



Analysis and Evaluation of Local Content Legal Regulations in Mozambique's Mining Sector

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Mozambique : Local content analysis and evaluation of the legal provisions in force

Executive summary

Local content rules are a very relevant matter for both the national economy and for foreign investors who must comply with them.

Any foreign investment in Mozambique needs to contribute in a positive way to developing the Mozambican national economy, adding economic value to it.

This added value can be achieved in different ways, for example by means of the creation of employment, development of culture and educational levels of Mozambican citizens, or by the installation of civil infrastructures such as roads, water and power distribution networks or hospitals.

In general terms, local content strategy can be understood as aiming to promote local value addition and linkages through utilisation of domestic resources. Local content rules (LCR) aim to address the balance between the benefits to be earned by the investors and the impact resulting from a given investment project on local economy.

The legal framework currently in force in Mozambique foresees LCR applicable to the extractive industries (mining, oil and gas), the employment of foreign workers, public-private partnership ventures, large-scale projects, and business concessions.

However, these LCR have been insufficient to effectively implement local content requirements in the country, mainly due to their ambiguity, since LCR are most often drafted as

general guidelines and principles that lead local content concerns to a case-by-case negotiation between the investor and the competent public entity (APIEX, MIREME or INP).

Furthermore, local content obligations undertaken by investors are very often not specifically detailed and included in the concession agreements, leaving local content enforcement in the hands of the investor's goodwill.

In fact, the current legal provisions are not clear regarding the definition of the term local content, the basic guiding principles, local participation, local content calculation formula, monitoring and certification procedure, applicability to public tenders and contracts, applicability to sub-contractors, local content plans and reports, or transfer of technology plans. Also there is no penalties regime applicable for non-compliance with the LCR.

Lack of qualifications and capacity of nationals (individuals and companies) and lack of local goods and services justify, very often, the avoidance of involvement of the local communities in foreign investment projects, especially by extractive industries, where very specialised qualifications, goods and services are required.

This paper describes the existing LCR legal framework and specific measures and procedures that can tackle existing LCR weaknesses currently under political discussion, in line with the LCDL.

Local content rules currently in force

Mega Projects Law (Law 15/2011 of 10 August)

The Mega Projects Law (MPL) sets the legal framework for concession agreements between public and private entities and contains several local content requirements.

The purpose of the MPL is to establish the rules governing the process of contracting, implementation, and monitoring of public-private partnership ventures, large-scale projects, and business concessions. Large-scale projects are understood to be investments over 12.5 million MZN (as of 1 January 2009).

For each project, specific local content requirements are set, considering the following criteria:

- a) the quantity and quality of resources made available by each party and their opportunity cost.
- b) the degree of responsibility of each party in making the various phases of the enterprise.
- c) the degree of risk, objectively measurable, incurred by each party, associated with the guarantee of return and profitability of the resources invested.
- d) the safeguarding of the country's economic competitiveness and a business environment favourable to the attraction of domestic and foreign investments.
- e) the need to preserve benefits for present and future generations.

The specific local content rules are divided into two types: financial benefits and socio-economic benefits. The concept of benefit is an advantage granted to Mozambique that may reside in several kinds of actions, omissions and privileges.

The financial benefits foreseen in the MPL shall be expressly stated in the contract between the state and the contractor. The law foresees an exemplification list consisting of:

- a) the participation reserved for sale via the stock market in favour of economic inclusion in commercial market terms, preferably of Mozambican individuals, in the share capital of the undertaking or the capital of the consortium, whether or not a foreign investment is involved, guaranteed through:
 - i) the state or another LCR public entity indicated by it, in a percentage of not less than 5 per cent and not more than 20 per cent of the said capital, or.
 - ii) the implementation by an entity of the enterprise, of the same level of participation for its unconditional sale, under the same terms and conditions as provided in sub-paragraph (i).
- b) the opportunity for public or private Mozambican legal entities to participate in the share capital of the venture or the capital of the consortium, under the terms that the parties negotiate and agree.

- c) the creation of a positive exchange rate effect for the balance of payments, either through the generation of foreign exchange resources or through savings for the country.
- d) the generation of tax revenue and positive contribution to the public treasury.
- e) the generation and distribution of profits or dividends as decided by the bodies of the enterprise.
- f) the equitable share of extraordinary direct benefits, safeguarding the economic competitiveness of the country and under the terms contractually agreed to be those, namely:
 - i) reinvestment in national territory.
 - ii) creation of a reserve for additional investments or to cover extraordinary losses of the enterprise.
 - iii) financial investments made and maintained in the country.

