to senior prior to the JLB, and the junior facility A is converted to senior solely as TLA debt, while the junior facility B is converted to senior solely as senior facility B debt. This provision helped to ensure as broad a market as possible for the junior facility A and junior facility B, and to create an essential point of difference.

ADDING THE REVOLVING OIL SERVICES FACILITY

Schlumberger/Hybrid Capital have arranged a consortium of investors and banks to provide a US\$50 million revolving oil services funding facility (ROSF) that is “evergreen” and subordinated to senior and

Figure 3: Funding Overview: Types, sources and debt maturity profiles

	Overview	Target Investor Universe	Maturity Profile		
Secured Financing	Senior Debt (Facility A)	– Hybrid RBL Structure – Amortising Loan	– Banks, Oil Traders	5 years	Senior Lenders (1P Debt Capacity)
	Senior Debt (Facility B)	– Bullet Repayment reducing repayment during ramp up	– Banks, Debt Funds, Hedge Funds and Traders	5.5 years	
	Revolving Credit Facility	– Working Capital Facility – to support ramp-up	– Banks	5.5 years	
	Junior Debt (Facility A)	– Bullet repayment – 2-yr PIK	– Banks, Debt Funds, Hedge Funds and Traders	6 years	Junior Lenders (2P Debt Capacity)
	Junior Debt (Facility B)	– Bullet repayment – 2-yr PIK	– Banks, Debt Funds, Hedge Funds and Traders	7 years	
	Revolving Oil Services Funding Facility	– Funding for Asset Development plan – Bullet Repayment	– Strategic Investors, Service Partners	7 years	
Unsecured Funding	Subordinated Notes	– High Yield Instrument – Bullet Repayment – 3-Yr Non-Call / PIL	– Fund Managers, Private Equity, Hedge Funds, Private Investors	7 years	
	Deferred Consideration	– Balance of purchase consideration – Pay-as-you-can	– Sellers	7 years	
	Equity	– Ordinary Equity	– Sponsor		

junior debt. The facility is priced in line with the junior debt and includes both a cash and PIK interest component for the first two years and full cash interest thereafter. Utilizations under the ROSFF can be applied toward the payment of project costs for capex and opex to support the accelerated ramp-up or expanded production.

DRAFTING THE STRUCTURED NOTES AND PETROLEUM ECONOMIC PARTICIPATION CERTIFICATES

The issuance of structured notes and petroleum economic participation units (PEPs) was a key element of the financing, as a synthetic equity instrument. The structured notes are a hybrid debt instrument with debt and equity features designed to give higher risk-taking investors such as equity investors, and asset managers risk-reward exposure to the transaction while being senior

to common equity. A number of the private equity and debt funds who committed to the financing at the senior TLB level also expressed an interest in both a fixed-rate instrument as well as an instrument that could offer equity-level return, on a highly subordinated basis. The structured notes and PEPs evolved as a means of satisfying this request from investors.

STRUCTURED NOTES

The structured notes are unsecured subordinated debt securities with a fixed coupon and cleared through the clearing systems. Holders are entitled to receive interest payments only after the expiry of a cash interest grace period. The structured notes require the issuer to meet a specified debt-to-equity ratio prior to the incurrence of additional secured indebtedness. The structured notes are designed to have a fixed dividend component as well as a detachable

oil royalty component—both deeply subordinated and payable only upon sufficient cash—that effectively solves for a target IRR to the investor, under McDaniel 2P/ Management Base Cases. The structured notes accrue cumulative dividends of 10 percent (delayed payment starting from 36 months), with a common equity dividend stopper feature—this enables Heirs Holdings to defer dividends until all cumulative deferred notes dividends have been paid. The structured notes are mandatorily redeemable seven years after the closing date.

