



USAID
FROM THE AMERICAN PEOPLE

SPEED
For a Better Business
Environment

ANALYSIS OF NATIONAL CONTENT PROVISIONS IN EXISTING LEGISLATION IN MOZAMBIQUE

BY JONATHAN KOOKER

TECHNICAL CONTRIBUTIONS FROM TACIANA PEÃO LOPES

FEBRUARY 2015

This publication was produced for review by the United States Agency for International Development. It was prepared by Development Alternatives Incorporated.

ANALYSIS OF NATIONAL CONTENT PROVISIONS IN EXISTING LEGISLATION IN MOZAMBIQUE

Program Title: Mozambique Support Program for Economic and Enterprise Development (SPEED)

Sponsoring USAID Office: USAID/Mozambique

Contract Number: EDH-I-13-05-00004-00

Contractor: Development Alternatives Incorporated

Date of Publication: February 2015

Author: Jonathan Kooker

Local Advisor: Taciana Peão Lopes

The authors' views expressed in this publication do not necessarily reflect the views of the United States Agency for International Development or the United States Government.

CONTENTS

- CONTENTS I**
- TABLES AND FIGURES III**
- ACKNOWLEDGMENTS AND LIMITATIONS V**
- ABBREVIATIONS VII**
- EXECUTIVE SUMMARY 1**
- I. INTRODUCTION 5**
- BACKGROUND 5**
- OBJECTIVE OF ASSESSMENT 6**
- METHODOLOGY 6**
- SUMMARY OF FINDINGS 7**
- II. NATIONAL CONTENT UNDER CURRENT MOZAMBICAN LAW 14**
- 1. EMPLOYMENT THEME 14**
 - A. The Guiding Principles 14
 - B. The Quota System 15
 - C. The Fiscal Incentives Regime 17
 - D. The Concession-specific Framework 18
- 2. FISCAL THEME 20**
 - A. The Guiding Principles 20
 - B. The Application of State Revenues 21
 - C. The National Profit-Sharing Framework 21
 - D. The Fiscal Incentives Regime 22
 - E. The Calculation for Favouring Mozambican Goods and Services 24
- 3. PROCUREMENT THEME 24**
 - A. The Guiding Principles 24
 - B. The Delegation of Procurement Policy Decisions 26
 - C. The Procurement Advantage for a National or Local Entity 28
 - D. The Procurement Benefits of Affiliating with a National or Local Entity 30
- 4. CSR THEME 32**
- III. CONCLUSION – NEXT STEPS 34**
- A. POLICY RECOMMENDATIONS 34**
 - 1. Recommendations in Respect of Forming a National Content Committee 34
 - 2. Recommendations in respect of Policy Formulation 36
- B. LEGISLATIVE RECOMMENDATIONS 38**
 - 1. Recommendations in Respect of the Legislative Process 38

2. Recommendations in Respect of the Legislative Content	38
ANNEX: KEY NATIONAL CONTENT LEGISLATION AND CORRESPONDING THEMES	41
BIBLIOGRAPHY	55

TABLES AND FIGURES

TABLE

Table 1: National Content Legislative Themes: Advantages and Disadvantages	7
Table 2: Key National Content Legislation and Corresponding Approaches.....	41

ACKNOWLEDGMENTS AND LIMITATIONS

This report was prepared for the *Confederação das Associações Económicas de Moçambique* (“CTA”) based on research and fieldwork undertaken in October and November 2014 through USAID/Mozambique’s SPEED (Support Program for Economic and Enterprise Development) project (“SPEED”). The authors acknowledge the contributions from Dorival Bettencourt, Policy Advisor at SPEED and Zachary Kaplan, Director, Extractives Group, at Development Alternatives Incorporated (“DAI”).

The content of this report is based on a review of the existing policies, legislation, decrees and regulations related to national content as in existence as of November 2014. The analysis references international legal standards and is not intended to constitute legal advice on laws of Mozambique or any other jurisdiction. The review is intended to serve as a sample of the current treatment of national content in Mozambique and should not replace a comprehensive evaluation of the entire legal framework of the country.

The matters dealt with herein should not be interpreted as being applicable to any other related issues. This report has been prepared solely for the internal use of CTA and SPEED and may not be relied on by any third party under any circumstance and may not be disclosed or displayed to any third party without the express, written consent of SPEED.

ABBREVIATIONS

BC	Business Concession
CTA	Confederação das Associações Económicas de Moçambique
CSR	Corporate Social Responsibility
DAI	Development Alternatives Incorporated
ENH	Empresa Nacional de Hidrocarbonetos
Government	Governo de Moçambique
LSP	Large Scale Project
MPD	Ministério de Planificação e Desenvolvimento (now "Ministério de Economia e Finanças")
PPP	Public Private Partnership
PPP Law	Law on Public Private Partnerships, Large Scale Projects and Business Concessions
SMEs	Micro, Small and Medium enterprises
SPEED	Support Program for Economic and Enterprise Development
State	Governo de Moçambique

EXECUTIVE SUMMARY

The Mozambican economy is on the precipice of being flooded with foreign investment. New gas deposits found offshore have the potential to bring significant increases to public revenues and transform local economic development. In fact, over US\$25 billion is expected to be invested by 2020 for oil and gas companies to reach initial production. This activity promises the country vast opportunities to strengthen Micro, Small and Medium enterprises (“SMEs”), human capital and access to finance both upstream and downstream of the investments as well as across all economic sectors. The Governo de Moçambique (“Government”) is poised to capitalize on this fortuitous change of events by developing a program for incorporating national content into new industries and the private sector is keen to get involved.

Studies, including an assessment conducted by DAI on behalf of SPEED¹ in 2013, have identified that Mozambique does not have a specific national content policy and regulatory framework and provide various recommendations as to the appropriate next steps to streamline the law. Both the public and private sector have relied on such reports to push for the initiation of urgent reform efforts, so that a national content scheme is in place before the surge of investment has passed and companies are in operation.

In response to these calls for reform, CTA and SPEED have joined efforts to ascertain the best way to contribute to the process. During their discussions, CTA and SPEED have recognized that, while the Government, foreign investors, SMEs, expert advisers and donor organisations agree that it is crucial for clarity to be brought to the nation’s national content regime, no one has conducted a comprehensive inventory of the laws already in place on the subject. CTA and SPEED maintain that a thorough assessment of the relevant provisions in the Mozambican code will inform stakeholders as to the prevailing treatment of national content by illuminating the themes, revealing the consistencies and identifying the areas for improvement in the present law. This report provides this evaluation.

The research for this report began with a study of the primary legislation related to investment, mining, petroleum, employment, mineral resources, taxation, procurement and finance from which provisions that contained references to an element of national content were extracted. Through further analysis of these references, the authors were able to articulate a trend in the law through which current Mozambican law treats national content. Specifically, the content of each of the provisions consistently led to one of four avenues for promoting national content: employment, fiscal, procurement or corporate social responsibility (“CSR”). After grouping each provision into one of these four categories, the clauses were assessed together and the definition and scope of each theme was defined.

The exercise of defining the content and scope of each of the themes illuminated the positive and negative attributes of each mode of treatment of national content. This report weighs the characteristics of each of the aspects of national content appearing in the Mozambican code, focusing on the underlying policies, assumptions, processes, conditions and qualifications, ease of compliance, opportunities for avoidance and circumvention, enforcement mechanisms, consistency and flexibility of the law. These factors are

¹ USAID/Mozambique’s SPEED (Support Program for Economic and Enterprise Development) project.

applied to evaluate each theme separately in the body of the report. Thereafter, the advantages and disadvantages of each of the themes are aggregated and assembled into recommended next steps for national content legal reform in Mozambique.

The following paragraphs summarize the report's findings.

Provisions falling under the **Employment Theme** aim to strengthen the skills and capacity of Mozambique's workforce through the employment and training of citizens throughout the economy. Laws address this objective by (i) offering guiding principles, (ii) structuring a quota system, (iii) devising a fiscal incentives regime and (iv) carving out a concession-specific employment framework from the quota system. The guiding principles state that a purpose of the legislation is to promote the employment and training of Mozambican citizens but do not dictate a process or standard for achieving this objective. The quota system builds on these general clauses and stands at the foundation of the national content employment code, setting a range of permitted ratios of foreign-to-Mozambican workers based on a company's size. The fiscal incentives regime affords companies the right to (a) remit profits if they meet conditions including the creation of at least 25 Mozambican jobs and (b) claim tax deductions for certain expenses related to qualifying training programs. The concession-specific framework departs from the standard quota system and forms a unique employment scheme for concessions and PPPs, leaving many details to be determined in forthcoming regulations or contracts with the Government.

Laws employing the **Fiscal Theme** align national content objectives with profit. This is achieved through (i) guiding principles (ii) application of State revenues (iii) a national profit-sharing framework, (iv) the fiscal incentives regime and (v) a calculation for favoring Mozambican goods and services. Guiding principles identify a statute's objective of stimulating economic development throughout the country but do not refer to a precise mechanism. Through the application of State revenues, the Government ensures that a percentage of State revenues from mining and petroleum operations are apportioned to development initiatives in the communities surrounding these industries. The national profit-sharing framework reserves certain ownership and partnership rights in selected extractive and PPP projects for Mozambicans and/or State and private sector entities. The fiscal incentives regime incentivizes, rather than mandates, activities that advance national content. The regime is (a) not complicated to supervise, (b) driven by capacity and availability rather than required use of Mozambican goods and services and (c) likely to be utilized increasingly as quality and supply rise. The calculation for favoring Mozambican goods and services institutes a formula, based on price, for determining whether Mozambican goods or services should be granted a procurement preference.

Procurement Theme statutes connect SMEs to large-scale businesses, surmising that through this interface, the capacity and quality of SME goods and services will rise while companies are able to purchase goods and services more quickly and affordably. The Mozambican code implements this model by (i) constructing guiding principles, (ii) delegating procurement policy decisions, (iii) granting an advantage to a national or local entity and (iv) bestowing benefits for foreign companies affiliating with a national or local entity. The guiding principles notify those seeking to adhere to a law that promoting entrepreneurialism, commercial skills growth and business expansion within Mozambique are parts of its goals. Laws that delegate procurement policy decisions provide general national content objectives but charge another process or body with the duty of determining the policy and structure to be used. Laws granting an advantage to a national or local entity do so by affording some form of preference to a qualifying company. However, the conditions rendering a company eligible for such preference are frequently unclear and inconsistent. Foreign companies that affiliate with a national or local entity can

also share in certain procurement advantages but, again, the relationship that creates an affiliation is not defined.

The **CSR Theme** emerges through the Policy of Corporate Social Responsibility for the Extractive Industry of Mineral Resources. The policy appears to be premised on the assumption that foreign investors' interest in sustainable development, economic growth, poverty reduction and resource protection in Mozambique will be driven more by their CSR standards rather than by economic and commercial needs. While the policy recommends many positive amendments to the national content legal structure, its assumption that partnerships between the extractive companies and SMEs are charitable acts may also not be the most prudent foundation upon which build future competitive and commercially-viable relationships between the sectors in the long-term.

The recommendations of this report range from threshold issues that should be considered when forming a national content policy committee, suggested studies on macroeconomic impacts and effects on capacity-enhancement of selected policy structures, data collection related to SME capabilities and barriers to delivery of goods and services to specific legislative amendments to be considered. Some of the core legislative amendments that are recommended include:

- Clarifying general provisions² by introducing clauses that set out clear procedures and standards.
- Assigning definitions to key, undefined or inconsistently terms so as to place the private sector and SMEs in a position to abide by the standards, avoid situations where abiding by one statute could require breaching another and grant the public sector the ability to assess whether the law has been followed.³
- Filling gaps in the law⁴ so that those looking to comply with a requirement can understand obligations without analyzing additional legislation.
- Harmonizing terms, standards, supervisory authorities and penalties/rewards, when supported by sound policy and research.⁵

² See e.g., article 6 (*Basic guiding principle for investments*) of the Law on Investment, which sets out that investments covered under the act “should contribute to the sustainable economic and social development of the country [and] meet the principles and objectives of the national economic policy.”

³ Examples of key terms that remain undefined in the current Mozambican legislation include “affiliation”, “preference” and “Mozambican citizen”.

⁴ See e.g., the Mining Law, which explains that training programs should be formed in accordance with “applicable legislation”. Unfortunately, under applicable law, training programs are only contemplated under provisions that require the terms be determined contractually and, therefore, provide no additional guidance.

⁵ Most-commonly, this occurs under the Procurement Theme. In certain concession arrangements, Mozambican law permits the Government and a private sector entity to agree via contract to a national content framework on a project-by-project basis. This creates a multifarious regime for national content and invites multiple arbiters of breaches of national content standards throughout the country.

- Providing explicit procedures and defined actions to be undertaken in compliance with national content requirements.⁶
- Appointing an entity to administer the law and defining the scope and parameters of its authority to negotiate or act.⁷
- Drafting national content legislation that fosters communication between the Government, the private sector and SMEs.⁸
- Redrafting provisions of the Mozambican code that materially diminish a company's profitability and access to finance to mirror the free market principles in which capitalist businesses thrive.⁹
- Enacting laws that function as catalysts for capacity-building within the economy when the capacity of the SMEs and human capital has not yet reached an optimal level.¹⁰
- Avoiding national content requirements so assertive that they deter investment.¹¹

⁶ Under the Mining Law and Petroleum Law, for example, in some sections, "national citizens" are to be employed and trained while in others, "Mozambican workers" should be retained. In neither case are the terms defined. Art. 64(b) and Petroleum Law, Art. 67, nonetheless impose penalties up to revocation of the concession for non-compliance with the national content provisions.

⁷ Where the law sets forth a condition, such as under the paragraph (4) of article 41 (*Acquisition of goods and services*) of the Petroleum, paragraph (1) of article 6 (*Requirements for Exemption from Customs Duties and Value Added Tax*) of the Code of Fiscal Benefits and the laws on hiring foreign workers and article 35 (*Fiscal benefits on import*) of the Petroleum Operations Tax & Fiscal Benefits Law, it does not proceed consistently to elucidate who decides whether such condition has been fulfilled.

⁸ Amendments to the code can be based on existing Mozambican law. The Regulation for the Mechanisms and Procedures for Contracting Foreign Workers, Arts. 8(1) and 12 and the Regulation for the Contracting of Foreign Citizens for the Petroleum and Mining Sector 8(1) and 12 provide flexibility in respect of the quota is permitted through communication with the government entity in charge of labor in the case of Government-approved investments and the hiring of short-terms workers (those working less than 30 consecutive or intermittent days or 180 days in the oil and gas and mining sectors), who do not fall within the quota regime.

⁹ The Petroleum Law, for example, permits the State to elect, at any time, to participate in the ownership of any entity involved in petroleum operations and requires that ENH form partnerships with all companies during exploration. Such Governmental right imposes risks as to profitability and impede financing.

¹⁰ Elective provisions, such as those related to fiscal incentives, encourage commercial interest and advantage in developing SME capacity while penal codes punish both the large investment company and SME for the lack of congruity between the quality and quantity of goods and services available and those required.

¹¹ Laws that require exceptionally high proportions of good and services to be procured domestically may drive potential investors to competing jurisdictions.

- Reconsidering policies and laws that equate national content objectives with corporate philanthropy.¹²
- Reward project neighborhoods by ensuring that the Government's economic gains from the region benefit its residents.¹³

I. INTRODUCTION

BACKGROUND

Mozambique finds itself at a unique economic development junction. Investments in gas, coal, oil and other mineral extractives and their associated infrastructure investments and their large demand for goods and services are opening up new markets for local business including SMEs. Both the Government and the private sector are faced with a challenge on how best to stimulate the development of private sector to leverage the push that the extractive industry is and will continue imposing on the economy. Parties are turning to national content as a mechanism to obtain support goods and services for the industry and to spread growth from the flourishing investment to the entire economy.

In response to the established need for an assessment of the national content framework in Mozambique, in September 2013, DAI, on behalf of SPEED, prepared for CTA the *Policy Options for Strengthening Local Content in Mozambique* study, which outlined the opportunities Mozambique has to manage national content in the absence of a single form of legislation on the subject. The report documented that while Mozambique's legal framework currently contemplates national content, the approach is not streamlined across the policies, laws and regulations that touch on the issue. One of the key recommendations of the report was the creation of a national content task force to coordinate the efforts

¹² A core premise in national content theory rests on the belief that each of the foreign corporations, SMEs and local staff can witness improved financial success and capacity through collaboration. To the contrary, the Policy of Corporate Social Responsibility for the Extractive Industry of Mineral Resources assumes that improvements in these areas are best-suited for corporate philanthropy.

