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

Introduction

Mozambique has a vast, untapped potential of minerals and metals and has attracted significant foreign direct investment in recent years. Its coal potential as well as vast reserves of natural gas have been particularly attractive. It is estimated that by 2032, natural resources, in particular coal and gas, could contribute up to USD 9 billion in revenues, should the demand from India and China continue to grow (CGA, 2014).

Economic context

Over the last 20 years, Mozambique was one of the fastest growing economies in sub-Saharan, with average annual real GDP growth of 8% (WB, 2015). This strong performance was a combined result of substantial structural reforms, sound macroeconomic policies, a favourable external environment and the discovery and exploitation of natural resources.

While coal and other minerals are growing industries, Mozambique is primarily an agricultural economy, with the production of cash crops such as cotton, copra (coconut product), tea, sugar, and cashew nuts. The sector accounts for 27% of GDP (WB, 2015) and 79% of total employment (UN, 2013). The manufacturing sector accounted for 10.4% of GDP in 2014, down from 16% in the early 2000s (WB, 2015). Although the manufacturing base as a whole is quite weak, major industrial operations include aluminium production, which makes up 50% of the country's exports (IMF, 2014). The share of the services sector was estimated at 53% of GDP for the period 2010-14 (WB, 2015).

Despite significant mineral resources and recent large findings of natural gas, the extractive sector remains largely untapped, with a low contribution to the economy. The contribution of the mining sector is expected to increase from 1.5% of GDP in 2011 to 2.9% of GDP in 2017 (KPMG, 2013).

Despite significant progress, numerous challenges remain to be addressed. First, there has been very little structural transformation in the economy. The share of the manufacturing sector actually went down quite significantly in recent years - 10.4% for the period 2010-14, compared to 16% for the period 2000-04 (World Bank, 2015). Rapid growth has not translated into significant poverty reduction. The emergence of natural resources and associated economic rents has exacerbated governance challenges. Capacity-building needs are pervasive, hard and soft infrastructure gaps still need to be filled, access to finance, in particular for SMEs remains a structural challenge and reforms need to continue to improve the overall business climate.

The mining sector in Mozambique

Mozambique is endowed with a large and diverse potential of mineral resources and hydrocarbons. This potential includes significant reserves of coal (estimated at 20 billion tonnes), heavy sands, metals such as iron, nickel, copper, titanium, manganese tantalum, tin, niobium, bauxite, chrome, other minerals such as fluorite, graphite, ornamental rocks (such as marble and granite), precious metals such as gold, silver and precious and semi-precious gems and stones, and building materials, among others.

The vast reserves of natural gas discovered offshore in the Rovuma Basin, which now adds the currently exploited gas reserves in the Mozambique Basin, has the potential to turn Mozambique into one of the countries with the largest reserves of natural gas in the world.

Artisanal and small scale mining (ASM), particularly for gold and precious and semi-precious stones, and ceramic production have significantly increased in the last decade. To better manage these activities, the Government has designated and reshaped certain mining areas and formalised a number of mining associations. It has also made available environmentally sound mining techniques and channelled technical and social support to the ASM mining operators.

Local content policies: legal frameworks and practical applications

Policy objectives

The dynamic extractive sector has contributed considerably to the rapid growth in Mozambique since the end of the civil war. In this context, the Government revamped the legal and regulatory frameworks to regulate petroleum and mining activities in order to ensure that operations would bring value to the country.

The discovery of significant coal reserves has prompted the Government to re-assess the regime applicable to mining operations. In this context and to remain consistent with the approach already taken under the 2011 Mega Projects Law and the recently enacted Petroleum Law, a new Mining Law was enacted in 2014.[1] The new regime is said to be overall more favourable to Mozambique and to Mozambicans (Shearman and Sterling, 2014).

In addition, more broadly, a Mineral Resources Policy and Strategy was approved in 2013 to improve the geological knowledge.[2] This strategic document sets the general policy orientation to turn the mineral resources into drivers of industrialisation, diversification and broader economic transformation. To address the skills gaps and shortages, a strategy for Training Human Resources for the Mineral Resource Sector has been designed for 2010-2020, to respond to the growing demand of the extractive industry for the entire chain of mining and petroleum activity.

