



Ep. 26: Africa Business and Investment Panorama

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Jose Garriga:

Hello, and welcome to *OnAir with Akin Gump*. I'm your host, Jose Garriga.

The United Nations projects that 40 percent of the world's population will live in Africa by century's end. This dynamic, volatile and increasingly youthful continent offers tremendous 21st-century opportunities for growth and development even as its component regions and nations contend with legacy challenges.

In this episode, Akin Gump international trade partner Nnedi Ifudu and corporate partner Weyinmi Popo take a look at Africa through the lens of investment and growth. And they'll discuss how policies and initiatives inside Africa and its constituent regions as well as those from outside the continent are determining the course and shaping the environment for business in Africa today.

Welcome to the podcast.

Nnedi Ifudu:

Thank you.

Weyinmi Popo:

Thanks.

Jose Garriga:

Weyinmi, Nnedi, Thank you. Thank you for appearing on the show today. All right, let's start with a little overview for listeners. Can you identify some continent-wide issues—political, economic—relevant from a business and investment standpoint? Nnedi, if you would, please.

Nnedi Ifudu:

So, I will tackle this from my perspective as a trade lawyer that is obviously, well, not obviously, but is often brought into Africa-related deals to provide my perspective on various risks that may be attendant to investment or business in Africa and a couple of challenges that clients often face on the continent.

First would be political instability, which is, unfortunately, rife with a number of African countries from administration to administration. You can have rapid changes in policy or laws and regulations that have implications for foreign investment and foreign business. So that lack of stability can often create risks that some investors have to take into account.

Next are weak judicial systems or rule of law concerns. You have, unfortunately, inefficient, overburdened judiciaries. Sometimes you also have members of judiciary being appointed by the president, which can make them subject to political manipulation.

You also have instances of sham lawsuits against foreign companies or weak protection for foreign investors which need to be accounted for.

I imagine that most people probably expected me to start with corruption, but yes, corruption is an issue with a lot of African countries. It is endemic in some countries. Transparency International, which is an international organization that monitors corruption and bribery indicators across the globe, routinely ranks a number of African countries quite low on its Corruption Perceptions Index. So, corruption is an issue and one that needs to be confronted, especially with the U.S. continuing to be aggressive with enforcing corruption cases outside the U.S.

And next is sanctions. I don't think this is one that one often thinks about, but, increasingly, sanctions are an issue with respect to Africa. The Trump administration has recently issued sanctions that affect Mali, South Sudan, where there have been allegations of human rights abuses and where you have sanctions on notable entities or industries in African countries that, in turn, affect the ability of the U.S. persons to deal with these sanctioned actors.

So, that's just a few issues that I contend with when I'm working with U.S. and non-U.S. companies looking at the region.

Weyinmi Popo: From my perspective, I think, for me, I see Africa from an opportunity perspective and in terms of three Ds, and one is demographics, which you alluded to earlier. The other is democracy, and my third is the diaspora.

I think, on the demographics point, as you point out, most projections say that Africa will be the most populous continent by the end of the century, but even now I think we have 200 million young people in Africa between the ages of 15 and 24, so it is already the youngest continent, which presents huge opportunities in terms of resources; people who are young, employable, anxious for change; great potential market for goods and services I think we already see that, in large part, in the adoption of new technology and technology-related businesses, which are thriving in Africa.

If you look at the tech hubs in Lagos, Kenya and South Africa, those are hugely thriving, and I think, in large part, down to demographics. It's a young dynamic population, which is very early to adopt technology and sees the advantage of that, and that creates huge opportunities for the U.S., which, of course, is, in Silicon Valley, a huge leader in technology. And I see already quite a lot of excitement by Silicon Valley investors in Africa.

I mean, [*Twitter CEO*] Jack Dorsey's visited the continent last year, was very excited by it, says he's going to move there for three to six months this year. So, clearly something's going right.

Nnedi Ifudu: [*Facebook CEO Mark*] Zuckerberg too.

