



Legal framework for local content and sub-contracting in the mining sector in Zambia

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Zambia: Legal framework for local content and sub-contracting in the mining sector

Introduction

Zambia has a vast natural resource endowment, which includes land, water, forests, game, and minerals. These natural resources give the country a very high potential for economic development.

Zambia hosts world-class reserves of copper, and is Africa's second-largest producer of copper and cobalt and is also home to the world's largest emerald and amethyst mines. It is, therefore, not surprising that mining accounts for about 70 per cent of the country's foreign exchange earnings. The country has attracted several big multinational mining companies over the years, and today has over 31 large-scale mining companies in operation. The sector contributed 13.2 per cent to the country's GDP in 2019.

Unfortunately, the contribution of the sector towards the local economy of mining communities remain negligible, although most mining companies claim to be involved in the advancement of the participation and involvement of local communities in the mining procurement value chain. According to the African Development Bank report, the mining procurement value chain is worth between \$2 and \$4 billion annually in goods and services (African Development Bank; 2019). Most of this procurement (more than 80 per cent) is from local sources. However, most of the goods consumed by the mines are imported into the country by foreign-owned firms. Very few are manufactured in Zambia. The services too are mostly provided by foreign companies, rather than Zambian-owned firms.

There are efforts to ensure that the sector attracts and promotes the participation of indig-

enous communities in the mineral value chain. This is aimed at responding to the increasing pressure from the population to derive more benefits from natural resource endowment. The government has endeavoured to ensure that all the relevant development legislation, policies, and planning instruments consider and recognise the role to be played by local stakeholders. For example, through the Ministry of Mines and Minerals and in partnership with the United Nations Development Programme (UNDP), a one-year (2015-2016) preparatory assistance project was developed (Ministry of Mines and Minerals Development; n.d.). The overall objective of the project was to develop a five-year multi-partner programme for implementing mining sector transformational activities to achieve Vision 2030, leveraging its commitment to the African Mining Vision (AMV). This included commencing the process for developing the Country Mining Vision (CMV). The project's long-term pillar was to lay the foundation for achieving the goals of minerals-led sustainable development through structural transformation and industrialisation as envisaged by Vision 2030 and the AMV.

The purpose of this report is to provide a detailed analysis of the local content and sub-contracting legal framework in Zambia. It will look at initiatives both past and present, laws and policies concerning local content, and the context of local content.

The analysis is benchmarked against the availability of the law, transparency, and accountability in its application, provisions of the policy and law that recognise the weak in society, consideration of women, the constitution of

the country and what it says about resource sharing, and will look closely at the weaknesses and gaps of the existing laws and policies with

the view of providing remedies to achieve the objectives being pursued by the local content concept.

A Review of the legal and policy framework on local content and sub-contracting in the mining sector in Zambia

The National Long-Term Vision 2030 (Vision 2030) is Zambia's first-ever written long-term plan, expressing Zambians' aspirations by the year 2030. It articulates possible long-term alternative development policy scenarios, which would contribute to the attainment of the desirable social-economic indicators by the year 2030. Vision 2030 is founded on seven basic principles: (i) sustainable development; (ii) upholding democratic principles; (iii) respect for human rights; (iv) fostering family values; (v) a positive attitude to work; (vi) peaceful coexistence; and (vii)

The Constitution of Zambia

In Zambia, the governance of the mining industry is ultimately provided for in the constitution of the country. It is only if the constitution allows its citizens to formally participate directly in the governance of the mining sector that they can make demands and know that they have a right to do so. Part two of the constitution of Zambia deals with national values, principles, and economic policies. The constitution stipulates as follows "10. (1) The Government shall create an economic environment which encourages individual initiative and self-reliance among the people, to promote investment, employment, and wealth (Kaunda & Dekka; 2016). (2) The Govern-

ment shall promote the economic empowerment of citizens so that they contribute to sustainable economic growth and social development.