¹³ See e.g., article 20 (*Local development*) of the Mining Law and article 19 (*Administration of petroleum operations*) and article 48 (*Local development*) of the Petroleum Law, which instruct the Government to ensure that a percentage, fixed by the State budget with reference to projected revenues from petroleum or mining operations, of its revenues from such operations be apportioned to development initiatives in the communities surrounding these projects.

of the public, private and local business sectors to generate a consistent and informed dialogue on national content.¹⁴

OBJECTIVE OF ASSESSMENT

This overview aims to summarize the treatment of national content under current Mozambican law by building on the research presented in the 2013 study. The laws reviewed and the conclusions derived from them are considered to be representative of the majority of the national content provisions and content themes in Mozambique. The intention of the analysis is to stimulate discussion among stakeholders as to appropriate policies, structures, mechanics, supervisory measures and standards related to national content for Mozambique in the future. The report is also designed to assist policy and legal discussions by highlighting the (i) inconsistencies and uncertainties for both the public and private sectors, (ii) the gaps among legislative provisions and (iii) conflicts present under the existing law.

METHODOLOGY

The findings of this study stem from a review of existing laws in Mozambique, national content frameworks, lessons learned and policy reports from other countries, stakeholder consultation, meetings with Mozambican legal counsel, correspondence with key Government entities and regular discussions with CTA.

The following laws, regulations and policies have been evaluated in preparation of this report:

- Code of Fiscal Benefits, Law No. 4/2009
- Enabling Law, Law No. 25/2014
- Foreign Exchange Law, Law No. 11/2009
- Insurance Industry Regulation, Decree No. 30/2011
- Investment Law Regulations, Decree No. 43/2009
- Law on Investment, Law No. 3/93
- Law on Public Private Partnerships, Large Scale Projects and Business Concessions, Law No. 15/2011
- Mining Law, Law No. 20/2014
- Petroleum Law, Law No. 21/2014
- Petroleum Operations Tax & Fiscal Benefits Law, Law No. 27/2014
- Policy of Corporate Social Responsibility for the Extractive Industry of Mineral Resources, Resolution No. 21/2014
- Política e Estratégia de Recursos Minerais, Resolução No. 89/2013
- Procurement Regulations, Decree No. 15/2010

¹⁴ The analytical team learned in November 2014 that the Ministério de Planificação e Desenvolvimento (now "Ministério de Economia e Finanças") ("MPD") has begun taking steps to establish a legal team to formulate a national content policy and/or law.

- Regulation for the Mechanisms and Procedures for Contracting Foreign Workers, Decree No. 55/2008
- Regulation on the Contracting of Foreign Citizens for the Petroleum & Mining Sector, Decree No. 63/2011

SUMMARY OF FINDINGS

Mozambican law’s treatment of national content can be grouped into four interrelated themes, categorized based on the particular aspect of national content promoted by the legislation, whether intentionally or unintentionally. Provisions incentivizing employment and training of Mozambicans fall under the **Employment Theme** and promote domestic growth through investment in human capital. Laws employing the **Fiscal Theme** appear in articles that connect profit or costs related to a project with national content. The **Procurement Theme** appears in legislation that seeks to increase SME involvement in provision of goods and services to spur economic development upstream and downstream of a primary large-scale investment project. The **CSR Theme** captures national content as a component of the private sector’s social responsibility program as opposed to a purely commercially-driven engagement.

Each of these themes holds advantages and disadvantages which are summarized in Table 1 “National Content Legislative Themes: Advantages and Disadvantages” and considered in detail in the following sections of this report. The findings show that the Mozambican code bundles a diverse set of models in its design to help the country meet its national content objectives. The laws reveal consistencies and inconsistencies, clarity and uncertainty, and direction and vagueness. Though gaps are common through the law, none of the provisions evaluated were found to be in direct disagreement with another. Therefore, much of the code remains open to development and interpretation but little requires repeal based on conflict of laws.

TABLE 1: NATIONAL CONTENT LEGISLATIVE THEMES: ADVANTAGES AND DISADVANTAGES

Theme	Relevant Law	Advantages	Disadvantages
Employment	<ul style="list-style-type: none"> • Code of Fiscal Benefits, Art. 6(1) • Code of Fiscal Benefits, Art. 18(1) • Enabling Law, Art. 3(2)(h) • Investment Law Regulations, Art. 6(2)(c) • Investment Law Regulations, Art. 29(2) • Law on Investment, Art. 7(a-e); (h) and 	<ul style="list-style-type: none"> • Requirements for employment of foreign workers are subject to attainable conditions and understandable procedures. • The regulator is identified and evidentiary requirements are articulated and reasonable. • A corporation seeking to hire a foreign worker knows precisely how to proceed under employment law. • The employment quota code appears to be designed to foster communication between the private sector and the Government. • The Regulation for the Mechanisms and Procedures 	<ul style="list-style-type: none"> • Corporations are required to guess the quantity of Mozambican workers legislated under the Mining Law and Petroleum Law by cross-reference to the Regulation for the Contracting of Foreign Citizens for the Petroleum and Mining Sector. • Provisions under the Mining Law and Petroleum Law should be clarified as companies’ failure to meet the requirements could lead to sanctions or revocation of the concession. • The nature and frequency of the training programs under the Mining Law and Petroleum Law

<p>(i)</p> <ul style="list-style-type: none"> • Mining Law, Art. 8(2)(b); (c) and (h) • Mining Law, Art. 33(2) • Mining Law, Art. 36(c) • Petroleum Law, Art. 12(2) • Petroleum Law, Art. 15(b) • Petroleum Operations Tax & Fiscal Benefits Law, Art. 19(1)(c) • Policy of Corporate Social Responsibility for the Extractive Industry of Mineral Resources, Art. 6 • PPP Law, Art. 4(g), (h) and (i) • PPP Law, Art. 34(b) and (c) • Regulation for the Mechanisms and Procedures for Contracting Foreign Workers, Art. 2(3) • Regulation for the Mechanisms and Procedures for Contracting Foreign Workers, Art. 3(1) • Regulation for the Mechanisms and Procedures for Contracting Foreign 	<p>for Contracting Foreign Workers and the Regulation on the Contracting of Foreign Citizens for the Petroleum & Mining Sector follow the same scheme.</p>	<p>is not specified or available from cross-reference to other laws.</p> <ul style="list-style-type: none"> • No guidance as to the appropriate percentage of workers from or the boundaries of the concession area under the Mining Law and the Petroleum Law. • Quotas and percentages are too inflexible to be applicable across sectors and meet the individual requirements of projects in Mozambique. • Inflexible quotas in respect of employment could drive investment out of the country.
---	--	--

	<p>Workers, Art. 4(1)</p> <ul style="list-style-type: none"> • Regulation for the Mechanisms and Procedures for Contracting Foreign Workers, Art. 5 • Regulation for the Mechanisms and Procedures for Contracting Foreign Workers, Art. 8(1) • Regulation for the Mechanisms and Procedures for Contracting Foreign Workers, Art. 12 • Regulation for the Mechanisms and Procedures for Contracting Foreign Workers, Art. 14(2) and (3) • Regulation for the Mechanisms and Procedures for Contracting Foreign Workers, Art. 17(1) • Regulation on the Contracting of Foreign Citizens for the Petroleum & Mining Sector, Art. 3(1) • Regulation on the Contracting of Foreign Citizens for the Petroleum & Mining Sector, 		
--	--	--	--

	<p>Art. 3(4) and (5)</p> <ul style="list-style-type: none"> • Regulation on the Contracting of Foreign Citizens for the Petroleum & Mining Sector, Art. 5 • Regulation on the Contracting of Foreign Citizens for the Petroleum & Mining Sector, Art. 8(1) • Regulation on the Contracting of Foreign Citizens for the Petroleum & Mining Sector, Art. 12 • Regulation on the Contracting of Foreign Citizens for the Petroleum & Mining Sector, Art. 13(2) and (3) 		
Fiscal	<ul style="list-style-type: none"> • Code of Fiscal Benefits, Art. 6(1) • Code of Fiscal Benefits, Art. 18(1) • Code of Fiscal Benefits, Art. 19(1)(c) • Investment Law Regulations, Art. 6(2)(c) • Law on Investment, Art. 6 • Mining Law, Art. 8(2)(b); (c) and (h) • Mining Law, Art. 20 • Mining Law, Art. 23(1) • Petroleum Law, Art. 4(3) 	<ul style="list-style-type: none"> • Acknowledges the commercial climate in which corporations function and align national content objectives with profit. • Attempts to compensate for a region's loss of the resource extracted. • Can facilitate balanced economic development. • May render communities more receptive to concession project. • The tax codes set out formulas that are easy for companies to interpret and incorporate into their fiscal operations, rendering the probability that these measures will be adopted. • Codes related to calculating a price when affording a preference to a national company provide straight-forward equations. • Entities charged with compliance and observance of 	<ul style="list-style-type: none"> • Mandating shared of ownership may not be commercially wise and could ultimately diminish the profitability of the endeavour. • PPP Law could be viewed by investors as removing the decision making authority of the sponsors in respect of its business partners and percentage of ownership. • PPP Law could be circumvented by profit sharing contracts and/or voting agreements between Mozambican nationals holding shares in the company and foreign investors. • Mozambican ownership of a company through the stock market may pose administrative hurdles for common investors and risks for the project company. • Compliance is typically optional. • Private sector could conclude that the costs outweigh the benefits, whether fiscally or

	<ul style="list-style-type: none"> • Petroleum Law, Art. 19 • Petroleum Law, Art. 41(4) • Petroleum Law, Art. 48 • Petroleum Operations Tax & Fiscal Benefits Law, Art. 19(1)(c) • Petroleum Operations Tax & Fiscal Benefits Law, Art. 19(1)(f) • Petroleum Operations Tax & Fiscal Benefits Law, Art. 21 • Policy of Corporate Social Responsibility for the Extractive Industry of Mineral Resources, Art. 2 • PPP Law, Art. 4(g), (h) and (i) • PPP Law, Art. 33(1)(a) and (b) 	<p>the law are defined.</p> <ul style="list-style-type: none"> • In respect of the fiscal incentives, regime mechanics are straight-forward and actions to be taken are precisely defined. • Fiscal incentives structure incites dialogue among stakeholders as to national content policies that would be worth implementing by all parties. Furthermore, the paradigm reveals an economic and demand-driven approach to national content, which may be in the best interest of the long-term development of national content measures. 	<p>administratively.</p> <ul style="list-style-type: none"> • The spikes in bidding value and excess price allowance are artificially introduced and could alter the costs across the market as well as lead to pay offs rather than genuine procurement of services by companies.
Procurement	<ul style="list-style-type: none"> • Code of Fiscal Benefits, Art. 6(1) • Enabling Law, Art. 3(2)(d) • Law on Investment, Art. 7(a-e); (h) and (i) • Mining Law, Art. 8(2)(b); (c) and (h) • Mining Law, Art. 22(2) • Mining Law, Art. 22(4) • Mining Law, Art. 24(1) • Mining Law, Art. 53(a) 	<ul style="list-style-type: none"> • Based on theory that connecting SMEs to large-scale businesses will build the capacity and quality of SME goods and services while enabling companies to purchase goods and services more quickly and affordably by utilizing domestic providers. • Goal is to spread economic success across the economy and encourage a permanent rise in national production. • Provisions grant a pre-emption right or preference to Mozambican businesses or individuals. • Preference arises automatically by nature of being a “Mozambican legal entity”, “local products and services”, “Mozambican citizen”, “national 	<ul style="list-style-type: none"> • Laws are not clear as to who decides and oversees the quality control analysis. • Laws also frequently lack direction, standards and definitions that are necessary to properly afford a Mozambican individual or entity a procurement preference. Laws lack lack uniformity in respect of who is afforded preference. • Where the law sets forth a condition, it often does not proceed to elucidate who decides whether such condition has been fulfilled. • Laws frequently render it difficult to anticipate the manner in which a company can expect to comply. • Standards for what is Mozambican are not defined.

	<ul style="list-style-type: none"> • Mining Law, Art. 57 • Mining Law, Art. 59(1) • Mining Law, Art. 65(1) • Petroleum Law, Art. 13(1) • Petroleum Law, Art. 26(4) • Petroleum Law, Art. 41(2) • Petroleum Law, Art. 41(4) • Petroleum Operations Tax & Fiscal Benefits Law, Art. 35 • Policy of Corporate Social Responsibility for the Extractive Industry of Mineral Resources, Art. 6 • Política e Estratégia de Recursos Minerais, Art. 4(f) • Política e Estratégia de Recursos Minerais, Art. 5(b) and (d) • PPP Law, Art. 4(g), (h) and (i) • PPP Law, Art. 34(d) and (e) 	<p>citizen”, manufacturer of a product produced in Mozambique, provided any conditions (e.g. products are comparable in quality to international materials) are satisfied.</p>	<ul style="list-style-type: none"> • It is not clear what exactly is a company to do when it gives “preference”. • The decision maker with respect to whether “preference” has been afforded is not clarified. • Statutes also do not explain the manner in which an entity prefers a Mozambican company or citizen.
CSR Approach	<ul style="list-style-type: none"> • Policy of Corporate Social Responsibility for the Extractive Industry of Mineral Resources, Art. 2 • Policy of Corporate 	<ul style="list-style-type: none"> • Envisages a government-managed CSR structure that includes national content and rectifies many of the limitations of the national content framework. • Strategies related to national content address shortcomings elsewhere in the law, such as: <ul style="list-style-type: none"> • identification of gaps in the existing 	<ul style="list-style-type: none"> • Policy assumption rests on certainty that foreign investors’ interest in sustainable development, economic growth, poverty reduction and resource protection in Mozambique will be driven by their CSR standards rather than by economic and commercial needs. • Anticipates that corporations in the extractive sector can be enticed to partner with the

<p>Social Responsibility for the Extractive Industry of Mineral Resources, Art. 3(b), (d), (e), (g), (g), (i), (j) and (k)</p> <ul style="list-style-type: none"> • Policy of Corporate Social Responsibility for the Extractive Industry of Mineral Resources, Art. 4 • Policy of Corporate Social Responsibility for the Extractive Industry of Mineral Resources, Art. 6 	<p>legislation;</p> <ul style="list-style-type: none"> • ensuring that legal requirements are aligned with international best practices; • promotion of capacity of interested parties to achieve compliance with the laws; • creation of mechanisms for supervision and strengthening of regulators; • harmonization of CSR plans across the sector, prioritizing development of human capital and links to the local economy; • support of development of Mozambican companies to provide goods and services to the extractives sector and build greater technical competence and trade competitiveness; • secure the extractive sector's contribution to the development of the capacity of local suppliers; • including provisions related to local enterprise development, employment creation and local acquisitions in the local development agreements, which are anticipated to be formed for each with the local governments for each extractive project; and • guaranteeing the financing of the local development programs. <ul style="list-style-type: none"> • The policy bases its definition of CSR and principles on internationally-accepted 	<p>Government in economic and social development projects.</p> <ul style="list-style-type: none"> • The policy does not have a direct, immediate legal effect. • The policy presumes that the current status of all Mozambican SMEs is too weak to be commercially desirable for the extractives industry. • Could be viewed as a delegation of the Government's duty to manage the social, sustainable and economic development of the country to the private sector philanthropic engagements. The private sector may not be an ideal candidate to bind with the Government in designing macroeconomic plans for meeting national content goals. • Government will need to incentivize the extractive industry and SME's participation in the formulation of these programs.
---	---	--

		standards. <ul style="list-style-type: none"> Themes of transparency, compliance with current legislation, consensus building among stakeholders, gender equality, respect for local culture and customs, harmony among Government policies, following international standards and monitoring and evaluation are core elements of the policy. 	
--	--	---	--

II. NATIONAL CONTENT UNDER CURRENT MOZAMBICAN LAW

Through the analysis below, each of the four themes of national content under Mozambican law are handled individually through assessments broken further into sub-thematic categories. The advantages and disadvantages related to the legal structures, underlying policies and relationship with other laws are considered in detail. This review, however, should not replace an exhaustive assessment of the policy objectives of the Mozambican government, both current and forecast, or a study of the best practices, lessons learned, current trends in economic, labor and corporate theory and projected outcomes related to each of the policies.