Weyinmi Popo: Zuckerberg was in Lagos.

Nnedi Ifudu: Two years ago, I think.

Weyinmi Popo: Yeah, exactly. So, I think there's a lot of excitement around the youth and the demographics. I think democracy is, frankly, given a low base from which it started, there's a lot of cause for excitement. If you look at most of the continent, I think it's fair to say almost all the large countries are democratic. Nigeria is the most populous—that's had transition of power twice now, and two out of the last three have been peaceful when there was a lot of fear about violence.

Ghana's had the same [*transition*] from opposition, and not just transition from the same party to within the same party—one party to another. Malawi just had its Supreme Court

recently annulled elections saying they weren't free and fair. Kenyan Supreme Court did the same. So, I think there's a lot of optimism in terms of governance. The democracy has taken roots. And Ethiopia has a prime minister who's in his 40s; there's been a transition of power there. I think there's just a lot of excitement. For me, I see a lot of optimism in terms of democracy taking root on the continent.

The autocratic past seems to be behind us, and I think that bodes well for rule of law and all the other things that come with being an open, transparent, free country. And the two examples I've just given in Malawi and Kenya of the Supreme Court annulling elections, I think they're great ones.

The third is diaspora. Maybe I'm biased here because I'm a member of that diaspora, but I think most people across the continent and investors who visit would be energized by the number of young people, young Africans who are living in the diaspora, as in overseas, who are returning to the continent to start businesses that previously didn't exist. I think if you look at the tech industry, certainly in Nigeria, a lot of the tech businesses have been seeded by people who spent time in Silicon Valley or at Stanford. They've gone back, they've spotted a gap, they've created businesses that, in turn, attract international investors and catalyze the local economies.

And I think that's a sort of often-overlooked part of the equation. But I think that's really added to the mix of excitement and opportunity on the continent. And that's not in any way suggesting that the Africans who live on the continent aren't as dynamic. But I just think that brings a sort of mix of interesting dynamics. If you look at private equity, for example, the largest private equity fund focused on Africa is run by Africans who, again, live overseas but understood the opportunity of investing on the continent and have gone on to do so with tremendous success.

Jose Garriga:

Thank you. So, you identified some countries just now is that you're using as exemplars of certain types of opportunity and growth; let's stay on that. Drilling down a bit and for listeners who may be less familiar with Africa from a regional standpoint, how would you differentiate Africa regionally from the standpoints of investment and growth and following up to see if you have any other insights into which countries look to be engines driving regional growth?

Weyinmi Popo:

I think the "Africa is not a single country" is a useful starting point. So, I like the fact that we're talking regionally rather than Africa is a sort of monolithic entity. I think, for me, I see it very much as North, which is North Sub-Saharan. You've got West Africa, East Africa and South Africa, and then Central Africa perhaps.

I think, by some statistics, five of the 10 fastest-growing economies in the world last year or the year before were in Africa, so there is fast growth, albeit from a low base. Regionally in West Africa, Côte d'Ivoire, or the Ivory Coast, has been a big engine for growth in the French-speaking part of Africa, which is regionally integrated, uses a single currency and speaks a single language, and Ivory Coast has been a big driver of growth there.

Ghana in West Africa has also been very fast growing. I think it grew at almost close to 9 percent, which is one of the fastest-growing economies in Africa. It's very stable. It's done a fantastic job of attracting investment, particularly from the African-American community; it's done a great job of that.

Nigeria is the largest economy in Africa and far and away the largest economy in West Africa. That's been a bit more sluggish in recent times, but, without a shadow of a doubt, in terms of potential, if it gets its act together, which we should have to believe it will, is going to be a huge engine for growth regionally and continentally.

Going east, I think Ethiopia was the fastest-growing African economy, which was 9.8 or close to 10 percent. It's also the second-most populous country in Africa, so, it represents huge opportunity, I think, for growth. It's got a young prime minister, which, in Africa, is novel. I guess America is going the other direction. It's liberalizing its economy. It's traditionally been quite a closed economy. It's looking at liberalizing, privatizing. It's got the most successful airline in Africa, Ethiopian Airlines. That's going to be a huge engine for growth, I think, if the economy liberalizes.