The constitution has provided fertile ground for the government to develop legislation and policies that will be responsive to the needs of the nation's population in relation to playing a visible role in the mineral economy of the country. It is up to the three arms of government to enshrine these creatively and objectively in the other instruments of the governance system to realise the aspirations of the supreme law of the land.

Vision 2030

The National Long-Term Vision 2030 (Vision 2030) is Zambia's first-ever written long-term plan, expressing Zambians' aspirations by the year 2030. It articulates possible long-term alternative development policy scenarios, which would contribute to the attainment of the desirable social-economic indicators by the year

2030. Vision 2030 is founded on seven basic principles: (i) sustainable development; (ii) upholding democratic principles; (iii) respect for human rights; (iv) fostering family values; (v) a positive attitude to work; (vi) peaceful coexistence; and (vii)

The Seventh National Development Plan (7NDP)

Zambia has had three development plans since the re-introduction of the medium-term development planning process in the early 2000s, namely the Fifth National Development Plan, 2006-2010 (FNDP), the Sixth National Development Plan, 2011-2015 (SNDP), and the Revised Sixth National Development Plan, 2013-2016 (R-SNDP). These plans were formulated with a view to meeting the national aspirations as articulated in Vision 2030. The aspirations are to transform the country from a primary-product-dependent economy into a strong, dynamic middle-income industrialised country by 2030. According to the Seventh National Development Plan (7NDP), Zambia aspires to be a prosperous middle-income country by 2030. To achieve this aspiration, it is imperative that the country articulates the processes, interventions and actions that will propel development towards this desired state.

Admittedly, in its analysis, the government has acknowledged that in 2014 (Ministry of National Development Planning; 2017) more than 80 per cent of the employed in Zambia were in the informal sector. The unemployment rate was 7.4 per cent of the total labour force. The urban unemployment rate was 11.5 per cent, while rural unemployment rate was 4.2 per cent. During the period under review, youth unemployment remained one of the biggest challenges. Of the 3 812 923 youths in the labour force, 400 810 were unemployed, representing a youth unemployment rate of 10.5 per cent. The male youth unemployment rate was

higher (at 12.2 per cent) than the female youth unemployment rate (at 9.1 per cent). The rural youth unemployment rate was 6.4 percent, compared to 15.2 for urban youth. While the 7NDP aspires to respond to the learnt lessons by implementing interventions to diversify the economy away from mining and implementing employment-creating interventions that reduce informality and improve decent work conditions, with a special focus on rural areas, it re-emphasises the importance of the agriculture, mining and tourism sectors towards poverty reduction and employment creation by improving the incentives structure and removing the binding constraints to growth. The 7NDP has not identified the key role and responsibility of local communities in the mining regions (such as Copperbelt, Central, Luapula and Northwestern provinces), but instead its focus has been on the need for diversifying the economies of these areas. Therefore, it does not respond to the current need for developing local content. The 7NDP's focus on the mining sector is myopic, as it only focused on production figures and projected exports without taking note of the various aspects of the value chain, such as the impact on local populations, participation of local contractors and suppliers, the contribution of the sector to the local economy, employment creation and support to other sectors of the economy.

Citizens Economic Empowerment Act, No. 9 of 2006

To ensure that citizens are empowered economically, the government enacted the Citizens Economic Empowerment Act No. 9 of 2006, which is principally aimed at uplifting citizens who have suffered marginalisation. It is meant to level the playing field and raise these citizens to a position where they can effectively participate in the national economy. Some of the key areas of the Act include the definition of empowerment as a broad-based and multifaceted strategy aimed at substantially increasing the participation of targeted citizens at all levels of the population in the economy, fostering wealth creation, and significantly decreasing income inequalities. The Act also defines targeted citizens as a “person who is historically marginalised of disadvantaged and whose access to economic resources and development capabilities have been constrained due to various factors including race, sex, educational background, status and disabilities”.

