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Local Content Policies In Minerals-Exporting Countries: The Case of Liberia

Introduction

The mining industry in Liberia has known a fast recovery and a rapid growth since the end of the civil war in 2003. The country currently exploits and exports gold, diamond, iron ore and cement, as well as petroleum resources and boasts a rich sub-soil, yet underdeveloped, in a variety of base metals (such as cobalt, lead, manganese, nickel, and tin) and industrial minerals (such as dolorite, granite, ilmenite, kyanite, phosphate rock, rutile, silica sand and sulphur).

Economic context

Liberia is a least developed country (LDC), with a per capita GNI of USD 370 per annum in 2014.[1] The country ranked 175th of 187 countries on the UN Human Development Index. In 2013, the mineral sector accounted for 11% of GDP in the country. However, the country's economic performance has been deeply affected by the Ebola outbreak in 2014 and 2015. The contribution of the sector is nevertheless forecasted to further grow, despite low commodity prices (USGS, 2015). The industry is a key driver of economic growth.

Liberia completed its accession to the WTO at the recent Nairobi WTO Ministerial Meeting in December 2015.

Overview of the Mining Sector

Due to the civil war that lasted until 2003, much of the mining activity in Liberia until recently remained small-scale and artisanal in nature. Since then, six iron ore concessions have been signed in Liberia, with an estimated value of USD 13 billion (Pailey and Siakor, 2015). Since the end of the war, the country managed to attract USD 7.6 billion in foreign direct investment particularly in the iron ore sector, accounting for 7% of the country's overall GDP and 57% of all tax revenue (LEITI, 2015). As a result, of this investment, performance of the mineral sector has been strong in recent years. The sector grew by 40% during 2013 alone, largely driven by increased output in the cement, diamond, and iron ore industries; export earnings from the mineral sector increased by 125% to USD 351.2 million in 2013 from USD 155.8 million in 2012 (Bermúdez-Lugo, 2014). Mineral export earnings in 2013 were dominated by iron ore (USD 314.2 million), followed by gold (USD 20.6 million) and diamonds (USD 17.4 million) (LEITI, 2015).

Over the last few years, exploration has been underway and a number of larger-scale mining projects are currently nearing the end of the development phase. Arcelormittal has a 70% stake in the Western Range Project, which is expected to increase production from 4.7 million metric tonnes in 2013 to 15 million tonnes in 2015. A new project being developed by China Union Mining in Bong is expected to produce 10 million metric tonnes of iron ore by the end of 2016. In the gold sector, Aureus Mining of Canada is also developing the New Liberty gold mine located 90 km north of Monrovia, which is expected to produce 119 000 ounces per year and would be the country's first commercial gold mine.

Local Content Requirements and Initiatives

Overall Policy Goals and Current Regulatory Frameworks

The overall regulatory framework for mining in Liberia is set out in the **Mining and Minerals Law 2000**, which was enacted during the presidency of Charles Taylor and replaced the Natural

[1] Liberia is a country of approximately 110 000km^2 and a population of 4.4 million people.

Resources Law of 1956. Under the law the Ministry of Lands, Mines and Energy (MLME) is the Government Agency responsible for the administration of the mineral sector, including granting mining licenses, and it has statutory oversight of the energy, land, minerals, and water sectors (LEITI, 2015). The Mining Law is currently under review and revisions are expected to align the Law with the Africa Mining Vision and other standards that are pertinent to extractive industries.

A better guide to current policy goals is provided in the **Mineral Policy of Liberia**, which was created in March 2010 to complement the Mining and Minerals Law, and "outlines the Government's expectations with regard to the contributions of all stakeholders in the sustainable development of Liberia's mineral resources" (Alix, 2014). The policy outlines Liberia's vision for mining and in particular highlights the goal of:

> *"A knowledge-driven mining sector that catalyses and contributes to the broad based growth and development of, and is fully integrated into, an African market through:*
>
> - *Down-stream linkages into mineral beneficiation and manufacturing;*
> - *Up-stream linkages into mining capital goods, consumables & services industries;*
> - *Side-stream linkages into infrastructure (power, logistics, communications, water) and skills & technology development (HRD and R&D);*
> - *Mutually beneficial partnerships between the state, the private sector, civil society, local communities and other stakeholders;*
> - *A vibrant, environmentally friendly and socially sustainable artisanal and small-scale mining sector;*
> - *A comprehensive knowledge of its mineral endowment."* (GoL, 2010)