1. EMPLOYMENT THEME

A. THE GUIDING PRINCIPLES

Articles of the Mozambican code falling under the Employment Theme aim to strengthen the skills and capacity of Mozambique’s workforce through the employment and training of citizens throughout the economy. Guiding principles aid with interpretation of the goals, objectives and subsequent clauses of the legislation. Such clauses frequently appear at the beginning of statutes and clarify that the role of an institution or the terms of the law should be interpreted with a national content policy objective in mind. However, alone, these sections do not mandate sufficiently specific responsibility, action, standards or measurements to render them meaningfully enforceable.

Article 3 (*General conditions*) of the Regulation for the Mechanisms and Procedures for Contracting Foreign Workers and article 3 (*General conditions*) of the Regulation for the Contracting of Foreign Citizens for the Petroleum and Mining Sector call for employers to use their best efforts to integrate Mozambican workers into positions of greater technical complexity and in management and administrative positions in their companies.

Paragraph (d) or article 7 (*Objectives of investments*) of the Law on Investment articulates the objectives of investments to include “the creation of jobs for national workers and the improvement of entrepreneurial productivity and efficiency”.

Article 4 (*Guiding Principles*) of the Law on Public Private Partnerships, Large Scale Projects and Business Concessions (the “**PPP Law**”) stipulates that each public private partnership (“**PPP**”), large scale project (“**LSP**”) and business concession (“**BC**”) contribute, *inter alios*, to the promotion of greater economic inclusion of Mozambicans.

By themselves, these provisions are difficult to enforce. However, the clauses form a segue to the employment quota system, investment incentives regime and concession-specific terms that clothe them with legal force.

B. THE QUOTA SYSTEM

The backbone of Mozambique’s employment legal regime is the quota system. The employment code establishes a sliding-scale quota system for the hiring of foreign workers based on the size of the company as follows:

1. a small company employs 10 or fewer individuals and may retain the greater of 10% or 1 foreign worker(s);¹⁵
2. a medium company has more than 10 and less than 100 employees and foreigners may comprise up to 8% of the total workforce;¹⁶
3. a large company has a workforce of more than 100 employees and may hire foreigners at a rate up to 5% of the total number of workers.¹⁷

In order to obtain work authorization for the foreigner, the company wishing to offer employment submits an application for approval to the government entity overseeing labor.¹⁸ Flexibility in respect of the quota is permitted through communication with the government entity in charge of labor in the case of Government-approved investments and the hiring of short-terms workers (those working less than 30

¹⁵ Regulation for the Mechanisms and Procedures for Contracting Foreign Workers, Arts. 2(3), 4(4), 5(1)(c) and 5(2)(c) and Regulation for the Contracting of Foreign Citizens for the Petroleum and Mining Sector, Arts. 3(4), 3(5), 5(1)(c) and 5(2)(c).

¹⁶ Regulation for the Mechanisms and Procedures for Contracting Foreign Workers, Arts. 2(3), 5(1)(b) and 5(2)(b) and Regulation for the Contracting of Foreign Citizens for the Petroleum and Mining Sector, Arts. 3(4), 3(5), 5(1)(b) and 5(2)(b).

¹⁷ Regulation for the Mechanisms and Procedures for Contracting Foreign Workers, Arts. 2(3), 5(1)(c) and 5(2)(c) and Regulation for the Contracting of Foreign Citizens for the Petroleum and Mining Sector, Arts. 3(4), 3(5), 5(1)(c) and 5(2)(c).

¹⁸ Regulation for the Mechanisms and Procedures for Contracting Foreign Workers, Art. 14(1) and Regulation for the Contracting of Foreign Citizens for the Petroleum and Mining Sector 13(1).

consecutive or intermittent days or 180 days in the oil and gas and mining sectors), who do not fall within the quota regime.¹⁹

In addition to the above preconditions, a foreign worker may not be hired unless:

1. he/she possesses the required academic and professional qualifications;²⁰
2. the proposed employee's academic qualifications are certified as equivalent to the required academic qualifications in Mozambique;²¹
3. insufficient Mozambican citizens hold such qualifications;²²
4. the union delegate, union committee or sectoral union and, in the case of specialized work in non-governmental organizations, scientific research, teaching and similar areas of specialized employment as well as in the case of any employment in the oil and gas and mining sectors, the ministry responsible for the relevant sector, confirm the employment necessity and shortage of the occupation in Mozambique;^{23 24}
5. the proposed period of employment is no longer than 2 years;²⁵ and
6. an application is approved by the entity responsible for labor along with supporting documentation and fee payment.²⁶ In the case of Government-approved investments, notification of the employment is required rather than approval of the application.²⁷

¹⁹ Regulation for the Mechanisms and Procedures for Contracting Foreign Workers, Arts. 8(1) and 12 and Regulation for the Contracting of Foreign Citizens for the Petroleum and Mining Sector 8(1) and 12.

²⁰ Regulation for the Mechanisms and Procedures for Contracting Foreign Workers, Art. 14(2) and Regulation for the Contracting of Foreign Citizens for the Petroleum and Mining Sector, Art. 13(2).

²¹ Regulation for the Mechanisms and Procedures for Contracting Foreign Workers, Art. 14(2) and Regulation for the Contracting of Foreign Citizens for the Petroleum and Mining Sector, Art. 13(2).

²² Regulation for the Mechanisms and Procedures for Contracting Foreign Workers, Art. 16(4) and Regulation for the Contracting of Foreign Citizens for the Petroleum and Mining Sector, Art. 15(2)(c).

²³ Regulation for the Mechanisms and Procedures for Contracting Foreign Workers, Arts. 16(3) and 17 and Regulation for the Contracting of Foreign Citizens for the Petroleum and Mining Sector, Arts. 15(2)(f) and (2)(g).

²⁴ In all sectors other than the oil and gas and mining sectors, the confirmation is issued by the ministry responsible for labor in consultation with the relevant line ministry. In the oil and gas and mining sectors, the ministry responsible for the applicable sector issues the confirmation without the involvement of the ministry responsible for labor.

²⁵ Regulation for the Mechanisms and Procedures for Contracting Foreign Workers, Art. 19(1) and Regulation for the Contracting of Foreign Citizens for the Petroleum and Mining Sector, Art. 17(1).

Employment with the Rouma Basin Project will be subject to a separate quota regime, conditions and procedures.²⁸ These parameters have not yet been articulated by the Government.

The requirements for employment of foreign workers are subject to attainable conditions and understandable procedures. The regulator is identified and evidentiary requirements are articulated and reasonable. The mechanics are equally explicit – a company cannot hire a foreign worker unless the requisite proportion is maintained. Finally, the provisions detail precisely the actions that need to be taken – the quotas are certain terms and the additional qualifications are clearly defined. It should also be noted that the quotas are consistent throughout the law.²⁹

A concern with the quota regime may be that legislated ratios are too inflexible to be applicable across sectors and meet the individual requirements of projects in Mozambique. For example, a company could employ less than 25 Mozambican workers because it sub-contracts most of its services. While partnering with Mozambican companies for these subcontracts could bestow significant benefit to the Mozambican economy, such company would not be permitted to remit profits abroad. Likewise, certain larger companies may have a significant need for foreign workers based on the nature of their operations. If they are not able to recruit these employees because of a strict quota system, the entire contribution to the Mozambican economy could be thwarted should the entity set up a branch office or relocate abroad to circumvent the system. That being said, the employment code appears to be designed to foster communication between the private sector and the Government.

C. THE FISCAL INCENTIVES REGIME

Mozambican law also incentivizes employment of Mozambican citizens under sub-paragraph (2)(c) of article 6 (*Minimum value of foreign direct investment*) of the Investment Law Regulations by permitting a company to remit profits abroad and re-export invested capital if, along with satisfying other requirements, it creates and maintains from the second year of operations at least 25 direct employment positions for Mozambican nationals who are registered with the social security system.

Paragraph (1) of article 19 (*Costs or losses*) of the Petroleum Operations Tax & Fiscal Benefits Law allows petroleum companies to deduct for income tax purposes the costs of professional training of Mozambican workers.³⁰ Expenses arising from vocational training of expatriate personnel or which otherwise do not comply with Mozambican laws on the training of Mozambican nationals are expressly excluded from tax deductions.

²⁶ Regulation for the Mechanisms and Procedures for Contracting Foreign Workers, Arts. 6, 7, 14, 15, 16 and 18 and Regulation for the Contracting of Foreign Citizens for the Petroleum and Mining Sector, Arts. 6, 7, 10, 11, 13, 15 and 16.

²⁷ Regulation for the Mechanisms and Procedures for Contracting Foreign Workers, Art. 8(1) and Regulation for the Contracting of Foreign Citizens for the Petroleum and Mining Sector, Art. 8.

²⁸ Enabling Law, Art. 3(2)(h).

²⁹ Subject to the provisions of the regulations in respect of employment with the Rouma Basin Project.

³⁰ See also Petroleum Operations Tax and Fiscal Benefits Law, Art. 21.

Paragraph (1) of article 18 (*Professional training*) of the Code of Fiscal Benefits permits the deduction of costs of professional training of Mozambican employees during the first 5 years from the date of commencement of a company's operations and up to a maximum amount equal to 5% of the company's taxable income for general professional training and 10% for professional training in the utilization of new technology.³¹

As with the quota framework, the questions related who may take advantage of and who is to oversee compliance with the law are answered through the structure. The entity that seeks the reward observes the requirements and the entity with the ability to bestow the reward, a tax deduction, oversees. These laws do not require an enforcement mechanism because of their optional nature - should an entity wish to forego the opportunity to obtain the relevant benefit, it will incur no additional penalty. For further discussion the use of fiscal incentives to encourage national content development, please refer to Section D (*The Fiscal Incentives Regime*) of Part 2 (*Fiscal Theme*).

D. THE CONCESSION-SPECIFIC FRAMEWORK

The Mining Law and Petroleum Law reaffirm the importance of employment and training, requiring companies to assure the employment and professional training of Mozambican workers and, in the case of oil and gas companies, secure participation in the management of petroleum operations.³² The same concept appears twice in each of the laws, with one clause stating a preference for the employment of citizens living near the project rather than those Mozambicans living anywhere in the country.³³

The laws unequivocally call corporations to action – to hire and train Mozambicans or nationals. Corporations can deduce that the quantity of Mozambican workers would be based on the quotas legislated under the Regulation for the Contracting of Foreign Citizens for the Petroleum and Mining Sector. It could be inferred that the number of workers holding leadership positions will follow the adage that foreign workers may only be appointed in response to a void of Mozambican workers with the necessary skills.

The laws contain guidance neither as to the appropriate percentage of workers from or the boundaries of the concession area nor as to whether the separate clauses correspond with materially distinct requirements. Most notably, the directive as to which individuals are to be hired is not in accord: in some sections, “national citizens” are to be employed and trained while in others, “Mozambican workers” should be retained. In neither case are the terms defined. Each of these provisions should be clarified as companies' failure to meet the requirements could lead to sanctions or revocation of the concession.³⁴

Ascertaining the nature and frequency of the training programs is even more challenging. The Mining Law explains that training programs should be formed in accordance with “applicable legislation”.

³¹ Code of Fiscal Benefits, Arts. 18(1) and 19(1) and Petroleum Operations Tax & Fiscal Benefits Law, Arts. 19(1)(c) and 19(1)(f).

³² Mining Law, Art. 33(2) and 36(c) and Petroleum Law, Art. 12(2) and 15(b).

³³ Mining Law, Art. 36(c) and Petroleum Law, Art. 15(b).

³⁴ See Mining Law, Art. 64(b) and Petroleum Law, Art. 67.

Unfortunately, under applicable law, training programs are only contemplated under provisions that require the terms be determined contractually and, therefore, provide no additional guidance. The applicable clauses include:

1. paragraph (2) of article 8 (*Mining contract*) of the Mining Law, which stipulates that the mining contract between the mining company and the Government must contain clauses addressing minimum local content, local employment and technical-professional training programs and the way communities of the mining area are to be engaged and benefitted by the project; and
2. provisions of the Policy of Corporate Social Responsibility for the Extractive Industry of Mineral Resources, which is self-described as to be achieved “through defined strategies in the different spheres [of CSR] on the basis of identified priorities and objectives...in the framework of local content development [and] social investment and local content development agreements” that focus on, *inter alios*, “ensur[ing] that the activities in the scope of [CSR are] harmonized with the plans of local development and prioritize the development of human capital, the links of local company and the generation of the productive employment...[and] employment creation”.^{35 36}

Such general statutes related to employment appear elsewhere in Mozambican law. The PPP Law, which does not apply to mining and petroleum concessions, also defers to the contractual process to define the terms more explicitly. Pursuant to paragraphs (b) and (c) of article 34 (*Socio-economic benefits*), each contractual agreement must also contain benefits to the Mozambican economy in the form of:

1. “offering work posts and technical-professional training programs to [sic] Mozambican employees”; and
2. “programs and actions of technical-professional training, transfer of technology and knowledge [sic] to the country”.

The advantages of allowing the Government and the contracting party negotiate the terms of national content programs are rooted in the recognition that these parties may be in the best position to assess the needs of and relevant capacity surrounding the specific project. A law that governs national policy uniformly across projects, sectors and regions may prove too inflexible to adapt to the idiosyncrasies of a project, sector or local economic climate. On the other hand, the reality of contract negotiations is that parties bargain in order to achieve a deal. This phenomenon could lead the Government to ease national content standards in the contract in order to gain an advantage in other aspects of the deal, such as in collateral infrastructure investments, guarantee frameworks or retention of the project’s output for national supply. Such results generate uneven standards across sectors and the economy as a whole, confusing regulators and frustrating SMEs as they prepare business models and long-term agendas.

To fully ascertain positive and negative aspects of the Employment Theme, additional research and analysis should be conducted in respect of the educational, vocational and macroeconomic effects of employment quota systems and prioritizing human capital development in national content programs.

³⁵ Policy of Corporate Social Responsibility for the Extractive Industry of Mineral Resources, Art. 6.

³⁶ It is understood that under Mozambican law, a policy does not hold the force of a law or regulation and therefore may not be covered by the term “applicable law”. The policy provisions are included for the sake of completeness.

2. FISCAL THEME

A. THE GUIDING PRINCIPLES

The Fiscal Theme links a financial reality with national content activity. Key advantages of the laws under this theme include their acknowledgement of the commercial climate in which corporations function and alignment of national content objectives with profit.

As with general provisions under the Employment Theme, certain Fiscal Theme statutes express a law's goal of furthering national content, in this case, through fiscal measures.

Paragraph 3 of article 4 (*The role of the State*) of the Petroleum Law establishes that “the State and its institutions and other public entities have a decisive role in the promotion of evaluating the existing petroleum production and contribute to the economic and social development of the country”.³⁷

Article 6 (*Basic guiding principle for investments*) of the Law on Investment guides interpretation of that legislation by declaring that investments covered under the act “should contribute to the sustainable economic and social development of the country [and] meet the principles and objectives of the national economic policy.”

As previously discussed, the PPP Law requires that each PPP, LSP and BC promote greater economic inclusion of Mozambicans and pursue programs, projects and actions related to social responsibility, sustainability and social development with the local communities.³⁸

These instructions are helpful in assessing the purpose of an act but fall short of constructing adequate parameters for implementation of the provisions. In particular, the Petroleum Law does not advise the State as to how its evaluation of petroleum production should contribute to economic and social development. In the Law on Investment, the guidelines are equally theoretical and serve as the only source of information on national content in that law. The PPP Law neither defines the terms “greater economic inclusion”, “social development”, “sustainability” or “social development” nor constructs a standard by which increases in these categories can be measured. Without subsequent provisions that elaborate on supervision, compliance, specific action and standards, these clauses are too vague to be implemented.

As with the Employment Theme, Mozambican legislation falling under the Fiscal Theme entrusts parties to a contract with devising national content parameters. The Mining Law orders mining companies and the Government to agree to the national content program in mining contract negotiations. Paragraph (2) of article 8 (*Mining contract*) of the Mining Law requires that the mining concession contract specify the way communities of the mining area are engaged and benefitted by the project. This provision articulates

³⁷ See also Mining Law, Art. 23(1), which holds that “The State, institutions and other legal persons of public right are fundamental in the promotion of the evaluation of mining potential, in order to allow access to the mining production benefits and contribute to socio-economic development.”

