G Model
EXIS 240 No. of Pages 7

ARTICLE IN PRESS

The Extractive Industries and Society xxx (2016) xxx–xxx

Contents lists available at ScienceDirect

The Extractive Industries and Society

journal homepage: www.elsevier.com/locate/exis

Original article

Regulating for local content: Limitations of legal and regulatory instruments in promoting small scale suppliers in extractive industries in developing economies

Simon White

Sir Walter Murdoch School of Public Policy and International Affairs, Murdoch University, Australia

ARTICLE INFO

Article history:
Received 15 June 2016
Received in revised form 4 August 2016
Accepted 4 August 2016
Available online xxx

Keywords:
Regulation
Law
Local
Content
Reform
Extractive
Supply

ABSTRACT

Many governments are increasingly eager to ensure resource-based investments lead to broad-based economic growth through local content policies, legislation, and regulatory instruments. However, it is unclear how effective these instruments are. This paper presents the findings of a review into the policy, legal, and regulatory framework for mining and the small-scale supply sector. It identifies the issues of major concern and presents the specific dimensions of business environment reform affecting the use of local, small-scale suppliers by extractive industries. Largely focusing on Africa, this research focuses on Nigeria, Ghana, Mozambique and South Africa. The review found that without external impetus, extractive companies generally have little regard for local content. However, in practice most existing local content instruments enable non-compliance and can also be a barrier to investments characterized by long-term, high-cost operations that are vulnerable to international commodity fluctuations. The development of local content instruments requires a good understanding of the extractive industry supply chains (large and small), and a balance of policy, legal, industrial development/support elements, and an on-going close interaction between governance institutions and entities directly and indirectly engaged in the industry.

1. Introduction

Extractive industries provide an attractive development opportunity for many governments, as the often high level of foreign investment over time can produce important revenues, employment, and contribute to long-term sustainable and inclusive growth beyond the direct contribution through inter-sectoral linkages. This paper examines the way policy, law, and regulatory frameworks have been established in the resources sector to promote local content, and specifically, small-scale suppliers. It builds on a previous review of sector-based business environment reform efforts the author undertook for the Donor Committee for Enterprise Development.[1]

Some developing and transitional economies are among the largest producers and net exporters of minerals, oil, and gas, while developed countries and fast-growing emerging economies are major consumers. Those countries lacking the "indigenous capabilities for transforming their natural resources into commercial goods" typically turn to multinational enterprises to "bring the needed capital, knowledge and access to markets" (UNCTAD 2007, p. xxi). This outsourcing of capital and skills can reduce the opportunity for direct economic and social benefit. Many of the promised benefits and linkages of resource exploitation have failed to materialize. Gajigo et al. (2012) present research by the African Development Bank showing how few of the inputs into capital-intensive mining activities in Africa have been sourced locally. Equipment, machinery, and consumables are most often imported. Employment generation is also limited by the capital-intensive nature of mining operations. For example, in Mali, although the mining industry accounts for up to 17% of national GDP and 70% of exports, it generates direct employment for only 13,000 people. Similarly, in Ghana, between 2000 and 2007 the minerals sector employed approximately 0.2% of the non-agricultural labour force, despite contributing 5.5% of Ghana's GDP and 40% of its exports.

The adoption of the 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDGs) by the United Nations Assembly in 2015 presents a call to action for governments and business around the world (United Nations, 2015). The private

E-mail address: simon@simonwhite.com.au (S. White).

[1] The Donor Committee for Enterprise Development is an international membership organisation made up of donors and development agencies and private foundations supporting private sector development in developing economies.

http://dx.doi.org/10.1016/j.exis.2016.08.003
2214-790X/

Please cite this article in press as: S. White, Regulating for local content: Limitations of legal and regulatory instruments in promoting small scale suppliers in extractive industries in developing economies, Extr. Ind. Soc. (2016), http://dx.doi.org/10.1016/j.exis.2016.08.003

sector is a key stakeholder in the implementation and success of the SDGs and mining can play a significant role. There are many goals and targets contained in the SDGs that mining can contribute to. A recent report by the UNDP (2016) provides an explanation of the links between mining and the SDG and maps the progress made. Significant attention is paid to the role of public-private partnerships in responding to the economic, social and environmental challenges. This includes a focus on the important of local content in the mining sector: “Mining companies, in partnership with other stakeholders, can help to build approaches to promote competitive domestic enterprises for increasing local content and supply capacity, which also helps drive more sustainable, long-term, diversified economic growth” (UNDP 2016, p. 38).