The Act has the following provisions.

• Employment Policies, Practices and Skills Development

Section 16. (1) A state institution and a company shall compile and submit, to the commission, information on employment policies and practices and the working environment for the purpose of the Commission identifying employment barriers which have adversely affected, or may adversely affect, targeted citizens.

Section 17. (1) Notwithstanding the Technical Education, Vocational and Entrepreneurship Training Act, the TEVETA shall liaise and inform the Commission on the progress made in training targeted citizens to enable them effectively to participate in the value-chain or to achieve broad-based economic empowerment.

(2) Notwithstanding the Technical Education, Vocational and Entrepreneurship Training Act, the TEVETA shall report to the commission, in a prescribed manner, on the progress made in training targeted citizens to enable them effectively to participate in the value-chain or to achieve broad-based economic empowerment.

• Preferential Procurement

Section 19. (1) Notwithstanding the Zambia National Tender Board or any other law relating to the procurement of public services and goods, the commission shall, in consultation with the Tender Board, determine the thresholds to be prescribed by the Minister responsible for finance for the participation of targeted citizens, citizen empowered companies, citizen influenced companies and citizen owned companies in tender for the procurement of services and goods for any State institution at national, provincial and district levels.

(2) The Commission shall develop, in consultation with the Tender Board, policy guidelines to ensure that targeted citizens and companies specified in subsection (1) are given preferential treatment in accessing and being awarded tenders for procurement of services and goods for any State institution.

The Act has not responded to or complimented the efforts of the constitution as its focus has been on the management of the commission. It has little on the implementation systems, and is not clear on the employment policies, practices, and skills development. It is silent on the definition of “targeted citizens, citizen empowered companies, citizen influenced companies and citizen owned companies”. The provisions are not adequate as they have promoted cadres masquerading as technocrats. Entities owned by the politically connected stand a higher

chance of benefiting from this opportunity, to the disadvantage of the needy and qualified in-

digenous citizens.

Mines and Mineral Development Act No. 7 of 2015

The mining sector in Zambia is currently governed by the Mines and Minerals Development Act No.7 of 2015, which is under review. The introduction of the Mines Act (2015) created several perceived problems in the body of mining law in Zambia. For example, it eliminated a clause, present in the superseded 2008 Mines Act, which facilitated direct community access to mineral revenue. This is seen as reversing a key legal provision that could support mineral revenue sharing at a local level and therefore facilitate host community financial empowerment. In relation to the local content concept, the following have been identified.

• Upstream value addition, technology innovation and adaptation

Section 20 (1): A holder of a mining right or a mineral processing licence shall in the conduct of mining operations or mineral processing operations and in the purchase, construction, installation, and decommissioning of facilities, give preference to the: -

(a) materials and products made in Zambia; and

(b) Contractors, suppliers, and service agencies located in Zambia and owned by citizens or citizen owned companies.

In its current state, this provision sounds inspiring, but it has weak implementation mecha-

nisms for an economy like Zambia's. More needs to be done to facilitate local value addition.

• Backward and forward Linkages

Section 20 (1): A holder of a mining right or a mineral processing licence shall in the conduct of mining operations or mineral processing operations and in the purchase, construction, installation, and decommissioning of facilities, give preference to the: -

(a) materials and products made in Zambia; and

(b) Contractors, suppliers, and service agencies located in Zambia and owned by citizens or citizen-owned companies.

The Improvement of the value chain and maximising diversification of economies involves the creation of conducive conditions for the development of backward and forward linkages, value addition (especially semi-processing and cluster development) with technology sharing among countries. This has not been fully and adequately attended to by the Act to allow for participatory backward and forward linkages. The Act has not provided for research and development, which should have facilitated the development of local capacity to support industrialisation in accordance with international conventions to which Zambia is a party.

Petroleum Exploration and Development Act No. 10 of 2008

Zambia has discovered oil and gas around the country, and in preparation for the smooth extraction the government in 2008 enacted this piece of legislation. It is important to look at how the legislation envisages taking care of local content.