Kenya is also a large regional economy in Eastern Africa, and I think those two are big drivers. Rwanda always turns up on the list of fastest-growing economies, but it's a relatively small country. Fantastic governance in terms of transparency, zero corruption, ease of doing business, and definitely, I think, is an engine for growth in its own right.

In Southern Africa, I think South Africa is clearly the most sophisticated and industrialized economy in Africa, second largest, and potentially a huge engine for growth. It's had its own challenges recently, I think, with investments, reductions, power cuts. It will need to liberalize, it will need to reform, it will need to embrace the market more. And I think that will create huge opportunities for investments in time.

Jose Garriga:

We've been speaking regionally, and now we're going to look at something that is again continent-wide, but this is a trade agreement. The African Continental Free Trade Agreement. To what extent do you all think, and this is a question that I'll open up to both of you, to what extent do you think this FTA is going to make a difference in economic growth and market development and, I suppose, the obstacle that every trade agreement has to face: To what extent is protectionism going to be an obstacle to its progress? Nnedi, if you would, please.

Nnedi Ifudu:

I think the short answer is that it remains to be seen. So, the African Continental Free Trade Agreement just entered into force in May of last year and actually didn't quite pick up steam until Nigeria signed on in July of last year because again, as Weyinmi said, it's still the largest economy in the region. And, so, it came into force last year, has been signed by 54, 55 countries—I think Eritrea as a sole holdout for now—but, currently, the agreement is binding on all 54.

But there are a lot of issues that still need to be ironed out, and much uncertainty remains as to the impact of the agreement. In terms of implementation, it is expected to happen in two phases. So, currently, they are negotiations in place regarding tariff schedules for goods. And my understanding is that negotiation is set to conclude in May, and then parties will begin to implement provisions by July. And then there will be a second phase dedicated to negotiations on investment, intellectual property rights and competition policy, and negotiations regarding the second phase, I understand, are expected to begin this year and likely continue into 2021.

The objectives of the agreement are laudable and some could say aspirational. So, the idea is to create a single continental market for goods and services with free movement of business persons and investment, thereby theoretically accelerating the establishment of the continental customs union and an African customs union.

It is also intended to expand intra-Africa trade through better harmonization and coordination of trade liberalization and facilitation regimes and instruments across regional economic communities and across Africa in general. Another goal is to resolve challenges of multiple and overlapping memberships and to expedite regional and continental integration.

Overall, the continental free trade negotiations aim to progressively reduce and eliminate customs duties and nontariff barriers on goods, with a goal of 90 percent of tariff lines going down to practically zero within five to 10 years for the least-developed countries.

So, again, the full impact of the AFCTA is—or the AFCFTA; it's a lot to say—is yet unclear, but the goal or the expectation is that it's supposed to lead to increased economic growth as well as increased foreign direct investment, right?

The idea is that there'll be some harmonization of protocols on trade, intermember state dispute mechanisms, as well as protection for international investment. So, I don't think protectionism should be an issue inasmuch as the goal is to reduce trade barriers and also to create a climate that is more favorable for international investment.

Weyinmi Popo:

Yeah, I mean I get very excited because I just think the potential is huge in terms of everywhere in the world where you look regionally, where there'd been reduction of tariffs in single markets, the growth potential is evident: Europe, Mercosur in South America, NAFTA in North America. I just think that it stimulates trade, creates a bigger single economic area for people to sell goods and services within.

And I think the game-changer for Africa is, I mean some statistic says 18 percent of intra-Africa exports, rather, exports within Africa are intra-Africa, compared to 70 percent in Europe. So, there's just a huge amount of increased trade. And, I think, for foreign investors, a lot of the time advising on transactions, what people are looking for is critical mass when you're investing, and outside of a few large countries like Nigeria with 200 million people and Ethiopia with 80 and South Africa with 50, Africa has 54 countries, a lot of which are small populations.

