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## Africa: Big opportunities for a big continent

Author: Dominic Carman

27 Oct 2005 | 01:00 |

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Between 1885 and 1908, several million African slaves died extracting rubber from the Congo Free State, an area 76 times the size of Belgium. This private project belonged exclusively to one man - the Belgian king, Leopold II. When increased demand for tyres, tubing and cable insulation caused a worldwide rubber boom during the 1890s, King Leopold grew even wealthier. The scramble for Africa had begun. By 1914, the European powers, most notably the UK, France, Germany and Portugal had carved up every African country on the map, except for Liberia and Ethiopia.

Today, a new scramble for Africa is underway. The G8, the World Bank and the International Monetary Fund are targeting poverty, disease and conflict, aiming to replace them with prosperity, progress and peace. Their mandate is to invest, build and develop the potential of 900 million people in Africa, a continent where, despite an abundance of natural resources, infrastructure needs far exceed the local ability to finance.

The governments, companies and banks faced with this challenge require significant legal advice. While this means increasing work for international law firms, optimism remains tempered by reality. The impetus from aid and debt relief is marginal. In most African countries, strong economic growth is elusive. Resource-rich states such as Nigeria, Angola, Equatorial Guinea, Sudan and The Democratic Republic of Congo are fixed at the bottom of the latest global Corruption Perception Index. Last year, the aggregate gross domestic product (GDP) for sub-Saharan Africa (excluding South Africa) stood at only \$300bn (£171bn) - 15% less than the equivalent figure for Belgium. The entire GDP for all 54 African countries approached \$700bn (£399bn) - a ranking just above The Netherlands and less than 2% of the world's economy.

So where are the success stories? Charlie Jacobs at Linklaters, counsel to Anglo-American and De Beers, advises on cross-border African deals. He says: "Many American companies say, 'Ah, Africa; aids, malaria, civil war, strife, famine, political risk too high'; whereas many in the Middle East see growth in areas such as telecoms which is hard to see elsewhere. With oil at \$65 (£37) a barrel, a lot of Middle Eastern money is moving into Africa. They are looking to diversify and often understand Africa better than the Europeans."

Jacobs points to the success of Egyptian operator Orascom Telecom in gaining mobile licences in Algeria and Tunisia and to the CelTel acquisition in March 2005. "As one of the largest African mobile phone operators, CelTel only got its first licence in Uganda in 1997. They built up 13 sub-Saharan licences by 2004. Then the Kuwaitis came and bought them for \$3.4bn (£1.9bn)," he says.

Neil Upton, London-based head of energy at White & Case, is currently working in Namibia for Eskom, South Africa's monopoly electricity utility. He says: "China is putting a huge amount of investment into the power sector - they are bidding for everything. They look as though they are trying to cut a swathe through the centre of Africa."

Clifford Chance (CC) partner Jeremy Connick, who specialises in energy and infrastructure advice, agrees: "Chinese companies are very comfortable with Africa risk, hoping to take some equity, but also to sell equipment, as are Israeli companies, which sell arms to various African countries."

Most of Africa's major emerging markets are in the largely Francophone north: Algeria, Egypt, Morocco and Tunisia. Paris-based Gide Loyrette Nouel has by far the biggest presence, with 50 French and local lawyers split between Casablanca, Algiers and Tunis. Gide plans to double that number, with further offices earmarked for Cairo and Dubai.

As senior Moroccan partner Hicham Naciri explains: "Many of our clients operate regionally - the World Bank, IFC, Goldman Sachs and Citibank among them. Of our corporate work, 70% comes from overseas, but only 15% from France. The rest is from Japan, Germany, the US and the UK."

"Privatisation and M&A work has been very active in Morocco, which has been the most open and active jurisdiction for lawyers. Algeria promises substantial work in infrastructure, project finance and privatisation. As with Tunisia, the M&A work will eventually come from privatisation."

Freshfields Bruckhaus Deringer finance lawyer Amir Jahanguiri adds: "We find Morocco is a competitive, increasingly mature market with some very capable lawyers. Gide, for example, took the best Moroccan lawyer [in Naciri] to run their local office. Tunisia has a few good lawyers, but has been noticeably less successful in privatisation and attracting foreign investment. Algeria still has some way to go, economically and legally, but has enormous potential."

Freshfields advised the Moroccan Government on the privatisation of Maroc Telecom and on infrastructure projects for TMSA: the new Tangier seaport and container terminal. In Algeria and

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Tunisia, it has advised on a variety of pipeline, LNG and power projects.

Like many other international firms advising on Francophone Africa, CC operates from its Paris office. "The North African markets are gradually becoming easier to operate in. We are doing an increasing amount in Algeria," explains Connick. For sub-Saharan work, he adds: "Operating from London and Washington, we have seen a lot more happening over the last 18 months in telecoms, mining, oil and gas and power. It is important to remember Africa inevitably starts towards the end of everyone else's economic cycle, so optimism may be overdone."

CC is currently advising a variety of export credit agencies and private finance initiatives (PFIs), which are raising \$2bn (£1.1bn) for GAPCO, a large mining operation in Guinea. "It is a lot of money for a small country. Every year there are two or three big, interesting deals in Africa and this is one of them," Connick says.

Freshfields' Jahangiri concludes: "Unfortunately we have found working in Guinea that there just aren't enough good local lawyers. It is a problem. We minimise the risk by simply asking local counsel to validate a checklist of French law as best they can."