In addition to those financial benefits, in the contracts comprising concessions for the exploration of national resources, the following benefits shall be foreseen in the contracts:

- a) payment of an award rate or signature bonus, if and in any way as provided for in the respective tender, to be made upon signature of the contract and a value of not less than 0.5 per cent and not more than 5 per cent of the fair value of the assets contractually assigned by the state or another public partner to the undertaking.
- b) payment of the concession or operating transfer fee, on a monthly, quarterly, half-yearly or annual basis, as agreed by the contracting parties, divided into components of
 - i) a fixed concession fee of not less than 2 per cent and not more than 5 per cent of the fair value of the assets assigned contractually to the enterprise.
 - ii) a variable concession fee, levied on the gross income net of indirect taxes relating to the periodic monthly, quarterly, half-yearly or annual invoicing of the operation of the activity which is the object of the venture and whose value shall correspond to:
 - a. 2 to 5 per cent of the said revenue, in the case of a structuring PPP venture that is a producer and supplier of inputs to other ventures in Mozambique, during the repayment period of loans contracted for the financing of the phase of its implementation.
 - b. 5 to 10 per cent of the said income, in all other undertakings, as well as in those referred to in the previous subparagraph as soon as the amortisation of the loans contracted for the financing of the phase of its implementation is concluded. (This benefit does not apply to the contracts subject to the Mining and Petroleum legislation)

The other kind of benefit is the socio-economic one. Those are also foreseen in the MPL and the financial benefits shall be expressly stated in the contract between the state and the contractor. These benefits are to be provided by each investor at its own expense, profiting Mozambican society and the economy. The benefits are, namely :

- a) The creation, rehabilitation or expansion of production or service infrastructure in connection or associated with the enterprise.

- b) The provision of jobs and vocational training programmes for Mozambican workers.
- c) Technical-vocational training programmes and actions, and transfer of technology and know-how to the country.
- d) Increase and maintenance of production, export and supply capacity to domestic market needs.
- e) Contribution to the business development of small and medium-sized Mozambican enterprises, via business and technological links between the enterprise and such enterprises.
- f) Carrying out a programme of activities or projects of responsibility, development, and social sustainability in the local communities, on the enterprise's own account.

Oil and gas sector

The Mozambican Petroleum Law (Law 21/2014 of 14 August) has several local content requirements, aimed at facilitating economic growth for Mozambican citizens and companies.

Also, the Mega Project Law (Law no. 15/2011 of 10 August) sets the legal framework for concession agreements between public and private entities, and has some local content requirements.

For ease of reference, we have listed the requirements pertaining to local content, which are currently in force in Mozambique in the petroleum sector:

- a) Promotion of Mozambican entrepreneurship, through the mandatory registration of oil and gas companies, on the Mozambique stock market.
- b) Oil and gas for Mozambican consumption – the government of Mozambique shall guarantee that a quota of no less than 25 per cent of the oil and gas produced in Mozambique is dedicated to the Mozambican market.

c) The government of Mozambique shall ensure that ENH takes the lead in the marketing and sale of petroleum products.

d) When the public interest so requires, holders of oil or gas exploration rights shall give preference to the Mozambican government in the acquisition of petroleum produced in the concession area.

e) The government of Mozambique may request petroleum products at negotiable prices, for use in the local industry, whenever deemed necessary for the country's commercial interest.

f) Oil companies operating in Mozambique shall ensure the employment and technical training of Mozambicans. Oil companies shall also make reasonable efforts to include Mozambican employees in highly qualified jobs, as well as in management positions (in accordance with Decree no. 63/2011, of 7 December).

Mining sector

The mining sector is regulated by the Mining Law (Law no. 20/2014 of 18 August) and the Mining Law Regulation (Decree no. 31/2015 of 31 December). Both these laws mention some local content dispositions, as follows:

a) The acquisition of goods and services in the minimum amount of 15 000 000 MT (which roughly corresponds to US\$900 000), must be executed through public tender.

b) Title holders and contractors must give preference to Mozambican goods and services whenever available in the required time and quality, and when its price (taxes included) is no more than 10 per cent higher than the prices of the imported goods available.

c) Foreign natural or legal persons who provide products and services to mining companies shall associate with natural or legal Mozambican persons, in terms to be agreed by the parties.

d) Mining companies operating in Mozambique shall ensure the employment and technical training of Mozambicans. Mining companies shall also make reasonable efforts to include Mozambican employees in highly qualified jobs, as well as in management positions (in accordance with Decree 63/2011, of 7 December).

e) For small scale and artisanal mining, only Mozambican citizens or Mozambican companies can bear a mining certificate.

