Hogan Lovells

Hogan Lovells Africa Forum South Africa Report

Africa Stand Up – Vision 2025

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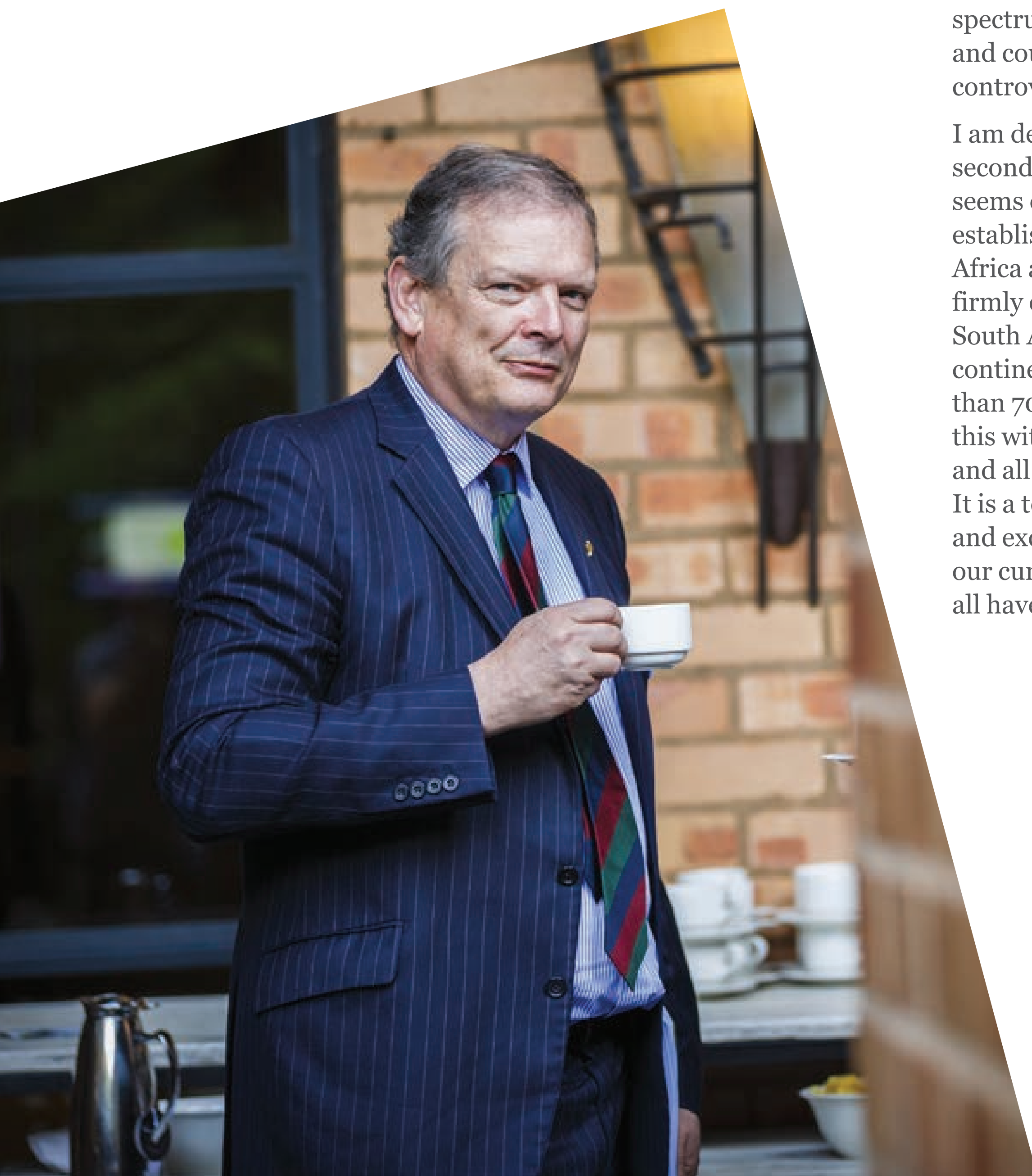
Welcome by Andrew Skipper

Partner and Head of Africa Practice, Hogan Lovells International LLP

I would like to welcome you all to this, our 2nd Hogan Lovells Africa Forum in Johannesburg, which follows on from our excellent forum in London; we really wanted to make sure we held this in Africa, and we are committed to repeating this.



Our theme this year is *Africa Stand Up*; and is our chance to look at how Africa can positively react to the current global uncertainties, take advantage of them and position itself to finally rise!

We have a genuinely exciting and varied menu of topics and speakers, and we have guests from a broad spectrum of African interests and countries. It will be exciting, controversial and a great day.

I am delighted to be back in my second home to welcome you. It seems only a short time since we established Hogan Lovells in South Africa and I believe we are now firmly on the map both here in South Africa and elsewhere on the continent (in Nigeria we have more than 70% share of voice!). We do this with our colleagues, our clients and all our friends on the continent. It is a team effort with outstanding and excellent players. As we say in our current marketing campaign, we all have a mountain to lean on.

Since our last event, we have continued to build on our four pillars:

We seek to understand Africa. You cannot succeed if you don't and you cannot do that from books. This year we have accelerated steps to engage with the continent. We are there a lot (I can't go to a restaurant in Lagos without meeting people I know), and we work with our friends.

Just recently I have seen personally the amazing transformation of the Moroccan approach to SSA, the elections in Ghana and hopeful progress, the belated but exciting changes in Nigeria (where I recently addressed an audience of 10,000 lawyers with some of the leading industrialists of the country), challenges here in South Africa, potential in Angola with elections and transformation possible, focus on intra-Africa supply chain and value in ECOWAS, innovation in Kenya and so on.

These are macro issues with micro needs and we are there to learn and then help others understand. And we want to share that learning, so we are proud to have linked with African Law and Business to produce a *Special Report on Investment in Africa*, which features a summary of the legal position in 23 countries as well as sector overviews and some journalist-led features. Each of you has a complimentary copy in your pack.

We are also keen to share our experience, thoughts and perspectives. And one way we do this is through our *A Perspective* blog. We are proud of the variety on our blog – everything from Brexit to Trump, Power to new technology, and Morocco joining the AU to an interview with me talking about the 3Cs of corruption, certainty and currency that inhibit international investment into Africa.

We operate in Africa. Our South African team has grown in size and excellence in the last three years since we joined forces – we now have 120 lawyers with 46 partners. We have a leading practice, but we do not operate in silos. Our teams work together and we have representatives from our other key hubs offices in London, Dubai, Paris and Washington/U.S., all represented here today. We constantly have partners on the ground. We are client driven and we make sure we have the right team from our global firm for each job. Life is too short to compete. We grew our business last year by 10% because we can work together and we can focus on where Africa really needs support – in delivering complex intra-Africa value adding transactions and projects. For example, our London, Paris and Dubai teams are advising a large solar developer on their projects in Niger, Benin, Nigeria, Conakry, Ghana and Malawi.