Finally, the Mining Law 2000 has also been amended in 2004 to Liberia's adoption of reporting standards for diamonds under the United Nations' Kimberley Process Certification Scheme. Furthermore, Liberia was admitted as an EITI candidate country in 2008 and was the first African country to become EITI compliant in 2009. The Liberia Extractive Industry Transparency Initiative (LEITI) process covers four sectors in Liberia – mining, oil, forestry, and agriculture – and sets out requirements for the government to audit and publish information on revenue flows received from the extractive sector. To date six annual LEITI reports have been produced, most recently in December 2015 (covering the year ending June 2013).

The Mining and Minerals Law is currently under review and the main objectives of this reform are to (Alix, 2014):

- Harmonise the 2000 Mining Law with a number of laws, including the 2010 Public Procurement and Concession Act Law and the 2000 Revenue Code (as amended in 2011) and the 2009 Liberia Extractive Industries Transparency Initiative (LEITI) Law. Liberia joined the WTO in December 2015, and the new mining law will have to ensure conformity with the rules of the WTO.
- Switch from a concession-based system to a license-based system and reduce carve outs from the prevailing legislation that are currently available under the 2000 Mining Law on the basis of negotiated mineral development agreements for major projects.
- Increase local content requirements (while ensuring compatibility with international trade rules).
- Improve cooperation between the various governmental departments and agencies involved in the mining sector.

A number of technical inputs have been produced that might guide a future local content policy. Burger (2011) and World Bank (2015) both highlight strategies for encouraging greater participation of local firms in Liberia, including specific sector opportunities. For example World Bank (2015) held workshops with local firms and identify a list of 18 potential sectors including uniform production, food, safety equipment and construction services.

Burger (2011) also suggests that a strategic approach needs a number of elements including facilitating interactions between mining firms in order to continue to identify new opportunities, dissemination of information about tenders, and establishing robust monitoring mechanisms to ensure that local content polices are being followed.

Mineral Development Agreements (MDAs) are legally binding agreements between mining firms and the Government of Liberia. They are established in the Amended Mineral Law of Liberia. MDAs establish clear rules regarding local content requirements – essentially employment, training and procurement requirements. These are negotiated on a case-by-case basis, with each mining firm and targets and objectives are set according the jointly agreed criteria and conditions.

Other relevant policy frameworks

The Liberian Labour Practices Law establishes minimum labour standards throughout Liberia.[1] However, the Law, which excludes workers in mining concessions from minimum wage standards, contains a clause that allows mining firms to extend the workday to twelve hours and the work-week to seventy-two hours. Employees are however to be compensated "fifty percent above the normal rate" for work exceeding the normal workday.

Mineral licenses are regulated by the 2010 Public Procurement and Concession Act Law, which sets out a transparent and competitive system for the concessioning of known state mineral assets.

Mining concessions are also regulated by the Act Establishing the Environmental Protection Agency (EPA Act) and the Environmental Protection and Management Law (EPML). The EPML requires maximum participation by the people of Liberia in the management and decision-making processes related to the environment and natural resources through various stakeholder processes. Many provisions on international human rights conventions are enshrined through the EPA regulations, as are many additional rights afforded to Liberians.

Notes:

1. It sets the standard workday at eight hours and requires that any employer that extends the normal working hours notify the Ministry of Labor or a local labor inspector.

2. Firms operating concessions firms in Liberia are required to follow the Environmental Impact Assessment (EIA) process outlined in the 2002 EPA Act.

Source: SDI (2014).