The Mega Project Law, mentioned above, is also applicable to the mining sector.

The Employment Law (Law no. 23/2007, of 1 August) is the legislation that regulates employ-

ment contracts in Mozambique. This legislation has some local content requirements for all companies operating under Mozambican law.

a) The employers shall create conditions for the inclusion of qualified Mozambican workers in positions with more technical complexity and management positions.

b) The Mozambican state may reserve some functions and activities for national citizens, for public interest reasons.

c) A company shall be authorised by the Labor Ministry to hire a foreign employee. Nevertheless, if the quotas are met, the mere notification is sufficient. The quotas are:

i) 5 per cent of the total workforce for big companies (more than 100 workers).

ii) 8 per cent of the total workforce for medium-sized companies (between 10 and 100 workers).

iii) 10 per cent of the total workforce for small companies (less than 10 workers).

These quotas may differ when there exists a specific contract between the state and the company in the terms of the MPL.

It is not allowed for the foreigners that entered the country to work in the country if they bear a diplomatic, courtesy, official, tourism, visitor, business, or student visa.

It is only allowed to hire a foreign worker when this person has the appropriate academic or professional competencies and if there are not any national citizens with those qualifications available.

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Weaknesses in existing rules, and the draft legislation

The LCR framework described above has been insufficient to effectively implement local content requirements in the country, mainly due to its ambiguity (OCED: 2019). Local content rules are most often drafted as general guidelines and principles that often lead local content concerns to a case-by-case negotiation between the investor and the competent public entity (APIEX, MIREME or INP).

Furthermore, local content obligations undertaken by investors are, very often, not specifically detailed and foreseen in the concession agreements, leaving local content enforcement in the hands of the investor's goodwill.

In fact, the current legal provisions are not clear regarding the definition of the term local con-

tent, the basic guiding principles, or other key terms in the legislation, and there are no penalties applicable in case of non-compliance with the LCR.

The lack of qualifications and capacity of nationals (individuals and companies) and the lack of local goods and services often justify the avoidance of involvement of the local communities in foreign investment projects, especially those related to extractive industries, where very specialised qualifications, goods and services are required.

Given this, we describe below specific measures and procedures that can tackle existing LCR weaknesses currently under political discussion, in line with the LCDL.

Local content draft law objectives

The Mozambican economy has been growing considerably in recent years, particularly the mining industry. To promote Mozambican economic agents, the Mozambican parliament intends to foster the production and use of Mozambican goods and services with the consequent growth and evolution of Mozambican companies and the improvement of the population's living conditions.

The LCDL must establish rules pertaining to the supply of goods and services, produced or provided by Mozambican companies (or with their involvement), to companies that operate in Mozambican territory.

In comparison, Brazil has chosen to use the territory criteria, instead of nationality, since it better serves the main purpose of the local content law, which is to stimulate economic growth

¹ Deemed as "policies imposed by governments that require firms to use domestically-manufactured goods or domestically-supplied services in order to operate in an economy", i.e., "localisation" policies that favour domestic industry over foreign competition, requiring companies and the government to use domestically-produced goods or services as inputs" (OECD, 2019, Local Content Requirements, Trade Policy Brief, available in https://issuu.com/oecd.publishing/docs/local_content_requirements).

² As an example, specific local content measures concerning local workforce and training, supply of goods and services and procedures related to oil and gas projects may be consulted, case-by-case, in INP website (<http://www.inp.gov.mz/en/Conteudo-Local>). Although this information is not available regarding investment projects in the Mining sector, the case-by-case negotiations on local content involvement still apply, given the ambiguity and lack of clarity of the current LCR framework.

³ V.g., in EPCC contracts (available in <http://www.inp.gov.mz/index.php/en/Policies-Legal-Framework/Exploration-and-Production-Contracts>).

in-country (whether that is made through Mozambican companies or foreign companies operating in Mozambique). The application of nationality criteria could potentially lead to foreign investors being discouraged from investing in Mozambique and redirecting their investment to other countries, which would result in a loss of economic value for Mozambique.