Although Mozambique does not legally define what it means by "local content", LCPs are at the core of this strategy in an attempt to increase the participation of local stakeholders and to maximize benefits for the local economy. Several priority areas have been identified where mining firms are required to make special efforts to increase local participation. There is no restriction on foreign ownership on mining titles and rights for large projects, provided all corporate entities are registered according to the Mozambican laws. These corporate entities can be held by foreign capital.

Legal and Regulatory Frameworks

Mining activities in Mozambique are regulated by a number of legal instruments, as summarized in Box 1. However, the primary legislation governing the mining sector is the Mining Law No. 20/2014, passed on 18 August 2014. The 2014 Mining Law has been designed to respond to the country's current economic situation.[3] It first seeks to guarantee and safeguard national interests with a view to maximizing benefits for the Government and the people. Furthermore, the legislation seeks to ensure greater competitiveness and transparency, preserve the environment, guarantee the protection of rights and define the obligations of mining rights holders.

The 2014 Mining Law focuses in particular on the following:

1. The promotion of local development and participation of local actors in the mining sector;

2. More stringent requirements on undertakings involved in mining operations. For instance, the Law requires that the acquisition by mineral rights holders of goods and services above a certain value should be subject to public procurement procedures. In selecting the best tender, preference will be given to local products and services;

[1] Mining Law No 20/2014 of August 18, 2014 replaced the Mining Law 14/2002 of June 2002. The Mining Law expressly excludes oil, natural gas, methane gas and natural gas from its scope. Hydrocarbons are governed by the new Petroleum Law.

[2] This includes mineral resources in the soil and sub-soil, in the inland waters, in the territorial sea, on the continental shelf, and in the Exclusive Economic Zone where, in accordance with international law, the state has sovereign rights and jurisdiction

[3] The Law lays down the general principles for the use and exploitation of mineral resources, access to and the exercise of prospecting and research activities, development and production, processing and sale of mining products, including mineral water.

3. The expansion of the scope of activities regulated by the legislation;
4. The position of the State has been strengthened, through the establishment of regulatory and supervisory entities for the sector to monitor implementation of obligations.

Box 1. Key policy and legal frameworks relevant to the mining sector in Mozambique

Mineral Resources Policy and Strategy, 2013: To improve knowledge of the mineral resources in the soil and sub-soil and to use mineral resources for industrialisation and development, diversification and economic transformation

Strategy for Training Human Resources for the Mineral Resource Sector, 2010-2020: To endow the country with skilled and specialist human resources, responding to the growing demand of the extractive industry for the entire chain of mining and petroleum activity;

Law no. 20/2014, of 18 August: Mining Law

Law no. 28/2014, of 23 September: Establishes the Specific Taxation and Fiscal Benefits Regime for Mining

Law no. 11/2007, of 27 June: Law on Mining Taxes

Law nº 15/2011 of 10 August 2011: Law on Public-Private Partnerships (PPP), Large Scale Enterprises and Business Concessions (Mega-project law)

Law No. 23/2007, of 1 August 2007: The Labour Law

Law nº 19/97, of 1 October 1997: The Land Law

Law nº 20/97, of 1 October 1997: The Environmental Law

Resolution no. 21/2014, of 16 May: Approves the Business Social Responsibility Policy for the Mineral Resources Extractive Industry

Decree no. 26/2004, of 20 August: Environmental Regulations for Mining

Decree nº 16/2012 of 4 of June: Regulations on Law on the Public-Private Partnerships (PPP Law Regulations).