Local Content Provisions within the Current Frameworks

General provisions

The main local content-related provisions under current legislation are found in Section 20 of the **Mining Law 2000**, which sets out provisions common to all mining licences. The Law states that:

> *"20.2: No operator or its contractor or subcontractor shall employ foreign unskilled labour. To the maximum extent feasible an operator or its contractor or subcontractor shall give preference and employ Liberians at all levels of their operations structure, particularly in skilled, technical, administrative, financial or managerial positions.*
>
> *20.3: Any and all operators, contractor or subcontractors shall provide on a continuing basis appropriate training for their Liberian employees, in order to qualify them for skilled, technical, administrative, financial or managerial positions"*

In addition on technology transfer "holders of mineral rights and their respective contractors and subcontractors shall conduct business in Liberia in such a way as to encourage the transfer of technology to Liberians to the fullest degree possible". Mining firms are also obliged under the Law to contribute to a Mineral Development Fund that administers various activities to help develop the sector.

With regards to employment, in an effort to encourage foreign investors to hire local labour, Section 75 of Title 18 of the **Liberian Codes of Laws** Revised in 1976, states that, except for administrative, supervisory, or technical positions, it is not allowed to hire a foreign employee unless the list of qualified Liberians had been exhausted or there is no qualified person on the list capable of performing the job. The employer would then have to report to the Minister of Labour that he is unable to find a suitable Liberian candidate, in which case, a special permit will be granted to hire the service of foreigner. Salaries given to the foreign employment would have to be the same as the one that would have been paid to a Liberian citizen in similar position, with equal competence or length of service (WTO, 2015).

A number of *investment incentives* are also provided for new investment activities under the Liberia Revenue Code of 2000 (amended in 2011).[2] Certified firms[3] are eligible for special investment incentives,[4] for a period of five years if the investment exceed USD 1 000 000 or, in the case of a business with 100% Liberian ownership, the capital invested exceeded USD 500 000. For large investments exceeding USD 10 million,[5] the tax incentives could go up to 15 years. To be eligible, firms need to inject new investments and operate in 15 priority areas,[6] including manufacturing of finished products having at least 60% local raw material content and capital invested exceeding USD 100 000), which may be applicable to the extractive sector.

Specific provisions found in Mining Development Agreements

As mentioned, specific MDAs set out detailed local content provisions. These relate to employment provisions, training and capacity building and local procurement.

Local procurement provisions require that mining firms and their "associates", which include contractors and suppliers of goods and services, give "*first preference, at equality of quality, delivery schedule and price to goods and services provided by Liberian citizens, subject to technical acceptability and commerciability"*.

A new section found in more recent agreements[7] on the use of "Liberian Goods and Services" states that firms must (i) give "*meaningful opportunities"* to Liberian firms to bid for contracts and (ii) "*to the maximum extent possible"* give preference when purchasing goods and services to those produced by Liberian firms (where the latter are defined as being those where Liberians are entitled to receive at least 60% of profits), provided that such goods are comparable to those obtainable from other sources. In addition, firms must submit a report on an annual basis on the extent to which the latter and its major contractors,[8] have acquired goods and services from preferred sources.

2 In particular under Chapter 1, Subchapter A, Section 16 (On Special Investment Incentives).

3 Companies certified by the Ministry of Finance and Development Planning upon recommendation by the Commission.

4 Special tax incentives (relevant to the extractives sector) are allowed for up to 100% of the qualifying cost with respect to the following: (i) 30% of the cost of equipment and machinery used in the activity in the year the asset was placed in service; (ii) 10% of the cost of the buildings and fixtures used in a manufacturing process that produced finished products (whether for domestic consumption or for export) having at least 60% local raw material content. In addition, the new investments that operated in the areas mentioned above are eligible for exemptions from GST and from import duty, for all medical and educational equipment and supplies purchased for the use directly in or in connection with the investment activity and intended to be placed in service within one year of purchase, and other assets, purchased for the use directly in the activity and intended to be placed in service immediately upon purchase.

5 These large investors are subject to approval by the President and the Legislature.

6 (i) tourism carried out through tourist resorts, hotels and cultural sites; (ii) manufacturing of finished products having at least 60% local raw material content; (iii) energy; (iv) hospitals and medical clinics (the capital invested exceeding USD 100 000); (v) low and medium income housing; (vi) air, sea, rail, and road transport infrastructure, including ports; (vii) high-impact information and communication technology; (viii) banking in the areas lacking financial services; (ix) poultry; (x) horticulture; (xi) exportation of sea products; (xii) agricultural food-crop cultivation and processing, including cocoa and coffee; (xiii) small- and medium-scale rubber and oil palm cultivation and processing; (xiv) manufacturing or assembly of finished products for export, provided that at least 70% of production was exported from Liberia within any 12-month period; and, (xv) waste management.