We invest in Africa in our team and in our relationships. We have over 100 staff in our global business service centre in Johannesburg, in addition to our legal team, and it is growing. And we cannot do this without our friends. We have one office in Africa; here in South Africa. Everywhere else we work with the best firms who we know well and with whom we have worked for years. We work in true partnership with them to deliver a seamless and effective service to our clients. We invest in these relationships and work to make them stronger. Many of our friends, from more than a dozen countries, are here today – welcome to you all.

Finally and almost most importantly, **we respect Africa**. You cannot succeed if you do not. So we are committed to building capacity ranging from judge training in Morocco to compliance training of the Central Bank in Angola. This helps all sides as tackling head on some of the issues around 3Cs, which I mentioned earlier. Deals can be reviewed with knowledge and international businesses can be confident of investing. Our main charity this year is focused on developing the capacity of women to become solar engineers. I just want to take a few minutes to talk about this initiative and how you can get involved if it's of interest.

Barefoot College has developed an innovative programme where women learn to make solar panels, install the panels in their villages, and become self-employed engineers in their communities. Many of the solar mamas are grandmothers and most cannot read or write, yet they achieve amazing things. Throughout the next three years, we will engage our people, our clients, and our communities to help Barefoot triple its number of international beneficiaries by training 400 solar mamas in 35 countries, who will go onto solar electrify 20,000 households and provide clean light to 200,000 people. We will help them achieve this through a combination of pro bono support, educational volunteering in schools, and financial support through our charitable matched giving initiative. They are our first ever global citizenship partner, and we are helping around the world.

In addition, we are proud to be supporting the Community Solar Innovation Award in partnership with Adelphi, SEED, and Barefoot College. We want to support the best eco-inclusive enterprises that utilise solar energy systems or solar technology innovation to improve lives in poor communities, particularly for women and girls. The winner will be announced in South Africa next year and receive pro bono legal advice from Hogan Lovells, financial investment in their enterprise, and business advice.

And it doesn't end there. This year we have joined with clients and colleague to hold events celebrating cocoa and culture in West Africa with the Academy of Chocolate, Mars and the Smithsonian National Museum of African Art (where I am on the board), we have been in Lagos with Professor Bruce Onobrakpeya, and Casablanca with the king's museum.

We are founding partners of the UK Ghana Chamber of Commerce, and I represented the Smithsonian at the opening of the Zeitz Mocaa museum in Cape Town (and had the honour of meeting El Anatsui, and sitting next to William Kentridge watching his moving video installation). I hope that African culture and art will *Stand Up* just as its business in unison.

We remain committed to Africa and to developing a sustainable business, with our colleagues and clients. Finally today is for you to engage with our speakers and with each other. One of the greatest pleasures we have is when we hear of meetings and deals arranged at these events between our friends and clients. There were many in London – let's beat it in Joburg.

Chairman's opening by Lavery Modise

Chairman, Hogan Lovells (South Africa)

It gives me great pleasure to welcome you all to the second annual Hogan Lovells Africa Forum held in Johannesburg.

A warm and special welcome to our distinguished guests, colleagues from the continent of Africa and from elsewhere across the globe for taking time to attend this auspicious occasion.

During the course of the day our panellists will facilitate discussions around the opportunities for investors and corporates to participate in the growth and development of economies in Africa. Our panellists will help us navigate these issues and provide us with a better understanding of the opportunities available for investors and corporates to participate in the growth and development of economies in Africa.

The 2017 Hogan Lovells Africa Forum is aptly entitled *Africa Stand Up – Vision 2025*. I think you will agree with me that the time is long overdue for Africa to stand up and become a destination of choice for investors. Africa has been described as a sleeping giant. A giant that has not yet fully recovered from its slumber. Africa is made up of many different countries, each with their own legal systems and ways of doing business. Developing relationships with legal, financial and other relevant advisors has contributed in developing an in-depth understanding of how to do business in each of the different African countries.

Some of the fastest growing economies are reported to be in Africa and at least nine of these countries are expected to be among the 20 fastest growing economies in the world in 2017.

At the recent Africa Forum hosted by Hogan Lovells in London, a number of common, positive themes came through. Few of us will argue that Africa is a continent of endless possibilities and opportunities. There are significant natural and human resources that can be unlocked for the benefit of all Africans. Endowed with the rich resources at their disposal most African countries should by now be punching above their weight.

In order to explore business opportunities available in Africa business must focus on what can be learned about doing business in Africa, South Africa included. Doing business successfully in Africa is the ability to become entrenched in local communities. This is also true for emerging markets. In Africa, for example, this means investing in building a local team or finding local partners. It is said that some companies have failed in Africa because they did not localise their business models.

In his speech at Columbia University at the turn of the past century, one of the founders of the ruling party, Pixley ka Isaka Seme said:

> "The regeneration of Africa means that a new and unique civilisation is soon to be added to the world... The most essential departure of this new civilisation is that it shall be thoroughly spiritual and humanistic – indeed a regeneration, moral and eternal."

Writing in *Some African Cultural Concepts*, Steve Bantu Biko whose brutal and cruel death at the hands of the apartheid era security police was commemorated on 12 September argued:

> "The great powers of the world may have done wonders in giving the world an industrial and military look, but the great gift still has to come from Africa – giving the world a more human face."

The two writers envisioned an Africa that will not only contribute immensely to the world economy, but also to a civilisation that is spiritual and a humanistic gift to the world and to give it a human face.

Many African countries have not yet developed and realised their true and full potential, largely due to human failures such as corruption.

Corruption impedes growth and distribution of wealth. It stands in the way of economic growth and development in Africa.

Strong independent institutions are a pre-condition for a successful economy. It is arguable that most rich countries across the globe have good institutions and poor ones have bad institutions. Policy uncertainties also result in low business and investor confidence.

Africa is facing significant social, economic and political challenges. The values of servant leadership have to be heightened as Africa searches for solutions. Leadership at all levels and sectors of society has a critical role to play in mapping a sustainable path for the African continent to thrive.

The time is now for Africa to stand up and be counted to claim its rightful place as a potential global economic powerhouse.

Opening keynote by Bonang Mohale

CEO, Business Leadership South Africa (BLSA)

Distinguished guests, my fellow South Africans. Thank you for inviting me to speak to you today. I want to thank Chairman Lavery Modise and Hogan Lovells for hosting this event and for giving us all a platform to share our ideas and vision for a better future for Africa.

I applaud the sentiment of Vision 2025 and fully support the need to think creatively about where we want to be in years to come. But if we are to achieve our visions, we must begin our work today. The challenges we face are complex and severe and they will not wait another day.