Section 63. (1) A holder of a licence issued under this Act, shall, in the conduct of petroleum operations under the licence, and in the purchase, construction and installation of facilities, give preference to the maximum extent possible consistent with safety, efficiency and economy, to—

(a) materials and products made in Zambia; and

(b) service agencies located in Zambia and owned by Zambian citizens or bodies corporate registered under the Companies Act.

(2) A holder of a licence shall, in all phases of the holder's operations, give preference

in employment to citizens of Zambia to the maximum extent possible consistent with safety, efficiency and economy.

(3) A holder of a licence shall, in the holder's operations, conduct training programmes in consultation with the Minister for the benefit of employees to enable the employees to qualify for advancement.

Although the law makes mention of preference for Zambian-made materials and companies, it does not address the aspect of nepotism and corrupt tendencies. There are complaints and allegations of unprofessional acts in the awarding of contracts. For example, Copperbelt PF Chairman Nathan Chanda has been accused of amassing wealth overnight, in Zambian reports alleging that he is set to become a multi-millionaire after being awarded a K10.5 million equivalent contract at KCM. It is further alleged that Nathan Chanda's company was only incorporated this year, has no mining experience, has no experienced employees, and has no equipment (Zambian Observer; 2019)

Mineral Resources Development Policy 2013 (“Policy 2013”)

The government revised the 1995 Mining Policy to ensure the development of a mining industry that creates lasting benefits for the Zambian people. The revision of the mining policy was dictated by several developments that took place between 1995 and 2013, key among them being the transfer of ownership of the industry to the private sector as a result of the privatisation process in March 2000. This process of reforms brought about challenges and lessons affecting the performance of the sector, which

led to further policy reforms. The change in the title from the Mining Policy to Mineral Resources Development Policy was due to the reflection on the complexity and diversity of the sector and the realigning of the sector to the Vision 2030 aspirations.

The following are the guiding principles of the policy: government's commitment to ensure sustainable exploitation of mineral resources; government's commitment to a free-market

economy; the application of modern principles in the administration of mining laws and regulations; adherence to regional and international conventions; and the promotion of citizen economic empowerment (CEE) (Republic of Zambia; 2013).

The policy objectives include the following: to attract and encourage local and foreign private sector participation; to facilitate the empowerment of Zambians to become owners and shareholders in the mining industry; to promote the development of a mining industry that is integrated into the domestic economy; to encourage sustainable development of small-scale mining sub-sector; and to further the policy prescription of 'Integrating the Mining Sector in the Domestic Economy' as a way of enhancing the contribution of mining to the Zambian economy.

Government has committed itself to:

- a) "Encouraging mining cluster development to link the mining sector to the broader economy.
- b) Promote linkages between mining and agriculture, mining and tourism, and mining for the (upstream) value-adding processing industries.
- c) Make provisions in the law to compel mining companies give preference to Zambian products, local contractors and services and to employ and ..." (Republic of Zambia; 2013:9)

Consistent with the Mineral Resources Development Policy of 2013, the Mines and Minerals Development Act of 2008 was revised and replaced with the Mines and Minerals Development Act of 2015. However, this Section of the law was retained in its entirety and even strengthened with the addition of sub-section

3, which states that "A person who contravenes subsection (1) or (2) is liable to pay a fine of five hundred thousand penalty units and an additional fine of twenty thousand penalty units for each day during which the default continues." The policy has the following elements in relation to local content.