I think, to the extent this can create a single market where, effectively, you invest in a business that now has continental reach and is selling goods across 30 countries rather than one country, I think that just creates far more investible opportunities for international investors. That's the sort of thing that gets people excited. It's like now I'm selling to 500 million people, not 10, and I just think that therein lies the opportunity.

Jose Garriga:

Thank you. A reminder, listeners, we're here today with Akin Gump international trade partner Nnedi Ifudu and corporate partner Weyinmi Popo discussing the business and investment situation and outlook in Africa.

All right, so, let's take this a bit further afield and talk about cross-border transactions, particularly from the U.S. Weyinmi, what are the salient issues that business listeners should know about in that respect?

Weyinmi Popo:

Well, I think the first one is we've touched on before, it's not a single country, it's 54 countries, and it's diverse in terms of languages, cultures, legal systems—some are based on English legal system, which is more similar to the U.S. and familiar to the U.S. investors. You got a huge French-speaking constituency, which is totally alien to U.S. investors and is far more regulated.

You've got Portuguese-speaking countries, and, so, there isn't a “one size fits all” approach. I think you really need to understand that there are differences, and taking good local advice, I think, is very important. And, consequently, your choice of international counsel is very important as well because you need someone that understands those nuances, I think, and can guide you through and engage the right local lawyers and advisors.

I think risk management is clearly another. I mean, we can't get away from the fact that the U.S. is a highly regulated country with much higher standards of regulation whether it's on corruption, standards for manufacturing or anything else than you're ever going to find in Africa. And, therefore, a lot of investors that we act for are looking to maintain those standards in the countries in which they invest. And that can be a challenge. Making sure you pick through the minefield of avoiding pitfalls of corruption and make sure they comply with the regulations, et cetera.

I think the other thing to note is: It's not a developed market so I think you have to temper your expectations in terms of what you are going to see in terms of compliance. If you go into an African investment thinking you're going to get the sort of due diligence information that you're ever going to get on a North American or European deal, you're probably not going to do many deals in Africa. It's not going to be perfect.

But I think there is a science or an art to understanding why it's not going to be perfect. You have to have a mindset of, "Okay, but what's the important stuff that we need to do to protect ourselves and be practical while at the same time maintaining the sort of standards that we're used to." So I think an understanding that you've got to be practical and pragmatic and quite smart, keep your wits around you. But I think you also have to fully expect that it's not going to be a replica of doing deals in developed markets. I think those are things to look out for, in my view.

Jose Garriga: Just following up, when you were talking about expectations, does that apply as well, presumably, then, to supply chain issues?

Weyinmi Popo: Yeah, I think that's right. I mean, I think a lot of the time if you are looking at making investments in Africa, it's far more of a development mindset in the sense that there are very few mature businesses in the sense that you would find in the U.S. or Europe. There's a lot of blue sky, and therein lies the opportunity to build and grow something, grow your own supply chains, grow your own effective business ecosystem that then becomes self-sustaining. I think we've seen that with companies that have IPOs successfully in New York, for example. They've built their own logistics and supply chains and therein lies the opportunity in a sense.

Jose Garriga: Thank you. So, in a related question, I'd like to ask you, Nnedi, talking about what it is that our listeners should expect and should know about the current U.S. administration and its Africa policies, particularly as they relate to trade and investment?

Nnedi Ifudu: So, for at least the first year of the Trump administration, there wasn't really a signature Africa plan. All that had come out with respect to Africa or that touched on Africa was the travel ban, which implicated, I think, two African countries, Somalia and Libya, I believe. But since then the administration has come out with its Africa strategy. And this strategy, essentially, has three pillars.

The first is prosperity, and not just prosperity for Africa, because you have to remember the President's ethos is America First. And, so, with respect to prosperity, it's mutual prosperity for the U.S. and prosperity for its African partners. The second is security, right? And with respect to security, really focused on counterterrorism efforts and, principally, countering the threat of "radical Islamic terrorism" and other violent conflict in the region.