As Chief Executive of Business Leadership South Africa, I want to talk to you specifically about the challenges facing us here in the rainbow nation. But I know the lessons from the South African experience will resonate with members across the African continent.

Last month, I and other members of the Business Leadership South Africa council went to Alexandra to launch our latest campaign - #BusinessBelieves - and pledged our commitment to delivering a better society for our children and grandchildren.

Tomorrow I will be in Durban and over the next few months I will travel around the country in order to remake that commitment in every corner of South Africa.

I remake it to you today. And if you take away just one message from today, let it be this:

- Business believes in South Africa.
- We believe in South Africa's future.
- We share the values set out in its constitution.
- And we say humbly: we want to play our part in ensuring the transformation so many in South Africa need so desperately.
- We are patriots who see our role as creating jobs...growing the economy and investing in communities...

So let there be no doubt: Business believes in South Africa.

But I stand before you today as a representative of this country's major businesses to say:

- Something is wrong in South Africa.
- Something is badly wrong.
- While much has changed for the better since the dark days of apartheid, too much has stayed the same.
- Too many South Africans are still living low quality lives and denied the most basic opportunities.
- Too many South Africans are without a job.
- Too often the dream of an equal South Africa has been betrayed.
- Our society continues to be ravaged by unemployment. By poverty. By nepotism. And by corruption.

It's perhaps no surprise then that business confidence in South Africa is now at a 30-year low. That is a direct result of the behaviour of the government and its poor leadership.

And while business must of course play its part, it is not enough.

The government must start to govern in the interests of the many and not just the few. In too many sectors of the economy and public life, policies have either been poorly conceived or poorly executed.

We are not educating and empowering our people to join the workforce. We are not creating a policy environment that supports job creation and inclusive growth. Of course, business is not blameless in this environment. We know business has made mistakes and too often fallen short. And when businesses fall short of the high standards expected of them, they should be called out and judged on their response.

For example, we at BLSA welcome the findings of KPMG's investigation and their willingness to act decisively on them. It's important that when business is accused of wrongdoing it does the right thing. But, as we acknowledge our own failings – we must also highlight the greater problem of government corruption and state capture, where there is no accountability.

Corruption and state capture are the cancers eating away at this society. Too often government contracts and jobs go to the connected rather than the deserving. This situation is a moral stain on our country. If current trends continue, the country faces a bleak future and we will be forced to live with the bitter legacy of leaving our children a worse country than we inherited.

> “So let there be no doubt: Business believes in South Africa.”

There is no greater challenge for us all – both as individuals and as business leaders – than confronting it and changing it. It is within our grasp to ensure that these trends do *not* continue. That we grip the situation and take the decisions necessary to shape a better future.

So I stand before you today to say: Business believes in South Africa. South Africa's future and our future as businesses are inseparable.

For too long we have remained on the side-lines on the issues facing the country, and today I want to say loudly and clearly that business is ready to play a full part in the transformation that South Africa so desperately needs and to make sure this country works for everyone.

The legacy of the ugly and deceitful "white monopoly capital" campaign, which sought to blame business for many of the problems that beset the country, has forced us to speak out. In this environment, business cannot stand idly by.

Critics have accused business of "cash hoarding" and an "investment strike". So BLSA commissioned some independent research to take a dispassionate view on the cash holdings of South African businesses and their investment.

The findings of this research were clear. There is no evidence to support the dual myths of "investment strikes" and "corporate cash hoarding". It's clear that South African businesses continue to invest in South Africa and hold cash reserves at appropriate levels. Like in any country, South African businesses are structuring their balance sheets responsibly in response to a weaker economy and a lack of policy initiative from government.

Government can change the equation by promoting consistent policy that supports economic growth. A credible outlook for the economy combined with regulatory certainty and political stability will inevitably lead to more investment. That's just one example of how business is standing up and speaking out against the lies of those who wish to divert attention away from corruption.

And we will work with others, be they representatives of labour, faith organisations, political parties of any kind - anyone who shares our values and wants to set this country on the right course.

And so, as we did in Alexandra, we commit again today to a contract with South Africa. We will do all we can to:

- **Create jobs, by growing the economy**
  South African businesses have created six times as many jobs as government since 1994. Our aim is to create even more jobs.
- **Encourage and empower senior black leadership**
  Ultimately, the best way to close the opportunity gap is to invest in more businesses owned, run by and employing black South Africans. We pledge to grow a new generation of black business leaders and entrepreneurs.
- **Invest in South Africans**
  South Africa can only meet the challenges of the future with a highly-skilled workforce. We will train South African managers and workers for the challenges ahead.
- **Invest in communities**
  Business owes it to South Africans to do more to ensure the communities where it operates thrive and prosper.
- **Support small businesses**
  They should be the lifeblood of our economy - but too often they struggle. It is our duty to help them succeed by financing new businesses, training and mentoring entrepreneurs for success.
- **Condemn and root out corruption**
  As I have said – corruption and state capture are the cancers that are eating away at our society. They must be rooted out, crushed and punished where we find them in the public or private sector.

This is our contract with South Africa.

But we believe that government must also commit to create the conditions necessary for it to succeed, so the economy can grow. Too many bad decisions have got in the way of that.

Addressing this gap in understanding will be a key mission for BLSA going forward. So our contract is not a programme, but a commitment. A pledge. BLSA is a membership organisation. We do not have the power or the remit to tell our members how to run their businesses. So we can't commit on their behalf to spend X billion rand or create Y thousand jobs.

But what we can do - and what we are doing through this contract - is telling South Africa that we will do more. And we are committed to doing more. Through the contract, we are making clear that we absolutely understand the responsibility to lead. It is our critical mission.

We know we will be judged by our deeds and not our words and we welcome that. It will be the responsibility of all our members to convert words into deeds, to return to their offices, recommitted to the task, determined to be making real, tangible progress in all these different areas. And society will be entitled to monitor the progress businesses are making towards meeting these pledges.

Last month we also launched our Integrity Pledge. As we call on government to end corruption – we want to be clear that we as business are also doing all we can to crush it where we see it.

Our Integrity Pledge states:

- We will have zero tolerance for corruption in our own midst.
- We will not act anti-competitively.
- We will protect whistle blowers.

As I have already made clear, while business can and must do better, we don't live in a vacuum. We also need to see our commitment matched by government and labour.

From government we expect a commitment to crush corruption and develop an environment that allows business to invest, grow the economy and create the jobs without which we will not have a future worth sharing.

Labour too must step up and show that it is willing to make the sorts of commitments necessary to create a successful climate for growth and job creation.

Conclusion

So that is our vision for South Africa. But the work to achieve it must start today.

We have signed our contract with South Africa and backed it up with an integrity pledge. It is a statement of business's belief in the future of the country, and our commitment to making it happen.

