WHITE & CASE

Winter 2022

# Africa Focus

Embarking on a period of unprecedented growth and opportunity

## Contents



# Africa 2023: A continent coming of age?

**Mukund Dhar**
Partner, White & Case LLP
Africa Interest Group Leader

Our ninth edition of *Africa Focus* shows Africa embarking on a period of unprecedented growth and opportunity.

We open this issue with a closer look at Article 6 of the Paris Agreement, which holds much promise for the African continent. Article 6 allows countries to voluntarily cooperate with each other to achieve emission reduction targets set out in their nationally defined contributions. The COP26 negotiations in Glasgow led to a set of agreed rules to help put Article 6 into practice. COP27 reaffirmed the previously agreed principles of Article 6, but sadly, challenges in reaching agreement led to crucial decisions that would allow for carbon trading to begin being deferred to COP28.

The relevance of the Article 6 to community-based agriculture—an area of particular importance in Africa—is highlighted by our guest contributor, Dan Collison, Chief Executive of Farm Africa.

Natural synergies between the Middle East and Africa—geographic proximity, well-developed logistical networks and close political and economic ties—are key features in this edition. We ask the question, "Can the Middle East—with its vast capital and a booming Islamic finance market—provide the much-needed boost to the underserviced Muslim population in Africa?" Focusing on the Gulf Cooperation Council states of Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates, we explore the growing investment and trade flows between the GCC states and Africa. Recent years have seen these ties expand south to include sub-Saharan Africa, and from an almost exclusive focus on oil and petrochemical-related products to a broad spectrum of other sectors.

> **"Africa has emerged as a pioneer in financial services—a good market in which to do business and realize profits—beyond just the development projects**

Cross-border investors are always sensitive to the risk of wrongful conduct that the state hosting their investments, and that state's organs, can inflict upon them. Many African countries have vowed to promote and protect foreign investments, and have taken steps to modify the investor-state dispute settlement system. One of our articles explores the current state of investment treaties in Africa and efforts to protect investments in African countries—originating from both within and outside Africa—as well as African investments abroad.

In many ways, Africa has emerged as a pioneer in financial services—a good market in which to do business and realize profits—beyond just the development projects. The way its people move money around the continent on their mobile phones is far ahead of many markets with a more mature banking structure. Africa has long been of interest to private equity investors, and rounding off the range of topics covered in this edition, we have an interview with Bryce Fort, Chief Executive Officer of Emerging Capital Partners, who was the driving force behind the recent listing of IHS Towers, an African mobile telecommunications company, on NYSE. The interview explores current developments in private equity in Africa.

We hope that you will find the new edition of *Africa Focus* a thought-provoking read.

# Article 6 of the Paris Agreement: Opportunities for Africa

After years of negotiations, the possibility of climate markets has finally materialized into the draft stage at COP27 in Sharm El Sheikh, but many crucial decisions that would allow for carbon trading to begin in earnest were deferred to COP28. This means that carbon trading between parties under Article 6—except through voluntary carbon markets—may really only formally commence from 2024, as partner **Tarek Mohanna** explains.

The Paris Climate Agreement, a legally binding international treaty on climate change, entered into force in November 2016 and was adopted by 196 parties in COP21 with the goal of limiting global warming to no more than 1.5 to 2.0 degrees Celsius above pre-industrial levels. The binding agreement is the first of its kind to bring multilateral climate change by way of cooperation between nations to reduce their emissions. To facilitate these efforts, the Paris Agreement sets a review of each party's' commitments every five years and provides a pathway for developed nations to assist developing nations in their emission mitigation efforts. It also creates a framework for transparent monitoring and reporting of emissions on both individual and collective levels.

The provisions of the Paris Agreement establish a framework for global climate action. Article 4 of the agreement requires each party to prepare, communicate and maintain successive nationally determined contributions (NDC) that it intends to achieve as its contribution toward the global goals. NDCs are submitted every five years to the UNFCCC secretariat. Parties are requested to submit the next round of NDCs by 2020 and every five years thereafter, regardless of their respective implementation timeframes.

Almost all parties submitted new or updated NDCs to the UNFCCC secretariat in the lead-up to COP26, outlining their national plans for 2020 to 2025 to reduce global greenhouse gas (GHG) emissions. In line with the Paris Agreement's principle of ratcheting up aggregate and individual ambitions over time, the next round of NDCs (in 2025) will be expected to be more ambitious, representing the highest possible ambition at that time. Although the Paris Agreement does not set specific requirements for the NDCs, there are certain expectations about the stringency of targets by various countries, largely reflecting each country's capabilities, its level of development and its contribution to emissions over time.

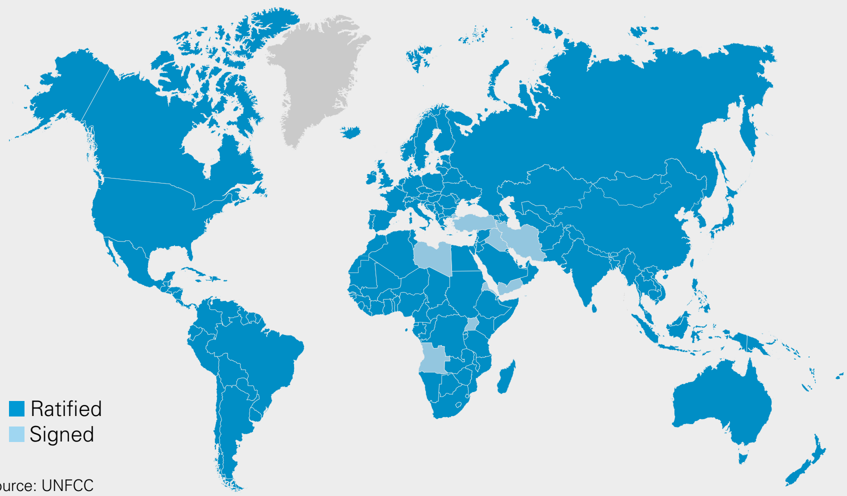
**194 parties**

Have joined the Paris Agreement (193 States plus the EU) as of November 2022

Source: United Nations

One of the key outcomes of the Paris Agreement is the establishment of Article 6, which governs carbon markets and recognizes that "some Parties choose to pursue voluntary cooperation in the implementation of their nationally determined contributions to allow for higher ambition in their mitigation and adaptation actions and to promote sustainable development and environmental integrity." In short,

**State of the Paris Agreement**




Source: UNFCC

Article 6 allows parties to voluntarily cooperate with one another to achieve the emission reduction targets set out in each party's NDCs. Under Article 6, a party may transfer carbon credits earned from the reduction of GHG emissions to help one or more parties meet their own climate targets. By making it clear that countries can transfer carbon offsets internationally to deepen their emission reductions, Article 6 explicitly enables international carbon trading.

Article 6 is crucial to the success of the Paris Agreement. It guides how countries should cooperate to generate deeper GHG reductions. In 2019, the International Emissions Trading Association (IETA) concluded that cross-border coordination in the form of carbon trading could cut the cost of meeting NDCs in half by 2030, making it possible to cut emissions 50 percent more, at no additional cost. Unsurprisingly, voluntary cooperation in the form of carbon trading has become a major focus of discussion, enabling the mobilization of global resources to ensure net reduction of GHGs and establishing a global carbon price that would tie the negative externalities of GHG emissions to polluters, therefore parties exceeding their NDCs would bear the costs of global warming.

COP27 was a productive stepping stone toward setting up the foundations for the potential creation of carbon markets as outlined in the Paris Agreement. A draft 60-page document was published during the conference, but many sections remain up for debate and future negotiations may be carried over into 2023.

**Article 6: Key provisions**

Article 6.2 describes cooperative approaches parties may engage in that involve internationally transferred mitigation outcomes (ITMO). This sets the foundations of the accounting framework behind international cooperation. Limited international oversight is defined, and a great deal of flexibility is allowed in designing and implementing the cooperative approaches. The cornerstones of Article 6.2 cooperative approaches are ensuring transparency, and avoidance of double-counting of ITMOs in order to preserve environmental integrity.

$CO_2$

**3.8bn tons**

Africa could achieve mitigation outcomes in the order of 3.8 billion tons of $CO_2$-equivalent over the period covering 2020-2030 (380 million tons of $CO_2$ per year)

Source: International Energy Agency (IEA)

**Confidentiality:** While COP 26 finalized the core mechanics of Article 6, COP27 was able to facilitate discussions around key mechanics, including what information countries would require to report when trading ITMOs, and that countries may "designate information…as confidential" when reporting to the Article 6 technical expert review team. However, unlike earlier drafts, the latest document requires an explanation of such confidentiality.

This change has raised concerns among climate activists that the agreed review process is insufficiently transparent in terms of accountability, and might allow greenwashing, opening the door to a lack of transparency.

The technical body of the UN climate regime was tasked with the development of rules to constrain the use of confidentiality. Participating countries were asked to submit their views prior to the next intersessional meeting in Bonn in June 2023.

The wording of Article 6 allows room to set a high bar for transparency and integrity that promotes much-needed regulation and accountability in what would otherwise be an unregulated voluntary carbon market.

"

**Many of the Africa's 54 countries have expressed interest in participating in the various Article 6 mechanisms, and some are already actively engaged in pilot projects and other market-preparing initiatives**

**Authorization of ITMOs:** Another key requirement of Article 6.2 is the establishment of authorization criteria of ITMOs. The authorization of an ITMO determines how the ITMO will be used by the participating parties. There are three kinds of authorized uses for an ITMO: toward an NDC; toward other international purposes, for instance, GHG mitigation under other international regimes such as the International Civil Aviation Organization; or for other purposes (for instance, carbon trading in voluntary carbon markets).

ITMOs are also given an expiration date, since they must be used (and adjusted for) in the NDC period in which they have occurred.