And the third is stability. The goal being that the President's priorities for U.S. foreign assistance will support progress towards stability, good governance and self-reliance. But relevant for this podcast is the prosperity prong, right? So, how is the administration looking to further prosperity between or among the U.S. and African countries? And thus far, the signature initiative of this administration is called Prosper Africa. It's not a new program, per se, but, rather, a harnessing of various programs that exist to create a whole-of-government approach with respect to investment in Africa.

So, it attempts to address certain complaints by U.S. companies interested in Africa. For years, U.S. companies have asked the U.S. government to make it easier to access trade and investment support services, and Prosper Africa, this initiative, attempts to answer this call by providing sort of a one-stop shop that makes the full range of U.S. government services available to U.S. and African businesses and investors. U.S.

companies are often not aware that the U.S. government has export, investment and risk mitigation tools, for example.

It is often the case as well that U.S. government personnel in Africa tend to work in silos. So, what Prosper Africa is intended to do is to connect businesses with buyers, suppliers and investment opportunities like I said in a whole-of-government approach intended to solve the problem of how to navigate U.S. bureaucracy and benefit from the various programs and services that exist.

So, there are three main goals of Prosper Africa. One is to modernize U.S. capabilities and efforts by coordinating about 15 U.S. government agencies who, in one way or another, touch on or support U.S. investment in Africa.

The other is to facilitate transactions, so, to help U.S. companies and African businesses develop, facilitate, expedite and mitigate the risk of transactions between the U.S. and African countries.

And third is to expand the access of U.S. companies to information and also to provide financing support where the private sector will not provide such support. The idea again being to open the pipeline of opportunities in Africa.

In terms of what's been done concretely as a result of Prosper Africa, an example is the fact that, within U.S. embassies in various African countries, we now have what is known as Deal Teams, and these Deal Teams are responsible, in some cases, for identifying opportunities for U.S. engagement. And my understanding is that these efforts have already led to some successful bids for U.S. firms in Africa.

That's the signature program of this administration. Another significant development, and this time by Congress, is what's known as the BUILD Act. The BUILD Act was signed into law in October 2018. It's the Better Utilization of Investment Leading to Development Act. It's not Africa-specific, but it's intended to assist the private sector with additional or increased investment in low- to lower-income economies.

So, while Africa is not, per se, the specific target or beneficiary of the BUILD Act, because a number of African countries would fall within this low- to lower-income definition, it is expected that, by default, African countries will benefit from the BUILD Act.

And, so, the BUILD Act, what it does, really, is, it's an overhaul of what was known as the Overseas Private Investment Corporation, OPIC, which is now being overhauled and is called the U.S. International Development Finance Corporation, DFC, and the goal of the DFC is to incentivize private investment as an alternative to state-directed investment. It aims to support U.S. businesses in competing for investment opportunities and, like I said, in low-to lower-income countries. Again, not specifically targeted African countries, but it is expected that African countries will benefit.

A key policy rationale for the BUILD Act is China's Belt and Road Initiative and its growing economic influence in developing countries and really trying to counter that growing influence.

I can go on and on about other initiatives, but I will stop. Suffice it to say that this administration seems committed to finding mutual ways to encourage U.S. businesses to do more in the region. If you were paying attention to the news just last week, the U.S. and the president of Kenya, President Kenyatta, announced that they'd begun negotiations for a free trade agreement between the U.S. and Kenya, which would be the first FTA between the U.S. and a sub-Saharan African country, which would be great because the idea, if this goes forward, is that the agreement would serve as a template for future agreements between the U.S. and other African countries and would likely

then take over from AGOA, the African Growth Opportunity Act, which is a trade preference program which started under Clinton but has continued under this administration.

And pursuant to AGOA, a number of qualifying African countries are able to export goods to the U.S. without paying any duty. But AGOA is set to expire in 2025, and the idea of the administration is that there would not be replacement of AGOA and instead there would be these FTAs between the U.S. and various African countries.