³⁸ PPP Law, Arts. 4(g) and 4(i).

a goal of the concession but leaves decision-making authority to the contract parties, who may or may not be in the best position to develop consistent national content structures on a case-by-case basis.³⁹

B. THE APPLICATION OF STATE REVENUES

An example of statutes that provide such elaboration are those affording fiscal benefits to communities in the vicinity of certain concessions, presumably as compensation for the region's loss of the resource extracted by the project as well as to facilitate balanced economic development in the region. Article 20 (*Local development*) of the Mining Law and article 19 (*Administration of petroleum operations*) and article 48 (*Local development*) of the Petroleum Law instruct the Government to ensure that a percentage, fixed by the State budget with reference to projected revenues from petroleum or mining operations, of its revenues from such operations be apportioned to development initiatives in the communities surrounding these projects. This remuneration may render communities more receptive to concession projects and, depending on the application of such funds, further national content.

C. THE NATIONAL PROFIT-SHARING FRAMEWORK

Similarly, paragraph (1) of article 33 (*Financial benefits*) of the PPP Law requires that the parties to each PPP, LSP and BC contract develop a paradigm for participation of Mozambican individuals in the share capital of each project company in an aggregate percentage ranging between 5% and 20% of such entity's overall capital. The act envisions that this participation be accomplished by each project company's listing on the Mozambican stock exchange, with such public offering guaranteed by the State, public entity appointed by the State or the entity implementing the undertaking. A separate provision contemplates the partial ownership of the project company by a public or private Mozambican entity, but interpretation of the clause is left to the contract parties as the percentage of ownership, mechanism and material terms are absent from the legislation.⁴⁰

The Petroleum Law permits the State to elect, at any time, to participate in the ownership of any entity involved in petroleum operations and requires that ENH form partnerships with all companies during exploration.⁴¹ As with the PPP Law, the percentage of permitted ownership, mechanism and material terms are void in these provisions and the distinction between "participation" by the State in petroleum operations and a "partnership" with ENH is not articulated. Additional analysis in respect of the definition of partnership and joint ventures is available under Section D (*The Procurement Benefits of Affiliating with a National or Local Entity*) of Part 3 (*Procurement Theme*).

The intent of these laws is to ensure that profits witnessed by large, often foreign, investors are spread across the economy. While the notion of distributing profits across the economy may be desirable macroeconomically, the mandated sharing of ownership may not be commercially wise and could ultimately diminish the profitability of the endeavour. The law could be viewed by investors as removing

³⁹ Please refer to Section D (*The Concession-specific Framework*) of Part I (*Employment Theme*) for further analysis of this issue.

⁴⁰ PPP Law, Art. 33(1)(b).

⁴¹ Petroleum Law, Arts. 20 and 24.

the decision-making authority of the sponsors in respect of its business partners and percentage of ownership. As a result, particularly where the shareholders are private persons or entities, these arrangements could be circumvented by profit sharing contracts and/or voting agreements between Mozambican nationals holding shares in the company and foreign investors. Additionally, the State's reservation of the right to assume ownership at any phase of petroleum operations poses significant risks to a project company and its sponsors. In order to mitigate such risks, the project companies and/or their lenders may demand that this right be waived contractually during the financing stage. Alternatively, project companies may deem the requirements to be too harsh and choose to invest in countries with national content laws that are more welcoming of their commercial objectives.

The PPP Law also envisions that Mozambican ownership be fostered through the stock market, which may pose administrative hurdles for common investors and risks for the project company. The role of the State in this process remains unclear as procedures have yet to be tested and the law offers significant latitude to the State's selection of structure for its guarantee in favour of the listing.

A full analysis as to the economic impact of similar measures world-wide, such as under South Africa's Broad-based Black Economic Empowerment Program and the lessons learned since the induction of Norway's state participation program in the 1970s, should be carried out to determine the best way to administer this policy.

D. THE FISCAL INCENTIVES REGIME

Articles of the Mozambican code rely on the fiscal incentives to incentivize, rather than to mandate or to prioritize, activities that advance national content. These laws tend to be easy to supervise, driven by capacity and availability rather than required use of Mozambican goods and services and utilized increasingly as quality and supply rise.

Article 2 (*Objectives*) of the Policy of Corporate Social Responsibility for the Extractive Industry of Mineral Resources reads "The Government seeks to ensure the benefits of the extractive industry [to] favour economic and social development of Mozambicans through the establishment of a tax regime that is fair to investors but also maximizes [sic] the return to the State....and [to] encourage [sic] the extractive industry to be included in investment plans, policies and programs of CSR".

The Policy of Corporate Social Responsibility for the Extractive Industry of Mineral Resources was passed in May 2014 and has not yet been implemented by legislation or regulation.⁴² However, as contemplated under Section C (*The Fiscal Incentives Regime*) of Part 1 (*Employment Theme*) above, Mozambican tax law already contains provisions related to the extractives industry's investment plans, policies and programs of national content:

1. paragraph (1) of article 19 (*Costs or losses*) of the Petroleum Operations Tax & Fiscal Benefits Law allows petroleum companies to deduct for income tax purposes the costs of professional training of Mozambican workers and any expenses arising from activities downstream of the

⁴² While no implementing legislation has been introduced to date, ministries are abiding by the principles of the policy. It has been reported that the Government currently refers the policy and the need for compliance by investors during meetings among ministries and concessionaires.

concession contract or from services supplied in the context of downstream activities if they are recorded separately for accounting purposes and, in the case of fees paid to petroleum development operations, are based on the arm's length principle and agreed by the entity supervising the petroleum industry and the tax authorities;

2. all companies are able to deduct 50% the costs for (i) acquisition for personal ownership of works of art and other objects representative of Mozambican culture and (ii) engaging in activities contributing to the development of such art works in accordance with to applicable law;⁴³ and
3. paragraph (1) of article 18 (*Professional training*) of the Code of Fiscal Benefits permits a company in any sector to deduct costs stemming from professional training of Mozambican employees during its first 5 years of operations, with maximum deductions of 5% of the company's taxable income for general professional training and 10% for professional training in the utilization of new technology.⁴⁴

These cases reflect the financial reality of business. The tax codes set out formulas sharing these costs with the Government through a deduction in income tax. Such structures are easy for companies to interpret and incorporate into their fiscal operations, rendering the probability that these measures will be adopted. Furthermore, as discussed under Section C (*The Fiscal Incentives Regime*) of Part 1 (*Employment Theme*) above, a company's participation in the national content activities that entitle it to a tax deduction is entirely elective, which also mirrors the free market principles in which capitalist businesses thrive. Such provisions can serve as a catalyst for capacity-building within the economy and precipitate an ease of enforcement when current constraints in capacity of the SMEs and human capital have not yet reached optimal levels.

However, the optional character of these laws may also be a deficiency. Ostensibly, the private sector could conclude that the costs outweigh the benefits, whether fiscally or administratively, and disregard the framework or forego the tax deduction. While this rejection would stymie the national content development goals attainable by these laws, such action would incite dialogue among stakeholders as to national content policies that would be worth implementing by all parties. Furthermore, the paradigm reveals an economic- and demand-driven approach to national content, which may be in the best interest of the long-term development of SMEs and employment capacity in the nation. This latter concept should be further evaluated based on lessons learned from similar macroeconomic and vocational development and the current theories in these subject areas.

It is recommended that a macroeconomic and policy evaluation regarding the use of taxation to encourage national content activity be conducted to assess the appropriate scope of the use of national content-based fiscal incentives in Mozambique.

⁴³ Code of Fiscal Benefits, Art. 19(1).

⁴⁴ See also Code of Fiscal Benefits, Art. 19(1) and Petroleum Operations Tax & Fiscal Benefits Law, Arts. 19(1)(c) and 19(1)(f).

E. THE CALCULATION FOR FAVOURING MOZAMBICAN GOODS AND SERVICES

Provisions that consider the price of goods and services when granting preferential treatment also follow the Fiscal Theme. Examples include (i) the preference of local products and services granted under the Petroleum Law if the price is 10% or less than the price of the imported good and (ii) the prioritization of national companies and products under the Procurement Regulations, where the bid price is increased by 10% of the pre-tax value for public works and 15% of the pre-tax contract value for nationally produced goods.⁴⁵ As in the tax codes, these provisions provide straight-forward equations for calculating whether to use a national supplier. That being said, these equations do not rest on an economic reality. The spikes in bidding value and excess price allowance are artificially introduced and could alter the costs across the market as well as lead to pay offs rather than genuine procurement of services by companies.

The Fiscal Theme laws suffer from a lack of consistency and clarity as to the elements that render a good or service, employee, cultural representation, individual and region as “local” or “Mozambican”. For in depth discussion about the issue surrounding these definitions, please refer to Section C (*The Procurement Advantage for a National or Local Entity*) of Part 3 (*Procurement Theme*).

Lastly, it should be noted that further research and analysis should be conducted to assess the economic, commercial and capacity-building effects as well as the advisability of enabling national companies to inflate their prices or bids and retain (or gain) a preference.

3. PROCUREMENT THEME

A. THE GUIDING PRINCIPLES

Of all the aspects of national content covered by Mozambican law, procurement is perhaps the most commonly legislated. The core philosophy of the Procurement Theme is that by connecting SMEs to large-scale businesses, the capacity and quality of SME goods and services will rise while companies are able to purchase goods and services more quickly and affordably. The goal is to spread economic success across the economy, as in the other policy themes, and encourage a permanent rise in national production levels.⁴⁶

As with the Employment Theme and the Fiscal Theme, introductory clauses of Mozambican laws and policies under the Procurement Theme affirm the general policy goals of the promoting entrepreneurialism, commercial skills growth and business expansion within Mozambique.

Article 5 (*Politica de Recursos Minerais*) of the *Politica e Estratégia de Recursos Minerais* affirms a policy to:

⁴⁵ Petroleum Law, Art. 41(4) and Procurement Regulations, Art. 26.

⁴⁶ It is understood that not every law related to procurement of national goods and services was formulated based on adherence to the goals and philosophy described in this paragraph. Nonetheless, whether or not designed for such purpose, the laws, if implemented and followed, would further these policies.

1. promote the participation of national entrepreneurs and the creation of partnerships in the business of mineral resources and throughout its value chain, with particular emphasis on the area of procurement, provision of goods and supplies and rendering of services; and
2. stimulate an increase in the licensing Mozambican operators and promote the establishment of cooperatives, associations of craft operators and SMEs.

Similarly, the Law on Investment lists its objectives to consist of, *inter alios*:

1. “the expansion and improvement of national production capacity or of capacity to render services which support productive activities”;⁴⁷
2. “contribution [sic] toward [sic] training, expansion and development of national entrepreneurs and Mozambican business partners”;⁴⁸
3. “the promotion of technological development and the improvement of entrepreneurial productivity and efficiency”;⁴⁹ and
4. “contributing toward [sic] improving the supply of domestic markets and the satisfaction of the priority and basic needs of the population”.⁵⁰

The PPP Law dictates that each PPP, LSP or BC shall:

1. establish business partnerships between the PPP, LSP or BC project and SMEs;⁵¹ and
2. transfer knowledge and technology from the PPP, LSP or BC project to [sic]⁵² SMEs.⁵³

As noted earlier in this report, while framing the goals of a policy or law, such guiding principle statutes lack processes, measurements and standards against which to gauge satisfaction of the requirements. A close evaluation of the above provisions of the PPP Law will illuminate the drawbacks of guiding principle statutes.

Under Article 4 (*Guiding principles*) no one is nominated to be responsible to ensure that a PPP, LSP or BC meets the requirements listed. The statute simply states that “the contracting of PPP, LSP or BC undertakings is subject to conformity with [these guiding principles].” Such lack of direction can breed

⁴⁷ Law on Investment, Art. 7(b).

⁴⁸ Law on Investment, Art. 7(c).

⁴⁹ Law on Investment, Art. 7(e).

⁵⁰ Law on Investment, Art. 7(i).

⁵¹ PPP Law, Art. 4(h).

⁵² The English translation provides an “and” here, which would mean that the project companies and SMEs are instructed to transfer knowledge and technology to a third, unnamed party. Therefore, it would appear that the intention is that this word be “to” and, accordingly, that the project companies transfer knowledge and technology to SMEs.

⁵³ PPP Law, Art. 4(h).

inactivity as each of the private sector and the Government could reasonably assume that other party is charged to act. Accordingly, enforcement would be unlikely. If the project failed to meet these objectives, the Government would encounter obstacles if it attempted to impose sanctions or rescind the contract for breach because the PPP, LSP or BC company does not undertake to abide by these terms.

Following the order set out above, a PPP, LSP or BC's compliance could range:

1. *from* hiring independent contractors to tend to the gardens at the main offices *to* developing and implementing a procurement plan for contracting with local businesses; and
2. *from* sending unused office products (with manuals) to local businesses *to* holding training seminars with local business partners to help them develop performance standards that meet the PPP, LSP or BC's needs;

Not only does this example demonstrate that such requirements, where alone, are difficult to enforce, it also shows that the broad nature of the provision offers limited information for observing the law. Project companies and their financiers may steer away from uncertainties like these they represent risks of unforeseen costs and disputes.⁵⁴

B. THE DELEGATION OF PROCUREMENT POLICY DECISIONS

An additional set of procurement laws affords a layer of direction above that which is provided through guiding principle statutes. While these provisions offer generalized guidance on objectives, they defer to another process or body to define the term of the clause more explicitly. On the positive side, this structure acknowledges the policy ambition of improving national content but allows those more closely connected with the relevant sector to determine the scope, often on a case-by-case basis. On the downside, the process can lead to unequal standards, trading of national content for other objectives and minimal checks and balances on compliance measures.

Mozambican law consistently delegates to the Government the duty of formulating a national procurement framework in legislation:

1. sub-paragraph (2)(d) of article 3 (Scope) of the Enabling Law grants the Government power to establish necessary terms and conditions for the provision of services in support of the Rovuma Basin Project, whereby national companies would be afforded preference. The terms and conditions should include a program for the creation of partnerships with national companies where national companies do not hold sufficient capacity or quality of service and in which national companies would gradually assume operational control;
2. paragraph (1) of article 34 (*Promotion of national entrepreneurship*) of the Mining Law states that “the Government must create mechanisms in order to allow the engagement of national entrepreneurship in mining, including the definition of the terms and conditions for this purpose”; and

⁵⁴ Subsequent sections of the PPP Law defer decisions in respect of about specific national content requirements to the contract with the Government. See discussion under Section B (*The Delegation of Procurement Policy Decisions*) below.

3. paragraph (1) of article 13 (*Promotion of national entrepreneurship*) of the Petroleum Law requires that “the Government must create mechanisms and outline the conditions for the involvement of the national entrepreneurship in the oil and gas enterprises”.

Structurally, each of these provisions effectively nominates the Government to develop a framework that integrates Mozambican businesses into a particular sector or projects. It is favourable that the laws are harmonious in their appointment of the entity to carry the process forward. That being said, the appointed entity is the Government, a vast structure with numerous branches. A general delegation to such a vast organisation could incite wrestling among the ministries for ownership of the role, induce the formation of separate intragovernmental task forces for each law and/or the allow leadership by different ministries for each statute.

As illustrated in Section D (*The Concession-specific Framework*) of Part 1 (*Employment Theme*), Mozambican laws also appoint the parties to the concession contract to formulate the national content framework for a specific project. Although this arrangement is seen most frequently in the employment context, a minority of provisions assign decision-making authority on national procurement to contracts:

1. the Mining Law requires that mining contracts incorporate “minimum local content” provisions;⁵⁵
2. the PPP Law imposes a requirement that each PPP, LSP and BC contract provide for “contribution to the development of Mozambican small and medium enterprises, via business and technological linkages between the undertaking and such enterprises”;⁵⁶ and
3. article 6 (*Strategic actions for the implementation of Corporate Social Responsibility Policy*) of the Policy of Corporate Social Responsibility for the Extractive Industry of Mineral Resources unveils local content development agreements which are instructed to concentrate on matters such as local enterprise development and local acquisitions.⁵⁷

Although each of these laws drive formation of a national procurement policy based on promotion SMEs, they do not require that the policies formed under the separate laws be consistent. The loose structure of delegation and the shallowness of the instructions render it likely that the strategy for Mozambican business involvement would be inconsistent across the laws. However, this could be a positive outcome. Arguably, the needs of the private sector, the capacity of the SMEs and the supply of Mozambican businesses in a particular field may vary from sector-to-sector and region-to-region. A policy tailored to individual sectors could accommodate these disparities. While tailored policies could be beneficial, such a system could spur decentralize oversight, curb the checks and balances and decrease the availability of monitoring resources. Section D (*The Concession-specific Framework*) of Part 1 (*Employment Theme*) analyses further the advantages and disadvantages of delegation of national content specifications under Mozambican law.