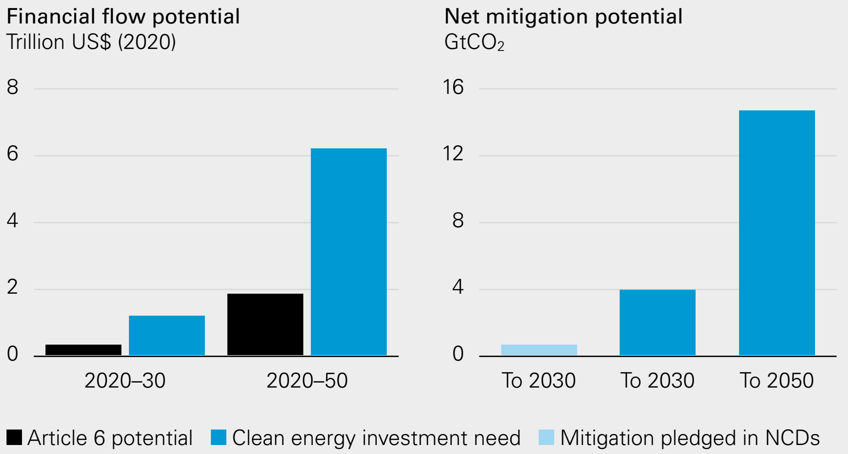
Article 6.4 establishes a centralized crediting mechanism under the authority of the CMA 2, which enables credit trading generated through specific projects. Activities under this mechanism can receive carbon credits issued by the UNFCCC if they are approved by the host party and complete the activity cycle. Such credits can be transferred internationally as well. Instead of using a set formula for establishing a baseline of carbon emissions, the mechanism under Article 6.4 allows greater technical flexibility by examining individual party baseline estimates and allowing them to be adjusted to their circumstances.

Negotiations at COP27 included defining the scope of "carbon removals" processes—natural or engineered—that would remove carbon dioxide from the atmosphere, contributing to a party's carbon credit. COP27 also hosted discussions on the parameters of what constitutes a carbon credit, referred to the supervisory body for further clarification.

Article 6.8 establishes a framework for non-market approaches (NMA) toward mitigation and adaptation, which acknowledges the importance of non-market-based cooperation to promote mitigation and adaptation ambition. This introduces cooperation between parties through finance, technology transfer and capacity building, where no trading of emission reductions is involved on a quid pro quo basis.

Article 6.9 establishes a framework to promote NMAs. Parties negotiated the governance and functions of this framework at COP27 and a work program to promote NMAs, including a potential voluntary UNFCCC-hosted web portal for their trading that could link projects with potential funders.

**Article 6 financial flows and $CO_2$ emissions reduction potential in Africa in the SAS**




Source: "Africa Energy Outlook 2022", IEA

Other contentious issues concerning Article 6 that have been deferred to COP28— expected to be held in Dubai in November 2023—include how to treat emissions "removals", whether to allow credits for "emissions avoidance" and when carbon credits could be "revoked".

### Article 6 and opportunities for Africa

There is a strong sense of support towards COP27 being the 'African COP', helping emerging economies decarbonize their industries and contribute to the global goal.

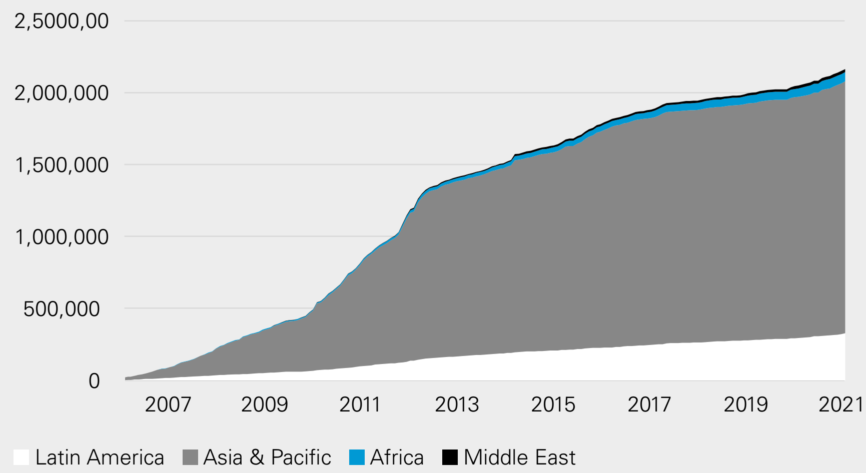
Participants in African financial services markets have been quick to recognize the opportunities that Article 6 offers for funding projects and activities on the African continent that advance climate change mitigation and adaptation. Many of the continent's 54 countries have expressed interest in participating in the various Article 6 mechanisms under development. Some are already actively engaged in pilot projects and other market-preparing initiatives.

The West African Alliance on Carbon Markets and Climate Finance (WAACMCF) is a good example of regional collaboration, which aims to "participate in international carbon markets, benefit from technology transfer and access result-based climate finance for NDC implementation". According to Ousmane Fall Sarr, coordinator of the WAACMCF, the WAACMCF must "make carbon markets accessible for West African countries to make sure least developed countries do not miss the train under the Paris Agreement as they did with the CDM." The Alliance currently comprises 16 member states: Benin, Burkina Faso, Cape Verde, Ivory Coast, Gambia, Ghana, Guinea, Guinea-Bissau, Liberia, Mali, Mauritania, Niger, Nigeria, Senegal, Sierra Leone and Togo.

Aided by funding by the German government, a similar alliance in East Africa has already published a handbook for Article 6 negotiations for member parties (Burundi, Ethiopia, Kenya, Rwanda, Sudan, Tanzania and Uganda) and other entities.

Encouraging Africa's full participation in Article 6 mechanisms is paramount for the continent.

**Cumulative CER issuance per region (1000 CERs)**




Source: "Can Article 6 of the Paris Agreement help finance Africa's just transition and resilience building?", Fourth Africa Climate Talks, Mozambique, 27-29 July 2022

Nature-based solutions in Africa could achieve mitigation outcomes in the order of 1.5 billion tons of $CO_2$-equivalent per year and, according to the International Energy Agency (IEA), Africa could achieve mitigation outcomes in the order of 3.8 billion tons of $CO_2$-equivalent over the period covering 2020–2030 (380 million tons of $CO_2$ per year).

The forests of the Congo basin have overtaken Amazonia as a carbon sink, but its carbon sequestration is decreasing because of human activity. By 2030, its ability to absorb $CO_2$ from the atmosphere might be 14 percent less than it was ten to 15 years ago. Clearly, Africa's potential contributions to stabilizing the Earth's climate are globally significant.

### Recommendations for Africa's implementation of Article 6

For the Paris Agreement goals to be achieved, the mechanisms of Article 6 need to be as inclusive as possible, both geographically and in terms of attracting public and private sector investment. As the latest findings of the Intergovernmental Panel on Climate Change (IPCC) show, Africa is likely to be disproportionately impacted should the 1.5 to 2.0°C objective not be met, and global emissions

> **Investments in climate change mitigation and adaptation in Africa need to be considered alongside bridging the continent's gap in infrastructure and energy deficits, and solving its other growth inhibitors**

are currently on track to more than double that. This does not come as a surprise, as the African continent is especially vulnerable to the harmful effects of climate change. Therefore, for African nations in particular, the threat as described by the IPCC report of failing to meet that objective is existentially dire. Market mechanisms and competition for climate finance may point to the fact that a one-size-fits-all approach may disproportionally benefit emerging economies. It is of the utmost importance to consider the circumstances of African countries.

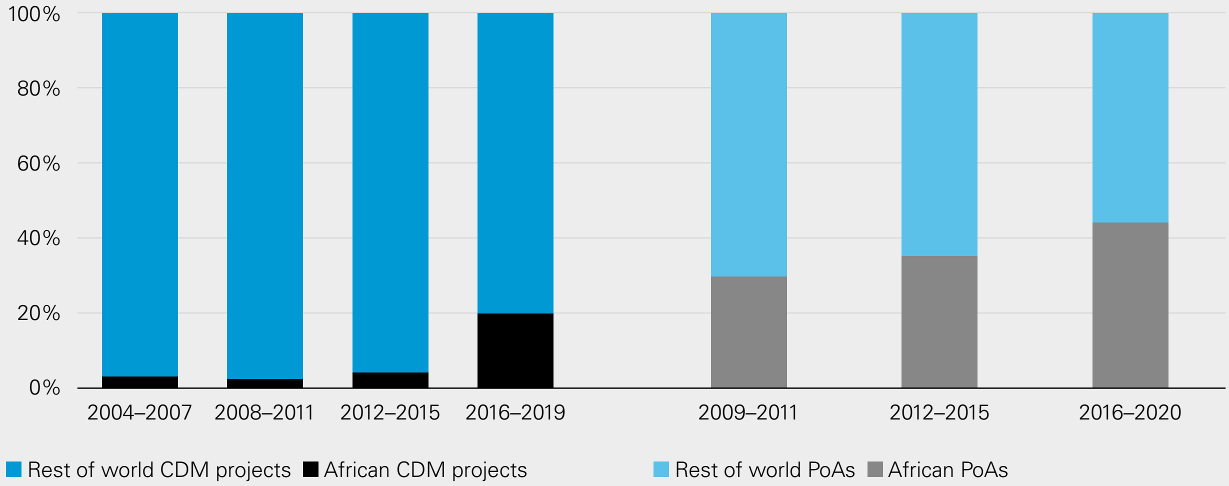
To ensure strong African participation, cooperative approaches defined under Article 6.2 and the mechanism under Article 6.4 need to be practical, inclusive and fair. Guidance and accounting metrics must be robust and clear. Furthermore, African nations need to be closely involved in developing such projects. Their own growth and development aspirations need to be respected and the measures implemented must be recognized by them to support those aspirations. Opportunities should be seized regarding expanding the cooperation with selected African host countries and private sector organizations that have demonstrated their ability to deliver, but that would benefit greatly from improved access to finance and enhanced capacity in order to meet Article 6 requirements. This can be achieved through support initiatives in Africa with the potential to quickly unlock large-scale investments. Regional blocs such as the WAACMCF alliance help create a long-term structure that capitalizes on the strengths of its members through promoting sub-regional cooperation that builds institutional capacity for long-term engagement with the Paris Agreement.

This means that investments in climate change mitigation and adaptation in Africa need to be considered alongside bridging the continent's vast infrastructure and energy deficits, and solving its other growth inhibitors. Funding strategies therefore cannot be limited only to carbon trading but need to incorporate other forms of sustainable finance and conventional funding sources as well. Because climate knows no national borders, efforts need to be integrated across African nations. There are myriad potential projects in the continent that should be considered, including international cooperation and investment with clear sustainable development benefits that could be unlocked by a well-designed carbon market approach. Indeed, many African countries make reference to market mechanisms in their PA contributions, in order to assist them in both the implementation of their NDCs and the sustainable transformation of their economies.