I ask you all to take it back to your workplace and share it with your staff and stakeholders. I ask you to help our campaign generate momentum and deliver the change we need. I ask all those who care about our country to stand up for a better South Africa.

It may be a struggle. And there will be setbacks along the way. But we are guided by those leaders who have come before us who fought to change South Africa for the better. Together we will emerge a stronger, more equal and more prosperous nation.

Plenary Session

Intra-Africa trade: Rethinking trade in Africa

The session was chaired by Lodewyk Meyer, partner at Hogan Lovells (South Africa). The panellists were Michael Dean, Managing Director, White Oak Trade and Specialty Finance (USA); Sean Shiels, Head Trader, Africa - Grains and Oilseeds, Export Trading Group; George Lo, Executive Head: Pan Africa China Banking, Standard Bank (South Africa); and Jean Craven, Joint-Chief Investment Officer, Barak Fund Management

Despite the global economic concerns, opportunities still remain for Africa to continue building momentum. These opportunities are not confined to looking outwards. Africa can do more to boost its internal trade, which lags behind other regions, but has been growing over the last couple of years as a result of an increasing consumer base with significant purchasing power.

According to a recent report in the 2016 edition of the *ICC Global Survey on Trade Finance* in 2014 intra-African merchandise exports were valued at US$98 billion. With total merchandise exports by Africa valued at US$555 billion, intra-Africa trade accounted for 17.7%. This reflects an upward trend of 10% from 2010. The panel of experienced industry professionals provided views on the opportunities and barriers to intra-Africa trade, financing Africa trade and how this is critical to an *Africa Stand Up* future.

The panellists started by discussing the challenges that Africa as a continent is experiencing in trade. Costs were identified as the biggest challenge as well as the lack of access to finance. This problem was illustrated by means of an example, whereby a borrower is provided with a facility by a financier, however the facility provided is only sufficient to finance the product in the warehouse and not the transit of the product to the required location.

The stringent regulatory requirements and policies applicable in some African countries are problematic. For example, due to the extensive documentation and cost implications at the respective border gates it is not unusual to find lines of trucks at the border gates, or not being able to transport maize procured in Zambia directly to Kenya or South Sudan without taking a detour to South Africa. Michael Dean then emphasised that some of the continents challenges are jurisdiction as well as regulations.

Factors such as the credit shortfall and the global credit shortfall estimated to be US$2 trillion were identified. George Lo noted that banks such as The Standard Bank of South Africa have positioned themselves as universal banks. He added that the banks are trying to improve the growth of trade in Africa by understanding the risks as well as the needs of the continent. Banks are sometimes faced with a lot of opportunities that are either bankable or unbankable. The challenge with unbankable opportunities is the transformation of these opportunities into bankable transactions.

Jean Craven added that another issue in relation to inter-regional trade in Africa is the volatility of currency. He provided an example of companies that invest in Africa, which raise money in dollars. He indicated that the problem lies with the local currencies as there are not sufficient tools to hedge out currency risks involved. Furthermore, these companies leave Africa and attend to problems

in their own countries and it is basically left to the Africans to take up investments.

The panellists moved on to discuss the warehousing system. One of the fundamental aspects of trade is the underlying value of the commodities. One of the challenges encountered is how do you ensure that the items being financed, for example your maize or beans, are actually secured, as many financiers in such transactions are looking for certainty, should something go wrong.

Lodewyk Meyer indicated that the importance of warehouse legislation is sometimes overstated by the importance of being sure from a pure legal perspective that you do perfect your security, whether it is by means of a pledge or by registering your security. From a financiers perspective it is important that they know that they will be able to cover their loss. Michael emphasised that from their perspective it is being comfortable with the operator of the warehouse.

The panellists further looked at how the clusters in trade finance can reduce the risks of trading. From a finance point of view it seems that these clusters don’t provide the necessary comfort of doing business in Africa. Jean added that the guidelines are there, however, the problem seems to be the implementation. It was suggested that the best option is to familiarise yourself with the policies in place and to physically be in that particular country to understand the workings of that country. Furthermore, there is a need for a collaboration of providers in liquidity with African companies, as 99.8% of the investors are non-Africans.

Towards the end of the discussion the panellists gave their views on the opportunities as well as the growth in Africa. It was suggested that Africans need to stand up as there is a lot of trade opportunities within the continent. Furthermore, problems that emanate from Africa cannot simply be discussed in places like New York or Johannesburg, stakeholders need to be on the ground trying to understand the cultures of these countries in order to get a better understanding of their capital markets.

Michael further emphasised that Africans need to understand their own capital markets. He provided an example of a company in Zambia that understood the trading of its business but did not know how to grow the business. This made it difficult for Michael as a potential investor to work out a transaction structure for this business, to enable it to grow. These are common problems encountered by investors.

There are many opportunities to be found in Africa especially with the growing middle class. In seeking such opportunities stakeholders should not only be focused on development outside the African continent, stakeholders should instead do more to boost internal trade in Africa.

Breakout Session 1

Mining and natural resources – A view inside the crystal ball

The session was chaired by Warren Beech, partner at Hogan Lovells (South Africa). The panellists were Paul Miller, Investment Banker Mining Finance, Nedbank CIB; Claude Baissac, Managing Director, Eunomix; Ria Sanz, Executive Vice President: Group Legal, Commercial and Governance, AngloGold Ashanti; Bonang Mohale, CEO, Business Leadership South Africa (BLSA); and Peter Major, Director: Mining, Cadiz Corporate Solutions.

The panellists were asked whether the African mining and natural resources sector has become uninvestable. Here are their views:

According to Peter Major, South Africa alone contributes to approximately half of the world's natural resources, and for that reason South Africa is still a very prominent contributor to the global resource market.

Peter stated that South Africa is the only country in the world, at the moment, that does not view the current gold price favourably and yet South Africa produces almost half the world's gold. This is a clear indicator that the South African mining industry has gone from the most efficient mining industry in the world, to one facing many challenges today.

He said the South African mining industry needs policy changes. Reference was made to the mining industries of other African countries such as the Democratic Republic of Congo and Zambia. In both these countries a positive change in policies resulted in increased productivity in the mining industries of each country.

Peter concluded by stating that a change in policy is absolutely crucial as the right policies and their efficient implementation attract investment. For the South African mining industry to attract more investment, policies relating to the mining industry need to change.

Bonang Mohale asked the question of how balance is achieved in terms of managing transformation requirements, policy uncertainty, regulation of legislation and promoting growth and favourable investment in the South African mining industry.

He stated that investors need policy certainty and, currently, in South Africa the policy makers don't know where they stand, and that the economic position is highly uncertain.