⁵⁵ Mining Law, Art. 8(2).

⁵⁶ PPP Law, Art. 34(e).

⁵⁷ PPP Law, Art. 34(e).

C. THE PROCUREMENT ADVANTAGE FOR A NATIONAL OR LOCAL ENTITY

Laws following the Procurement Theme afford Mozambican nationals or companies an advantage in the provision of goods and services.

The Política e Estratégia de Recursos Minerais establishes a policy in which Mozambican companies are assigned the right of first refusal in the event of a discovery of mineralized bodies with economic value.⁵⁸

The Petroleum Law furthers this policy as follows:

1. “Mozambican legal entities as well as foreign legal entities that associate with Mozambican legal entities shall have a pre-emption right in the granting of concession contracts”,⁵⁹
2. “Petroleum operations right holders must give preference to local products and services when comparable, in terms of quality, to the international materials and services that are available in time and in the quantities required and when the price, including taxes, is [not more than] 10% of the price of the available imported goods”.⁶⁰ and

Likewise, the Mining Law stipulates that the mining concession holder give preference to local products and services.⁶¹ Article 57 (*Treatment and internal processing*) states that “wherever the availability of resources and economic viability justify it, the treatment and processing of Mozambique’s explored mineral shall be carried out in the country”.

The Procurement Regulations favour local firms by restricting participation based on nationality or increasing the value of a bid from a national bidder or that represents nationally produced goods. This preference is imparted where 25% of the bid’s proposed finished product contain Mozambican inputs⁶² or when the bidder is either a Mozambican citizen or a company with at least 50% of its capital held by Mozambican citizens.⁶³

Paragraph (1) of article 6 (*Requirements for Exemption from Customs Duties and Value Added Tax*) of the Code of Fiscal Benefits awards an exemption from customs duties “when the goods to be imported are not produced in Mozambique or, if produced in Mozambique, do not satisfy the specific characteristics for the purpose and function require or inherent in the nature of the project and the respective activity to be carried out and explored”. The Petroleum Operations Tax & Fiscal Benefits Law grants similar customs duty exemptions to oil and gas investors but only if “the goods to be imported are not produced in the territory of Mozambique or, if they are produced in the territory of Mozambique, fail to meet the

⁵⁸ Política e Estratégia de Recursos Minerais, Art. 4(f).

⁵⁹ Petroleum Law, Art. 26(4).

⁶⁰ Petroleum Law, Art. 41(4).

⁶¹ Mining Law Art. 22(4).

⁶² Such inputs coming from Mozambican citizens or companies with at least 5% of its social capital held by Mozambican citizens.

⁶³ Procurement Regulations, Art. 26.

specific features for purpose and functionality required or inherent to the nature of the activities to be developed and run”.⁶⁴

The above examples follow a common theme in order to encourage the use of Mozambican sources for resource extraction as well as for goods, services and, in the case of the Mining Law, employment, in support of businesses established in Mozambique. Each provision grants a pre-emption right or preference to Mozambican businesses or individuals. Such pre-emption right or preference arises automatically by nature of being a “Mozambican legal entity”, “local products and services”, “Mozambican citizen”, “national citizen”, manufacturer of a product produced in Mozambique or “in Mozambique” provided any conditions (e.g. products are comparable in quality to international materials) are satisfied.

Although Mozambican law benefits from the functional cohesiveness of these laws, the framework presents drawbacks. First, where the law sets forth a condition, such as under the paragraph (4) of article 41 (*Acquisition of goods and services*) of the Petroleum Law (at item 2 above), paragraph (1) of article 6 (*Requirements for Exemption from Customs Duties and Value Added Tax*) of the Code of Fiscal Benefits and the laws on hiring foreign workers and article 35 (*Fiscal benefits on import*) of the Petroleum Operations Tax & Fiscal Benefits Law, it does not proceed to elucidate who decides whether such condition has been fulfilled. Without an arbiter to make this judgment, it is difficult to anticipate the manner in which a company can expect to comply.

Additionally, the laws lack uniformity with respect to whom is afforded preference, ranging from “Mozambican legal entity” to “local products and services” and from “Mozambican citizen” or “national citizen” to manufacturer of a product produced in Mozambique or treatment and processing in Mozambique. While this creates uneven procurement standards across sectors, the larger concern is that, except for in the case of the Petroleum Law and the Procurement Regulations, the terms referring to “Mozambican” and “national” are rarely defined and, where defined, the standards are not the same. Mozambican citizenship may be decipherable from the term’s dictionary definition but determining whether an entity is local or a product has been made in Mozambique is much more cumbersome. These benchmarks should not only be streamlined but also clarified in a manner that meets the policy objectives of the Government.

The absence of a body to declare a condition as satisfied and a unilateral definition for “Mozambican” or “national” and are specific illustrations of the two overarching questions arising under the Procurement Theme, namely, what exactly is a company to do when it gives “preference”? And, who decides whether “preference” has been afforded? Unlike the provisions under Section B (*The Delegation of Procurement Policy Decisions*), which pinpoint a regulatory process or body, the above laws do not delegate decision-making authority to any entity. The statutes also do not explain the manner in which an entity prefers a Mozambican company or citizen. In the absence of direction as to what granting a preference entails, a company will be guessing as to its obligations. Without a supervisory body and guidance as to carrying out a pre-emption or preference, the provisions are administratively and substantively onerous to enforce. Hopefully, the regulations for the Petroleum Law and the Mining Law would offer further insight on these matters.

⁶⁴ Petroleum Operations Tax & Fiscal Benefits Law, Art. 35.

Other sections of the Mozambican code proffer greater specificity in administration of the procurement framework. The Mining Law exempts Mozambicans from the permit requirement for extraction of mineral resources for use in building materials and provides Mozambican nationals with the exclusive right to purchase and sell mineral products not carried out under a mining concession.⁶⁵ In addition, direct, national and foreign investment may only be paid through a bank registered in Mozambique or a foreign account authorized by the foreign exchange authority.⁶⁶

Sub-paragraph (2)(d) of article 3 (*Scope*) of the Enabling Law grants the Government power to establish necessary terms and conditions for the provision of services in support of the Rovuma Basin Project, whereby national companies would be afforded preference. The terms and conditions should include a program for the creation of partnerships with national companies, in which national companies would gradually assume operational control, in cases where national companies do not hold sufficient capacity or quality of service.

Here, the mechanisms for administration are clearer than in the previous codes addressing procurement of Mozambican goods and services. Under the Mining Law, the preference given to Mozambican citizens and banks is easily interpreted because this preference is exclusive. Therefore, the question arising under the other laws related to the meaning of a preference is absent. However, as in the previous laws, uncertainty regarding which authority shall supervise compliance remains.

As with the legislation listed in Section B (*The Delegation of Procurement Policy Decisions*) above, the Enabling Law assigns the Government with the duty of devising the terms and conditions for procurement of goods and services from national companies. In this case, however, the law offers more detailed instructions than in many of the other delegating laws by requiring partnerships to grant national companies increased operational control. Considerations related to enforcement capacity and methodology for applying the preference will hopefully be delineated.

The macroeconomic advantages and disadvantages of preferential treatment of national goods and services as well as its influence on quality and capacity of national services should be further evaluated in order to assess more fully the ultimate impact of such policy.

D. THE PROCUREMENT BENEFITS OF AFFILIATING WITH A NATIONAL OR LOCAL ENTITY

Similar to the framework for granting preference to Mozambican companies are the provisions requiring foreign companies to affiliate with Mozambican enterprises. These laws typically have clear mechanics. Through affiliation with a Mozambican company, a foreign entity can engage in certain economic activity in the country. Without such affiliation, the foreign entity does not obtain the right.

That being said, the laws do not extrapolate on the meaning of affiliation, association or partnership between a foreign and Mozambican entity. The provisions are further subject to the drawbacks regarding inconsistent or absent definitions of the Mozambican entity highlighted in Section C (*The Procurement*

⁶⁵ Mining Law, Arts. 53 and 59.

⁶⁶ Mining Law, Art. 65 (1)(a) and Foreign Exchange Law, Art. 6.

Advantage for a National or Local Entity) above. In some circumstances, such as under the Petroleum law, insight can be derived as to the intended connection. There, a Mozambican person is “any legal entity incorporated and registered pursuant to the Mozambican legislation with its headquarters in the country and having at least fifty one percent of its share capital held by national citizens or controlled by Mozambican citizens, or Mozambican public or private companies or institutions.”⁶⁷ Therefore, it could be inferred that a partnership between a Mozambican entity and a foreign partner would have less than 51% of its shareholding owned or controlled by Mozambican citizens. It should also be noted that under Mozambican law, partnerships are not considered legal entities.

Paragraph (2) of article 22 (*Acquisition of goods and services*) of the Mining Law only permits foreign entities to provide services to mining operations if they are affiliated with a Mozambican single or collective person. The Petroleum Law enacts the same requirement in respect of services procured in to the oil and gas sector.⁶⁸ As mentioned under Section C (*The National Profit-Sharing Framework*) of Part 2 (*Fiscal Theme*), the PPP Law and the Petroleum Law contemplate State ownership of or partnership with project companies under loosely-defined provisions.

A variation on this theme arises where collaboration between foreign and Mozambican entities is rewarded by preferential treatment or pre-emption.

As previously mentioned:

1. Foreign legal entities that associate with Mozambican entities shall have a pre-emption right in the grant of oil and gas concessions;⁶⁹ and
2. Preference will be handed to foreign entities that create partnerships with national companies for procurement in the Rovuma Basin Project.⁷⁰

The positive and negatives related to procurement preferences afforded for joint ventures mirror those discussed under Section C (*The Procurement Advantage for a National or Local Entity*) above. Furthermore, the economic and socio-political effectiveness of affiliation should be examined both within Mozambique and globally, particularly in respect of whether (i) such partnerships are genuinely synergistic in operation and leadership, (ii) the national partner is the ultimate beneficiary of the financial and technical successes related to its portion of the venture and (iii) knowledge transfer and training of the national entity is profitable and constructive.

Finally, as discussed in Section E (*The Calculation for Favouring Mozambican Goods and Services*) of Part 2 (*Fiscal Theme*), a question arises in the face of strict requirements to retain national companies as such measures could incite payoffs to satisfy legal requirements if the quality of the good or service does not match the standard required by the company. Many provisions under Mozambican law recognize that certain standards are to be met, but such laws are not clear as to who decides and oversees the quality

⁶⁷ Petroleum Law, Definition (o).

⁶⁸ Petroleum Law, Art. 41(2).

⁶⁹ Petroleum Law, Art. 26(4).

⁷⁰ Enabling Law, Art. 3(2)(d).

control analysis.⁷¹ The laws also frequently are void of direction, standards and definitions that are necessary to properly afford a Mozambican individual or entity a preference. Accordingly, an analysis of the advantages and disadvantages of the preferential treatment of Mozambican entities should be supported by a study of the outcomes and lessons learned from similar policies globally. Such study should further explore the utility of SME-capacity building measures, which, to the extent contemplated under Mozambican law, are largely embedded in employment and procurement frameworks.

4. CSR THEME

The CSR Theme emerges under Mozambican law through the Policy of Corporate Social Responsibility for the Extractive Industry of Mineral Resources. The policy appears to be premised on the assumption that foreign investors' interest in sustainable development, economic growth, poverty reduction and resource protection in Mozambique will be driven more by their CSR standards rather than by economic and commercial needs. The policy anticipates that corporations in the extractive sector can be enticed to partner with the Government in economic and social development projects.⁷² Despite the fact that the policy requires implementing legislation in order to be administered, it envisages a government-managed CSR structure that includes national content and rectifies many of the limitations related to national content under the current Mozambican legal code.

The policy bases its definition of CSR and principles on internationally-accepted standards.⁷³ Themes of transparency, compliance with current legislation, consensus building among stakeholders, gender equality, respect for local culture and customs, harmony among Government policies, adherence to best practices and ensuring proper monitoring and evaluation are core elements of the policy.⁷⁴ Moreover, the strategies related to national content address shortcomings in elsewhere in the law, such as:

1. identification of gaps in the existing legislation;
2. ensuring that legal requirements are aligned with international best practices;
3. promotion of capacity of interested parties to achieve compliance with the laws;
4. creation of mechanisms for supervision and strengthening of regulators;
5. harmonization of CSR plans across the sector, prioritizing development of human capital and links to the local economy;

⁷¹ See Petroleum Law, Art. 41(4), Code of Fiscal Benefits, Art. 6(1) and Petroleum Operations Tax & Fiscal Benefits Law, Art. 35.

⁷² See Policy of Corporate Social Responsibility for the Extractive Industry of Mineral Resources, Art. 2.

⁷³ See Policy of Corporate Social Responsibility for the Extractive Industry of Mineral Resources, Arts. 3 and 4.

⁷⁴ Policy of Corporate Social Responsibility for the Extractive Industry of Mineral Resources, Arts. 3(b), 3(d), 3(e), 3(g), 3(h), 3(i), 3(j), 3(k) and 4.

6. support of development of Mozambican companies to provide goods and services to the extractives sector and build greater technical competence and trade competitiveness;
7. secure the extractive sector's contribution to the development of the capacity of local suppliers;
8. including provisions related to local enterprise development, employment creation and local acquisitions in the local development agreements, which are anticipated to be formed for each with the local governments for each extractive project; and
9. guaranteeing the financing of the local development programs.⁷⁵

If discharged, the actions above would redress some of the primary mechanical and administrative matters that confound the current legal framework and impede fulfilment of national content objectives.

Identification of the status of the current national content law is the necessary first step in developing the next steps for a national content regime in Mozambique. In addition, with a knowledgeable regulatory body that is clad with clearly-delineated supervisory powers, questions related to supervision of compliance would be resolved. If terms and conditions related to national content would meet international standards, uncertainties surrounding the entity charged with action and the manner in which one complies would be quelled. A collaborative, harmonized approach to the formulation of national content measures would diminish gaps and inconsistencies across the law, building structure to the provisions that currently remain loosely defined or varied in standards. Bolstering the competence of Mozambican entities, involving the communities in transactions with the extractive sector and granting SMEs access to finance would temper many of the fundamental qualities of the Mozambican economy that inhibit the commercial value of national content.

However, the concern with the policy rests in the underpinning philosophy. By combining national content development with CSR, the policy presumes that the current status of all Mozambican SMEs is too weak to be commercially desirable to the extractives industry and that large multi-national companies should not have an active role in engaging local SMEs in their supply chains. Not only may this be factually incorrect, but the assumption that partnerships between the extractive companies and SMEs are charitable acts may also not be the most prudent foundation upon which build future competitive and commercially-viable relationships between the sectors in the long-term.

Furthermore, characterization of national content activities as CSR could be viewed as a delegation of the Government's duty to manage the social, sustainable and economic development of the country to the private sector's philanthropic engagements. While the private sector may be in the best position to determine the commercial and employment needs it has in respect of its business, it may not be an ideal candidate to bind with the Government in designing macroeconomic plans for meeting national content goals. Finally, as aforementioned, the Government will need to incentivize the extractive industry and SME's participation in the formulation of these programs if the policy's intention is to create a meaningful dialogue among stakeholders that results in a national content framework that can be competently administered, monitored and evaluated.

⁷⁵ Policy of Corporate Social Responsibility for the Extractive Industry of Mineral Resources, Art. 6.

Accordingly, although the principles and action plan of the policy address many of the primary needs of the current state of national content law in Mozambique, the mechanism that binds national content with CSR should be thoroughly assessed.