• Value Addition

Government will promote and facilitate the development of downstream processing capacities for minerals by:

- a) Providing an appropriate and legal fiscal regime.
- b) Exploring opportunities to expand the local metallurgical plant capacity in the country; and
- c) Identifying market potential for national and regional consumption of value-added products.
- d) Make provisions in the law to compel mining companies to give preference to

Zambian Mining Local Content Initiative (ZMLCI)

At the national level and across the sectors, the government has developed a local content strategy, which aims to foster business linkages in growth sectors as well as promote linkages between MSMEs and large enterprises, both local and foreign². The strategy, therefore, serves as a framework for integrating the use of local primary resources and locally manufactured goods and services, the employment of local people and the participation of local service providers in production processes. The programme has been operating under the joint leadership of the Chamber of Mines (CoM) and the Zambia Association of Manufacturers (ZAM). It aims to enhance the use of locally manufactured inputs in the Zambian mining industry.

In 2012, ZMLCI commissioned a limited survey to capture baseline information on existing local supply linkages in the mining industry and to understand the key issues affecting both mining companies (buyers) and Zambian manufacturers and SME suppliers. That study found that:

- Most mining input goods and services were supplied by original equipment manufacturers (OEMs) either directly or through their agency offices registered in Zambia.
- Zambian suppliers and manufacturers generally make up only a small proportion of suppliers, suffering from lack of access to finance and generally using outdated and inefficient plant.
- Mining companies perceive Zambians as unable and unreliable suppliers.
- Imported finished products by OEMs were tax-exempt and this shut out Zambian produced goods.

Although there have been efforts in this direction, there has been an increasing outcry about the absence of involvement of local communities in the value chain, thereby rendering the initiative impotent and valueless.

² Zambia Strategy paper on the promotion of local content.

Conclusion and Recommendations

Zambia does not have dedicated local content legislation, unlike South Africa (which has the Mining Charter) or Ghana (which has well-defined local content laws in its oil, petroleum, and mining sectors). Zambia does not yet have a local content policy, and did not have an industrial policy until March 2018. Several Zambian sectorial policies are well aligned to Vision 2030, the main policy driver, and are supportive of local content growth, industrialisation, and development. However, this policy does not include the subordinate legislative provisions, which in effect are the main implementing instruments for policies and development plans.

This has led to contestations that more needs to be done to localise the rather large procurement value chain. This would support greater job creation, industrial growth and expand welfare gains.

The main recommendations proposed are:

- a) *Transform the current government guidelines* on the formulation, adoption, implementation and monitoring and evaluation of the national policies into regulations to enhance adherence to the tenets of international best practice and improve policy outcomes.
- b) *Establish a local content and value addition promotion agency* to implement all the five components of local content and value addition. This institution must have the mandate to influence the review of other policies and legislation to support supply-side and demand-side upgrading requirements of mining-related enterprises.
- c) *Addressing unfair competition* by introducing margins of preference for locally manufactured goods and supplied services; preventing dumping through import tariffs and requiring all tier 1 contractors to reserve a proportion of procurement for local goods and services.
- d) *Providing support at company level to Zambian SMEs* for some of the identified opportunities. Support includes access to finance through a structured SME loan and equity fund and facilitated access to technology and expertise for Zambian entrepreneurs.
- e) *Addressing policy and legislative weaknesses*, especially aligning the Mines and Minerals Act to the strategic intent of Vision 2030 and the mining policy; providing for tariffs and incentives to stimulate domestic manufacture of the identified goods and services; and strengthening government leadership over the pace and direction of local content growth and procurement practices.
- f) *Establish a mining-anchored labour market information system* to facilitate quicker skills landscape assessment to speed up the expatriate migrant labour validation process by the Ministry of Labour and the Department of Immigration.
- g) *The MMDA should be specific* in what is expected of the mining companies as regards human capital development. The Act should also include incentives to companies that adhere

to the policy, especially if they engage tertiary institutions through participation in the development of curriculum to suit sector requirements, in addition to funding of research programmes that will add value to production and processing methodologies of the commodity that they produce in terms of costs and related variables.

h) *Operationalise the Mining Skills and Training Framework by government*, the mining industry, education and training Institutions, the Chamber of Mines, parastatals and equipment suppliers

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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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