7 See for example 2011 Concession Agreement among the Government of the Republic of Liberia, Western Cluster Limited, Sesa Goa Limited, Bloom Fountain Limited and Elenilto Minerals and Mining LLC; the Mineral Development Agreement between the Government of the Republic of Liberia, China-Union (Hong Kong) Mining Company Limited and China-Union Investment (Liberia) Bong Mines Company Limited; 19 January 2009.

8 A "major contractor" is a contractor or a sub-contractor who received more than USD 200 000 directly or indirectly from the mining firm in a given financial year.

No specific quantitative targets are set and there is no defined type of goods and services that have to be sourced locally.

The **employment provisions** contained in the Mining and Minerals Law are repeated within individual exploration and development agreements. Generally, unskilled labour must be exclusively Liberian, and firms must give preferences to Liberians for specific job families (including skilled, financial, accounting, technical, administrative and managerial positions, provided equal qualifications). In more recent agreements, firms are required to ask their contractors and sub-contractors to comply with employment requirements with respect to their own employment practices.[9] No restrictions are made regarding senior management positions.[10]

In keeping with the 2010 Minerals Policy, mining development agreements have elaborated the provisions, by setting out more detailed processes and targets for achieving the explicit objective that the operation "should be conducted and managed primarily by citizens of Liberia". For example, in addition to providing a preference to Liberians in skilled positions, the new Agreements require parties to "*agree on progressive implementation of an employment schedule so as to cause citizens of Liberia to hold at least 30% of all management positions, including 30% of its ten most senior positions, within five years [...] and at least 70% of its all management positions, including 70% of its ten most senior positions, within ten years*".[11] In these new agreements, clear numerical targets are defined, to be met within a specific timeline (5 or 10 years).

Training clauses are also elaborated in more recent agreements[12] to include, for example, the obligation for firms to provide training to Liberians to qualify them for skilled, administrative, technical and managerial positions. Types of training include vocational training and on-the-job training, both in Liberia and abroad and scholarships for advanced study abroad (subject to operational needs and conditions).

To enable ***technology transfer***, firms may be asked to allow up to two professionals (such as geologists, mining engineers or surveyors) to participate in all aspects of technical operations as well as marketing activities.[13]

9 See for example, 2011 Concession Agreement among the Government of the Republic of Liberia, Western Cluster Limited, Sesa Goa Limited, Bloom Fountain Limited and Elenilto Minerals and Mining LLC; the Mineral Development Agreement between the Government of the Republic of Liberia, China-Union (Hong Kong) Mining Company Limited and China-Union Investment (Liberia) Bong Mines Company Limited; 19 January 2009.

10 See for example the 2005 Agreement between the Republic of Liberia and Mittal Steel.

11 See for example the 2011 Concession Agreement among the Government of the Republic of Liberia, Western Cluster Limited, Sesa Goa Limited, Bloom Fountain Limited and Elenilto Minerals and Mining LLC; the Mineral Development Agreement between the Government of the Republic of Liberia, China-Union (Hong Kong) Mining Company Limited and China-Union Investment (Liberia) Bong Mines Company Limited; 19 January 2009.