III. CONCLUSION – NEXT STEPS

Mozambican law supports a broad range of approaches to further national content. Stakeholders should consider the advantages and disadvantages of each of the models currently employed under the law along with the gaps, inconsistencies and uncertainties that arise from the multifarious structure that is presently enacted. It is crucial that those formulating the policy and laws on national content provide sufficient direction to those supervising and complying with the law. The alternative could drive away investment, render compliance impractical and incapacitate enforcement agencies.

It is essential that the issues in this report be evaluated, with the support of the research recommended in this analysis, among all stakeholders before a national content policy, law or regulation is introduced by the Government. The following sections set out particular recommendations in respect of both procedure for developing a national content legal framework and the content that would strengthen such a framework.

A. POLICY RECOMMENDATIONS

1. RECOMMENDATIONS IN RESPECT OF FORMING A NATIONAL CONTENT COMMITTEE

As referenced at the beginning of this report, the analytical team learned in November 2014 that MPD has begun taking steps to establish a legal team to formulate a national content policy and/or law. It is recommended that this team be expanded and a cross-sector committee with representatives from all stakeholder groups be formed to devise a national content framework.

As the Government and MPD certainly appreciate, designing a policy committee on a technical, cross-sector and economically-significant subject such as national content requires considerable planning. Prior to embarking on policy formulation or legislative drafting projects, those spearheading a comprehensive national content policy and legal reform agenda in Mozambique should articulate the mandate and objectives, timeline, membership selection criteria and governance structure of the committee (the “**Basic Assumptions**”).

While it is advisable that experts familiar with designing national content policy committees collaborate with an organization executing such an endeavor, should a Mozambican entity decide to begin the process without counsel, it should be certain to evaluate certain threshold issues to guide formation of the Basic Assumptions. Following are samples of such threshold issues:

1. **National versus local content** – Will the committee develop a policy that addresses content from all parts of Mozambique collectively or will the policy also contemplate a separate system

relating to local content in areas immediately surrounding a project?

While a committee will ultimately agree upon a definition of national content, it will be necessary for those planning its formation to determine a core aspect of the definition – whether the policy will also consider content originating in the vicinity of a project differently from content generated elsewhere in the country. This decision will dictate much of the structure of the committee, including membership and the governance modeling.

2. **Sector-specific versus comprehensive content** – Will the committee introduce a comprehensive policy for national content for all sectors or will the policy only address selected, key sectors?

A comprehensive framework for all sectors may offer efficiency by facilitating centralized research, monitoring and enforcement and provide the potential for consistent and transparent objectives, standards and processes. However, a “one size fits all” approach may not adequately value the unique nature of each sector and project. The vast amount of data that would need to be compiled in order to render balanced, informed decisions on the economy as a whole and may not be available at present in many less-developed sectors. At this stage of Mozambique’s development, many industries already function with an inherently high level of national content components while other sectors may benefit from an increase of national elements. Balancing these distinctions, particularly in light of the significant legislative amendments that will also need to be weighed, could lead to induction of an untenable and cumbersome framework that would potentially deter investment and hinder economic development.

If comprehensive legislation for all sectors is deemed appropriate, a general law that permits a sectoral ministry to tailor, through regulation, the broad objectives to its field of expertise may minimize some of the constraints inherent to a blanket approach.

3. **Timeline** – By when should the committee deliver on its mandate?

Typical time frames for the research and development of national content policies can extend up to 18 months. While the specific work plan, resources and availability of committee members will affect the timeline, the mandate should set out targets for delivery of the policy to the Government, especially if political and commercial factors create a need for expediency.

4. **Sole ownership versus partnership** – Should the committee be chaired by a single organization or should a partnership be formed, such as between the private and public sector, to lead the committee?

Committees for national content policy have been chaired by both the public and private sectors. However, leadership by persons with the political clout to implement the collective decisions is necessary.⁷⁶

5. **Essential members** – Who must the committee have as members in order to carry out its mandate effectively?

⁷⁶ Gebre-Egziabher, T. and Clacey, R., *Assessment of Local Economic Development (LED) Approach in Ethiopia*, p. 53, UNDP, 2011.

Representatives from the primary, if not all, stakeholders should be invited to join the committee, if it is to formulate a transparent, informed and balanced policy. Those introducing the committee should evaluate the political and commercial climate in Mozambique to determine whether certain individuals, companies or government entities are essential to have as committee members and advocates. It would be advisable to secure the commitment of these individuals or entities prior to recruiting the remaining participants or announcing the formation of the committee publicly.

6. **Proportion of members** – What should the proportion be among members?

Membership should be designed so that the committee is comprised of equal numbers of representatives from the various stakeholder groups. For example, a task force would typically have the same numbers of individuals from the private sector, local business sector and government. If sociopolitical, commercial or other factors lead to a departure from this model, the committee's founders would need to be to consider whether voting procedures should be designed to prevent one group of representatives from exercising a collective, majority vote in each decision.

7. **Supervision** – How much discretion should be left to the committee members to form and develop their plan of action, research projects, timeline and procedures?

The mandate and governance structure should be designed so that the committee members have sufficient instruction as to their objectives and procedures, but permit a level of flexibility that grants members ownership and responsibility for the committee.

The above overview lists the types of key considerations that must be assessed during the course of committee design and prior to the committee's induction. Following appraisal of threshold issues, a mandate, membership selection process and governance structure should be designed to include mechanisms that further participation of relevant stakeholders, transparent operations and member confidence in the objectives, integrity and processes of the committee. It is reiterated that an entity seeking to launch a national content policy committee act deliberately, following research and in consultation with area experts.

2. **RECOMMENDATIONS IN RESPECT OF POLICY FORMULATION**

Throughout the analysis, the authors have flagged studies that should be conducted by members or experts retained by the members of a Mozambican national content policy committee. The proposed research undertakings are recommended as methods to equip policy formulators with knowledge of the current trends, lessons learned and best practices related to national content, macroeconomic, employment, vocational, fiscal, procurement and development policies globally. These studies include:

1. research and analysis in respect of the educational, vocational and macroeconomic effects of employment quota systems and prioritizing human capital development in national content programs;
2. a full assessment of the economic impact of measures mandating local ownership of foreign companies and state partnerships with foreign entities world-wide, such as under South Africa's

Broad-based Black Economic Empowerment Program and the lessons learned since the induction of Norway's state participation program in the 1970s;

3. an evaluation of paradigms that invent an economic- and demand-driven approach to national content, including whether such programs have proven to serve the best interests and long-term development of SMEs and improve the employment capacity in the nation, based on lessons learned from similar macroeconomic and vocational development and the current theories in these subject areas. The study should also consider:
 - a. the economic and socio-political effectiveness, both within Mozambique and globally, of employing affiliation between foreign and national entities as a national content tool, particularly in respect of whether (i) such partnerships are genuinely synergistic in operation and leadership, (ii) the national partner is the ultimate beneficiary of the financial and technical successes related to its portion of the venture and (iii) knowledge transfer and training of the national entity is profitable and constructive; and
 - b. the macroeconomic advantages and disadvantages of preferential treatment of national goods and services as well as its influence on quality and capacity of national services;
4. a macroeconomic and policy review of the use of taxation to encourage national content activity to assess the appropriate scope of the use of national content-based fiscal incentives in Mozambique;
5. a thorough inquiry to ascertain the economic, commercial and capacity-building effects as well as the advisability of enabling national companies to inflate their prices or bids and retain (or gain) a preference in procurement; and
6. an investigation into the commercial, macroeconomic, development and SME capacity-enhancing effects of a mechanism that binds national content with CSR.

It is recommended that those forming the policy or law related to national content rely on the findings from these proposed research projects to evaluate the best policy structure for national content in conjunction with Mozambique-specific studies.

Although the focus of this report is placed on the legal rather than data-based elements of formulating a national content policy, the authors note that national content policy committees should consider the local and national facts and figures stemming from the following evaluations when adapting best practices to a particular context:

1. analyses of national development priorities;
2. local (SMEs') capabilities studies;
3. supply chain mapping and evaluations;
4. thorough demand mapping (in conjunction with measuring local capacity of SMEs) to determine the needs for various goods and services expected to be required by the extractives industries in order to identify and prioritize the local industries that should be supported for national content;
5. environmental and social risk assessments;

6. cost-benefit analyses;
7. reviews of barriers to use of national goods and services;
8. assessments of access to finance and business support services; and
9. reviews of existing infrastructure.⁷⁷

B. LEGISLATIVE RECOMMENDATIONS

1. RECOMMENDATIONS IN RESPECT OF THE LEGISLATIVE PROCESS

Once the national content policy committee has concluded its preliminary research as set out in Section A (*Policy Recommendations*) above, the legislative process can commence. As with the formation of a national content policy committee and conducting policy research, the legislative process should be guided by individuals experienced in law reform projects, conversion of policy into legal code, complex legislative drafting and the policies bearing on national content. Ideally, the experts that consult on the drafting of the law would be in a position to serve on the national content policy committee and participate in research and data collection activities.

The legislative process should be driven by the recommendations in Sub-section 2 (*Recommendations in Respect of the Legislative Content*) below, which are intended to be reviewed in connection with the findings from the policy research and data collection discussed in Section A (*Policy Recommendations*) above. After the national content policy committee has considered the research and data findings in connection with the status of the current law, it can first conclude a policy and then forward the drafters of the proposed legislation, provided that the recommendations set out under Sub-section 2 (*Recommendations in respect of the Legislative Content*) have been vetted by the national content policy committee. A sub-committee of the national content policy committee may be best-suited to supervise this operative along with direction from the Ministério da Justiça in order to ensure compliance with parliamentary protocols.

2. RECOMMENDATIONS IN RESPECT OF THE LEGISLATIVE CONTENT

The body of this report weighs the positive and negative attributes of each of the themes of national content currently legislated under the Mozambican code. The findings reveal that reform is needed not only to align policy objectives, but also to clarify obligations, erase inconsistent standards, calibrate procedures and promote enforcement and compliance. Such reformative legislation should be prepared in conjunction with a sound national content policy. Any new law that addresses these issues must repeal provisions from the current code with which it conflicts so as to avoid spreading uncertainty in the law.

The list below summarizes the legislative reform actions recommended in this report:

⁷⁷ See *Local Content Strategy*, at 5, The International Petroleum Industry Environmental Conservation Association, 2011.

1. **Clarify general provisions** – General clauses, often at the beginning of a statute, must be empowered with the force of law by subsequent provisions that stipulate the procedures and standards that are required for national content activities. Such procedures and standards will also need to be supported by unambiguous penalties for non-compliance or rewards for compliance. The body that oversees such compliance must be specified.
2. **Define terms used in law consistently** –Terms used to describe a standard or action must be defined in order for the private sector companies and SMEs to comply with the law. Throughout Mozambican national content law, notions like “affiliation”, “preference” and “Mozambican citizen” are void of consistent standard or structure. Such terms hold multiple meanings across different statutes and, in many cases, no defined meaning. Terms, such as these, need to be given consistent, standard meanings so as to place the private sector and SMEs in a position to abide by the standards, avoid situations where abiding by one law would mean breaching another and grant the public sector the ability to assess whether the law has been followed. A consistent definition of “national content” would also reduce confusion in the code.
3. **Fill gaps in the law** – A few national content statutes hold unclear references or conditions, such as requiring (i) that an action be taken in accordance with “applicable law” where no applicable law exists or (ii) that a condition be fulfilled where no condition is set. Such provisions should be self-contained, if possible, so that those looking to comply with the requirement can understand obligations without analyzing additional legislation. At minimum, the cross-references should lead those looking to follow the provision to the proper term, law or condition.
4. **Harmonize national content themes** – In some cases, the Mozambican code devises parallel standards and procedures for the same subject matter. Many of the employment law provisions are aligned throughout the law. When supported by sound policy and research, such harmonization of terms, standards, supervisory authorities and penalties/rewards should be replicated in respect of fiscal and procurement provisions.
6. **Establish procedures and required actions** – Statutes that require an action must establish a mechanism for action. National content requirements should be drafted with explicit procedures and defined actions to be undertaken. The Mozambican code contains national content provisions that impose a penalty for non-compliance but fail to offer adequate instruction as to how to follow the law.
7. **Authorize an entity to enforce and/or oversee compliance** – Laws must appoint an entity to administer the law. Legislating the actions to be taken, protocols to be observed, meanings of terms and related penalties or rewards holds limited effect where no Government body has been afforded the supervisory power. Laws must identify to which public sector unit applications, appeals and complaints should be filed as well as which body shall be policing the statute.
8. **Encourage communication and flexibility** – National content legislation should foster communication between the Government, the private sector and SMEs. While some provisions are too inflexible to be beneficial across sectors, regions or projects, establishing transparent procedures for communication with the Governmental unit in

charge of enforcement or compliance could mitigate this problem. Transparent application processes, for example, enable the Government to consider unique business models and idiosyncratic needs of an enterprise within the boundaries established by law. If properly monitored, such measures could allow those prepared to comply with the letter and purpose of national content laws to render the best decisions about how to do so.

9. **Remove opportunities for unequal standards** – Flexibility and communication are to be encouraged but should not be limitless. Provisions that delegate all decision-making authority to contract negotiations incite unequal national content standards and create the potential for trading other political or commercial interests for national content objectives. These scenarios should be avoided. Where a law delegates authority to a Government entity, such delegation should define the scope and parameters of the entity’s authority to negotiate or act. The delegation should also be clear. The law must name an entity, such as a relevant Government ministry, rather than a process or document, such as the subject matter of a contractual provision, when deferring a decision in respect of national content.
10. **Recognize the reality of business and close loopholes** – National content statutes should recognize and respect the reality of business. Frameworks that provide straight-forward equations to determine whether Mozambican goods or supplies are to be procured should be encouraged, provided quality can be taken into account and loopholes in the law enabling artificial bid inflation and payoffs are closed. Where possible, provisions of the Mozambican code that materially diminish a company’s profitability and access to finance should be redrafted to mirror the free market principles in which capitalist businesses thrive. Likewise, laws that promote a demand-driven approach that boosts the long-term development of SMEs and the employment capacity of Mozambicans should be prioritized.
11. **Incentivize capacity-development** – Laws that function as catalysts for capacity-building within the economy are to be enacted in cases where the capacity of the SMEs and human capital has not yet reached an optimal level. Such provisions should be easy to enforce and be incentive-based rather than penal. Introducing strict penalties and high standards in less developed economies can deter investment and incite circumvention of the law.
12. **Legislate competitively** – National content frameworks should promote investment. As with other aspects of investment promotion, a key tactic in drawing quality business into a country is to create a commercial environment that is more attractive than that of the competition. While Mozambique should seek to spread the financial success of foreign investors throughout its economy, its national content laws should acknowledge that some its sectors are may be less developed than those of its neighbors. Laws should not be so aggressive that investors choose to take their business elsewhere.
13. **Distinguish national content protocols from benevolent acts** – Policies and laws that equate national content objectives with corporate philanthropy should be reconsidered. A core premise in national content theory rests on the belief that each of the foreign

corporations, SMEs and local staff can witness improved financial success and capacity through collaboration. Laws should not create a perception that the Government has handed responsibility for management of sustainable economic development to the private sector’s charitable programs. Such CSR resources can be deployed to support and accelerate national content growth but should not replace the primary focus of the national content policy. The national content framework should create a commercial interface based on factual study, not an assumption, of the capacity of SMEs and needs of the larger corporate sector.

14. **Reward project neighborhoods** – Large-scale undertakings, such as in the extractives, infrastructure and agriculture sectors, impact the communities around the site of the projects more than those outside the region. Laws that reward project neighborhoods by ensuring that the Government’s economic gains from the region benefit its residents can help to stimulate the regional economy and foster respect and peaceful relationships between the industry and those living in the region.

The actions set out in the above summary should be approached in a balanced manner. It is neither possible nor recommended that each provision of the Mozambican code relating to national content hold all of these attributes. The purpose of the recommendations is to offer an overview of the hurdles and advantages of the current Mozambican law on national content, highlight the traits held by a solid national content legal framework and encourage discussion among stakeholders working in consultation with experts to develop an effective national content regime for Mozambique.