The success of the implementation of Article 6 approaches in African countries is contingent on their function in a practical, inclusive and equitable manner. Africa's perceptions of opportunities and challenges presented by Article 6 are heavily influenced by existing experiences with the CDM.

**"Developed countries should take the lead in providing financial assistance to more vulnerable and less-equipped countries to fund measures both for mitigation of and adaptation to the effects of climate change**

**African relative share of CDM activities over time**




Source: UNEP DTU 2020A, B

This mechanism allows countries with emission-reduction or emission-limitation commitments under the Kyoto Protocol to offset their obligations by implementing emission-reduction projects in developing countries. By the time African countries awoke to the opportunities under the CDM, Asian countries had already issued hundreds of millions of dollars worth of carbon credits. The transition from the CDM mechanism under the Kyoto Protocol to Article 6 mechanisms under the Paris Agreement has potentially important implications for the continuation of existing mitigation activities established through the CDM.

Regarding Article 6, African countries are equipped with enhanced knowledge and experience to selectively build on the institutions, capacities and activities already established under the CDM, with support from several developed nations. As in other emerging market regions, many African nations have made their NDCs under Article 4 conditional on international support, including through Article 6 carbon markets. Just some examples of such international support specifically related to Article 6 include Germany's International Climate Initiative, which provides support to West and East African alliances; Japan's Joint Crediting Mechanism, which allows for the issuance of carbon credits in Africa; and the Global Forests Finance Pledge.

### COP27 in Africa: Laying the groundwork for greater assistance to more vulnerable countries

A series of breakthrough agreements were reached during COP27 to provide funding for vulnerable countries hit by climate disasters—a forward step toward fostering cooperation and collaboration. This is an important point of progress that assists developing countries respond to unfavorable circumstances. New pledges, totaling more than US$230 million, were made at the Adaptation Fund at COP 27, enhancing resilience of those living in climate-vulnerable communities. Climate finance was at the forefront of discussions, particularly around setting up "new collective quantified goal on climate finance" by 2024, focusing on the needs and priorities of developing countries.

The World Leaders Summit—held over two days during the first week of COP27—convened six roundtable discussions which highlighted solutions for the most pressing issues, including vulnerable communities, access to food security, access to finance to combat climate challenges, but details are still subject to further discussion.

The Paris Agreement provides a strong framework for financial, technical and capacity-building support to countries that require this, in Africa and elsewhere. It reaffirms that developed countries should take the lead in providing financial assistance to more vulnerable and less-equipped countries, to fund measures both for mitigation of and adaptation to the effects of climate change. This includes transfer of technology, for which a mechanism and framework is defined. As the Article 6 rulebook gains traction, flows of funding and technology from the developed world to Africa would need to increase, if those countries are to fulfill their obligations under the Paris Agreement. At COP27, negotiators were able to thrash out more of the practicalities involved, operationalizing a lot of crucial guidance on reporting requirements, enabling greater progress in the coming years based on productive discussions on crucial low-emission development activities, improved access to finance and resources, as well as conductive domestic institutional set-ups—translating into practical climate action.

**16**

The West African Alliance on Carbon Markets and Climate Finance (WAACMCF) currently comprises 16 member states

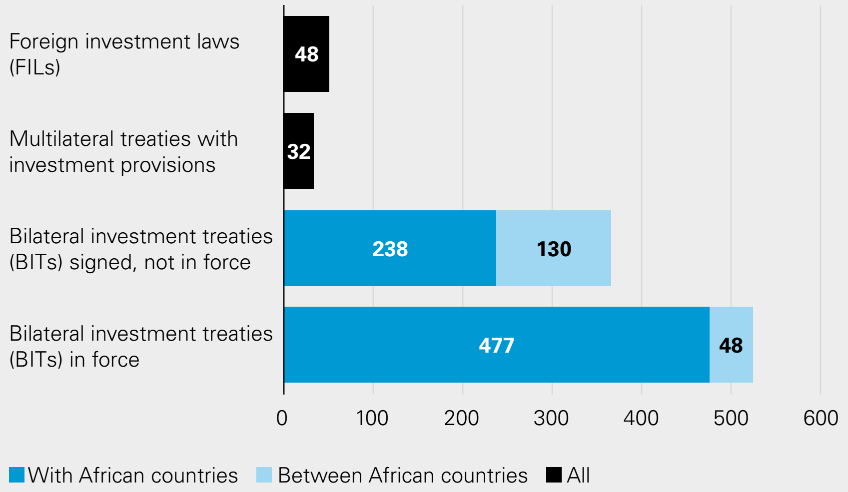
# Investment treaty protection: How to safeguard foreign investments in Africa

Prudent African investors—and investors within Africa—can ensure that their foreign investments are protected from wrongful conduct that the state and its organs can inflict. **Robert Wheal, Elizabeth Oger-Gross, Agnieszka Zarówna** and **Salma Selim** highlight recent initiatives across African countries to modify the investor-state dispute settlement (ISDS) system.

The influx of foreign direct investment into Africa has been reaching new highs, with tens of billions of US dollars pouring into various African countries every year and reaching a record high with US$83 billion invested in 2021. More is yet to come, with US$2.5 trillion worth of infrastructure projects estimated to be completed by 2025—and much of it will come from foreign investors. Many African countries have vowed to promote and protect such foreign investments. Indeed, the proliferation of bilateral investment treaties (BITs), other treaties with investment provisions and foreign investment laws (FILs) in Africa, along with the parallel rise in numbers of claims brought by African investors and claims brought against African states under such instruments, show that investment protection is an important consideration. At the same time, various African states have been revamping the system in recent years to emphasize the states' policy objectives.

**"Many African countries have vowed to promote and protect foreign investments**

**African investment treaties and foreign investment laws**




Source: UNCTAD International Investment Agreements Navigator

## Investment treaties in Africa

Efforts in Africa to protect foreign investments and investments of African investors abroad are across-the-board, covering the international, regional and domestic levels. At the core of the system are investment treaties concluded between two or more states that set out a number of protections in favor of foreign investors and their investments. If the state violates these protections, the investor can bring claims directly against the host state where its investment is located, typically before an international arbitration tribunal. Foreign investor protections may also be available in the host state's FIL or in an investment contract concluded between the foreign investor and the state.

As of October 2022, there were 525 BITs with African countries—including almost 50 intra-African BITs—in force, alongside more than 30 multilateral treaties with investment protections, including the COMESA (Common Market for Eastern and Southern Africa) Treaty (1993); the OIC (Organisation of Islamic Cooperation) Investment Agreement (1981); the Economic Community of the Western African States (ECOWAS) Supplementary Act for Common Investment Rules for the Community (2008) and the Common Investment Code (2019); as well as the Arab League of States' Arab Investment Agreement (1980). The extensive realm of investment protection also includes domestic FILs, which were adopted by almost 50 African states. It also covers non-binding instruments such as model BITs and the Pan-African Investment Code. Negotiations for the Investment Protocol of the African Continental Free Trade Area are currently underway. If adopted, it will be the first binding investment agreement at the continental level.

## Who is eligible for protection?

To qualify for investment treaty protection, an "investor" must be a national—a physical or legal person—of a state other than the host state (the other contracting state). While this assessment is fairly straightforward for natural persons, it may be more cumbersome for legal persons, such as companies, in particular if, in addition to the place of incorporation, the treaty imposes further conditions, such as having substantial business activities.

As for "investments," treaties typically encompass "all kinds of assets" and include open catalogues of assets that are covered, including, e.g., shares, real estate property, concessions, claims to money and copyrights, among other things. To determine whether an investment was made, some investment tribunals also consider whether the investor has made a contribution of money/assets having a certain risk and duration to the host state's economy.

**525**

As of October 2022, there were 525 Bilateral Investment Treaties (BITs) with African countries

Source: Market data

## How to ensure an investment is covered

When there is no suitable investment treaty between the foreign investor's state of incorporation and the host state, some investors choose to (re-) structure their investments to ensure a sufficient level of investment protection. This is often done by inserting an entity established in a state that has an investment treaty in force with the host state into the ownership structure of the investment. While investment planning—such as tax optimization—is a legitimate tool,

### BEWARE OF TREATIES THAT ARE NOT IN FORCE

In the *Besserglik v. Mozambique* case, the South African investor's claims arose from the alleged expropriation by Mozambique of its two fishing vessels and its interests in a joint fishing venture involving two Mozambican state-owned entities. The tribunal declined jurisdiction on the ground that the Mozambique-South Africa BIT had not yet come into force because the states had failed to comply with their respective notification obligations under the BIT. This case is symptomatic of a more widespread phenomenon in Africa resulting from the state's signing BITs but not ratifying them. Out of 130 signed intra-African BITs, only 48 are in force.

the timing of the (re-)structuring is key: Some tribunals have dismissed investment claims where the restructuring—presumably to gain protection under a treaty—has been carried out after a dispute with the state has arisen or become reasonably foreseeable.

## INVESTMENT RE-STRUCTURING EXAMPLE

A South African investor invests in Egypt by purchasing an Egyptian company. There is no BIT between South Africa and Egypt, but there is a BIT between Egypt and, e.g., Mauritius. To ensure investment protection, the South African investor could establish a Mauritian subsidiary, which in turn would hold the shares in the Egyptian company—such an investment could by covered under the Egypt-Mauritius BIT.

**US$2.5tn**

Value of infrastructure projects estimated to be completed in Africa by 2025

Source: McKinsey & Co

### What if the state violates its obligations under investment treaties?

Under investment treaties, states assume a number of obligations toward such qualifying foreign investors and their investments. These typically are, e.g., to protect investments from unlawful expropriation and to ensure fair and equitable treatment, full protection and security and non-discriminatory treatment. If a state violates its treaty obligations, the qualifying investor may bring a claim directly against the state to a forum provided for in the treaty in accordance with its investor-state dispute settlement (ISDS) mechanisms.

Some investment treaties require that, as the first step to resolve any investor-state dispute and before turning to arbitration, an aggrieved investor send a notice of dispute to the state and attempt to resolve its dispute amicably. If there is no resolution within a prescribed time, often three to 12 months, the investor will typically be entitled to commence arbitration.

The arbitration forum and rules depend on a particular treaty, with African BITs often referring to ICSID (the International Centre for the Settlement of Investment Disputes) or UNCITRAL (the United Nations Commission on International Trade Law) arbitration. ICSID arbitration, which is held under the auspices of the World Bank, is available with respect to states that have signed and ratified the ICSID Convention (the Convention on the Settlement of Investment Disputes between States and Nationals of Other States). The vast majority of African states are parties to the ICSID Convention, with Angola, Equatorial Guinea, Eritrea, Libya, South Africa and Western Sahara being notable exceptions.