Guiding principles

A clear definition of guiding principles is crucial to lead the interpretation of LCR in force. Although some of these guiding principles already exist in the current legal framework – for example, the guideline expressed in paragraphs a) and b) – the remaining were not included in the existing legal framework.

LCDL identifies, as guiding principles:

- a) Preference for goods and services that are produced using Mozambican production factors (which are defined as the elements of the productive process, namely capital, raw materials, equipment, and workforce);
- b) Promotion of participation of Mozambican citizens and companies, in the supply of goods and services.
- c) Investment in the capacitation of Mozambican citizens and companies.
- d) Promotion of strategic partnerships between Mozambican and foreign companies.
- e) Transparency in the contracting process of goods and services.
- f) Development of the Mozambican economy, through the transfer of technology and knowledge.

Local content: a definition

LCR currently in force have no definition of the term local content, which could be defined, as it is by the LCDL, as “the portion of local production factors which were used in producing goods or providing services, as well as the participation of Mozambican citizens in the share capital of companies”.

In line with this definition, LCDL proposes a definition of local content goods, i.e., goods with a minimum of 10 per cent of local content (this percentage is determined through a formula, mentioned below). For each sector, dynamic minimum percentages may be set within a time frame of seven to ten years.

The definition of this term has been widely discussed in parliament. There are proposals to amend to this section to eliminate the 10 per cent minimum percentage ; instead, it is proposed that the percentage of local content for each sector (or even for each concession agreement) is set

There are also proposed amendments to the LCDL that aim to limit its application to concession agreements, or even to specific sectors (such as hydrocarbons and mining sectors) which traditionally attract bigger investments. If this law is to be applicable to all economic sectors, it may create an unfair burden on other sectors (which have lower investments).

by the Mozambican government on a case-by-case basis. This would allow the Mozambican government to adjust the value of local content requirements to each case, considering several factors related to the specific sector (such as the level of development of Mozambican industry in that sector, current status of the Mozambican and the international economy, local logistics of the sector, etc),

Local content services are defined by the LCDL

Local participation

Although local participation provisions (as defined below) already exist, effective participation by the private sector is not foreseen by the LCR in force,⁴ apart from the mandatory registration of oil and gas companies on the BVM⁵ and general guidelines for giving opportunities. Local participation must be defined, as it is by the LCDL, which suggests defining it as “the subscription, up to 15%, of the share capital of:

- a) Enterprises, through companies, to be created, between foreign and Mozambican citizens or legal entities, in accordance with Mozambican Law.
- b) Joint Ventures, to be created between Mozambican citizens or legal entities and the companies contracted by the concessionaires.”

The minimum percentage of local participation must not be transferable to foreign individuals

as services provided by Mozambican citizens, or legal entities incorporated under Mozambican Law, that operate in Mozambican territory.

As mentioned before, Brazil chose to use a territory criterion rather than a nationality criterion, to boost the economic circulation of goods and services in Brazil, and there are proposals to amend this portion of the law to eliminate the nationality criteria by only mentioning “companies that operate in Mozambique”.

or companies. The proposed amendments to the LCDL mention the elimination of this minimum percentage (15 per cent) of local content. The alternative would be to have a requirement for the subscription by Mozambican citizens or companies of the share capital of those companies operating in Mozambique that intend to take part in concession agreements.

In relation to this point, and as already mentioned, the Brazilians have chosen to use a territory criterion, since the nationality criteria could potentially create a difficult obstacle to overcome for foreign investor, who might direct their investments to other countries that seem more attractive because they do not have such requirements. By taking the nationality criteria, Mozambique may attract foreign investments from all over the world, creating jobs and boosting the economy.

Local content calculation formula

Unlike in other jurisdictions, ⁶(Department of Trade and Industry South Africa, 2017) the current legal framework does not foresee a method to accurately measure and verify local content products (goods, services and works), crucial to analyse any development of local content in the country and to monitor it.

Considering this legal gap, to calculate local content, the LCDL sets the following formula: % LC = $(1 - CI/PV) \times 100$.

In this formula:

LC is the local content value

PV is the production value

CI is the value of imported elements

(for example, imported raw materials and foreign workers' wages).

For each sector, dynamic minimum percentages may be set within a time frame of seven to ten years. For several sectors, this formula may not work and it may not be this simple. Specific methods and calculations may be required for certain sectors.