Bonang emphasised that regulatory uncertainty and policy indecisiveness is South Africa's biggest flaw. Once these flaws are rectified, the industry will have a better outlook and attract the foreign investment it needs.

Paul Miller was of the view that there are still opportunities for mining in Africa. However, in South Africa our biggest challenges are the cost of electricity and the overall cost of mining, which has increased substantially. Furthermore uncertainty is a cost in itself because uncertainty creates risk.

Politicians (government) either do not realise or may be ignorant to the fact that uncertainty is a cost in the mining industry. Risk is a cost that has pushed up the cost of capital considerably. Paul stated that we have to attract capital in order to build mines and in order for the current mines to operate profitably.

South Africa is currently losing the battle to attract capital. A recent study was done at Nedbank to look at where the capital raising initiatives are. The study revealed that the money comes from outside of Africa and has to be attracted into South Africa. For example, the study revealed that Australia is the single biggest source of investment capital in South Africa.

Therefore it is imperative that all risks are managed, especially the risk of uncertainty, in order to attract investment into the South African mining industry.

Ria Sanz describes the mining industry as a capital intensive, long-term business that requires policy certainty. Money no longer “comes by itself” into the South African mining industry, it has to be brought in, which means investors have to be attracted to the industry.

Ria also stated that government needs to remember that companies that make good profits, pay higher taxes to the government. Therefore if companies don’t make profit, they become unable to pay taxes.

Not so long ago South Africa ranked well in terms of the global mining sector; South Africa now is the third least attractive mining sector to invest in.

Ria looked at one of the reasons for this “downgrade” and the first problem raised was uncertain legislation. At the moment the mining industry and the legislation are at loggerheads. Mining Charter 3 and all its potential implications threaten the sanctity of ownership, and if there is no sanctity of ownership, it makes it impossible to attract investment.

In order to remedy this problem Ria stated that government can restore trust by either amending or abandoning Mining Charter 3. Furthermore it can embark on good faith consultations with all relevant stakeholders in the mining industry to collectively solve the issues the industry faces.

Claude Baissac had a more matter-of-fact approach to the key question at hand. He was of the view that government and the politicians know exactly what needs to be done to help the South African mining industry; however it’s not being done because it’s not politically convenient for “the people at the top”.

He stated that the people need to say no to corruption and not be afraid to take on the people allowing the corruption to take place. Claude is of the view that unless a change of thinking occurs at policy level and regulatory level, then the mining industry will continue to become weaker and weaker.

In conclusion, the panellists were still very optimistic of Africa as a continent to invest in; however they did outline the constraints that inhibit the South African mining industry from flourishing and the measures that need to be taken to make the country’s mining industry more investable.

Breakout Session 2

Reviving M&A in Africa: A triumph of hope over experience?

The session was chaired by Warren Drue, partner at Hogan Lovells (South Africa). The panellists were Dawie van der Merwe, Director, Independent Advisory (Pty)Ltd; Konrad Reuss, Managing Director & Regional Manager Africa, S&P Global Ratings; Claas Kuehnemann, Acting Managing Director, SAP Africa; and Avrom Krengel, Group Legal Counsel, Investec Bank.

In light of the fact that investors seem loathe to invest, not only in South Africa but the rest of the continent, does Africa remain an attractive destination for overseas investors?

Avrom Krengel stated that it is important to differentiate South Africa from Africa. In the first quarter of 2017, the outlook was positive despite the overhang from the [ratings] debacle, but we saw a recovery in the commodity prices.

However, following the cabinet reshuffle, investors pulled back indicating that corporates do not have an appetite for the political risk. The sentiment is not expected to change much until the ANC elective conference in December this year.

Talking broadly in respect of Africa, he highlighted that although there is a lot of optimism, it is curtailed by uncertainty in commodity prices as well as regulatory uncertainty. The "good" companies operating with Africa are attracting support and investment and there is a sense that "sanity is returning to the African continent".

Konrad Reuss noted that during the last few years sub-Saharan Africa has experienced headwinds, such as the drop in the commodity and oil prices. He pointed to the fact that everyone is contrasting present day Africa against what sub-Saharan Africa looked like 20 years ago where exchange rates and interest rates were increasing and banks were experiencing a lot of defaults in respect of their loans, but this is not the case today. He further noted that although the strengthening within policies and regulations has led to investor confidence, he does not believe it is enough.

Konrad also said that the concept of "Africa rising" came and went. Africa can be defined as comprising of leaders and laggers, winners and losers. In this regard, we have noted that investment is advanced into economies that are stable, show growth and have certainty in respect of their policies. It is incumbent on policy makers to ensure that their countries are attractive to investors. The investment is going to go to the fast-growing companies.

Claas Kuehnemann concurred with the comments made in respect of the drop in oil and commodity prices. However, he stated that the attractiveness of investment is different per sector and even more different within the sectors. He warned that it is imperative that companies continue to invest in technology as it remains fundamental to economic growth.

Emerging markets are cyclical in nature and global holding companies, which ordinarily expect a consistent return on their investment, must be realistic in respect of what returns can be realised within Africa. We have noted a direct positive correlation between the amount of time which investors remain within Africa and the quantum of the benefits they can derive.

Dawie van der Merwe commented that companies become distressed even within good economic times. However, the political uncertainty makes the distress even more acute. There is obviously a greater risk aversion in respect of the acquisition of distressed assets. This position needs to be understood against the fact that distressed assets need to be rectified in order to get the economy going again.

With Kenya having recently gone through an election that was overturned by the Supreme Court, from the view of a global ratings agency what is the opinion on the overturning of a general election, notwithstanding the fact that the rule of law was upheld?

Konrad stated that Kenya is a conundrum, especially when considering the importance of

rule of law vis-à-vis an election being overturned. Furthermore, it poses the question of what form of government is the best form of government. He made the example of the relatively smooth democratic election in Nigeria, notwithstanding the fact that the president who was elected was very bad for the economy.

He then contrasted the Nigerian situation against the position in Rwanda where one man has been in charge for an extended period of time - referring the latter instance as a "one man risk" where as long as the one man serves the country and makes the right decisions, it would be fine. He however pointed out that the people of the country may require more democratic processes and freedoms.

Going back to Kenya, Konrad stated that the country represents a better rating than most African countries with its B+ investment grade. The country has a fairly diversified and competitive economy. He admits that the Supreme Court ruling was a positive turn of events, illustrating that there is a strong and independent judiciary which works, and that has the appetite to make unpopular decisions. On a broad institutional analysis, he argues that this represents a good outlook. On the other hand though, he pointed out the absence or lack of a strong civil service in Kenya, which he believes may hold back the investment and consequently reduce the GDP.

Lastly, he importantly points to a consideration that Kenya will now be required to re-run a presidential election campaign that was not budgeted for, which would lead to further uncertainty. In addition to that, there is the chance of post-election violence, especially if a narrow victory is realised.