Once the investor initiates arbitration, typically each party to the dispute appoints one arbitrator, who then together appoint the presiding arbitrator and form a tribunal. The proceeding usually involves two rounds of written submissions submitted with witness, expert and documentary evidence, as well as a document production phase, and is followed by a hearing. On average, investor-state arbitrations last between three and four years.

If the tribunal finds the state to have violated its treaty obligations, it will issue an award in favor of the investor. The most frequent remedy for aggrieved investors is monetary damages, seeking to put the investor in the position it would have been but for the state's treaty violation. For example, in *KCI v. Gabon,* a Tunisian investor in the construction sector was awarded €4.3 million from Gabon for the latter's violation of the OIC Investment Agreement, a multilateral treaty with investment provisions to which a number of African states, including Tunisia and Gabon, are parties, while in *Unión Fenosa Gas v. Egypt,* a Spanish investor in the natural gas sector was awarded US$2.013 billion for Egypt's violation of the Egypt-Spain BIT.

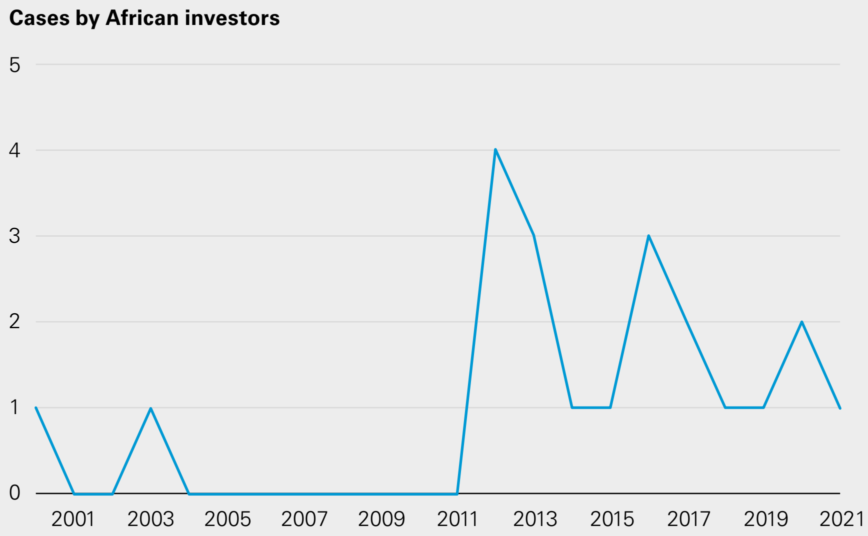
### Recent trends: Africa-related ISDS cases, the African efforts to revisit international investment law and growing numbers of African arbitrators in ISDS cases

The overall number of ISDS cases were on the rise in the past two decades, with African investors having brought more than 20 cases during this time.

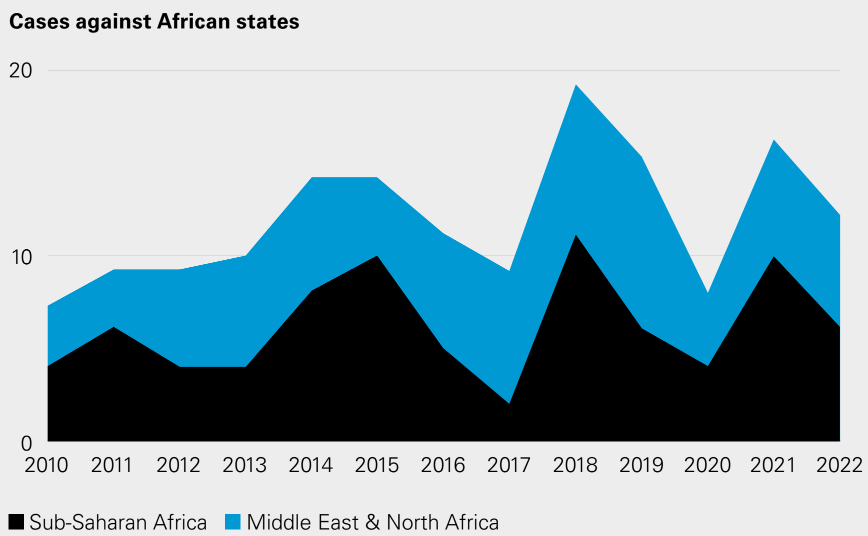
So too, however, were cases brought against African states, with 12 such cases registered by ICSID in the 2022 fiscal year alone. While this accounts for approximately one-quarter of cases registered by ICSID that year, it shows a significant drop from 2018 when ICSID registered almost 20 new cases against African states. Notably, two-thirds of all ISDS cases against African states were brought by investors from Europe alone.

The increasing numbers of ISDS cases have contributed to African states and institutions taking another

> **Under investment treaties, states assume a number of obligations toward qualifying foreign investors and their investments to protect them from unlawful expropriation and to ensure fair and equitable treatment**




Source: UNCTAD Dispute Settlement Navigator




Source: The ICSID Caseload – Statistics

look at the standards of protection and the ISDS mechanisms. These endeavors strive to move away from the treaties concluded in the past century and emphasize state policy objectives. For instance, on the domestic level, in 2015, South Africa (which decided more than a decade ago to terminate most of its BITs) promulgated the Protection of Investment Act, which replaces the classic fair and equitable treatment standard with "fair administrative treatment" and significantly limits access to international arbitration. On the international plane, the efforts span from emphasizing sustainability, investor obligations and protection of the host states' regulatory discretion in the newly concluded BITs; through placing direct obligations on investors, redefining investment protection standards and expressly providing for states' counterclaims in the African Union's Pan-African Investment Code, to featuring cultural attributes of African nations, including the principle of Ubuntu (translating to "human dignity and equality to any person"), and highlighting the protection of indigenous communities in the Africa Arbitration Academy 2022 model BIT for African States.

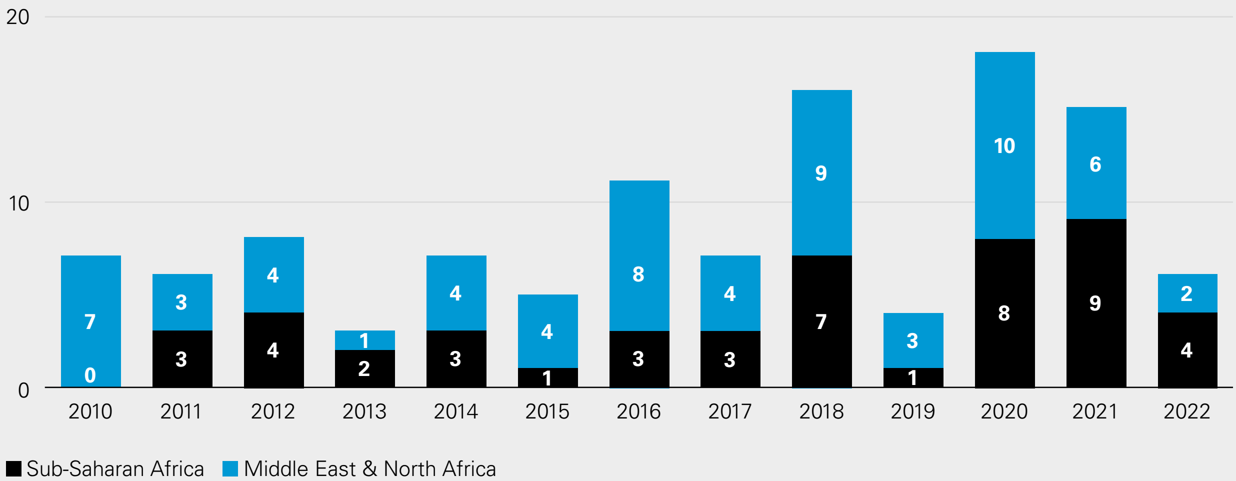
**"Efforts in Africa to protect foreign investments and investments of African investors abroad are across-the-board, covering the international, regional and domestic levels**

Against that background, the participation of African investors and arbitrators in ISDS has slowly increased in recent years. Over the same period, there has been a greater emphasis on diversity in arbitral appointments, as reflected in, e.g., the African Promise, an initiative launched in 2019, encouraging arbitration practitioners to sign a pledge to ensure fair representation of African arbitrators, and there are some positive indications. ICSID has reported a growing trend in the participation of African arbitrators, rising from only seven African arbitrators (and none from sub-Saharan Africa) appointed in 2010 to 18 African arbitrators, including eight from sub-Saharan Africa, appointed in 2020. Still, there is a way to go—notably, the number of African arbitrators appointed in ICSID cases has fallen to six in 2022.

**12**

Cases against African states were registered by ICSID in the 2022 fiscal year, a significant drop from 20 such cases in 2018

**African ICSID arbitrators**




Source: The ICSID Caseload – Statistics


AMAFRAN
MILL
IBIKOR

# Middle East and Africa corridor: The perfect partnership for funding Africa's growth

The Middle East and Africa have much common ground: geographic proximity, well-developed logistical networks and close political and economic ties. For African economies living on the edge, can the Middle East—with its vast capital and a booming Islamic finance market—provide the much-needed boost to the under-serviced Muslim population in Africa? **Claire Matheson Kirton** and **Sam Manful** explore.

According to the IMF, sub-Saharan public debt had, by mid-2022, reached about 60 percent of GDP, which is a level last seen in the early 2000s. The composition of this debt has been steadily shifting toward higher-cost private sources, increasing debt service costs and rollover risks, with 19 of the region's 35 low-income countries now considered to be either in debt distress or at high risk of distress.

Following a clear retrenchment from China—the region's largest inbound investor in recent history—policymakers across the region now face a sobering task to set a stabilizing course against the backdrop of geo-economic turmoil. After two decades of robust and ever-growing investment and engagement, President Xi Jinping announced in January 2022 that China would cut the headline amount it supplies to African nations by a third, from US$60 billion to US$40 billion. In the wake of China's retrenchment, opportunities have arisen for increased investment from the states within the Gulf Cooperation Council (GCC) comprising the Kingdom of Bahrain, Kuwait, the Sultanate of Oman, the State of Qatar, the Kingdom of Saudi Arabia and the United Arab Emirates (UAE). For the GCC nations, in particular Saudi Arabia, the UAE and the State of Qatar, the Middle East/Africa corridor has become an increasingly prominent investment strategy over the past few years. Between 2017 and 2019, prior to the COVID-19 pandemic, investment volumes through capex and FDI from GCC nations into Africa increased steadily. Now, as the world rebounds from the effects of the pandemic and manages geo-political instability, GCC investment has continued to climb, reaching US$8.3 billion so far in 2022, which is almost back to pre-pandemic levels.

