

Lobbying that hinders the Local Content Bill in Mozambique



1. Background

It has been six (6) years since the debate on the participation and concrete gains of Mozambicans in major extractive industry projects began. The basic issue is the establishment of legal mechanisms that make it possible the links between major natural resource exploitation projects, in particular hydrocarbons, and the Mozambican private sector.

In Law 21/2014 of 18 August (Oil Act) it is possible to lay down some rules on local content, with emphasis on the need for employment and technical and vocational training of Mozambicans and their participation in oil management and operations (Article 12); Compulsory registration of concessionaires on the Mozambique Stock Exchange (article 13); reserving a quota of no less than 25% of



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oil and gas produced for the national market (article 35); and that the National Hydrocarbon Company (ENH) take the lead in marketing and commercialising oil products (article 36); the obligation for foreign suppliers of goods and services to associate with Mozambican persons (article 41(2)); in the preference rule for the acquisition of Mozambican goods and services that are available in the required time and quantities and when the price, including taxes, is no more than 10% higher than the prices of imported goods (article 41(4)); the State may participate in petroleum operations at any of their stages under the terms and conditions to be established by contract (article 20).

The rules of local content in the oil sector are complemented by the Megaprojects Act (Law 15/2011 of 10 August), with regard to national participation in the shareholding structure of concessionaires. This law requires that between 5% and 20% of the share

capital of the concessionaire company be reserved for the participation of Mozambican public and private persons, including a free carry component and another for sale through the Mozambique Stock Exchange (BVM) to Mozambican individuals.

The free carry component awarded to ENH in the fifth (5th) public tender for the award of petroleum exploration and production rights in July 2015 was set at a minimum of 10%. The concessionaires would also have to make some shares available for sale to Mozambican citizens through BVM at market price to reach 20% if they have not already been allocated to ENH. Under the terms of the Regulation of the Megaprojects Law (Decree 16/2012 of 4 July), the provision for disposal through BVM is made until the 5th year from the date of the start of operation of the project, which is interpreted as 5 years after the start of commercial production.

1.1. Special regime in the Rovuma Basin

the local content regime for the Rovuma Basin Projects, Area 1 (led by the French Total) and Area 4 (led by the American Exxon Mobil, Italian Eni and China National Petroleum Corporation) is regulated by Decree-Law 2/2014 of 2 December. This decree proves the ability of multinationals involved in gas exploration projects to lobby because in less than one year of the Petroleum Law they have managed to stay under the umbrella of a special regime. The document establishes that local content must be included in the Development Plan, which will include a Local Content Plan to be approved by the Government following international standards, as well as stipulating preference for Mozambican companies, or for Mozambican companies in partnership with foreign companies, in order to ensure the transfer of capacity and boost the Mozambican private sector.

The Decree-Law also establishes that for any type of goods, materials, services and equipment, preference will be given to Mozambican suppliers, when the delivery conditions are competitive in terms of quality and availability, and shall comply with international industry standards and their price does not exceed by more than 10% the price, including taxes of the items to be imported into the national market.

For goods and services requiring specialised know-how, according to the document, preference should be given to Mozambican companies, or to Mozambican companies in partnership with foreign companies. The partnership may be carried out by any legally

permitted means, including subcontracting or partnerships in the form of a commercial company or other type of partnership with no percentage restriction for each party.

For main contracts (valued at US\$25 million or more) and/or contracts for the supply of goods or services related to technology, patents or supply with special requirements, including those related to the construction, operation and maintenance of production infrastructure, procurement is free. Here there is no national preference. Any foreign company may provide these services. These rules may be changed when the acquisition of goods and services is carried out within the framework of projects financed in whole or in part with resources obtained from an export credit agency, to the extent that the adoption of separate rules is expressly provided for as a condition in the financing contract concerned.

With regard to foreign labour: the hiring of foreigners is done in accordance with the quota stipulated in the Labour Force Plan approved together with the Concessionaire Development Plan, but applicable to contractors and subcontractors. Concessionaires and subcontractors may also hire foreign workers on a short-term basis for a maximum period of 180 consecutive or interpolated days per year to carry out any type of work, whether or not of a casual, occasional or unpredictable nature. According to the special regime, the Local Content Plan for suppliers of goods and services is updated every three years and the Labour Force Plan is updated annually.

1.3. Shelved proposal for a law with local content

Without any clear explanation, the Government shelved the Local Content Bill, approved in August 2019 by the Economic Council, leaving only its analysis, revision and approval by the Council of Ministers, so that it could be forwarded to Parliament. Knowing the importance of this law for the Mozambican context, there is no doubt that the Government is being pressured by very well identified interests not to proceed with the document. This situation makes it impossible to develop the national business sector, which

would be decisive in creating jobs for young people.

The draft law with local content, approved in August 2019 by the Economic Council, presents the following "guiding principles" (Article 4): The acquisition of goods and contracting of services must observe the following principles: a) preference for goods and services produced with recourse to national production factors; b) promotion of the participation of national natural and legal persons in the supply of goods and services; c) en-



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couragement of investment in capacity building of Mozambican companies and citizens; d) encouragement of the establishment of strategic business partnerships between national and foreign suppliers; e) transparency in the contracting of goods and services; and f) development of national capacity through the transfer of technology and training.