Avrom was of the view that the Kenyan judgment is encouraging - notwithstanding the fact that there may be a short-term fallout. Where Africa comes short is that it makes the mistake of creating a "ruler for life". He made the observation that certain constituencies are tribal based and without the rule of law, we would be back to square one. An independent judiciary coupled with effective and independent law enforcement results in stability within a country.

Besides political sensitivity and general volatility across the continent, there are many barriers to entry for investors to consider when making acquisitions on the continent; BEE in the South African context, and indigenisation in the broader African context. Do these policies frighten off investors? Do they understand the imperative and need for them?

Claas was of the view that indigenisation laws are very pronounced within South Africa (in the form of BEE) and less in Africa. He further pointed out that it takes a lot of time to explain to foreign holding companies how BEE and indigenisation laws must be implemented, even though the principles and reasons behind such laws are well understood. He explained that not only are implications and implementation of indigenisation laws difficult, especially when making an investment case, but also worth noting that the actual application of such legislation very differently within African countries. This also leads to uncertainty.

The requirements of BEE and indigenisation can become onerous for the investor.

With business rescue having created a new element of M&A activity in South Africa for investors who can pick up distressed assets, and despite the tough economic conditions, activity in the rescue sector seems relatively flat as banks seem more intent on dealing with distressed assets internally as opposed to proceeding to business rescue. Can business rescue as a model be applied across the continent? Is it a model that's working? And has there been interest from international investors in picking up the assets?

Dawie noted that there has been an upward trend in the effectiveness of business rescue. As with all legislation, time is needed in order for same to gain traction. The trend of slow payers within the financial community in respect of adoption of business rescue procedures is also starting to change. He explained that it will take a long time to extrapolate the concept of business rescue into Africa, however the World Bank had attempted to do so. This represents an opportunity for law firms to establish a presence and expertise within Africa.

He further noted that large internationals are very interested in acquiring distressed assets if these appear to be able to deliver returns. Lastly, he added that business rescue is just another form of M&A.

Avrom stated that Investec always tries to deal with distressed assets internally, even though many banks dealing with distressed assets may look towards business rescue proceedings. He explained that from a bank's perspective, the key is always post-commencement financing. If a bank does not believe an asset will generate a return, or at least a better payout for creditors, the banks will not even consider becoming involved with a distressed asset.

With all of the trouble going on in the world, is Africa even on the radar?

Claas stated that with all of the trouble going on elsewhere in the world, Africa is beginning to look like a relatively safe haven. A lot of opportunity exists for Africa when the rest of the world is under pressure economically and politically.

Konrad explained that Africa has gone through a commodity cycle, with the oil price looking to remain stable at US$50 per barrel. The key challenge relates to credit metrics, which all still remain very volatile. The metrics are informed by commodity and oil prices wherein if we see changes in such prices, within two to three years we can recognise the change in the current account from a surplus to a deficit and a change from growth to recession. He further stated that Africa is still vulnerable from a credit metrics point of view. The growth rates were high at some point, then the recession happened. He concluded that African leaders should implement reforms to guard against the vulnerability that exists in commodity and oil price fluctuations.

He pointed out the fact that there's reasonable volatility, but from a market perspective, the African markets represent easy liquidity and have historically enjoyed low interest rates. The bond markets are still open for African issuers, but this position becomes somewhat uncertain if the U.S. Federal Reserve decides to increase interest rates.

Konrad warned that investors don't always understand the African credit history and instead chase after the yield. There's a need to understand this history more, but Africa remains an attractive investment for those that are well informed. People also need to be cognisant of credit risk.

Are things as dire as they seem? What is the medium-term outlook?

Avrom held the view that South Africa's macro-economic environment should be doing much better than we are currently doing. This is because the country enjoys a very sophisticated banking environment but is overshadowed by a political cloud. But it's the noise around the politics that's more of a detractor. South Africa has strong opposition parties, free press and a well-functioning democracy.

> "A lot of opportunity exists for Africa when the rest of the world is under pressure economically and politically."
>
> *Claas Kuehnemann*

According to him, the next two years are as pivotal as the years from 1990 to 1994.

He further expressed that if the country sees a positive result emanating from the ANC elective conference in December, confidence will return to the country very quickly.

For Konrad, from an international investor perspective, Russia, Turkey, Egypt and Brazil are seen as more attractive emerging markets in which to invest. International investors believe that the worst is behind such countries, however in South Africa, they believe that the worst is still to come. A close eye is being kept on the fiscal performance. This results in a position where investors do not have confidence.

He further stated that as it stands, South Africa was downgraded to sub-investment grade and the outlook has remained at negative. The big challenge is for South Africa not to go the route of Brazil or Venezuela.

"Nobody in the outside world gives South Africa the benefit of the doubt". From a ratings perspective, he described the position as one of rising stars and fallen angels. At the moment South Africa is considered a fallen angel. Korea is an example of a rising star that managed to move away from sub-investment grade in merely thirteen months. This must be contrasted with Indonesia that took 20 years to move from sub-investment grade to investment grade. On average we note a turnaround of seven to eight years. This being said, he added that there is no fixed answer as to how long it will take for South Africa to become investment grade again.

Claas stated that the next two years in South Africa would represent a watershed moment that must be closely watched and we can only hope that we have seen the worst. He concluded by saying, "We'll see what happens in December" (at the ANC elective conference).

Dawie held the view that the South African public is hungry for a glimmer of hope and if things do turn around, there will be countless opportunities for success.

Closing comments on what Africa looks like in 2025

Avrom highlighted the fact that is important to note that Africa comprises 54 very different countries. However, he states that from looking at the continent as a whole with reference to what it was, one can safely say that things are looking very positive.

Konrad envisioned the South Africa in 2025 as one with a reformed government - having just made it back to investment grade status with the credit rating of the rest of Africa improving towards investment grade.

For Claas, 2025 represented a very positive position. He believes that there will be countless technology opportunities. There will be the need for continued skills development and good governance to form a critical part of the chances of success of Africa.

Dawie expressed the view that Africa needed to decide where it wants to go. One of the key objectives to Africa's success would be the beneficiation of its own resources.

Straight Talk: Views on unlocking consumer insights to unlock Africa

Alvin Visser, an independent consumer insights specialist

Alvin Visser is an expert in ethnographic research - a research method that ultimately allows consumer, brand and category truths to emerge at the coalface, giving companies critical strategic advantage to better know the very things they did not even know they should know.

He has conceptualised, planned and personally orchestrated full on-the-ground ethnographic Africa consumer research campaigns that have effectively built and anchored brands, better understood categories/territories, informed market segmentations and also led to ground-breaking innovation. Alvin has worked on projects in South Africa and Africa for multi-national corporates such as Unilever, Diageo, Woolworths, Standard Bank, BATSA, PepsiCo, Engen, J&J, Heineken and GSK, among a multitude of others.