Supported by a strong GDP rise across the GCC in 2021 and a rise in ready capital to deploy, oil prices and commodity prices rose in 2022. Traditionally, ties between the GCC and Africa have been strongest between the GCC and North Africa, notably Egypt—perhaps an obvious link given the cultural and Arabic-speaking connection and relative proximity. However, the scope for direct business between the continent and the GCC has far more potential than this well-trodden path. There is evidence that GCC states are increasingly turning their attention to sub-Saharan Africa. UAE-based Mashreqbank is currently the leading GCC bookrunner in Africa, operating investments in 14 countries across the continent. GCC funders appear to be viewing Africa as a long-term investment prospect, too. While African operations of GCC banks continue typically to be run from the GCC, they are actively seeking partnerships with local lenders.

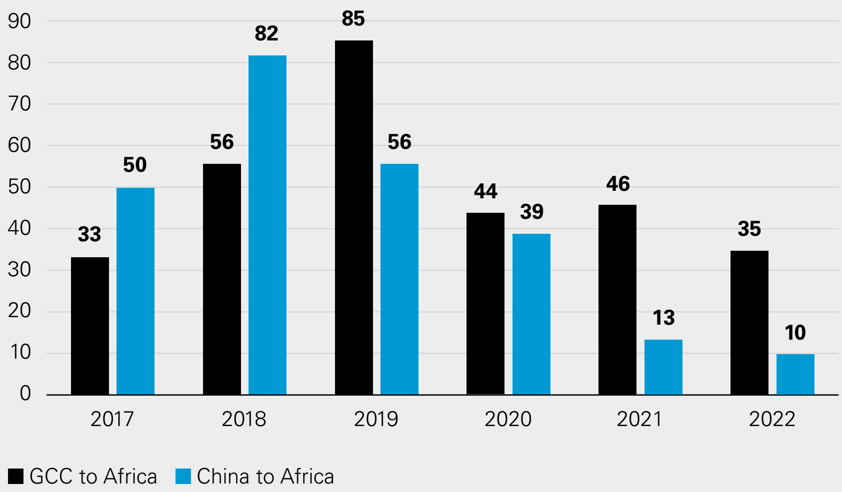
**US$3.8bn**

GCC investment into Africa has continued to climb, reaching US$8.3 billion so far in 2022

Source: Market data

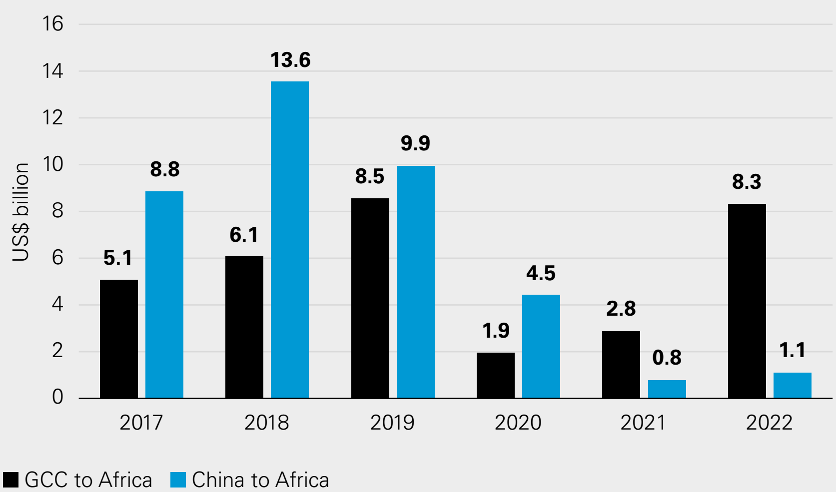
> **"Supported by a strong GDP growth across the GCC in 2021 and a rise in ready capital to deploy, GCC states are increasingly turning their attention to sub-Saharan Africa**

Volume of deals by year




Source: FDI Markets

Value of deals by year




Source: FDI Markets

While many consider GCC states only in the context of oil & gas, these countries have, in fact, had a consistent diversification away from sole reliance on natural resources for years, and have instead been heavily investing in infrastructure, telecoms and food security. Africa has been a large recipient of this focus to date: Qatar-based investment company IAS International has plans to invest in a number of development projects in Central African Republic worth US$1.6 billion, including the development of a tax-free special economic zone; and Saudi Arabia has become one of the biggest acquirers of agricultural land across Africa followed by UAE, Qatar, Bahrain and Kuwait—all states that are increasingly focused on food security and reduced reliance on market imports.

Widely tipped as the fast-growing industry across Africa, telecoms have also proved popular for foreign direct investment from the GCC. E& (previously known as Etisalat), the UAE's telecoms operator, has stakes in several African telecom companies in Tanzania, Benin, Burkina Faso, Togo, Niger, Mali, Mauritania, the Central African Republic, Chad, Gabon and Ivory Coast. Qatar's Ooredoo has North African operations and Kuwait's Zain operates in Sudan, South Sudan and Morocco.

The GCC's burgeoning presence in infrastructure in Africa is particularly notable, with UAE-based DP World operating nine ports and terminals across eight African countries, including Algeria, Angola, Egypt, Mozambique, Rwanda, Senegal, Somalia and South Africa, and has recently acquired a controlling stake in Nigeria's Africa FMCG Distribution Ltd. Investment such as this continue to be a significant contributor to local employment and trade synergies. Sultan Ahmed Bin Sulayem, Group Chairman and CEO of DP World, notes by way of example that the company has "been in Senegal for the last 12 years...[…]... During this period, growth increased, volumes doubled and so did the number of employees."

Critically, GCC investment into Africa does not appear to be limited to ad hoc purchases of strategic assets by state-owned enterprises. The commitment to developing ongoing, sustainable trade is demonstrated by recent diplomatic and policy-driven decisions, too. In summer 2022, we saw the UAE and Kenya issue a joint statement announcing their intention to negotiate a comprehensive economic partnership agreement (CEPA). This is recognized as a precursor to increase the overall value of non-oil bilateral trade between the UAE and Kenya, which rose to US$2.3 billion last year. Private companies are also seeing the benefits of the strengthening relationships, with African businesses increasingly choosing the UAE as a base of operations, with 1,600 new African member companies registering with the Dubai Chamber of Commerce since October 2021, demonstrating the

**GCC states have had a consistent diversification away from sole reliance on natural resources for years, and have been heavily investing in infrastructure, telecoms and food security, and Africa has been a large recipient of this focus**

opportunities for such companies to use the UAE as a base for outbound engagement and a platform for utilizing global opportunities for export.

Significant opportunities exist for GCC financial institutions credit providers, both state-owned and private, to establish themselves as cornerstone lenders across sub-Saharan Africa. The GCC banks and funds have exceptionally strong liquidity. For instance, Moody's Investment Service notes that UAE banks had liquid assets at 38 percent of total assets as of December 2021, up from 36 percent as of December 2020. Opportunities are clear. Africa's vast infrastructure and energy demands offer a bountiful supply of project opportunities that, according to the African Development Bank (AfDB), will need to be funded largely with private sector funding. Also according to AfDB, the continent's infrastructure financing needs will be as much as US$170 billion a year by 2025, with an estimated gap of approximately US$100 billion a year. Yet according to McKinsey & Co, 80 percent of infrastructure projects in Africa fail at the feasibility and business-planning stage. Also, according to McKinsey & Co, the UAE stands second only to the United States (and slightly ahead of China) in terms of appetite for investment in African infrastructure.

**US$170 billion**

According to AfDB, Africa's infrastructure financing needs will be as high as US$170 billion a year by 2025

With pressure on debt levels rising, the need to restructure and refinance existing debt, and demand in the international capital markets contracting, debt markets remain the key focal point for supporting these requirements. The traditional higher returns available from lending across Africa may also prove attractive in an environment where local spreads in the GCC are relatively low.

Islamic finance also offers significant opportunities. With sub-Saharan Africa home to approximately 15 percent of the world's Muslim population and approximately 40 percent of sub-Saharan Africa identifying as Muslim, obvious synergies exist between the continent and the GCC for providing not only conventional finance but also Shari'a-compliant financing. Foreign investments through Shari'a-compliant finance would diversify the sources of funds needed to bridge the continent's infrastructure gap. Despite this funding need, the use of Shari'a-compliant funding across sub-Saharan Africa has not developed at the pace it could have done. A number of political, socio-economic, legal and regulatory considerations have resulted in a more measured uptake. To date, use of Shari'a-compliant fund-raising in sub-Saharan Africa has been opportunistic, driven principally by sovereign sukuk issuances, but we expect that the use of inbound Shari'a-compliant funding will become necessary as the gap between available funding from the "usual" market participants and the funding need continues to widen.

The Middle East/Africa corridor makes much sense from a proximity, travel and logistical perspective. Policy-makers appear aligned that across the two regions, closer ties benefit both parties. While the undoubted increase in transaction flow between the two regions in the past few years shows that these political ties are bearing fruit, there remain a number of areas of potential where the Middle East/Africa corridor appears to offer the easiest—yet underused—path to success. As a multitude of African economies are in need of significant inbound investment, why can't this be serviced by a Middle East region with significant capital to deploy, its own strategic policy aims to satisfy and a sophisticated and well-developed Islamic finance market, which could easily be utilized for the burgeoning and under-serviced African Muslim population? This could be a perfect partnership.

# Africa's coming of age: An interview with Bryce Fort

**Marcus Booth** and **Salewudin Ibrahim** spoke with **Bryce Fort, Managing Director and Founding Partner of Emerging Capital Partners (ECP)** to hear his insights on the current state of private equity funds in Africa.

**You have been a leading player in the private equity sector in Africa for many years now, with key roles in many notable transactions. What attracted you to African PE work?**
I joined Emerging Capital Partners in 2002, which, at that time, was Emerging Markets Partnership (EMP), where we launched the first large Pan-African PE firm. Prior to that, I was an investment analyst at Deutsche Bank in London. As such, I have an interesting and multifaceted view of PE in Africa, having been active from the very beginning of the industry. Only four African funds and management companies existed when we established Fund I. Now there are about 80 to 100 management companies and more than 260 equity investment funds focused on Africa.