In addition, the time frame of seven to ten years seems too long. In today's world, technology and economies are changing and evolving every day, and it is impossible to establish specific percentages on such a wide timeframe.

Monitoring and certification

Monitoring

The current legal framework does not foresee any mechanism to monitor LCR in the country and to certify local content products (goods or services). The monitoring and management of the LCDL will be carried out by a public entity to be created by the Council of Ministers. This public entity would likewise be responsible for keeping a database on the certified Mozambican suppliers and promote opportunities for local content suppliers.

The amendments made to this law propose to

establish a broader scope on this point, to allow the Mozambican government to transfer the monitoring of the LCDL to other public entities in accordance with the specifics of each sector (especially in sectors that require high levels of technical knowledge).

The appointment of different public institutions for different economic sectors, would be beneficial since each sector has technical issues which may be difficult to tackle by a single non-specific entity.

Certification

Goods and services of local content are subject to certification, to be issued by a public entity (that is yet to be created). The natural persons or companies will be deemed to be "local sup-

pliers" by presenting the relevant certificate. The public entity mentioned above is also responsible for establishing the percentage of local content, in accordance with the criteria and

procedures to be set by the Mozambican government.

The certification procedure, to be reliable and accurate, must be made for each product or service individually. It is not recommended (also considering the Brazilian case) that a global classification such as "national supplier" be used, since the procedures for producing different products may be different (and may change periodically).

The Brazilian experience is that it is more practical to have private entities executing the certification because of the high volume of certifications needed (especially considering the economic growth this law intends to achieve). The government would be responsible for monitoring these private certifying entities, but not every product or service.

Public tenders

The current legal framework must continue to ensure that the supply of goods and services is made by public tender. In general, this already happens under the legal provisions currently applicable in Mozambique in relation to the extractive industries

Direct negotiation may be exceptionally allowed, if the specific goods or services require the use of technology, specialised workforce, patents or other special requirements, duly supported, that are not available in Mozambican territory.

Contracts

Apart from the LCR applicable to tenders, legal provisions currently in force do not ensure that the private sector complies with LCR. To do so, LCDL proposes that all enterprises that operate in Mozambique, when hiring services or purchasing goods, must be required to observe the LCDL.

The goods or services to be purchased shall present the specific technical requirements required for the purchasing entity, whilst presenting the corresponding local content certificate. The purchasing entity shall give preference to those goods or services with the highest local production factors.

In the event that the goods or services to be purchased cannot be supplied by a single candidate, suppliers may form associations to provide such goods or services, provided that the requirements set by the purchasing entity are

met (this association may be carried out by any means foreseen in the Mozambican Commercial Code).

During the procedure for evaluation of proposals to the supply of goods and services, each proposal shall be assessed in relation to its compliance with the LCDL, along with other evaluation criteria. When proposals are 10 per cent similar, the proposal with the highest percentage of local content shall be selected.

All proposals for the supply of goods and services are required to contain the following information:

- a) The origin of the goods or services, along with the local content certificate.
- b) The number of Mozambican and foreign employees in Mozambique.
- c) The minimum number of Mozambican

⁶ For example, South Africa has a guidance document for the calculation of local content issued by the Department Trade and Industry, available in https://www.sabs.co.za/Local-Content/docs/Local_Content_guideline.pdf.

citizens the supplier proposes to employ.

If the supplier is a foreign entity, the proposal shall additionally contain the following information:

- a) Measures to transfer technology, knowledge and skills to Mozambicans.
- b) Partnership with local suppliers.
- c) Measures to develop and capacitate local suppliers within the partnership.

In line with these provisions, there are proposed amendments to limit the application of this law to concession agreements. In our view, if all the companies operating in Mozambique are required to observe the LCDL requirements, this may create obstacles to foreign investment,

Sub-contractors

In line with widening LCR application, implementation of LCR to sub-contracting practices avoids its circumvention by economic agents. LCDL proposes that Mozambican citizens or companies that intend to sub-contract other entities to provide for goods or services shall present a request with the following information:

- a) The specific goods or services to be sub-contracted.
- b) The name of the person or entity to be sub-contracted.
- c) The reason to support sub-contracting.

Contractual reserve

A contractual reserve forcing the acquisition of local products (goods and services) is adequate to ensure that local products have preference over foreign ones, when such products are

which does not contribute to the purpose of the law.