He gave examples on how to use consumer ethnography by observing, interacting and mining for strategic localised clues. How one-on-one connections are essential to develop rapport and trust, and allow the consumer should dictate what's important to him or her.

Alvin explained why a consumer-centric approach is so critical to success in Africa. One has to tread carefully and park all Eurocentric boardroom arrogance. He further unpacked how meeting consumers' *real* needs means knowing everything about how your market acts, negotiates, thinks, dreams, believes, worries and purchases is the only way to ensure success.

The consumer's truth is reality. What causes firework displays in South Africa can sink in Tanzania. What works in Nigeria is not certain to work next door in Ghana. What might work in Lagos falls apart in Kano. What causes laughter in the UK can cause offence in Ethiopia.

He closed with tips on how to win in Africa:

- Make no assumptions - Research every aspect, be mindful of country specifics.
- Thrive in unpredictability and complexity - Be agile, constantly innovating, quick course corrections.
- Be consumer-centric - Smart analytics are vital but boardroom logic is the runway to failure and frustration; consumer insight fuels strategy that wins.

> "A consumer-centric approach is critical to success in Africa."

Breakout Session 3

Infrastructure and projects – Developing now for a brighter future

The session was chaired by Anina Boshoff, partner at Hogan Lovells (South Africa). The panellists were Hildabertha Kundu, Deal Originator, Development Bank of Southern Africa; Simon Ardonceau, Head of Strategic Consulting Sub-Saharan Africa, JLL; Fadzai Nyamasve, Strategy and Growth Director, AECOM Africa; and Jonathan Berman, Managing Director, Fieldstone Africa.

According to research conducted by the World Bank, there is a growing gap between the cost of infrastructure required in sub-Saharan Africa and the resources available to ensure that it is delivered efficiently and cost-effectively.

Only two thirds of Africans have access to power; just over a third have access to roads and less than 4% of the global annual infrastructure spend finds its way to sub-Saharan Africa. Given that the annual "infrastructure gap" is estimated to be around US$100 billion per annum and most African governments simply do not have additional resources, the infrastructure panel at our 2017 Johannesburg Africa Forum focused their discussion on some of the flaws of the traditional thinking around infrastructure development in Africa.

The panel agreed that traditional notions and expectations around the role of government versus the role of developmental agencies and private players (including funders and equity investors) were problematic. There was consensus that the assumption that government should be responsible to provide infrastructure, or even that government should be exclusively responsible to provide certain types of infrastructure, had to be abolished in favour of innovation and cooperation among governments and investors in Africa.

Exploring the issue further, Jonathan Berman noted that history may be to blame for the perception that the state should be responsible for the financing of infrastructure and the delivery of particular services. He remarked that this might not have been a problem if states had the capacity to fund all infrastructure development and all public services. However, given the current backlog and the growing "infrastructure gap", no state in sub-Saharan Africa has this capacity.

Expanding further on perception versus reality, he submitted that private investors have generally had very good experiences in Africa. He stressed that the problem was not related to risk of return and that many private equity investors were demanding lower returns at a time when the risks were supposedly increasing. This trend shows that, while there is not enough investment in sub-Saharan Africa yet, certain private sector investors had woken up to the opportunities in Africa. More often than not, these opportunities involve cooperation between private players and national government.

Fadzai Nyamasve expressed the view that environmental issues, government mandates in relation to social aspects, and implementation delays were the main challenges to the successful delivery of projects that involve African governments. She stated that the procurement processes that had to be followed were not only time consuming, but also increased project costs. However, she noted that procurement processes could be improved and costs reduced with improved planning and project preparation, again emphasising the importance of working in partnership.

Standardisation as a means of improving efficiencies and reducing costs was identified as a possible solution but not a panacea. Hildabertha Kundu, referring to the Kenyan procurement framework, argued in favour of regional standardisation and the benefits that can be (and have been) gained by countries like Uganda and Burundi when they borrowed from Kenya's existing regulatory framework.

Jonathan cautioned that standardisation is more suited to some jurisdictions and industries than others. He noted in particular that the benefits of standardisation can only be realised when there is an adequate number of projects that are implemented based on an agreed standard or approach. He indicated that, where standardisation does work, it results in projects being completed in a shorter time frame and reiterated that deals taking too long to implement was a key concern for investors in Africa.

The most promising sector for standardisation appears to be renewable energy where the size of viable projects is getting smaller and smaller. Renewable energy has also seen some interesting innovations, including from the likes of KfW Entwicklungsbank whose GET FiT programme has successfully supported a number of investments in the renewable energy space in Uganda and is now being rolled out to other countries in sub-Saharan Africa.

Standardisation is a key element of the GET FiT programme, which aims to assist East African nations in pursuing a climate resilient low-carbon development path that results in growth, poverty reduction and climate change mitigation.

Various panel members noted government capacity as a constraint to infrastructure development on the continent and concurred that standardisation (both in relation to legal documents and procurement processes) could address this.

However, Simon Ardonceau pointed out that governments and investors should be mindful of the fact that every country and every project is different. What works for one project or region may not work for another. Therefore, standardisation should allow for a flexible approach and acknowledge differences (including in requirements and expectations) among different countries.

When presented with the view that there is less room for innovation in infrastructure than other areas of development (given the bricks and mortar involved), Fadzai was quick to note that there is almost unlimited room for innovation on the design and engineering side of projects.

In addition, she argued that great gains are possible and are being achieved in how designs are carried out, again confirming the benefits of innovation and standardisation (including in the materials used for projects). However, she stated that while designs and construction materials are being standardised, execution skill and capacity remain constrained and that these issues (alongside labour-related issues) adversely impact the completion timelines of projects in sub-Saharan Africa.

This view was echoed by Hildabertha who noted, with reference to a 10,000 km road construction project in Kenya that took close to four years to take off, that African governments are not unwilling to innovate, but are often unable to, given their limited institutional capacity. She suggested that innovation, like many other things in Africa, would take time, especially in relation to the larger projects.

Jonathan noted the relative demand for equity investment and stated that competition had contributed to innovation in this space. While noting that much of the decline in debt finance had resulted from the response of international commercial banks to global rather than African issues, he was of the opinion that the debt funding to projects on the continent was lagging behind equity investments. He noted as a further possible reason for the comparative lag that development finance institutions, which were slow to innovate, had traditionally been the dominant debt funders in sub-Saharan Africa. Bucking the trend in this regard, Hildabertha noted that some of the most important recent innovations in infrastructure finance were introduced by development finance institutions in response to currency shortages and related liquidity issues in countries like Nigeria and Zimbabwe.