**Foreign investment in Africa has grown significantly over the years despite continued jurisdictional and regulatory risks, and political instability across the continent. Do you sense a change in the mood toward Africa?**
The mood tends to come and go, following global macro-economic trends. There was a learning period from 2011 to 2012 onwards, when the so-called "Africa Rising" narrative became prevalent. During that period, investors began exploring Africa in more depth. We saw several billion dollars in direct funds, and IHS was certainly a major beneficiary of that. We raised US$3 billion in equity from investors all over the world between 2012 and 2014. The COVID-19 pandemic brought on a different mood, with interest rates going up and Africa's economies contracting. However, the mood is becoming brighter again as we emerge from the devastation caused by COVID-19.

**Skeptics still insist that opportunities for private equity in Africa are quite limited and opportunities for exits can be particularly problematic. Do you think these perceptions are still valid?**
Exit opportunities in Africa broadly can be broken down into two buckets: general exit opportunities and IPOs. ECP has completed over 40 exits so far and there are other PE firms that have sold good and profitable African businesses. The demand and ability to exit PE equity investments in Africa is definitely there, so long as the investor adheres to certain key principles and takes into account a number of factors that are specific to Africa. The narrative about lack of exit opportunities can be due to certain managers failing to manage or structure their deals properly, rather than lack of demand in the secondary market. That said, there are challenges in Africa that PE investors need to consider. For example, capital formation in Africa is less pronounced than in more developed markets, and companies have smaller budgets for M&A transactions.

With regard to IPO as an exit opportunity, the recent listing of IHS Towers (IHS)—one of the leading mobile telephone tower operators in Africa—on the New York Stock Exchange (NYSE), made history in several ways as an African IPO. It was great that we were able to list IHS on the NYSE. To be able to list in a market like the US or UK, you have to be able to adhere to the highest standards of corporate governance, as well as the financial, accounting and reporting obligations imposed by their respective exchanges. IHS was able to do that, and I think many other African companies are capable of doing that as well. I expect to see more African businesses listing internationally and, hopefully, also locally on African stock exchanges.

**Besides the African stock exchanges and the NYSE, there are other exchanges to explore, not least in London and Paris, for instance. Do you think African companies will lean naturally toward the NYSE for IPOs, and what are your thoughts on the other available options?**
The choice of exchange depends on each particular situation. Some countries have deep historical roots with London and Paris, including

> "The narrative about lack of exit opportunities can be due to certain managers failing to manage or structure their deals properly, rather than lack of demand in the secondary market

their legal systems. That does play a role. There are also challenges to consider, though. Regulatory and/or stock exchange requirements in a particular country might or might not fit with the company and shareholders' needs. In some circumstances, corporate structuring may be necessary to fit the company within the rules of a particular exchange.

New York is bigger, with deeper capital markets and more flexibility, but that does not mean that it will be the best fit for all companies seeking to list. African companies are frequently attracted to the large local exchanges because of the familiarity factor, especially the Johannesburg Stock Exchange, which has a critical mass of significant institutional investors behind it. The choice of exchange ultimately depends on the size of the company, on the exchange, the rules of the exchange and the structural changes that need to be undertaken to align the company with the rules of that particular exchange and the profile of the company's shareholders. For example, IHS had shareholders from all across Asia-Pacific, Europe, Africa and the US. Their level of familiarity with the requirements of US capital markets varied widely. White & Case was instrumental in helping the IHS shareholders understand these issues and align them with their own local requirements.

**Africa has emerged as a pioneer in financial services in several respects. The way people move money around the continent and do their banking on their mobile phones is far ahead of even more developed markets. Over the past 15 to 20 years, we have seen this transformation becoming far more institutionalized, which is a very positive byproduct of PE engagement in Africa. Africa seems to be coming of age—a good market in which to do business and realize profits—beyond just the development work that we saw in the early years. Do you agree?**

Absolutely. When we first started, there was marginal interest from investors outside of natural resource

companies, port/shipping, logistics and suchlike. What we have seen more recently is interest from traditional financial investors and strategic investors. We have seen a large and very consistent flow of big names into Africa, such as American Towers, General Electric and Walmart.

Financial investors, of course, come and go much more frequently, depending on how they allocate their capital. Africa is very sensitive to global macro-economic trends, and we have seen their interest go up and down with those trends. When the markets are up, extra money tends to flow into Africa. When the markets are down, that money flows back to safety—mainly to the US. However, if we take a longer view dating back before the global financial crisis and then forward post COVID-19 and until today, there is a clear, positive trend of both financial and strategic investors allocating increasing amounts of capital to Africa.

**Do you see increasing trends toward a greater focus on regulatory compliance and ESG matters affecting PE in Africa? If so, how do you see your investors reacting to this?**

**US$7.4bn**

2022 saw a record US$7.4 billion of private capital investment into Africa

Source: African Private Equity and Venture Capital Association (AVCA)

Africa has actually been a leader in ESG for some time now, in some respects, because of the role that development finance institutions have long played as a major source of capital in Africa. We have been reporting on ESG since the early 2000s and long before markets expected businesses in Europe or the US to do this.

Regulation and compliance is a very interesting trend. Generally, the US and Europe are the trendsetters. They create regulations and compliance rules that they believe should apply in their own markets, and then these spread to other markets. What we worry about—and not just in Africa—is that companies are having to invest significant sums in compliance teams and systems to ensure adherence to these increasingly complex and burdensome requirements. This is squeezing smaller companies to the advantage of larger companies with greater resources. Smaller companies can find it extremely difficult to meet required standards, for instance, "know your customer" requirements imposed on shareholders. Requirements, for example, in one jurisdiction, can be far more onerous than those in another.

# Africa and the Gulf States herald a new era in trade and investment relations

Profit is a strong motivator in any budding trade and investment partnership, and the relations between the Gulf countries and Africa are no exception. Strong diplomatic and economic ties have long existed between the Gulf Cooperation Council (GCC) states and North Africa—particularly Egypt and, more recently, sub-Saharan Africa—but there are other levers at play for deepening economic relations, as **Gareth Hodder** explains.

The interests of the GCC countries in cooperation with Africa have historically been shaped by their relatively one-sided and short-term economic goals. But propelled by the COVID-19 pandemic, food supply issues and the changing regional geopolitics in recent years, the dynamics have been shifting toward deeper, longer-term—and mutually beneficial—commitments between the Gulf States and the African continent. Currently, all GCC States, barring Saudi Arabia, have signed and ratified bilateral investment treaties—BITs—with African countries, strengthening economic ties while pursuing diversification strategies beyond traditional sectors and addressing current critical issues, such as food security.

“

**Over the past decade, the UAE has emerged as one of the largest investors into Africa among the GCC states**

Over the past decade, the UAE has emerged as one of the largest investors into Africa among the GCC states, and is the fourth-largest investor globally into Africa—after China, Europe and the United States. In 2018 alone, the Abu Dhabi Fund for Development also financed more than 66 projects in 28 African countries, valued at US$16.6 billion. Between January 2016 and July 2021, the UAE invested US$1.2 billion into sub-Saharan Africa, a staggering 88 percent of the GCC total during that period.

Saudi Arabia—another big investor into Africa—has also made significant investments in energy and mining projects, and particularly into Africa's agribusiness, in response to growing food security concerns in the region.

**Food security**

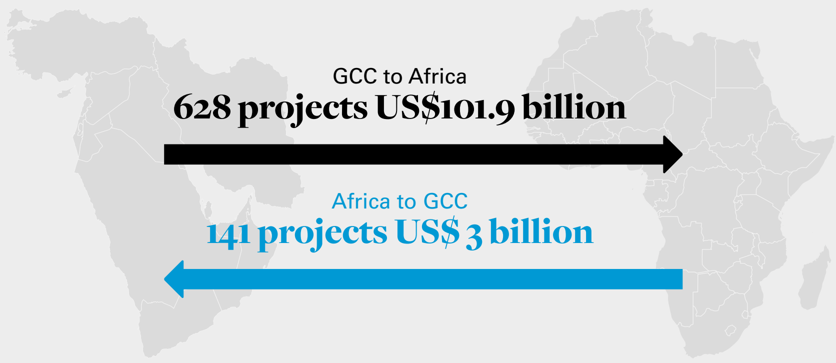
Food security remains a major concern for the region and GCC states have historically been exploring agriculture projects in Africa for at least a decade. The capital-rich and financially robust GCC countries have been adept at managing and mitigating their food supply risks. But the 2007-08 food crisis—during which more than 30 countries imposed food export restrictions—and the current disruption of global food supplies caused by Russia's actions in Ukraine, have changed this. Climate change is also expected to add further pressure on the Gulf's food supplies. Against this dire canvas, Africa—with its vast amounts of arable land—could double or triple its cereals and grains output, which would add 20 percent to worldwide output. Similar increases are possible with horticulture crops and livestock.

Zambia and Kenya have been devising terms for land use that meet both local and investor needs. Saudi Arabia has also invested heavily in Africa's agribusiness, especially in East Africa, with a portfolio thus far of roughly two million hectares.