Decree nº16/2005, of 26 June 2005: Regulation on the Commercialization of Mineral Products

Decree no. 61/2006, of 26 December: Regulations on Technical Safety and Health for Geological and Mining Activities

Decree no. 62/2006, of 26 December: Approves the Regulations on the Mining Law and its appendices

Decree no. 5/2008, of 9 April: Regulations on the Specific Mining Taxes

Decree no. 20/2011, of 1 June: Regulations on the Sale of Mineral Products

Decree nº 66/98, of 8 December 1998: Regulations on Land Law

Decree nº 26/2004, of 20 August 2004: Environmental Regulations for Mining Activities

Decree nº 61/2006 of 26 December 2006: Regulation on Technical Safety and Health for Geological and Mining Activities (Mining Safety Regulation)

Decree 31/2012, of 8 August 2012: Regulations on the Process of Resettlement Resulting from Economic Activities

Decree nº 15/2006 of 15 June 2006: Regulation on Waste Management

Ministerial Diploma no. 189/2006, of 14 December: Basic Environmental Management Norms for Mining

Ministerial Diploma no. 92/2007, of 11 June: Norms and Procedures for Enrolling Technical Staff Eligible for Drawing up Exploration and Research Reports and Work Programmes in Mining Projects

Source: ICLG (2015); EITI (2014).

More specific details about the application of local content provisions can be found in two distinct sets of frameworks:

1. The broad guidelines and the priority focus regarding local content (although no clear definition exist in Mozambique) are explicitly put forward in the 2014 **Mining Law** and in various other regulations that accompany the mining law such as the Mega-project law;
2. These are more concretely detailed and specified in individual **mining contracts**. The requirement to have local content provisions as mandatory elements is explicitly mentioned in the 2014 Law.

Provisions under the 2014 Mining Law:

The 2014 Mining Law requires the creation of mechanisms to promote local investment in mining projects.

a) ***Preference for the local sourcing of goods and services***: The 2014 Mining Law sets out local content requirements for the procurement of goods and services for mining activities that are designed to promote the development of Mozambican businesses and know-how. The Law requires that preference must be given to Mozambican individuals or entities for the purchase of goods and services. For large purchases, whose value exceeds an amount determined in subsequent regulations, firms must use a tendering process, which must be published in widely read newspapers in Mozambique and on the firm's website. The Law however does not give any numerical requirement as to the conditions under which "preference" is to be given (CGA, 2014).

   Furthermore, foreign entities that provide services to mining operations are required to "associate with" Mozambican entities. Again, details of how this obligation is to be implemented remains unclear and is expected to be specified in future regulations and/or secondary legislation.

b) ***Employment requirements:*** The 2014 Mining law requires mining firms to ensure the employment of local workforce when competencies are available and provide professional training of Mozambican workers. Furthermore, a Decree published in 2011 (No. 63/2011), established the criteria regarding the hiring of foreigners citizens in the mining sector. The objective was to ensure that more qualified workers would be attracted to mining operations. The 2014 Mining Law introduced new requirements for mining firms regarding the hiring of workers and employees. All job vacancies should be widely advertised with all details regarding expertise required to allow nationals with the requisite competencies to apply for the jobs. This requirement, however, does not seem to apply to sub-contractors (CGA, 2014).

c) ***Equity participation:*** Article 33(1) of the PPP Law, which related to mining concessions, requires the participation of Mozambicans in the capital of each undertaking ranging between 5% and 20% of the equity capital.

d) **Listing on the stock exchange**: The 2014 Mining Law requires mining firms to be listed on the Mozambican Stock Exchange. The terms of this participation has however not yet been defined and it is uncertain as to whether this refers to a specific percentage of a project, or whether all of the shareholding of the firm is to be listed. (CGA, 2014). It is thought however that this provision will facilitate equity participation of Mozambican investors in mining firms.

e) **State participation**: According to the 2014 Mining Law, the participation of the State is expected to progressively increase in mining projects. While the level of participation is not explicit in the Law, it is expected that this will be agreed within the specific terms of mining contracts. In addition, the PPP Law Regulations provide that in order to be considered for the award of exploitation rights over natural resources, the State will have the right of a free carry participation of at least 5% of the share capital during any phase of the project.

f) **Use of local inputs**: The 2014 Mining Law requires the use of local inputs, such as a fuel for electricity generation or raw materials for the manufacturing industry in Mozambique.