The proposed amendments mention the application of this law to concession agreements with a minimum global number of supplies of US\$5 000 000. This is because the requirements set forth by this law may be overcome by big companies and big enterprises, but it may create unfair obstacles to small and medium-sized companies. For example, if a company intends to buy a pack of rice, with the current wording of the LCDL it would be required to request all the above information from the supplier prior to the transaction. This does not seem practical or reasonable. By establishing a minimum limit to apply these requirements, small businesses (or small transactions) would be protected.

The sub-contractor shall also be a certified supplier and is subject to the provision of the LCDL and its regulation.

The obligations established by this portion of the law may be deemed as redundant, since the certification procedure, in principle, shall take into account the sub-contractors of each company. Furthermore, this requirement for submission of a request for each sub-contractor may create a high volume of requests, which may be difficult to address.

available in the country at market prices.

To achieve this, LCDL proposes that enterprises shall reserve contracts for specific goods or

services to be acquired in Mozambican territory. These goods and services will be listed in an annexe to the LCDL.

Import of goods and services

To complement the contractual reserve, a public entity should monitor the import of foreign goods and services in order to ensure that such goods and services are not in the national market.

LCDL proposes that, when goods or services required by the purchasing entity are not available in Mozambican territory, such goods or services may be purchased in foreign territory, provided that previous authorisation is granted by the public entity mentioned in point 4 above. To request this authorisation, the purchasing entity shall submit a form and present the following information :

- a) The nature of the goods or services.
- b) The reasons by which the goods and services are required, and their purpose.
- c) The quality, quantity and timeline to delivery, as expected by the purchasing entity.
- d) The market price of similar goods and services.

Local content plan

The current legal framework does not ensure that businesses in Mozambique have a clear local content plan for the inclusion of the local goods, services and work.

To address these issues, LCDL proposes that companies operating in Mozambique must elaborate, on an annual basis, a local content plan, with the actions and strategies to be developed in the following year. Furthermore, contracting enterprises shall also elaborate a long-term plan for a period of five years.

LCDL suggests, however, amendments to this topic to limit the application to concessionaires and concession agreements.

- e) Any other relevant information.

This information must be kept for four years and made available to the relevant authorities for the purposes of monitoring compliance with the LCDL.

It is relevant to note that the amendments proposed to the LCDL clearly state that this last measure does not seem reasonable, as it may create practical barriers to all imports for any companies. The proposal would be to apply these requirements only to goods or services that are covered by a contractual reserve (point 8) and concession agreements.

The current wording, which establishes a requirement for authorisation of each import, may create practical and unreasonable barriers for any imports. It would be more reasonable to have such requirements only for goods or services which are covered by the reserve mentioned in point 8 above, and by concession agreements.

The local content plan shall contain information on:

- a) goods and services expected to be purchased.
- b) Hiring of local workforce.
- c) Training, capacitation and transfer of knowledge and skills to Mozambican employees.
- d) Actions and programmes to develop local suppliers.

The enterprises shall present the local content plan to the relevant authorities (mentioned in point 4 above) for the purposes of monitoring compliance with the LCDL.

Enterprises shall also promote training and capacitation of Mozambican citizens and com-

Reports

Monitoring the implementation of LCR and local content plans may require regular reports from the entities and individuals subject to LCR, an obligation that is not in force in the current LCR framework.

Having this in mind, the enterprises shall sub-

Transfer of technology plan

The current legal framework does not ensure that foreign businesses in Mozambique transfer technology and know-how to the Mozambican manufacturing and working processes.

LCDL proposes that foreign natural persons or companies shall elaborate a plan for the transfer of technology, experience, technical knowledge and skills to the Mozambican natural persons or

Sanctions

The current legal framework does not include effective mechanisms to hold accountable firms that do not comply with Mozambican LCR. In fact, and regarding legal provisions concerning local employment, the legal regime allows hiring foreign workforce without complying with the quota's regime, by paying more administrative costs than the ones applicable when hiring foreigners within the quotas regime, giving foreign firms the incentive to pay instead of hiring local workers.

panies that supply goods and services in their local content plan, indicating the objectives, timeline, and other relevant information.