Denton Wilde Sapte's Africa practice has received plaudits in recent years, although it recently lost its respected Africa head, Charles Morrison, to DLA Piper Rudnick Gray Cary. Dentons has an office in Cairo and five associated offices in the region: Tanzania, Zambia, Uganda, Ghana, and Botswana. Paul Gugingo, its director of Africa development, points out that the firm "has 28 lawyers working on Africa projects". He adds: "We are probably the most active international firm in the breadth of our work - telecoms, finance, energy, IPP, infrastructure and privatisation."

"Wherever we operate, our clients expect us to manage the entire legal function - whether it is sophisticated jurisdictions like South Africa or Nigeria, or Eritrea, where you might be dealing with a one-man firm. In Africa, we always have to monitor the quality. Everything that goes to the client has to go through us. We provide detailed checklists, tell the local lawyers exactly what is required. It depends on the individual's expertise. You can get some countries in Africa where there are superb lawyers. We have just been working for Total in Zimbabwe, for example."

Jacobs agrees: "In Africa's unsophisticated jurisdictions, you try to limit the local lawyer [involvement] as much as possible. All you actually want is someone to be able to answer your local law questions. We simply say, 'We are doing this deal in English law. This is the position. Is the answer the same locally - yes or no?'"

Morrison comments: "I have been doing Africa work for 15 years in Anglophone jurisdictions, including a lot in Mozambique and Angola. When it is oil-related work, English law is nearly always used even in Lusophone jurisdictions. The Lisbon-based firm Miranda Correia Amendoeira & Associados has made its name on the back of its offices in Mozambique, Angola, Guinea-Bissau, Cape Verde and Sao Tome and Principe. They are often the reference point for the laws in those jurisdictions."

When the World Bank seeks international legal advice for African governments, it most often turns to US firm Hunton & Williams. Washington partner John Beardsworth is currently advising the governments in Uganda, Tanzania, Nigeria and Sierra Leone on various energy and infrastructure projects.

He says: "The beauty of advising governments and state utilities is that you tend to be associated with the Attorney General's chambers, which have some top-flight lawyers. We have been working with the World Bank since 1989, during which time we have advised about 25 African governments. Legal costs are financed by World Bank loans to each government. Beyond projects and infrastructure, we have dealt with all sorts of work - from settling a border dispute between Ethiopia and Eritrea to numerous arbitrations."

Arbitration and alternative dispute resolution contract clauses are standard, with London and Paris the favoured locations.

One lawyer widely recognised by competitors for his understanding of how Africa works is Cadwalader Wickersham & Taft projects partner Paul Biggs - formerly head of the Africa team at the Commonwealth Development Organisation.

Biggs worked on the first Mozambique privatisation of Maputo Port in 2003 and more recently, the \$1bn (£5.6m) Sasso pipeline from Mozambique to South Africa: "Mozambique is an exciting jurisdiction. We work well with a local lawyer there. But when you work in Nigeria, it is an exception because there are several good firms to choose from with strength in depth. Whereas in most jurisdictions - Uganda, Tanzania, Ghana, for example - there are only two or three firms and then often only one individual in each of those firms worth using," he says.

Julian Jackson, co-founder of Africa Legal, a subsidiary of leading South African firm Deneys Reitz, offers further insight: "In some countries such as Kenya and Botswana, there is a reasonably sophisticated but very small legal community. It is easy to get good transactional advice. Botswana is a tiny country economically, but fairly typical - there is one good lawyer in one good firm and that is it. In Ghana, there may be two or three quality lawyers. So problems arise when you run out of options if your preferred lawyer is conflicted."

Jackson adds: "Mozambique is improving, with a few good lawyers. But Angola, booming with oil and gas work, is legally problematic, opaque and very difficult to get things done. Whereas in Nigeria, where there are also significant difficulties and things are not at all transparent, there are several very good, energetic, capable firms."

"One key issue in most African jurisdictions is that, while you can get good local advice, there are very real problems in enforcing and administering the law through the local court systems, and it is often impossible."

White & Case's Upton adds: "For the vast majority of lawyers in Kenya, Tanzania, Mozambique and even Nigeria, the training is not strong enough as a bedrock for good legal analysis of commercial contracts. The education and professional standards of a lawyer need constant reinforcement. The base position is much higher in the UK and the US. African lawyers simply do not get reinforcement through ongoing training, nor do they get exposure on a regular basis to lawyers of equivalent comparable skill."

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According to Linklaters' Jacobs, international firms do have a role "working with the local firms and bringing them up a level". He adds: "We find that in many jurisdictions, local firms really appreciate international firms coming in working alongside them, focusing on the issues and working closely together."

Does Africa have a brighter future? It depends on who you talk to. Like many lawyers, Connick is passionate about the continent, but cautious about its prospects. He says: "You go to Africa, fall in love with the place and think, 'there is so much opportunity here'. Then you see corruption and political intrigue destroying investors' confidence. After spending a lot of time in Africa, I became a deep pessimist."

"Today, political risk remains a major impediment, as is the time taken to do a deal. But the potential upside in many sectors is increasing with commodity prices shooting up. The politics also appears to be improving and there is less strife. On balance, I am more of an optimist."

Beardsworth says he is "very bullish" on Africa. He adds: "It is not well understood. I try and open the eyes of my energy-related clients to the real possibilities of sub-Saharan Africa. It is truly remarkable."

"When I come back to the States, my colleagues ask me: 'What is it like doing business in Africa?' I tell them what they really should be asking is: 'What is it like doing business in Nigeria? What is it like doing business in Tanzania? What is it like doing business in Uganda?' Every country is different."

"But overall, it is on the upswing. There is an awful lot to be done there."



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