ANNEX: KEY NATIONAL CONTENT LEGISLATION AND CORRESPONDING THEMES

Article	Provision	Theme
Code of Fiscal Benefits, Art. 6(1)	An exemption from customs duties, and that is only granted when the goods to be imported are not produced in Mozambique or if produced in Mozambique do not satisfy the specific characteristics for the purpose and function required or inherent in the nature of the project and the respective activity to be carried out and explored.	Procurement Theme <i>(The Procurement Advantage for a National and Local Entity)</i> Fiscal Theme
Code of Fiscal Benefits, Art. 18 (1)	The cost of investments in professional training of Mozambican employees is deductible from taxable income for the purposes of the calculation of Corporate Income Tax (IRPC), during the first five years dating from the date of commencement of operations up to a maximum amount equal to 5% of taxable income.	Employment Theme <i>(The Fiscal Incentives Regime)</i> Fiscal Theme <i>(The Fiscal Incentives Regime)</i>

Code of Fiscal Benefits, Art. 19(1)(c)	<p>During a period of five tax years dating from the date of commencement of operations, investments eligible for fiscal benefits under the terms of this Code the following allowances may be also considered as costs for the determination of taxable income for corporate income tax (IRPC) purposes.....</p> <p>(c) In the case of expenditure for the acquisition for personal ownership of works of art and other objects that are representative of Mozambican culture as well as activities that contribute to the development of such works under the terms of the Law for the Defense of Cultural Patrimony, Law 10/88, of 22 December, only 50% of the expenditure is deductible as a cost for tax purposes.</p>	Fiscal Theme (<i>The Fiscal Incentives Regime</i>)
Enabling Law, Art. 3(2)(d)	<p>The scope of the powers granted to the Government under this enabling law in relation to the Rovuma Basin Project shall encompass the following....</p> <p>(d) Establishment of the necessary terms and conditions for the acquisition of goods and provision of services for the Rovuma Basin Project, by means of preference in the contracting of national companies that, not having capacity or quality, partnerships shall be created for a gradual transference of operational capacity;</p>	Procurement Theme (<i>The Delegation of Procurement Policy Decisions</i>)
Enabling Law, Art. 3(2)(h)	<p>The scope of the powers granted to the Government under this enabling law in relation to the Rovuma Basin Project shall encompass the following....</p> <p>(h) Establishment of a special regime for labour for the Rovuma Basin Project which shall, among others, foresee: (i) a work force quota, to be periodically readjusted in accordance with the different phases of the project; and (ii) a Mozambican specialists' quota in the undertakings, to be periodically readjusted;</p>	Employment Theme (<i>The Quota System</i>)
Investment Regulations, Art. 6(2)(c)	<p>The foreign investor whose investment project satisfies one of the following requirements is also eligible for the external remittance of profits and the re-export of invested capital...</p> <p>(c) Creates and maintains from the second year of operations at least twenty five direct employment positions for Mozambican nationals who are registered with the social security system.</p>	Employment Theme (<i>The Fiscal Incentives Regime</i>) Fiscal Theme
Investment Law Regulations, Art. 29(2)	Foreign employees with the professional qualifications and specialisations that Mozambique requires may be hired provided that there are no, or insufficient numbers of, Mozambican nationals with the required qualifications.	Employment Theme
Law on Investment, Art. 6	Investments covered by this Law, irrespective of the form they may assume, should contribute to the sustainable economic and social development of the country, meet the principles and objectives of national economic policy and satisfy the provisions of this Law and of its Regulations and any other applicable legislation in force in the country.	Fiscal Theme (<i>The Guiding Principles</i>)
Law on Investment, Art. 7(a-e); (h) and (i)	<p>The carrying out of investments under the present Law shall, inter alia, pursue the following objectives:</p> <p>(a) the development, rehabilitation, modernisation or expansion of economic infrastructures for the operation of productive activities or for rendering services necessary for</p>	Employment Theme (<i>The Guiding Principles</i>) Procurement Theme (<i>The Guiding Principles</i>)

	<p>supporting productive economic activities and promoting the country's development;</p> <p>(b) the expansion and improvement of national production capacity or of capacity to render services which support productive activities;</p> <p>(c) contributing towards training, expansion, and development of national entrepreneurs and Mozambican business partners;</p> <p>(d) the creation of jobs for national workers and the raising of professional skill levels of the Mozambican labour force;</p> <p>(e) the promotion of technological development and the improvement of entrepreneurial productivity and efficiency...</p> <p>(h) the reduction and substitution of imports;</p> <p>(i) contributing towards improving the supply of domestic markets and the satisfaction of the priority and basic needs of the population;</p>	
Mining Law, Art. 8(2)(b);(c) and (h)	<p>The mining contract, among other clauses, should contain the following...</p> <p>(b) minimum local content;</p> <p>(c) local employment and technical-professional training programmes...</p> <p>(h) the way communities of the mining area are engaged and benefitted by the venture;</p>	<p>Employment Theme (<i>The Concession-specific Framework</i>)</p> <p>Fiscal Theme (<i>The Guiding Principles</i>)</p> <p>Procurement Theme (<i>The Delegation of Procurement Policy Decisions</i>)</p>
Mining Law, Art. 20	<p>1. A percentage of State revenues generated by mining activities is allocated to the development of the communities established in the areas where mining activities take place.</p> <p>2. The above mentioned percentage is fixed in the State Budget Law, depending on the expected revenue for mining activity.</p> <p>3. Revenue is channelled through the annual budget.</p>	Fiscal Theme (<i>The Application of State Revenues</i>)
Mining Law, Art. 22(2)	Single or collective foreign legal persons providing services to mining operations shall be associated to Mozambican single or collective legal persons in accordance with the regulation.	Procurement Theme (<i>The Procurement Benefits of Affiliating with a National or Local Entity</i>)
Mining Law, Art. 22(4)	The mining holder must give preference to local products and services.	Procurement Theme (<i>The Procurement Advantage for a National and Local Entity</i>)
Mining Law, Art. 23(1)	The State, institutions and other legal persons of public right are fundamental in the promotion of the evaluation of mining potential, in order to allow access to the mining production benefits and contribute to socio-economic development.	Fiscal Theme (<i>The Guiding Principles</i>)
Mining Law, Art. 33(2)	Mining companies must assure the employment and professional training of Mozambican workers according to the applicable legislation.	Employment Theme (<i>The Concession-specific Framework</i>)
Mining Law, Art. 34(1)	The Government must create mechanisms in order to allow the engagement of national entrepreneurship in mining projects, including the definition of the terms and conditions for this purpose.	Procurement Theme (<i>The Delegation of Procurement Policy Decisions</i>)

Mining Law, Art. 36(c)	The holder of mining rights has, beside others, the obligation to.... (c) secure employment and technical training to national citizens especially the ones who live in the concession area;	Employment Theme (<i>The Concession-specific Framework</i>)
Mining Law, Art. 53(a)	The extraction of natural resources for building materials does not require a mining permit or authorization when the following requirements are met: (a) carried out by national citizen in the extent and way allowed by the local customs and in the land where it is common to carry out such extraction;	Procurement Theme (<i>The Procurement Advantage for a National and Local Entity</i>)
Mining Law, Art. 57	Whenever the availability of the resource and economic viability justify it, the treatment and processing of Mozambique's explored mineral shall be carried out in the country.	Procurement Theme (<i>The Procurement Advantage for a National and Local Entity</i>)
Mining Law, Art. 59(1)	The mineral processing licence is issued to the collective legal person constituted and registered in accordance with the Mozambican legislation in force, with legal, technical and financial capacity that wishes to carry out mineral processing activities.	Procurement Theme (<i>The Procurement Advantage for a National and Local Entity</i>)
Mining Law, Art. 65(1)	Direct national and foreign investment may be made, exclusively or jointly, in the following manners if measurable in monetary terms... (a) value paid in currency freely convertible for the total or partial acquisition of shares in a company constituted in Mozambique or mining permit in the case of partial or total transmission, so long as the value is paid in a bank registered in Mozambique or an authorized foreign account under the terms of Foreign Exchange Law;	Procurement Theme (<i>The Procurement Advantage for a National and Local Entity</i>)
Petroleum Law, Art. 4(3)	The State and its institutions and other public entities have a decisive role in the promotion of evaluating the existing petroleum potential so as to provide access to the benefits of petroleum production and contribute to the economic and social development of the country.	The Fiscal Theme (<i>The Guiding Principles</i>)
Petroleum Law, Art. 12(2)	The petroleum exploration companies must ensure the employment and the technical-professional training of Mozambican nationals, as well as their participation in the management and in the petroleum operations.	Employment Theme (<i>The Concession-specific Framework</i>)
Petroleum Law, Art. 13(1)	The Government must create mechanisms and outline the conditions for the involvement of the national entrepreneurship in the oil and gas enterprises.	Procurement Theme (<i>The Delegation of Procurement Policy Decisions</i>)
Petroleum Law, Art. 15(b)	The petroleum operations right holders have, among other, the following obligations... (b) to ensure the employment and technical training to national citizens, preferably to those who live in the concession area;	Employment Theme (<i>The Concession-specific Framework</i>)
Petroleum Law, Art. 19	1. The Government shall implement policies that ensure the execution of petroleum operations including the implementation of the necessary regulations for its application. 2. The Government shall ensure that a percentage of the	Fiscal Theme (<i>The Application of State Revenues</i>)

	<p>revenue generated in the petroleum production is channelled to the development of the communities in the areas where the petroleum operations are being conducted.</p> <p>3. The percentage referred in the previous paragraph is fixed by the State Budget with reference to the expected revenues of the petroleum operations.</p>	
Petroleum Law, 26(4)	Mozambican legal entities as well as foreign legal entities that associate with Mozambican legal entities shall have a pre-emption right in the granting of concession contracts.	Procurement Theme (<i>The Procurement Advantage for a National and Local Entity</i>) and (<i>The Procurement Benefits of Affiliating with a National or Local Entity</i>)
Petroleum Law, 41(2)	Single or collective foreign entities that provide services to the petroleum operations must associate to single or collective Mozambican entities.	Procurement Theme (<i>The Procurement Benefits of Affiliating with a National or Local Entity</i>)
Petroleum Law, Art. 41(4)	The petroleum operations right holders must give preference to local products and services when comparable, in terms of quality, to the international materials and services that are available in time and in the quantities required and when the price, including taxes, is not over by ten percent to the price of the available imported goods.	Procurement Theme (<i>The Procurement Advantage for a National and Local Entity</i>) Fiscal Theme (<i>The Calculation for Favouring Mozambican Goods and Services</i>)
Petroleum Law, Art. 48	A percentage of the revenue generated by the petroleum activity is allocated in the State Budget to the development of the communities of the areas where the respective petroleum enterprises are located.	Fiscal Theme (<i>The Application of State Revenues</i>)
Petroleum Operations Tax & Fiscal Benefits Law, Art. 19(1)(c)	Subject to the provisions of the IRPC Code, the following are deemed to be costs or losses from petroleum operations... (c) the professional training of Mozambican workers;	Employment Theme (<i>The Fiscal Benefits Regime</i>) Fiscal Theme (<i>The Fiscal Benefits Regime</i>)
Petroleum Operations Tax & Fiscal Benefits Law, Art. 19(1)(f)	Subject to the provisions of the IRPC Code, the following are deemed to be costs or losses from petroleum operations... (f) Expenses arising from any activities downstream of the concession contract, or from services supplied in the context of activities downstream of that contract, when incurred by the concessionaire, in accordance with Article 21;	Fiscal Theme (<i>The Fiscal Benefits Regime</i>)
Petroleum Operations Tax & Fiscal Benefits Law, Art. 21	1. For the purposes of Article 19 (f), a fee paid by the entity that holds the concession contract, to the entity that incurred such costs, shall be deductible. 2. For the purposes of the provisions of paragraph (f) of Article 19, costs arising from any activities downstream of the delivery point, or from services provided in the context of activities downstream of the delivery point, shall be recorded separately from petroleum operations for accounting purposes, and a fee charged to ventures that develop petroleum operations shall be deductible.	Fiscal Theme (<i>The Fiscal Benefits Regime</i>)

	<p>3. The fee referred to in paragraphs 1 and 2 shall be agreed between the entity responsible for supervising the petroleum industry and the tax authorities, and shall comply with the arm's length principle.</p>	
<p>Petroleum Operations Tax & Fiscal Benefits Law, Art. 35</p>	<p>1. For the five fiscal years following the date of the approval of a development plan, ventures under the Petroleum Law shall be exempt from:</p> <p>(a) customs duties owed on imports of equipment for use in petroleum operations falling into class K of the Customs Tariff;</p> <p>(b) customs duties owed on imports of the goods set out in Schedule II of this Law, which are deemed equivalent to goods in class K of the Customs Tariff.</p> <p>2. The benefits referred to in the preceding paragraph shall only be granted when the goods to be imported are not produced in the Mozambican territory or, if they are produced in the Mozambican territory, when they fail to meet the specific features of purpose and functionality required or inherent to the nature of the activities to be developed and run.</p>	<p>Procurement Theme <i>(The Procurement Advantage for a National or Local Entity)</i></p>
<p>Policy of Corporate Social Responsibility for the Extractive Industry of Mineral Resources, Art. 2</p>	<p>The Government seeks to ensure the benefits of Extractive Industry favoring economic and social development of Mozambicans, through the establishment of a tax regime that is fair to investors but also maximize the return of the State; infrastructural development; and the encouragement of extractive industry to be included in investment plans, policies and programs of Corporate Social Responsibility.</p> <p>Thus, Corporate Social Responsibility Politics is based on the following objectives:</p> <p>(a) Promote the establishment of mechanisms that ensures the existence of programs of Corporate Social Responsibility in the extractive sector of mineral resources, in a manner that contributes in an effective way to poverty reduction and for the Sustainable Development in Mozambique.</p> <p>(b) Adjust and co-ordinate the programs of Corporate Social Responsibility in the objectives and the development programs, especially local development plans.</p>	<p>Fiscal Theme <i>(The Fiscal Incentives Regime)</i></p> <p>CSR Theme</p>
<p>Policy of Corporate Social Responsibility for the Extractive Industry of Mineral Resources, Art. 3(b), (d),(e), (g), (h), (i), (j) and (k)</p>	<p>To achieve these objectives the Corporate Social Responsibility Politics for the Extractive Industry of Mineral Resources observe the following principles...</p> <p>(b) Law, Transparency and Accountability: Activities of the exploitation of mineral resources should be conducted in accordance with the Law, on the basis of decisions made in a transparent way and in an environment of responsibility by the interested parties;</p> <p>(d) Gender Equality: In the management process of mineral resources, all men and women have the same rights and opportunities to access or use of this by participating in the decisions with these related, as well as of benefit sharing resulting of its exploitation;</p> <p>(e) Consultation and Participation: All persons which are likely to be affected directly or indirectly by activities of</p>	<p>CSR Theme</p>

	<p>extractive industry should be previously informed and consulted;</p> <p>(g) Environmental Responsibility and Benefit-sharing: The Corporate Social Responsibility of extractive industry passes through respect with the principles of sustainable environmental management and must guarantee a sharing with the communities of benefits arising from the exercise of activity;</p> <p>(h) Appreciation and Respect for Culture, Customs and Local Values: The programs of Corporate Social Responsibility should include action that promote and value by respect for culture, customs and values of local communities of areas where the projects can be placed;</p> <p>(i) Integration with the Policies and the Government's Strategy: Implementation of the policies of Corporate Responsibility of extractive industry must be done in such a way to integrate it and harmonize it with other policies, strategies and relevant laws applicable in the country;</p> <p>(j) Alignment with the Standards, Conventions and International and Regional Strategies: Interpretation of Corporate Social Responsibility Policy of extractive industry must be done in such a way that aligns the standards, conventions and international and regional strategies on this matter;</p> <p>(k) Monitoring and Evaluation: The programs of Corporate Social Responsibility of Extractive Industry shall be subject of actions of monitoring and evaluation.</p>	
Policy of Corporate Social Responsibility for the Extractive Industry of Mineral Resources, Art. 4	<p>For the effects of this Policy the concept of Corporate Social Responsibility of the standard ISO26000 is adopted, of the International Organization for Standardization, is defined as:</p> <p>The responsibility of an organization for the impacts of its decisions and activities on the society and on the environment through a transparent and ethical behavior, that:</p> <ul style="list-style-type: none"> - Contribute for sustainable development, including health, and well-being of society; - Take in consideration the expectations of interested parties; - Stay in conformity with current legislation and be consistent with Conducts of international standards; and - Be integrated with the entire organization and be practiced in its relations 	CSR Theme
Policy of Corporate Social Responsibility for the Extractive Industry of Mineral Resources, Art. 6	<p>The Objectives of Corporate Social Responsibility of Policy will be achieved through defined strategies in the different spheres on the basis of priorities and objectives identified:</p> <p>In the framework of legislation and its implementation</p> <p>(a) identify gaps and complement the existing legislation, in order to ensure its implementation in areas related to Corporate Social Responsibility in extractive industry;</p> <p>(b) ensure that the legal requirements on this issue observe and must be aligned with international good practices of Corporate Social Responsibility of this activity;</p> <p>(c) promote dissemination of regulatory legal framework about Corporate Social Responsibility, specifically for the extractive sector of mineral resources;</p>	<p>Employment Theme <i>(The Concession-specific Framework)</i></p> <p>Procurement Theme <i>(The Delegation of Procurement Policy Decisions)</i></p> <p>CSR Theme</p>

(d) promote of the capacity of the interested parties for the application of legal requirements related to Corporate Social Responsibility;

(e) create mechanisms of supervision and strengthening of training of agents of the State and other regulators in professional ethical issues and others related to Corporate Social Responsibility...