PEPS

The PEPs are an equity-like instrument and give holders exposure to the amount of oil being produced and sold by the issuer. The PEPs have a fixed term of eight years (debt service on the PEPs begins three years after closing of the acquisition). The royalty stream under the PEPs

Top of distillation column,
Nigeria, Kaduna, NNPC



will survive any redemption of the structured notes and produces an additional yield to the detachable royalty instrument. The amount payable will move up or down depending on the liquids production rate and realized oil export prices.

APPROACH TO DRAFTING THE AGREEMENTS

In the initial stages, there were extensive discussions about how best to approach the drafting of the documents, and what format the documentation should take. While lenders under the senior and junior facilities were represented by separate counsel, it was important that the various debt facility agreements worked together, and were entered into on terms consistent with the lenders' relative seniority. For example, if a matter is prohibited at the senior and junior level but a waiver or exemption to such prohibition has been approved by the senior lenders, then junior or ROSF lender consent should not also be required (subject to a limited subset of amendments that would require the approval of all secured creditors).

It was commercially agreed that White & Case, as sponsor counsel, should have primary responsibility for drafting the various facility agreements and note instruments, given that the firm had visibility across the entire structure. The approach to drafting adopted was to secure substantive agreement on the SFA, and then to begin negotiations with the junior lenders using the SFA as a base document, excepting provisions that are not appropriate for the junior lenders. The same process was then undertaken for the ROSF. Given the approach to drafting, it was important that a degree of confidentiality was maintained between the lenders under the various tranches of capital.

CLOSING THE ACQUISITION

In keeping with the nature of the acquisition, the closing was carefully and extensively structured by the Standard Chartered and Heirs Holdings teams.

Following financial close, proceeds of disbursements under the SFA and JFA, and proceeds of note issuances earmarked for such purposes,

are required to be funded into an escrow account. Amounts standing to the credit of the escrow account can be released from escrow only after specified conditions set out in the SFA have been satisfied. If the conditions to release are not satisfied by a specified longstop date, an automatic unwind mechanism kicks in to return monies to the lenders.

Given the diversity of the lenders, funding at financial close took place in a multi-phase manner. Some lenders were required to provide evidence of funding by delivering acquisition letters of credit at financial close, other lenders were cash funding at financial close, and others were required to cash fund into the escrow accounts only at the latest point permitted under the share purchase agreement.

TAKEAWAYS

The successful financing of the OML 17 acquisition demonstrates the confidence Nigerian investors and international financiers have in the market, and illustrates the broad appeal of the innovative financing structure. We have set out below some suggested key takeaways from the financing.

– **Credit diversity:** The approach taken to this financing with regards to tailoring each tranche of debt to the requirements of specific types of lenders can be adapted and employed on a sector and asset class agnostic basis. With the ongoing process of energy transition and portfolio rationalization by IOCs, there is increasing need to access liquidity pools beyond traditional commercial banks and accordingly there is the need for financing structures that will attract a new class of lenders/investors into energy and infrastructure projects. As the search for yield continues and given current monetary policies worldwide, stronger inflation on the horizon and a weak US dollar, we expect to continue to see a broad range of lenders and investors in emerging markets and the energy sector in particular bringing with them new requirements and approaches. The challenge for borrowers and lenders alike will be putting

together financing structures that work for all sides.

– **Energy transition and gas processing:** Nigeria's huge gas reserves will be a key element in buffering the nation from the effects of the energy transition process. Given the increased interest in gas development, we have started seeing increased appetite for gas commercialization projects from industry players and commercial banks. More particularly, independent companies are seeking to expand their focus to gas commercialization activities in order to maximize their earnings from the gas value chain. A good example of the increasing participation of independent companies is the US\$700 million greenfield 300mmscf/d gas processing plant being developed by ANOH Gas Processing Company Limited (AGPC) (a 50:50 joint venture company of Seplat and the Nigerian Gas Company) in south-eastern Nigeria. The plant will be dedicated to the processing of non-associated gas from the unitized area of oil mining leases 21 and 53. Another illustrative example is a developer that has just received approval to establish Nigeria's first floating LNG facility.