In line with these suggestions, this requirement for a local content plan should only be applied to parties of a concession agreement

mit, on an annual basis, to the public authority mentioned in point 4 above, a report with a detailed evaluation of the performance, actions and strategies defined in the local content plan, the percentage of compliance, and the results obtained.

companies with which they are associated. The enterprises shall reasonably support this transfer of knowledge.

The obligations created under this topic may be relatively simple to comply with by big companies but may be unreasonable burdensome for small or medium companies.

LCDL proposes that any violation of the rules of the LCDL may be sanctioned by the application of fines or suspension of the supplier, from the database mentioned in point 4.i), for a period of two years.

Sub-contractors are jointly liable for the lack of compliance with the LCDL

Conclusion, final notes, and recommendations

As already mentioned, the existing LCR framework is insufficient to promote local content and to involve local individuals and companies in the extractive industries currently being undertaken by foreign investors in the country.

Among other things, this is obvious when we see the political need to discuss and approve a detailed legal framework in line with the LCDL, to prevent extractive industries' concessionaires from operating in the country solely with their worldwide suppliers' network with only the minimum involvement possible from local communities and without transfer of technology, know-how, and skills.

The LCR currently in force are ambiguous, involving general rules and principles that in most cases fail not only to define local content and related obligations, but also lack implementing mechanisms for measuring, monitoring and certifying compliance. Indeed, there are no quantitative or qualitative requirements for measuring local content, and no sanctioning regime to enforce it.

Furthermore, local content case-by-case negotiation an approach may lead to differences in the involvement of local communities in comparable projects when such approach is not combined with strict local content guidelines and principles.

Given all the above, we understand that strengthening LCR in Mozambique will necessarily imply at least the following legal provisions:

1. A definition of local content objectives in line with the Mozambican political interests of economic growth and local goods, services, and work inclusion.
2. A definition of strict local content principles guidelines, in line with the legal provisions in force.
3. A definition of the terms local content, local content goods and local content services, based on a territory criterion rather than on nationality criteria.
4. A definition of local participation that ensures the subscription of share capital by locals in the private sector.
5. A formula to accurately measure local content products (goods, services, and work).
6. Mechanisms to monitor and certify local content products (goods, services, and work).
7. Mechanisms to ensure that companies operating in Mozambique give preference to local products.
8. Application of LCR to sub-contracting practices.
9. An obligation to reserve some contracts for locals, through the identification of goods and services that can be supplied locally at market prices, with no need to turn to foreign markets.
10. Mechanisms to monitor imports of goods and services, through an authorisation granted by a public entity that must evaluate if the goods and services are not in the local market under similar conditions.

11. Mechanisms to implement local content annual plans for the inclusion of local goods, services, and work.
12. Obligation of companies operating in Mozambique to draft, periodically, local content reports in line with the local content annual plans.
13. Mechanisms to implement local transfer of technology, know-how and skills.
14. A sanctioning regime to enforce LCR through fines schemes.

The above recommendations are in line with the political discussions surrounding the approval of LCDL and are mostly based in comparative law studies (mainly with the Brazilian law), given the lack of technical studies in Mozambique regarding local content in the country.

Although many other measures to tackle local content issues could be introduced, these are the measures with direct relation to Mozambique.

It is also our opinion that increasing the costs and requirements for foreign investment may jeopardize recent Mozambican policies to attract foreign investment. One should consider the eventual loss of elasticity between the investment costs and the expected gains to be earned.

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Official Government Websites

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MIREME website - <https://www.mireme.gov.mz/>

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SARW Objectives

Monitor corporate and state conduct in the extraction and beneficiation of natural resources in Southern Africa, and assess to what extent these activities uplift the economic conditions of the region's communities.

- Generate and consolidate research and advocacy on natural resource extraction in Southern Africa.
- Create informed awareness of the specific dynamics of natural resources in Southern Africa, building a distinctive understanding of the regional geo-political dynamics of resource economics.
- Provide a platform of action, coordination and organisation for communities, activists, researchers, policy-makers, corporations, regional and global governing bodies in the watching and strengthening of corporate and state accountability in extractive industries.
- Engage with and support government on building accountable and transparent management of extractive resources.
- Build capacity for communities, civil society, parliaments, and media to hold governments and corporations to account, and to participate in decisions about resource management.
- Advocate and promote human rights and environmental protection in resource extraction activities.
- Support efforts to legislate mandatory public disclosure of and access to financial, social, environmental and regulatory compliance information in the extractives industry.
- Promote extractive industries that create wealth for local communities.

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