While a specific percentage in respect of the minimum requirement of resources is not mentioned, it is expected to be defined in specific mining contracts.

Provisions under mining contracts

Currently, most local content requirements now are embedded in individual contracts for mining exploration, extraction and production. These contracts contain similar aspects of local content such as share of local labour employment and some local supply chain strengthening activities. However, the scopes for each vary greatly.

The Mining Law of 2014 stipulates that all mining contracts must contain certain mandatory clauses, that may include numerical targets to be negotiated between the firm and the government, regarding:

1. The level of State participation;
2. Minimum local content;
3. Local employment and training requirements (ratios);
4. Incentives in relation to increasing the value of the minerals to be extracted (downstream processing);
5. Corporate social responsibility requirements;
6. Memorandum of understanding between the firm, the State and the community establishing dialogue with local communities;
7. Disputes resolution mechanisms, including provisions relating to the settlement of disputes by way of arbitration; and
8. The way that the communities in the area will be involved in and benefit from the mining activity.

All mining Contracts must be published in the Official Gazette and are subject to the Administrative Court's prior approval.

Table 1. Summary of LCPs applicable in Mozambique

Type of Requirements	Details of requirements	Applicability in Mozambique	Relevant legal frameworks
Quantitative requirements			
Numerical requirements	Equity participation	Investors required to concede 5 – 20% of equity in share capital to Mozambican investors	PPP law (para 1; Art 33)
	State's free carry participation[1]	State will have the right of a free carry participation of at least 5% of the share capital	PPP Law
Qualitative requirements			
Compulsory requirements but are not expressly defined by numerical targets (but may be specified in individual contracts)	Preference for locally sourced goods and services	Firms to give preference to the local sourcing of goods and services Large purchases should be tendered	Mining Law 2014 Mining contracts
	Employment requirements	Firms to give priority to Mozambicans Foreign employment allowed when local competencies are not available	Decree No. 63/2011 Mining Law 2014 Mining contracts
	Joint venture requirement	Foreign service providers are required to “associate with Mozambicans” (no quota defined)	Mining Law 2014 Mining contracts
	Information sharing	Tenders for large supplies must be published in all media and on the internet All job vacancies must be published in all media and on the internet	Mining Law 2014 Mining contracts
	Listing on Mozambique Stock Exchange	Firms are required to be listed on the Mozambique Stock Exchange	Mining Law 2014 Mining contracts

1. Free carry obligations require that firms grant, free of charge, a specified percentage interest in their venture to the host government.

Source: Adapted from Ramdoo (2015).

Suppliers development and partnerships

A number of private-public initiatives are already operational in Mozambique to scale up business linkages, in particular with SMEs. Already in 2002, the aluminum smelter Mozal, an industrial plant in Mozambique that processes imported alumina, launched a project to stimulate and strengthen local business capabilities to enable small entrepreneurs to compete for contracts for operations at different stages of processing. Although not a mining project, the latter is seen by many as a flagship programme that helped to develop business linkages, create jobs and localize suppliers (USAID, 2012).

Many critics point out however that too few linkages were created, in particular compared the value of the investment of Mozal (USD 4 billion when combined with Sasol gas projects) with that of the programme (Nhancale, 2010). One reason may be the definition of "local companies", which meant any companies registered in Mozambique. This facilitated investment from foreign firms, such as South African firms involved in the large mining projects in Mozambique, but did not necessarily foster the development of Mozambican indigenous firms to take advantage of mega-projects (Castel-Branco, 2002 and 2004).

Following the experience of Mozal, similar initiatives have been attempted, albeit with limited success, by mining firms such as Vale and Rio Tinto. Rio Tinto Coal Mozambique (RTCM) Project in the Tete region initiated a business linkages programme. The following activities were conducted:

1. The firm mapped out opportunities for local SMEs in three areas, namely (a) areas related to their core business; (b) non-core activities relevant to the operation of the mine, in particular related to services such as catering; and (c) potential other businesses with a focus on infrastructure and energy;
2. Identifying priority geographical areas: by the order of priority they were (a) resettled communities (b) Tete/Beira (c) Zambezi Corridor and (d) Mozambique as a whole.
3. The firm then mapped and conducted a diagnosis of local businesses in these priority geographical areas with a view to identify potential suppliers that could provide goods on a competitive basis.