Further, NNPC/NGC is currently being advised by SCB in connection with the development of the Ajaokuta-Kaduna-Kano Project (AKK) —a pipeline project that aims to reduce gas flaring and establish a guaranteed gas supply network between the south and the north of the country. The AKK project is proposed to be completed within 24 months of the launching of the construction, in July 2020. Gas-fired power plant projects with c.3.6 GW capacity and gas-dependent industries (in many cases spurred by existing industry players) are under development across the AKK pipeline route, due to the increased access to gas.

On a broader macro level, we think that gas processing plants and other related projects are a sector ripe for additional investment and one where there is a real opportunity and need for private sector investment in Africa both from

commercial banks and development finance institutions. Extensive studies have been undertaken with regards to the negative externalities caused by gas flaring and biomass energy sources, and the next stage in the evolution of the energy picture for Africa will be a move toward cleaner, more diversified and more sustainable energy sources, and gas is a key element of this.

– **M&A and divestments acquisitions:** For more than a decade, there has been a steady reduction by oil majors in their onshore and shallow-water footprint in Nigeria. This has increased the opportunities for independent companies to participate in the upstream business. We expect that there will be more divestments by the majors and given the provisions of the Local Content Act and recent divestment history, we expect independent companies to acquire the relevant assets.

– **Increased FDI:** With increased participation by independent companies in the Nigerian oil & gas market (especially taking into account Heirs Oil & Gas's acquisition of interest in OML 17 and the 2020 Bid Round), we expect to see increased investment (debt and equity) in independent companies. Successful participants in the 2020 Bid Round will require working capital for field development. Further, as we have seen from the larger independent companies (such as Seplat and Oando), it is not unlikely that newer players will, at some point, take steps to raise funding from the capital markets through IPOs and Eurobond issuances.

Southern Africa's PGMs are on the rise

PGMs are helping Southern African mining remain relevant and contributing to a global clean and green transition

By Gary Felthun, Allan Taylor and Rebecca Campbell

Platinum group metals (PGMs) have been the main contributor to a major uplift in Southern African mining production in 2021—the biggest bounce in six years after disruption caused by the pandemic and a significant production decrease in 2020.

The recovery coincides with the transition by automotive manufacturers from combustion engines to electric vehicles. It may have been expected that this would risk the loss of a powerful driver of demand for the Southern African PGM. But in a reversal of fortunes, PGMs are helping to ensure that the region remains relevant and is contributing to the global clean and green transition.

Along with a price boom, there seems to be a new wave of investment interest in PGMs, but this relies, to a large extent, on demand-side stability.

DEMAND DRIVERS AND SUPPLY CONSTRAINTS

Among the rarest metals on earth, PGMs, which include platinum, palladium, rhodium, ruthenium, iridium and osmium, are well known for their catalytic properties. This

makes them resistant to corrosion, wear and tarnish, and gives them excellent high-temperature characteristics, high mechanical strength, good ductility and stable electrical properties.

A significant driving force behind the PGM boom is the automotive sector. With 78 million cars being produced in 2020, the need for autocatalysts and the PGMs used to make them is significant. The more stringent emissions regulations that have been put in place in Europe, China and India—driving the increase in the use of autocatalysts in vehicles—have started to impact the subsequent demand for PGMs.

Ultimately, the expected growth in battery electric vehicles (EVs), which do not use autocatalysts, may result in some reduction in demand for PGMs. However, this transition will take time and, during the transition phase, combustion engine vehicle emissions are expected to become even more heavily regulated by governments worldwide.

Approximately three million EVs were sold in 2020, representing less than 5 percent of global sales. EVs are expected to account for at least 7 percent of the global road vehicle fleet in 2030, showing continuing strong demand in more traditional modes of transport.

While current demand hinges on autocatalysts, PGMs are making rapid progress in the new end-use sectors of the hydrogen economy: fuel cells; lithium batteries; low-loss computing; and food technology.