Weyinmi Popo: I think the only thing I'd add to all of that is: I think this administration's trade and investment view towards Africa is influenced, to my mind, in large part by the threat it sees with China.

Nnedi Ifudu: Absolutely.

Weyinmi Popo: The strategic threat, which is starting to make the U.S., I think, finally look at Africa as also an investment opportunity rather than just a place that is a security threat or a place where it's about philanthropic and pro bono and aid programs.

I think the strategic plan from China and the way China is investing across the continent, both in hard infrastructure as well as in soft infrastructure like payment platforms and technology, is making the U.S. and this administration alive to that opportunity and threat, and thinking, well hold on, we need to reboot our relationships with Africa from a trade and investment perspective and counter that and also start to see Africa through the prism of investment rather than just as a recipient of aid or a security threat. So, I think it's good for Africa.

Jose Garriga: Thank you. Nnedi, just following up, in terms of Prosper Africa and these other programs that are being put forward by the Trump administration, is there a lead agency, or is this being done as a sort of a bunch of equals working on this?

Nnedi Ifudu: Yes, I would start with the Department of Commerce. Commerce has a concierge service that educates you on Prosper Africa and what it means and how to navigate the website. So, Commerce has taken the lead.

Jose Garriga: Thank you. So, then, just to wrap up, what takeaways would each of you offer listeners, particularly in the business community, regarding now looking at the short term, the 2020 outlook for business and investment in Africa. You've touched on a number of things and a number of very important points that people should mind, particularly the nonmonolithic nature of Africa writ large, but beyond that, what specific tips would you offer business listeners? Weyinmi, if I could ask you to lead.

Weyinmi Popo: I think 2020 is potentially quite an exciting year for investors in Africa. I think we're already seeing a groundswell of investments flowing into the technology sector. I think, 2019, those \$2 billion of equity raised for investments in technology-related investments, which was double the amount raised in 2018, and I think I see that trend increasing. And if that happens in 2020, then we'd be looking at \$4 billion of equity, which is a huge amount.

I think the U.S. is at the forefront of that because of its lead in Silicon Valley and the default capital and experience. I also think that and hope that there's going to be a rebooting of the large regional economies like South Africa and Nigeria, which have had their challenges historically, but, hopefully, start to hum a bit more and start to drive regional growth and create opportunities for international investors.

I think Ethiopia is going to continue to be a hotspot for growth, a liberalization program coming on there which will, again, create huge opportunities for international investors. So I'm quite optimistic, regionally, that we'll continue to see growth in Africa, and,

hopefully, the regional superpowers will start to power a bit and drive growth and investment opportunities.

Jose Garriga:

Thank you. Nnedi.

Nnedi Ifudu:

I think, for U.S. investors in particular, I would say that whatever you think about the merits of the programs and initiatives and downsides that are currently in place in terms of U.S. policy as it relates to trade and investment in Africa, I will say that, whether we view it from the lens of countering Russia/China influence and whether the motives are underhanded or not and we're fighting this battle on our shores and outside, the fact is that there are a lot of tool, there are a lot of programs currently in place that are intended to bolster U.S. investment in Africa. So, I wouldn't worry too much about the motivation. Instead, I would focus on taking advantage of all of the tools and initiatives that are currently in place.

Jose Garriga:

Thank you. Thank you both. Listeners, you've been listening to Akin Gump international trade partner Nnedi Ifudu and corporate partner Weyinmi Popo. Thank you both making the time to appear on the show today and describe and explain the very opportunity-rich African business and investment climate.

And thank you, listeners, as always, for your time and attention. Please make sure to subscribe to *OnAir with Akin Gump* at your favorite podcast provider to ensure you do not miss an episode. We're on, among others, iTunes, SoundCloud, and Spotify.

To learn more about Akin Gump's Africa practice and its work, look for "Africa" on the Experience or Insights & News sections on akingump.com and take a moment to read Nnedi's and Weyinmi's bios on akingump.com.

Until next time.

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