Bureaucracy, apart from laws and legal frameworks, was listed as an additional challenge, especially in relation to the implementation of public private partnerships. The panel felt that it was a major factor, not only slowing projects down, but also preventing them from getting off the ground. Sensible decision making and a well-run public sector were put forward as issues that could assist Africa in turning its fortunes around. Boldness and vision are also required from African governments, even if this results in the privatisation or the unbundling of certain state-owned utilities. Ethiopia, despite being one of the smallest and poorest countries in the region, was identified as a country that had led by example in this regard.

Finally, viewing Africa as an integrated continent while acknowledging regional and country-specific differences was considered important for infrastructure development. The panellists agreed that the exponential growth and development of the telecommunications sector in Africa (which includes regional and pan-African success stories in the infrastructure, services and technology) served as evidence that the continent can catch up with (and even surpass) other developing regions.

Breakout Session 4

New innovations: Digital disruption in Africa

The session was chaired by Andrew Skipper, partner and Head of Africa Practice, Hogan Lovells International LLP. The panellists were Eric Croeser, Director of Mining Partnerships, IoT.nxt; Grant Marais, CEO, VAST Networks; Toyosi Alabi, Partner, Olaniwun Ajayi LP; and Emmanuel Sinclair, COO, i-Pay Secure Payment (Pty) Ltd.

The session brought together a diverse panel of speakers, who are at the forefront of innovations in their respective fields. Grant Marais of VAST Networks is involved in the development and rolling-out of open-access Wi-Fi network infrastructure in South Africa. Emmanuel Sinclair of i-Pay provides financial technology (FinTech) solutions that make online payments more convenient and secure. Eric Croeser of IoT.nxt has created a platform that allows rapid deployment and businesses to action an Internet of Things (IoT) strategy with little or no disruption to existing operations. Toyosi Alabi of Olaniwun Ajayi LP assists her clients in navigating the legal complexities brought about by digital disruption in entertainment, media, leisure and intellectual property in Nigeria.

Andrew Skipper kicked off the session by giving an overview of the session's theme and stated that new innovations have opened a world of risk and opportunity. The panellists were thereafter given the opportunity to discuss the most important technological advances in their respective fields and how they see those innovations helping Africa.

Exponential organisations

Eric, fittingly, started the panel discussion by introducing to the audience the concept of exponential organisations and their potential for digital disruption. He explained that exponential organisations are characterised by the Six Ds:

- Digitisation
- Deceptive Growth
- Disruption
- Demonetisation
- Dematerialisation
- Democratisation.

The digitisation of technology is the first step that sets a chain of events into action that ultimately leads to the democratisation of technology. Eric explained that although growth and disruption may be deceptively slow to begin with, digitised technologies will ultimately improve at an exponential rate and costs will drop drastically. As digital technologies improve and costs drop, old physical technologies will be replaced by digital technologies and ultimately lead to the democratisation of the digitised technologies. Eric is of the view that Africa stands to benefit from developments in this regard, as the democratisation of technologies will remove existing barriers to entry. Of the Six Ds, "Demonetisation", "Dematerialisation" and "Democratisation" proved to be recurring themes throughout the session.

FinTech and Africa

Emmanuel took the discussion further by giving an overview of the innovations that i-Pay has brought to market through its online payment gateway service.

In particular, he spoke about the ways in which i-Pay's FinTech is allowing for more convenient and secure EFT payments that are less cumbersome than traditional EFT payments. In addition to the benefits and convenience for consumers, Emmanuel also highlighted the efficiencies and cost-saving synergies that have been realised by i-Pay's clients, through the automation of the EFT process. "Finger errors" have been reduced with the result that i-Pay's clients devote less resources to tasks such payments reconciliations of transactions allocated to suspense accounts.

Turning to FinTech in Africa, Emmanuel emphasised that reliance on cash in Africa is one of the biggest challenges that FinTech faces today. He went on to say that more than 80% of financial spend across Africa, is currently undertaken through means of cash transactions, and that the majority of the African population is still unbanked. According to Emmanuel, this is a result of lack of trust in regulators and the people's desire to retain control over their money.

Emmanuel pointed out that since 2011, significant amounts of money have been injected into the FinTech with US$7 billion being channelled to the African and Asian markets. However, and apart from "money wallets", the uptake of other FinTech technologies across Africa has been slow. Emmanuel was however optimistic that once the benefits of FinTech solutions are demonstrated, for example in markets such as Nigeria, that more of the unbanked population will be encouraged to bank. Emmanuel further emphasised the importance of partnerships with the incumbent banks to develop and roll-out FinTech solutions in Africa.

Timing and market entry

Grant provided more insight into the way certain technologies take off in some countries and not in others, with M-Pesa being a case in point. According to Grant, M-Pesa's success in East Africa can be attributed in part to the low banking penetration and limited ATM network in East Africa. M-Pesa's timing, according to Grant, was therefore central to its success in East-Africa, as M-Pesa served a particular need. In South Africa, which has a higher banking penetration and a trusted regulator, M-Pesa was not seen a "game changing technology". Grant further raised the point that it is important that technologies are properly taken to market. Grant used the failures of Nokia in properly taking products such as *push-email*, which was popularised by BlackBerry, as an example.

Entertainment and media in Nigeria

Toyosi explained that in her experience, digital disruption in entertainment and media has been positive and has brought about creativity, recognition and inclusion in Nigeria. The playing field has been levelled for all to test their creations. According to Toyosi, the proliferation of streaming services, digital concept sharing platforms and digital talent shows has allowed artists to gain recognition and has created new business opportunities. Toyosi said that "Nollywood", Nigeria's film industry, has embraced online content share platforms for the facilitation of content downloads and content streaming. According to Toyosi, YouTube has become a popular content sharing platform for movies in Nigeria. The growth in the Nigerian entertainment sector in the last few years has been driven by developments in the digital space.

Artificial intelligence (AI), machine learning (ML) and jobs

Eric shared his views on the future of the workplace following the adoption of AI and ML. He explained that he does not see AI and ML replacing employees, but believes that in future, employees will be augmented by AI and ML (that is "the augmented employee"). AI and/or ML will be allowed to process data free from human heuristics and biases and reduce the time between the event and action being taken by a human.

Education

Education was a recurring theme during the discussions. Grant explained that when VAST Networks rolled out its open-access Wi-Fi network infrastructure in two Gauteng townships, its goal was to implement a world-class network. He said that they could only make an impact in the two townships if the roll-out of the network was coupled with education regarding the internet. Grant is of the view that education regarding the internet and its outcome is of vital importance in ensuring that people are gainfully employed.

The closing keynote was delivered by Judge Mlambo, Judge President of the Gauteng Division of the High Court of South Africa.

The forum was closed by Andrew Skipper, Partner and Head of Africa Practice, Hogan Lovells International LLP.

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