**Energy and infrastructure**

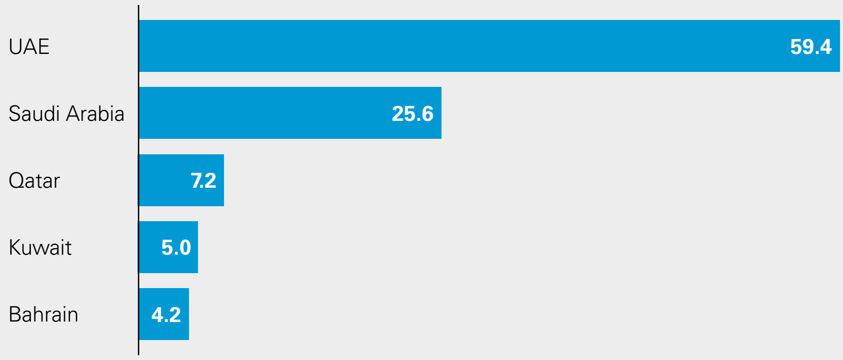
While agro-investments remain a priority for the GCC, investors are looking at numerous other sectors. Africa's growing

**FDI flows between GCC and Africa from 2012 to 2022**



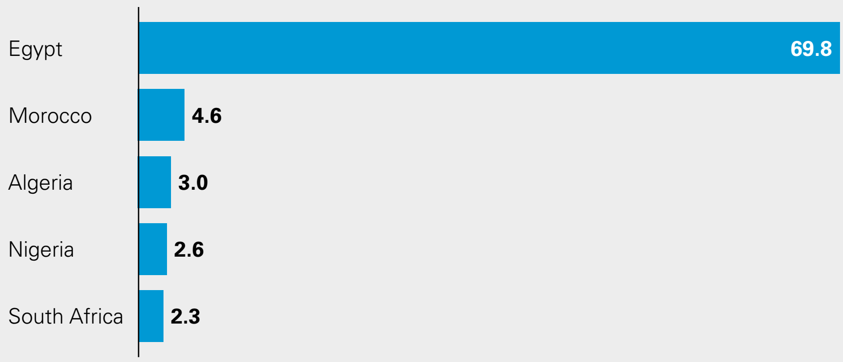

Source: FDI Markets

**Top five source countries of FDI flows from GCC to Africa by value US$ billion**




Source: FDI Markets

**Top five destination countries for FDI inflows from GCC to Africa by value from 2012 to 2022, US$ billion**

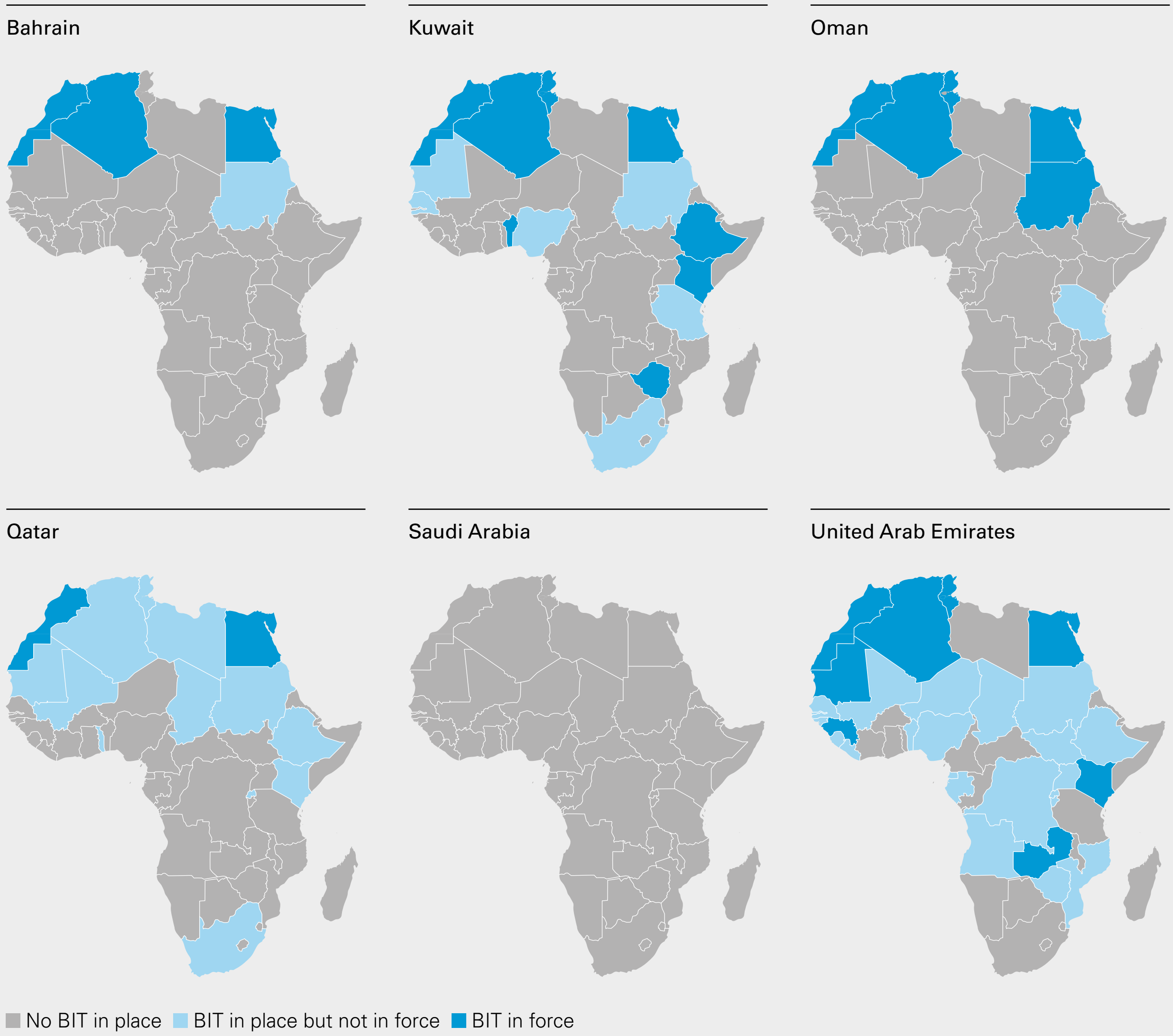



Source: FDI Markets

infrastructure and energy needs offer excellent opportunities to GCC investors. As part of its €300 billion (US$321.9 billion) Global Gateway strategy, the EU seeks to partner with the UAE to accelerate Africa's energy transition and infrastructure development. Abu Dhabi–based Tabreed recently contracted to provide energy services to CapitalMed, Egypt's new healthcare mega-project. Roughly 15 percent of Ghana's electricity comes from a power station jointly owned by Ghana's Volta River Authority and Abu Dhabi's TAQAR Group. Dubai-based Yellow Door Energy is the largest distributed solar developer for commercial and industrial businesses in southern Africa. The QIA has forged an alliance with Italian utility Enel (Enel Green Power) to finance, build and operate renewable energy projects in sub-Saharan Africa.

> **"Africa—with its vast amounts of arable land—double or triple its cereals and grains output, which would add 20 percent to worldwide output**

**Bilateral Investment Treaties (BITs) in place between GCC and African states**




Source: UNCTAD International Investment Agreements Navigator

## Airlines and airports

Besides sovereign investments, recent years have seen GCC corporates investing in assets that align well with their businesses. Qatar Airways invested US$1.3 billion in 2020 to acquire 49 percent of RwandAir and a 60 percent stake in the new Bugesera International Airport near Kigali, its planned pan-African hub.

The Qatar Investment Authority anchor US$250 million investment into the Virunga Africa Fund I is further evidence of Qatar's growing interest in Africa. In 2021, Qatar also acquired a 50 percent stake in 800 MWs of renewable projects in South Africa and Zambia, and made a US$200 million investment in fintech platform Airtel Mobile Commerce.

## Seaports

DP World operates seaports in Angola, Djibouti, Egypt, Morocco, Mozambique, Senegal and Somaliland. DP World and Britain's development finance agency CDC Group have announced intent to jointly invest up to US$1.72 billion in logistics infrastructure in Africa, including port modernization.

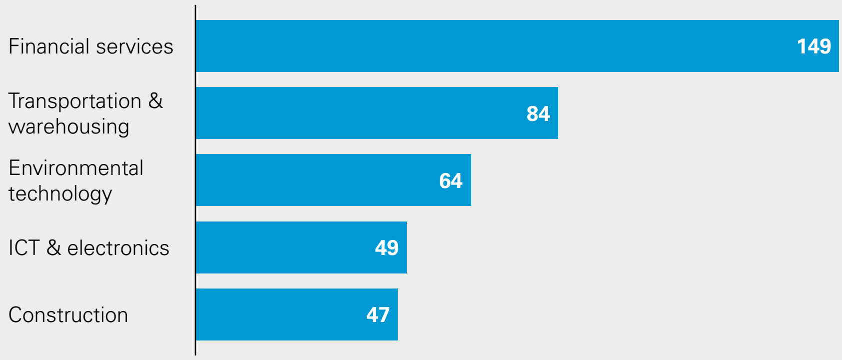
Abu Dhabi Ports, collaborating with Hutchison Port Holdings, is searching for projects in Africa, too. As a starting point, their focus is to elevate the Port of Dar es Salaam in Tanzania as a world-leading trade hub.

## Telecommunications

Ranked the 15th-largest mobile network in the world, UAE's E& (previously known as Etisalat), operates across Benin, Burkina Faso, Central African Republic, Egypt, Gabon, Ivory Coast, Niger and Nigeria. Qatar-based Qtel operates networks in Algeria and Tunisia. Saudi Arabia has also announced a US$1 billion investment initiative in Africa, focusing on industry, finance, agriculture, fishing, mining, transportation, regional security and energy.

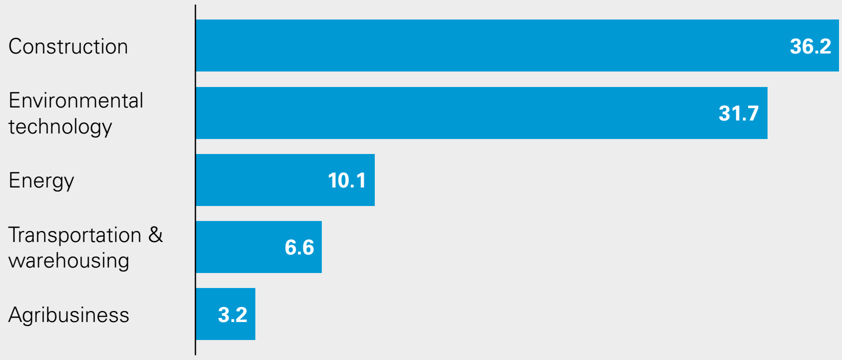
Given that the GCC states need to diversify away from hydrocarbons, and Africa's increasing appeal, it seems likely that investment between the Gulf countries and Africa investment is likely to continue to grow.

**Top five sectors of FDI inflows from GCC to Africa from 2012 to 2022**
**By number of investments**




Source: FDI Markets

**Top five sectors of FDI inflows from GCC to Africa by capex value from 2012 to 2022**
**US$ billion**




Source: FDI Markets

# Credit where credit's due: Who's benefiting from the voluntary carbon market?

Nature-based solutions attract significant interest from investors seeking access to carbon credits that are generated through the measurement of avoided emissions and sequestered carbon. Projects that protect and restore the environment improve carbon storage, but also strengthen the livelihoods of smallholder farmers and offer powerful incentives, as more money can be made by protecting the natural habitat than further eroding it, says **Dan Collison, Chief Executive of Farm Africa.**

Smallholder farmers in eastern Africa are facing unprecedented challenges as a multi-layered crisis takes hold of the region. The worst drought in 40 years, resurgent conflict in Ethiopia, inflation running in excess of 30 percent in some countries: The UN estimates that 100 million people in the Horn of Africa will be at risk of acute food insecurity by the end of 2022.