The draft law states that goods with national content are those produced with a percentage of not less than 10% of national inputs (Article 5(2)). The document, which still needs the approval of the Council of Ministers, before being submitted to Parliament, provides for the Government to create an entity responsible for the management and supervision of the rules of national content. There is an obligation for the large undertaking or project to reserve contracts for certain goods and services to be acquired and contracted on national territory (article 15).

The proposal stipulates that large-scale undertakings operating in the national territory must draw up an annual National Content Plan specifying the actions and strategies to be developed in the following year (Arti-

cle 17(1)). In addition to the annual National Content Plan, the contracting large-scale undertakings shall design and adopt a Long-Term Plan designed for a period of five (5) years (number 2 of article 17).

With regard to the participation of Mozambicans in large-scale projects, including natural gas exploration, the proposal is that enterprises should reserve 15% of their share capital, via the Stock Exchange, for sale by Mozambican individuals and public or private legal persons (Article 21 number).

The document opens up the possibility for each activity sector in which a large enterprise is involved to define a differentiated percentage of national participation, as long as it does not exceed the percentage referred to in the previous paragraph (paragraph 2 of Article 21). This is a problematic position, as the 15% should not be considered the maximum to be sold by the undertakings, but the minimum.

Failure to comply with the provisions of the draft law will give rise to fines, which will have to be fixed in the regulations of the law once approved by Parliament.

List of goods and services to be supplied on a contract reservation basis

Goods	Services
<ul style="list-style-type: none"> • Food and drink • Office supplies • Locally manufactured construction material • Feeding stuffs • Agricultural inputs • School material • Wood products • Plastic products 	<ul style="list-style-type: none"> • Inland transport of people within the national territory • Safety on the ground • Catering on the ground • Home and non-satellite telecommunications • Banking services • Legal services • Insurance services • Accounting services • Tourist services • Medical services • Post office and day-to-day computer support services • Human resources management • Fuel supply • Topography services • Cleaning and laundry • Waste collection and waste management • Sewerage services • Crane rental

3. Multinationals don't want the local content law

the multinationals involved in gas projects in Mozambique have a politically correct discourse regarding local content, although reality shows that they have been pressuring the government not to proceed with the proposed law for Parliament, as a way of safeguarding their interests in contracting goods, services and labour, in addition to escaping the obligation to alienate their shares.

The Decree-Law granting a special regime for areas 1 and 4 of the Rovuma Basin is unequivocal proof of the pressure exerted on the Government by multinationals. In fact, multinationals, particularly in the gas industry, have contracts in other countries for the supply of products and services with companies already experienced in supplying them, which often means that they have the same companies in new investment quadrants, as is the case in Mozambique.

However, in order for Mozambican companies to gain the necessary strength in providing quality services to the demanding extractive industry, there is a time of preparation which is necessary and which also requires investment from large companies. Historically,

multinationals have told governments that they want the services for yesterday so that companies from other investment quadrants can be authorised.

Without a law on local content, Mozambique has no legal arguments to impose preference on the acquisition of local goods and services, the hiring of local labour and the participation of private and public individuals and legal persons in large-scale projects. All that exist in scattered legislation is good intentions to safeguard local content.

The private sector believes that even with the approval of the draft law on local content, as it has been drafted, it will not solve the problems related to the scarce participation of the national industry of goods and services, on a competitive basis, in the various projects to be developed in the country, since it defines the obligations in a very broad way, and its regulation is necessary for its practical application.

The proposal itself recognises that economic operators must comply with the rules on the incorporation of national content contained in law and regulations to be approved

by the Council of Ministers. In other words, without such regulations, obligations would be limited to a purely theoretical level, without being possible to demand and monitor compliance.

The various problems of articulation between the proposed law of a general nature and the various sectoral laws are notorious, for example the extractive industry and the diplomas applicable to this sector, which already provide for various obligations of local content and are to a certain extent more demanding until the provisions of the proposal.

It is important to note that there are projects whose applicable legislation establishes a legal and fiscal stability regime in favour of the concessionaires, such as that provided for in the special legal and contractual regime applicable to the Liquefied Natural Gas Project in Areas 1 and 4 of the Rovuma Basin. Under

these legal stability regimes, with the approval of a new law, regulation or administrative act or an amendment to these, involving the imposition of new taxes, duties, customs duties, fees, levies or charges of any other nature which adversely affects the economic benefits of the concessionaires, the Government is obliged to refund the economic benefits which the concessionaires would have had or would have received if the changes described above had not taken place.

In this perspective, if with one hand economic operators are forced to invest and transfer revenues and profits to the local economy, with the other hand money is taken away from the public purse to pay for the increased costs operators will have. Therefore, the transfer of income does not result from local content provisions but from "indirect investment" by the State.



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