12 Such as the Agreement signed in 2005 between the Republic of Liberia and Mittal Steel.

13 See for example, Article XII regarding Employment and Secondment of the 2005 Agreement signed with Mittal Steel.

Table 1. Summary of LCPs applicable in Liberia

Type of Requirements	Details of requirements	Applicability in Liberia	Relevant legal framework
Numerical requirements	Compulsory requirement prohibiting employment of foreign labour in unskilled positions	Mining operators are not allowed to employ foreign unskilled labour.	Mining and Minerals Law 2000; MDAs
	Requirement to employ % of local labour in skilled positions	The Mining Law states that a preference in skilled / technical /managerial positions should be given to Liberians. This is compulsory. Recent Mining Development Agreements typically state that firms must submit a plan to ensure that 30 per cent of such positions are filled by Liberians after five years, and 70 per cent after 10 years.	Mining and Minerals Law 2000 and Individual Mining Development Agreements
Requirements not based on specific targets			
Local sourcing of goods and services	Firms to source inputs from domestic suppliers only if available on a competitive basis	Firms must 'to the maximum extent possible' give a preference when purchasing goods and services to those produced by Liberian firms (where the latter are defined as being those where Liberians are entitled to receive at least 60 per cent of profits), provided that such goods are comparable to those obtainable from other sources.	Individual Mining Development Agreements
Reporting and justification	Mining firms to report on preferential treatment provisions of Mining Development Agreements	Firms typically must provide an annual report on the extent to which they are meeting 'best-endeavour' clauses on sourcing Liberian goods and services	Individual Mining Development Agreements
		Firms meeting a determined activity threshold are requested to provide information on employment and taxation, on a voluntary basis	LEITI Act 2009
Capability and knowledge development	Requirement for the training of local labour or certification of local suppliers	The Mining Law states that training should be provide to enable Liberians to qualify for skilled / technical /managerial positions. Recent Mining Development Agreements typically set out instruments (e.g. overseas scholarships, donations to local universities) to achieve this, where necessary and operationally possible.	Mining and Minerals Law 2000 and Individual Mining Development Agreements
R&D contribution and transfer of technology	Firms required to transfer technology to local firms	Firms must conduct business 'in such a way as to encourage technology transfer'	Mining and Mineral Law 2000
	Firms required to carry out some levels of R&D locally	Up to 2 professionals, including geologists, mining engineers, surveyors etc. must participate in technical aspects of operations as well as marketing activities Firms are obliged to contribute to a Mining Development Fund	MDAs

Source: Adapted from Ramdoo, 2015b.

Public-Private Partnerships

In the absence of a comprehensive local content framework, one notable attempt to forge partnerships between local firms (particularly SMEs) and larger mining firms has been through the USAID-funded Sustainable Marketplace Initiative Liberia (SMI-L) project. The project aims specifically at "building the capacity of small and medium-sized enterprises (SMEs) and breaking down information barriers preventing local suppliers from accessing business opportunities" (Musinamwana and Casavant, 2014). It has produced a number of useful outputs including:

- A Supplier Directory containing more than 3 300 profiles of local firms, searchable on the internet by sector and location.
- Tender Distribution: disseminating tender announcements to local suppliers via SMS, email and on the Building Markets' website.
- Business Matchmaking: helping international buyers identify cost-competitive and high-quality domestic products and services by request and establishing relationships between buyers and local businesses at networking events.

- Training for local businesses on contracting requirements, international standards and customer service
- Market research and communications: promotes local procurement by identifying opportunities and challenges to local sourcing.

According to project reports since April 2012 SMI-L has supported local businesses to win over USD 33.9 million in contracts and create 1 149 jobs.

Main properties

In Liberia, investment in large mining projects is very recent and the design of an appropriate policy framework is still in progress. The overall framework set out in the Mining and Mineral Law 2000 is being revised and in the meantime has been overtaken by the practices contained within specific Mining Development Agreements (MDAs), negotiated individually with investors.

Observers highlight the need for horizontal linkages between mining and the broader economy, notably through much needed and coordinated infrastructure investment (see for e.g. Kaplan et al., 2012). It is suggested that given the large infrastructure investments being made as a result of mega mining projects, there is an opportunity to promote growth corridors, with the aim of triggering knock-on effects for employment and overall economic development.

Under current legislation, many aspects of local content policies can be described as "best endeavour". In terms of procurement, for example, preference should be given to Liberian suppliers if they are competitive in terms of price and quality. The definition of Liberian firms is quite clear and is specified as a firm where 60% of profits go to Liberians.

In terms of employment requirements, targets are specified although they may be difficult to adhere to as regards skilled positions. There is an obligation to hire Liberians for all unskilled positions. For skilled positions, many recent MDAs state that firms must submit a plan to ensure that 30% are filled by Liberians after five years, and 70% after 10 years. Some evidence suggests that compliance mechanisms are not fully operational and that many firms do not meet these obligations (SDI, 2014).

More Information

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For further information on our work on trade in raw materials, contact:
Jane Korinek, OECD Trade Policy Analyst
Jane.korinek@oecd.org

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