In the longer term, the region is faced with the challenge of producing and accessing sufficient food, without further degrading the already exhausted land on which so many lives depend. Development investments need to consider the impact of agriculture on the environment, as well as the role of healthy habitats in mitigating climate change.

Projects that protect and restore the environment often improve carbon storage, principally through sequestration in soil and vegetation such as grasslands or forests. Done right, farmers' and communities' work to protect habitats can result in an improved and diversified household income, for example when farmers' yields increase after adopting climate-smart agriculture practices or forest dwellers are able to harvest and sell forest-friendly produce such as wild coffee. This can provide a powerful incentive to further protect global public goods, as more money can be made by protecting the natural habitat than further eroding it.

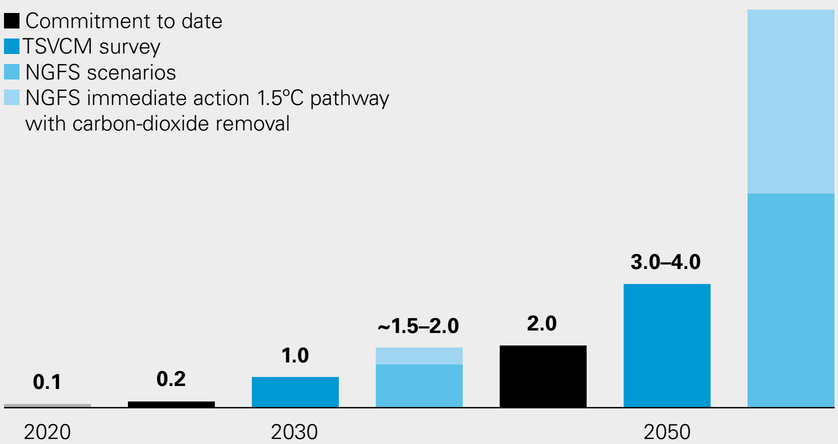
Such nature-based solutions now attract significant investment from donors, from global climate funds, and from investors seeking access to carbon credits that are generated through the measurement of avoided emissions and sequestered carbon. The voluntary carbon market is growing rapidly, projecting a 15-fold increase in demand to 2030 and a 100-fold increase in demand to 2050. Prices have surged, from just over US$3/tonne of carbon dioxide-equivalent ($tCO_2e$) three years ago, to approximately US$10/$tCO_2e$ in 2022, and the market is estimated to be worth upwards of US$50 billion/year by 2030.

However, carbon offsetting is controversial and cumbersome, and the revenue from carbon credit sales often does not filter down to the local communities working to protect their ecosystems.

**100m**

The UN estimates that 100 million people in the Horn of Africa will be at risk of acute food insecurity by the end of 2022.

**Voluntary demand scenarios for carbon credits, gigatons per year**




Source: "A blueprint for scaling voluntary carbon markets to meet the climate challenge," McKinsey & Company

## CASE STUDY: THE BALE ECO-REGION REDD+ PROJECT

Between 2012 and 2021, Farm Africa and its partners, with funding from the Norwegian government, worked to deliver an ambitious integrated landscape management project that reduced deforestation and boosted the livelihoods of local communities in the Bale Eco-region in Southwestern Ethiopia.

Over the project period, deforestation in the Bale Eco-region was 58 percent lower than it was projected to be in the absence of the project. This avoided deforestation resulted in more than 25,000 hectares of forest being saved and carbon emissions being reduced by 10.5 million tonnes of $CO_2$. The project helped more than 34,000 members of 64 forest cooperatives increase their incomes from the sale of forest-friendly products and REDD+ carbon credits earned by the reduced emissions.

Our project worked on multiple fronts. The first is community mobilization—equipping community groups and local government authorities with information and capacity to collaboratively set the rules for participatory forest management. Together, the community and local government agreed upon how to monitor the forest, how to take action on transgressions such as illegal logging and how to share the benefits of sustainable forest management. The government-owned Oromia Forest and Wildlife Enterprise (OFWE) and the community-based forest management cooperatives agreed to share the earnings from the sale of carbon credits in a 40:60 ratio.

Second is diversified livelihoods that use non-timber forest resources to sustainably increase income, in this case including high-value organic forest coffee, honey and gum products. Incomes, excluding the revenue from carbon sales, increased by 143 percent over the course of the project, providing a powerful incentive to continue protecting the forest. These products need buyers, and the project also connects producers to new markets, nationally and internationally. Substantial carbon credit revenue flowed to the cooperatives and local government forest authorities. We are now in the process of managing the sale of a further 2.8 million $tCO_2e$ of carbon credits generated in 2020 and 2021, with the prospect of a considerably higher price, given the buoyant market.

And, there is a crucial scale-up objective. This has been the first REDD+ project in Ethiopia to issue and sell carbon credits, and the lessons have been instrumental in guiding the development of the jurisdictional phase—the process by which the experience of the project is incorporated into regional and national policy.

### Ethics around offsetting

The carbon credit revenue flow to the local government and communities is to be welcomed. There is a tangible return for the efforts to preserve the public goods that are the forests and water towers of Southwest Ethiopia. The forest cooperatives are using these returns to further invest in their communities: flour mills, coffee processing equipment and manufacturing fuel-efficient stoves. From this point of view, the system is working.

However, the carbon market remains opaque and volatile, with little transparency on pricing and carbon brokers' mark-up. There are moves in the sector to address this, with the Integrity Council for the Voluntary Carbon Market aiming to develop principles on issues such as additionality—reductions achieved by a project need to be "additional" to what would have happened if the project had not been carried out—and the permanence and measurement of carbon emission reductions, plus a set of threshold standards that will build trust in the market and unlock additional investment to deliver climate impact.

Well-documented criticisms point to the license carbon offsets can give to polluters to continue burning carbon. Businesses need to assess carefully the types of companies with which they want to prioritize trading. An important criterion is companies that take action to reduce emissions before seeking to deploy offsets. Offsets are a legitimate part of a strategy to achieve net-zero, if they are structured so that rewards flow directly to communities working hard to protect the environment.

**US$50 bn/y**

The voluntary carbon market is estimated to be worth upwards of US$50 billion/year by 2030

Source: Market data

### What's next?

At COP26, leaders of some of the large global climate funds commented that one of the blocks to getting climate action funding down to the community level was a "lack of bankable projects." But evidence so far simply does not bear this out. The success of the Bale Eco-region REDD+ project is a case in point: It shows that with the right approach to community mobilization, transparency and inclusion on decision-making and innovation in strengthening livelihoods, the benefits of climate and carbon funding can reach deeply into forest communities.

The carbon market is complex, volatile and potentially very risky, in creating smallholder dependencies on corporate and other agents. We need to progress cautiously in promoting this market as an alternative to other land uses.

There are many players in the carbon market who can act to safeguard communities involved in carbon offset schemes. Project developers, including NGOs, have a crucial role to play in promoting the diversification of livelihoods to ensure communities have multiple incentives to reduce carbon emissions, and alternative sources of income if carbon credit revenue is delayed or less than anticipated. In Bale, for instance, communities also earn income from coffee production, livestock production and climate-smart agricultural intensification, all of which reduce the need to clear forest.

It could be counterproductive if communities became overly dependent on carbon income and the associated market and corporate actors, or if efforts to sequester carbon happened without equal attention being given to more productive livelihoods. It is interesting to think about carbon as a value chain in its own right, but this could risk the commodification of community and environment and a shift to "carbon farming" at the expense of sustainable food production.

Investors and funding vehicles should make their processes less difficult to navigate. At present, the global climate funds, and the requirements around the carbon market risk making the sector inaccessible to indigenous forest communities. Current efforts to introduce standards through the Voluntary Carbon Market Integrity Council and associated core carbon principles are welcomed, but the focus of this initiative is about market "integrity" and predictability for buyers and traders, rather than producers, and reinforces the sense of community being viewed as collateral rather than market agents.

Local and national governments should better regulate the emerging carbon subsector to ensure benefits flow to communities and that land rights are not infringed. As the value of carbon credits rises, so too does the value of land where carbon credits are generated. There are many speculators keen to make a profit from the buoyant market, and there is a risk that vulnerable communities or those with limited land rights, particularly women, could be exploited. Investors, too, should pay careful attention to the quality of carbon credits, and the benefit-sharing mechanisms, to ensure the credits they buy are ones that reward those doing the lion's share of the work to reduce emissions: local communities.

**"As the value of carbon credits rises, so too does the value of land where these carbon credits are generated, and investors should ensure the credits they buy reward those doing the lion's share of the work to reduce emissions: local communities**

**Marcus Booth**
Partner, Dubai
**T:** +971 50811 4905
**E:** mbooth@Whitecase.com

**Mukund Dhar**
Partner, London
**T:** +44 20 7532 2379
**E:** mdhar@whitecase.com

**Gareth Hodder**
Partner, Johannesburg
**T:** +27 64 751 1554
**E:** gareth.hodder@whitecase.com

**Claire Matheson-Kirton**
Partner, Dubai
**T:** +971 56 504 8721
**E:** cmathesonkirton@whitecase.com

**Tarek Mohanna**
Partner, Cairo
**T:** +20 12 2221 71675
**E:** tmohanna@whitecase.com

**Elizabeth Oger- Gross**
Partner, Paris
**T:** +33 6 13 88 21 45
**E:** elizabeth.oger-gross@whitecase.com

**Robert Wheal**
Partner, London
**T:** +44 7717 731270
**E:** rwheal@whitecase.com

**Salewudin Ibrahim**
Associate, Dubai
**T:** +971 56 505 9852
**E:** salewudin.ibrahim@whitecase.com

**Sam Manful**
Associate, Dubai
**T:** +971 5 640 61891
**E:** sam.manful@whitecase.com

**Salma Selim**
Associate, London
**T:** +44 7515 783 355
**E:** salma.selim@whitecase.com

**Agnieszka Zarowna**
Associate, London
**T:** +44 7784 295802
**E:** agnieszka.zarowna@whitecase.com

whitecase.com