In the framework of Local Economic Development

(a) ensure that the activities in the scope of Corporate Social Responsibility should be harmonized with the plans of local development and prioritize the development of human capital, the links of local company and the generation of the productive employment;

(b) support the development of Mozambican companies to supply goods or services giving them greater technical competence and trade competitiveness;

(c) ensure the development of economic parallel and complementary activities to mining enterprise and petroleum;

(d) ensure that the sector's companies contribute for the development of capacity of local suppliers, for compliance of international standards of quality and certification, in providing services and of supplying goods;

(e) publicly recognizing the best practice in local hiring, through an award program or other possible incentives, in order to promote the local purchases of quality in between the extractive sector;

In the framework of Social Investment and Local Development Agreements....

(d) ensure that the Local Development Agreement have focused, mostly, in the following areas of intervention...

- ii. Development of human capital;
- iii. Local Enterprise Development;
- iv. Employment creation;
- v. Local Acquisitions....

In the framework of Financing of Social Investments

(a) guarantee that the budgets for the projects and initiatives of social responsibility are elaborated with the active participation of all interested parties;

(b) ensure that allocated funds are exclusively applied in the conduct of planned activities;

(c) ensure that the local coordination groups through their function of monitoring, they guarantee that the funds of local investment serve only to interests and purposes previously agreed;

(d) promote the creation of mechanisms of communication between the parties for the sharing of best practice, and lessons learned, creation and harmonization of rules and procedures in the context of implementation of the politic presence and for the allocation of funds for social investments...

	<p>In the framework of Monitoring and Evaluation</p> <p>(a) guarantee that the monitoring activity and evaluation must be for result-oriented;</p> <p>(b) publish the reports for monitoring and evaluation;</p> <p>(c) ensure that the goals and the established indicators are agreed in the framework of negotiation of social investment, specifically, of Local Development Agreements, in between the interested parties, for orientation and facilitate the monitoring process;</p> <p>(d) ensure that a part of the total amount of the social investment to be conducted by the companies it is reserved to allow the fulfillment of an Independent monitoring and evaluation;</p>	
<p>Política e Estratégia de Recursos Minerais, Art. 4(f)</p>	<p>Constituem principais objectivos da política de recursos minerais....</p> <p>(f) promover a participação do sector privado nacional, cooperative e associativo, atribuindo o direito de preferência a nacionais em caso de identificação de corpos mineralizados com valor económico;</p>	<p>Procurement Theme (<i>The Procurement Advantage for a National or Local Entity</i>)</p>
<p>Política e Estratégia de Recursos Minerais, Art. 5(b) and (d)</p>	<p>São definidas como principais linhas no âmbito da política le recursos minerais....</p> <p>(b) No âmbito da exploração mineira e petrolífera...</p> <p>Promover a formação dos operadores e das comunidades afectadas pela actividade mineira em material de desenvolvimento sustentável, com particular destaque aos aspectos ligados à saúde pública e protecção de ambiente....</p> <p>Apoiar o surgimento de empresas mineiras e petrolíferas moçambicanas de foro público e privado com nível internacional;</p> <p>Assegurar a atribuição de benefícios e compensações especiais para as comunidades dos locais de exploração mineira....</p> <p>(d) No âmbito da participação nacional na actiidade mineira e petrolífera...</p> <p>Promover a participação do empresariado nacional e a criação de parcerias na actividade de recursos minerais e em toda a sua cadeia de valor, com particular destaque para a área de procurement, fornecimento de bens e insumos e prestação de serviços;</p> <p>Estimular o aumento do licenciamento de operadores nacionais, e promover a constituição de cooperativas, associações de operadores artesanais, pequenas e médias empresas;</p>	<p>Procurement Theme (<i>The Guiding Principles</i>)</p>
<p>PPP Law, Art. 4(g), (h) and (i)</p>	<p>The contracting of PPP, LSP or BC undertakings is subject to conformity with the following guiding principles for each undertaking, concretely...</p> <p>(g) its contribution to the development of the national capital markets and the promotion of greater economic inclusion of</p>	<p>Employment Theme (<i>The Guiding Principles</i>)</p> <p>Fiscal Theme (<i>The Guiding Principles</i>)</p>

	<p>Mozambicans in each undertaking;</p> <p>(h) establishment of business partnerships between the PPP, LSP and BC undertakings and the micro, small and medium enterprises, as well as the transfer of technology and know-how;</p> <p>(i) pursuit of programs, projects or actions of social responsibility and sustainability, and social development with the local communities...</p>	Procurement Theme (<i>The Guiding Principles</i>)
PPP Law, Art. 33(1)(a) and (b)	<p>The financial benefits for the Country from each PPP, LSP and BC undertaking shall be expressly referred to in the contract to be concluded between the contracting party and the contracted party, namely:</p> <p>(a) the participation reserved for sale, via the stock market in favor of the economic inclusion on commercial market terms, preferably of Mozambican natural persons, in the share capital of the undertaking or in the joint venture equity, whether or not foreign investment is involved, guaranteed by:</p> <p>(i) the State or other public entity appointed thereby, in a percentage not less than 5% nor greater than 20% of the referred capital; or</p> <p>(ii) the entity implementing the undertaking, of the same level of participation, for unconditional sale, under the same terms and conditions provided in clause (i), above.</p> <p>(b) the opportunity for Mozambican public or private corporate persons to participate in the share capital of the undertaking or the equity of the joint venture, under terms to be negotiated and agreed by the parties, without prejudice to the provisions of (i) and (ii) of the preceding clause (a).</p>	Fiscal Theme (<i>The National Profit-sharing Framework</i>)
PPP Law, Art. 34(b) and (c)	<p>The PPP, LSP and BC undertaking concession contract shall also contain clauses expressly specifying the socio-economic benefits to be provided by each undertaking, at its own expense, for the national economy and Mozambican society, namely, the benefits related to...</p> <p>(b) offer of work posts and professional training programs for Mozambican employees;</p> <p>(c) programs and actions of technical-professional training and transfer of technology and know-how to the Country...</p>	Employment Theme (<i>The Concession-specific Framework</i>)
PPP Law, Art. 34(d) and (e)	<p>The PPP, LSP and BC undertaking concession contract shall also contain clauses expressly specifying the socio-economic benefits to be provided by each undertaking, at its own expense, for the national economy and Mozambican society, namely, the benefits related to...</p> <p>(d) increase and maintenance of the production and export capacity and of the capacity to supply internal market needs;</p> <p>(e) contribution to the development of Mozambican small and medium enterprises, via business and technological linkages between the undertaking and such enterprises...</p>	Procurement Theme (<i>The Delegation of Procurement Policy Decisions</i>)
Regulation for the Mechanisms and Procedures for	Private employment agencies may only contract foreign citizens in accordance with the quota or work authorization regimes.	Employment Theme (<i>The Quota System</i>)

Contracting Foreign Workers ⁷⁸ , Art. 2(3)		
Regulation for the Mechanisms and Procedures for Contracting Foreign Workers, Art. 3(1)	Employers must do the most they can to create conditions for the integration of Mozambican workers in positions of greater technical complexity and in management and administrative positions in companies.	Employment Theme (<i>The Guiding Principles</i>)
Regulation for the Mechanisms and Procedures for Contracting Foreign Workers, Art. 4(1)	Under the quota regime the employer may employ foreigners subject to communication to the Minister of Labor, or entities delegated by the Minister, within fifteen days of having admitted the foreign employee.	Employment Theme (<i>The Quota System</i>)
Regulation for the Mechanisms and Procedures for Contracting Foreign Workers, Art. 5	<p>1. Based on the classification of the company, the employer may employ foreign citizens, in accordance with the following quotas:</p> <p>(a) five percent of the total workforce, for large companies;</p> <p>(b) eight percent of the total workforce, for medium companies;</p> <p>(c) ten percent of the total workforce, for small companies.</p> <p>2. For the purposes of the preceding paragraph the following apply:</p> <p>(a) large company: employing more than one hundred workers;</p> <p>b) medium company: more than ten and up to a maximum of one hundred workers;</p> <p>(c) small company: employing up to ten workers.</p> <p>3. The number of workers to be considered corresponds to the average number of workers employed during the previous calendar year.</p> <p>4. In the first year of activity, the number of workers to be considered is the number on the day of start-up of activity.</p>	Employment Theme (<i>The Quota System</i>)
Regulation for the Mechanisms and Procedures for Contracting Foreign Workers, Art. 8(1)	In investment projects approved by the Government which provide for the employment of foreigners in greater or lesser number than the quota regime, a work authorization is not required, and is replaced by the requirement to communicate the employment of a foreigner within 15 days of their entry into the country.	Employment Theme (<i>The Quota System</i>)
Regulation for the Mechanisms and Procedures for Contracting Foreign Workers, Art. 12	<p>1. Short-term work is considered to be work for periods not longer than 30 consecutive or interspersed days, in the same year, by foreign citizens including those already under contract to the parent company or its subsidiaries in other countries.</p> <p>2. Short-term work is exempt from work authorization as foreseen in paragraph 2 of Article 1 of the present Regulation.</p> <p>3. The employer or its representative must submit, in advance, to the entity responsible for labor in the province</p>	Employment Theme (<i>The Quota System</i>)

⁷⁸ As many of the provisions of the Regulation for the Mechanisms and Procedures for Contracting Foreign Workers and Regulation for the Contracting of Foreign Citizens for the Petroleum and Mining Sector cited in this report are primarily administrative, only the key clauses will be included in this table.

	<p>where the foreign citizen is to work, a communication in duplicate including the identity and qualifications of the employee, the reason for contracting the employee, the activities they will perform, and the precise start and end dates for their activities.</p> <p>4. This communication is verified in accordance with Article 7 of the present Regulation.</p> <p>5. Short term work does not fall within the quota system and is exempt from payment of fees.</p>	
Regulation for the Mechanisms and Procedures for Contracting Foreign Workers, Art. 14(2) and (3)	<p>2. The employment of a foreign worker, who shall have the required academic or professional qualifications, may only take place provided there are no national citizens with those qualifications, or that they are insufficient in number.</p> <p>3. The authorization to employ foreigners is also conditional on proof that the provisions of this regulation have been respected.</p>	Employment Theme (The Quota System)
Regulation for the Mechanisms and Procedures for Contracting Foreign Workers, Art. 17(1)	The contracting of foreign citizens for work in non-governmental organizations, scientific research, teaching, and other areas of specialized technical assistance will be determined by order of the Minister responsible for labor, after hearing the entity responsible for the relevant sector.	Employment Theme (The Quota System)
Regulation on the Contracting of Foreign Citizens for the Petroleum & Mining Sector ⁷⁹ , Art. 3(1)	Employers must use best efforts to create conditions for the integration of qualified Mozambican workers in positions of greater technical complexity and in management and administrative positions of the company.	Employment Theme (The Quota System)
Regulation on the Contracting of Foreign Citizens for the Petroleum & Mining Sector, Art. 3(4) and (5)	<p>4. A foreign citizen may be hired for the petroleum and mining sector through the quota regime, the short term work regime, the regime under investment projects approved by the Government and the work authorization regime.</p> <p>5. The quota regime presupposes the contracting of a certain percentage of foreign citizens set in accordance with the total number of Mozambican workers in the company, under the terms established in Article 5 of this Regulation.</p>	Employment Theme (The Quota System)
Regulation on the Contracting of Foreign Citizens for the Petroleum & Mining Sector, Art. 5	<p>1. Based on the classification of the company, the employer may employ foreign citizens, in accordance with the following quotas:</p> <p>(a) five percent of the total workforce, for large companies;</p> <p>(b) eight percent of the total workforce, for medium companies;</p> <p>(c) ten percent of the total workforce, for small companies.</p> <p>2. For the purposes of the preceding paragraph the following apply:</p> <p>(a) large company: employing more than one hundred workers;</p> <p>(b) medium company: more than ten and up to a maximum</p>	Employment Theme (The Quota System)

⁷⁹ As many of the provisions of the Regulation for the Mechanisms and Procedures for Contracting Foreign Workers and Regulation for the Contracting of Foreign Citizens for the Petroleum and Mining Sector cited in this report are primarily administrative, only the key clauses will be included in this table.

	<p>of one hundred workers; (c) small company: employing up to ten workers.</p> <p>3. The number of workers to be considered corresponds to the average number of workers employed during the previous calendar year.</p> <p>4. In the first year of activity, the number of workers to be considered is the number on the day of start-up of activity.</p>	
Regulation on the Contracting of Foreign Citizens for the Petroleum & Mining Sector, Art. 8(1)	In petroleum and mining investment projects approved by the Government in which the employment of foreign citizens in a percentage greater or lesser than the one foreseen in the quota regime is provided, work authorization is not required, and communication in accordance with the terms of Article 9 of this Regulation shall suffice.	Employment Theme (The Quota System)
Regulation on the Contracting of Foreign Citizens for the Petroleum & Mining Sector, Art. 12	<p>1. Short-term work is considered to be work for periods not longer than 180 consecutive or interspersed days, in the same calendar year, when rendered by foreign citizens including those already under contract to the company that is a titleholder, concessionaire, operator, subcontractor or its subsidiaries in another country.</p> <p>2. Short-term work in the terms of the preceding paragraph does not require work authorization; [for the purpose,] communication shall suffice.</p> <p>3. The employer or its representative shall submit, within fifteen days after the date of the employee's entry, to the entity which oversees the labor area in the province where the foreign citizen is to work, a communication in duplicate including the following information: (a) identity of the foreign employee; (b) academic or professional qualifications; (c) the reason for his employment; (d) the activities he will perform; and (e) indication of the starting and finishing date dates for his activities.</p> <p>4. The conformity of the communication shall be verified in accordance with the terms established in article 7 of this Regulation.</p>	Employment Theme (The Quota System)
Regulation on the Contracting of Foreign Citizens for the Petroleum & Mining Sector, Art. 13(2) and (3)	<p>2. The employment of a foreign citizen, who shall have the required academic or professional qualifications, may only take place provided there are no national citizens with those qualifications, or when they are insufficient in number.</p> <p>3. The authorization to employ foreign citizen is also conditional on proof that the provisions of this Regulation have been respected.</p>	Employment Theme (The Quota System)

BIBLIOGRAPHY

- Code of Fiscal Benefits, Law No. 4/2009
- Enabling Law, Law No. 25/2014
- Foreign Exchange Law, Law No. 11/2009
- Investment Law Regulations, Decree No. 43/2009
- Law on Investment, Law No. 3/93
- Law on Public Private Partnerships, Large Scale Projects and Business Concessions, Law No. 15/2011
- Mining Law, Law No. 20/2014
- Petroleum Law, Law No. 21/2014
- Petroleum Operations Tax & Fiscal Benefits Law, Law No. 27/2014
- Policy of Corporate Social Responsibility for the Extractive Industry of Mineral Resources, Resolution No. 21/2014
- Política e Estratégia de Recursos Minerais, Resolução No. 89/2013
- Procurement Regulations, Decree No. 15/2010
- Regulation for the Mechanisms and Procedures for Contracting Foreign Workers, Decree No. 55/2008
- Regulation on the Contracting of Foreign Citizens for the Petroleum & Mining Sector, Decree No. 63/2011