Their particular combination of chemical and physical properties makes PGMs valuable to the end-market for a range of industrial, medical and electronic applications—not just for investment

but for real, functional use. In many of their applications, substitutes for PGMs are either not feasible or are considered to be inferior in performance. As such, demand for PGMs is expected to continue even as prices rise.

Fuel cell technologies are also becoming increasingly prominent across many sectors, including transport, as part of the global push to improve air quality and reduce global warming. Additionally, the anticipated growth in demand for electrolysis capacity to produce green hydrogen presents significant demand potential in the longer term. Together with the use of platinum in automotive fuel cells, PGMs will play a key role in the hydrogen economy and therefore contribute to the energy transition process.

With environmental stewardship identified as one of the main sources of sustained demand, PGMs will form a significant part of the conversation as green energy metals of the future at the UN Climate Change Conference in November, alongside lithium, cobalt and copper.

Despite this increased demand, there are considerable factors that are limiting PGM supply. While new projects have been announced and will hopefully come online, the process is slow and the funding environment risk-averse, even amid soaring commodity prices. According to the World Platinum Investment Council, 2021 will be the third consecutive year with a deficit in supply. Supply is projected to be broadly flat for the next three to four years, resulting in continued expectations around buoyant pricing.

In addition, Johnson Matthey's latest PGMs Market Report notes that the palladium and rhodium



Among the rarest metals on earth, PGMs are well known for their catalytic properties.



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Steel BCNC-928

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Dump trucks transporting platinum ore for processing, South Africa





This sector is well positioned to capture future investment, especially as global economies recover.

markets will remain in deficit, despite all-time-high prices being recorded, with palladium climbing above US\$3,000 per ounce and rhodium repeatedly surging to US\$30,000 earlier this year.

According to the report, mining alone will not produce enough supply of PGMs to meet demand—approximately 25 percent of supply is from recycled materials—which may in turn drive prices even higher.

IMPLICATIONS FOR THE SOUTHERN AFRICA MINING SECTOR

This growth has significant implications for the Southern Africa mining sector, which accounts for more than 60 percent of world PGM production. Russia produces a further 26 percent, and most of the rest comes from Canada and the US.

In particular, South Africa produces more than 80 percent of the world's platinum, more than 30 percent of the world's palladium (Russia accounts for about 45 percent) and approximately 80 percent of the world's rhodium.

For the first time since 2010, PGMs overtook coal as the most significant contributor to mining-industry revenue in South Africa, reaching ZAR 190 billion last year. Their performance continues to surge in 2021.

Mineral sales for March 2021 in South Africa reached a record ZAR 75 billion, with 41 percent of that generated by PGMs according to the latest data, while platinum supply for Zimbabwe in Q1 2021 showed 11 percent growth compared to the same period in 2020. Additionally, the Zimbabwe Statistics Agency reported that PGM exports for March 2021 increased by 202 percent to US\$168.9 million—their highest export earning since 2009.

This uptick has translated into real opportunities for Southern African PGM miners, especially those that have been highly acquisitive during the last two years and focused on geographic diversification.

While recycling from secondary markets is an attractive alternative, platinum producer Implats has suggested there will be a shift back to the South African production base, which will enable the PGM majors to capitalize on continuing strong demand.

Helping to drive this demand are new products such as PGM exchange-traded funds or novel investment products such as Norilsk's Global Palladium Fund, showing how investors are looking for different ways to obtain PGMs' physical and derivative exposure.

All of these conditions, together with the push toward a hydrogen economy, make for a positive and exciting outlook for a sector that might otherwise have struggled to find its place amid the expected rise of EVs. With automotive manufacturers and other end-users of PGMs being increasingly focused on the ESG performance of their entire supply chains, and debt and equity investors continuously raising the bar in the ESG realm, too, the sector is well positioned to capture future investment, especially as the global economic recovery gathers pace.

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