However, the project was put on a backburner as Rio Tinto sold its assets to the Indian firm International Coal Venture Private Limited in 2014. No information is available on the approach that the Indian firm will take to stimulate linkages with local businesses.

Vale is another global firm present in the coal sector in Mozambique. It had plans, in collaboration with the International Finance Corporation (IFC), to design a linkages programme, based on its Inove procurement programme model in Brazil to develop local suppliers. However, this did not materialize partly because the IFC did not continue with their planned investment in Vale. As a result, Vale embraced a more traditional CSR approach, to focus local communities around its operations. Business linkages and suppliers' development is not mentioned as a priority.

Box 2. Mozal's partnership experience

When Mozal announced it would settle in Mozambique in 1997, the State was determined to use this opportunity to create opportunities for local businesses. However, it was found that "99% of local firms had serious problems with product quality", lacked experience, did not have adequate equipment and technology and had suffered from skills shortages. In addition, intra- and inter-firm linkages were very weak and there were very few formal firms that could take up any potential opportunities that Mozal could provide.

To bridge this gap, in 2001, an *SME Empowerment Linkages programme (SMEELP)* was jointly put in place by Mozal, the Centre for the Promotion of Investment (CPI) and the IFC to develop local firms so they could become eligible to participate in the construction of the Mozal plant. The project first created a database of potential Mozambican firms that could supply the company in goods and services. In order to allow small firms to bid for contracts, Mozal redesigned and unbundled a number of its large contracts and reformulated its procurement standards. The firm further facilitated local firms' participation by providing information and by training and mentoring potential SME bidders. In total, 16 SMEs were trained and over time 28 contracts worth just over USD 5 million were awarded.

From 2003 onwards, when Mozal moved into the operational phase, the SMEELP focused on providing access to finance to SMEs and on providing technical capacity training (the so-called Mozlink programme). In 2005, an Industrial Park was created to enable firms to benefit from clustering effects. This phase of the programme trained 45 SMEs. Mozlink enterprises gained contracts worth USD 13 million out of a total expenditure on local content of USD 180 million.

From 2006 onwards, Mozlink was expanded (Mozlink II) to include other foreign investments primarily in the gas (SASOL) and beverage sectors (Coca-Cola and South African Breweries). Supply chains programmes were developed to strengthen business and technical capabilities of SMEs so they could compete for industry contracts in the wider economy. Mozlink II is said to have trained 75 SMEs, providing USD 20 million in revenues for SMEs with a 40% growth in contract development by Mozlink corporate partners, and created 3 000 employment opportunities.

Overall, the different phases of the project are estimated to have created over 200 suppliers of inputs in sectors such as metallurgical services, transportation, auto mechanical and electrical products and services, construction, security, cleaning, catering and laundry. Furthermore, with an investment of about USD 1 million by IFC and partner corporations, the programme facilitated USD 53 million in incremental sales for local SMEs; USD 15 million in contracts signed by SMEs and created 336 formal jobs (USAID, 2012).

Source: Burr (2014); USAID (2012).

Challenges facing the mining sector in Mozambique

Despite its vast proven mineral resources, currently large mining projects are concentrated in the coal sector. While the demand for coal is expected to continue to drive the mining sector in Mozambique, the country has also taken commitments regarding global climate change agreements,[4] meaning that it will have to diversify its mining production portfolio as countries adopt energy transition policies towards greener technologies.

Beyond coal assets, however, a number of other mineral resources offer significant potential, in particular for smaller "junior" firms. These include aluminum, beryllium, tantalum, pig-iron, zinc, lead, silver and gold as well as several precious stones such as rubies and diamonds. Despite numerous challenges, the cost of production for some of these minerals is estimated to quite low.[5]

The current lack of infrastructure and energy,[6] considered as one of the key bottlenecks hampering the development of mines in remote areas for instance, provide substantial opportunities for the construction sector and other peripheral services. While major mining firms often use their own in-house technical expertise and capacity, the growing "junior" market provides significant opportunities to develop related services industries.

There are a number of challenges facing the development of suppliers in Mozambique. First, the private sector is rather weak and is characterized by a large informal sector, many micro enterprises and a weak manufacturing base. Large firms like Vale and Rio Tinto struggle to find firms that can meet a critical mass and can deliver on large contracts. Also, most firms have technological difficulties, a major barrier to work with capital-intensive and technologically-advanced firms.

4 Mozambique is a member of the United Nations Framework Convention on Climate Change (UNFCCC) through the country's ratification of the Kyoto Protocol. The country has established a Designated National Authority (DNA) to manage activities under the Kyoto Protocol's Clean Development Mechanism (CDM) within Mozambique. It has already committed to switch from coal to natural gas for its cement plant in Matola and is looking at green energy alternatives as it moves to electrify the country.

5 As an example, Brazil is the world's largest pig-iron producer and its cost of production is USD 380/mt to USD 390/mt. In Mozambique, the cost of production is estimated to be around USD 225/mt.

6 The power grid covers about 6% of the country. Therefore most of Mozambican households and businesses have limited or no access to electricity; only 10.5% of households have such access. Half of those households are located in Maputo and surrounding areas.

Furthermore, Mozambique has a real challenge regarding its skills capabilities: long years of civil war have drained the country of its manpower and severely affected the educational system bringing about serious insufficiencies in training in the workforce. Mozambique has one of the lowest levels of education among its adult population in the world, with only 1.2 years of formal education (AOE, 2012). This low skills level is a major obstacle for employers in the industrial and mining sectors when seeking to recruit qualified manpower and to meet the conditions of preference for local labour as required by the Mining Law and mining contracts.

Another major challenge faced by local SMEs that want to grow their businesses is the difficult access to finance. Due to the lack of collateral and high interest rates, many local firms are structurally excluded from the financial system.

Main properties

Despite Mozambique's rich resource endowment, large-scale industrial mining activities are fairly recent. This is reflected in the recent evolution of the legal framework, which is only starting to clearly define objectives and the means to achieve these objectives.

Recent regulatory reforms have adopted a relatively flexible approach, that seek gradually to increase the participation of Mozambicans in the mining sector, but without obliging firms to adhere to numerical targets to meet this objective.

This approach seems to be a pragmatic one, given that Mozambique first needs to strengthen its skills capabilities, bridge its infrastructure gap, improve its business climate and develop its private sector and manufacturing base. The lost years during the civil war have resulted in a weak education system and have drained the country of a significant portion of its skilled labour force. Similarly, the private sector is often comprises of small firms in the informal sector. They need to be scaled up in order to take advantage of supply chain opportunities that the mining sector can provide.

One area where Mozambique has imposed targets is in equity participation. Mining firms are obliged to have between 5 and 20% of their equity held by Mozambicans. In the case that this brings full participation of Mozambicans at the level of board of directors, it could represent a good opportunity to increase access of the local population to the highest levels of business decision-making. The risk of this kind of equity requirements is, however, that it could introduce an opportunity for rent-seeking among local executives and represent a substantial cost to the mining firm without providing any longer-term benefit.

There have been some suppliers' development programmes instituted in Mozambique with varied success. One of the most successful seems to be that by Mozal, a large coal-mining firm. Critics point to the limited success even of this programme given the large scale of Mozal's projects and the relatively small size of its suppliers development programme. The challenges are, however, immense: one study estimated that 99% of Mozambican firms had sufficiently flawed performance that they would have difficulty supplying firms such as Mozal. Mozal's suppliers initiative includes many supporting policies such as unbundling of large contracts to make them more accessible to smaller local firms, mentoring selected SMEs and providing easier access to finance.

More Information

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Jane Korinek, OECD Trade Policy Analyst
Jane.korinek@oecd.org

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