Supplier inputs and linkages can occur along and beyond the mining value chain. Backward linkages occur when foreign affiliates acquire inputs (i.e., goods or services) from local suppliers. Forward linkages occur when foreign affiliates sell outputs (i.e., minerals) to domestic buyers. Linkages can be developed with domestic firms or with other foreign affiliates in the host country. Hanlin (2011) identifies three phases in a mine's lifecycle that influence procurement decisions: design, construction, and operation. Within each of these phases critical decisions are made influencing procurement throughout the life cycle of the mine, and there are a number of opportunities the integration of local small-scale suppliers. These include:

- Advice and support in obtaining an exploration licence;
- Exploration activities;
- Reserve calculations, financial calculations, and metallurgical test work;
- Market studies;
- Preparation of the bankable feasibility study and environmental impact assessment and management plan;
- Environmental services;
- Advice and support in obtaining a mining licence;
- Equipment ordering and delivery;
- Mine and plant construction;
- Building up to full production;
- Catering, laundry, security, and general operational services;
- Mine closure; and
- Mine site rehabilitation.

This paper examines the use of policy, legal and regulatory instruments to ensure resource-based investments lead to broad-based economic growth through the promotion of local supply chains.

2. Policy development and reform

In response to increasing unrest and frustration among their citizens, governments are paying greater attention to the promotion of local content within extractive industries. The African Union's (2009) *African Mining Vision* describes the desire for a knowledge-driven African mining sector that catalyses and contributes to broad-based growth and development. This is envisaged to emerge through down-stream linkages (into mineral beneficiation and manufacturing), up-stream linkages (into mining capital goods, consumables and service industries) and side-stream linkages (into infrastructure, skills, and technology/research and development). It has become, in Besada and Martin's (2014, p. 11) words, “among the most important frameworks for developing mineral resources in Africa”. The African Mining Vision reflects many of the aspirations African governments hold with regard to local content. Many African governments, says the African Union (2009, p. 23) agree: “most of what they wish to achieve through ownership in mining projects can be achieved through the regulatory and fiscal instruments”. Pedro (2012) argues this view assumes the state is more able to attract private investors than it is to raise the funds and skills to directly undertake mining activities.

The Vision calls on African governments, regional economic communities and Pan African organisations to take short, medium and long-term steps toward the implementation of its Action Plan. The Economic Commission for Africa (2011) report on Africa's mineral regimes provides a guiding reference to the specific challenges to be addressed through implementation. These are to be taken with the support of Development Partners and through partnership arrangements between the public and private sectors, as well as civil society organisations, local communities, and other key stakeholders. The African Mineral Development Centre, based in Addis Ababa, has been established to support the implementation of the Vision and to work with national governments, industry and other key stakeholders in their efforts to achieve the Vision and prosecute its Action Plan.

A growing number of African countries have established national policy frameworks for the extractive industries in which the requirement for ‘local content’ or ‘beneficiation’ has become more prominent (see Tordo et al., 2013; Sejpal et al., 2015). Among these are national mining codes or acts containing a subset of laws to regulate exploration and production of minerals that specify rights and obligations of private companies (e.g., applicable taxes, freedom to repatriate funds, access to foreign currency), as well as the interests and obligations of the state. Research by Gajigo et al. (2012) describe them as documents of primary importance for a mining investment.

The four cases presented below provide brief descriptions of the national frameworks established to support local content provisions, with a focus on small-scale suppliers. The focus here is on government's aspirations in terms of policies for local content. Later, the other elements of the business environment (i.e., the legal and regulatory regimes and the institutional arrangements) are discussed.

2.1. Nigerian local content policy development and reform

In *Nigeria*, local content in the oil and gas sector is estimated to be around 40%. Foreign workers and overseas suppliers provide most white-collar jobs, engineering, materials, and maintenance work (Fabi, 2009). In 1972 and 1979, two Nigerian Enterprises Promotion Decrees were promulgated. These sought to direct foreign investments to areas where Nigerians could not excel or lacked the requisite production factors. These applied across the economy, but did little to transform the oil and gas sector.

In 2010, some years after an earlier Bill drafted in 2003, the Parliament adopted the Nigerian Oil And Gas Industry Content Development Act, 2010, which provides for preferential treatment of local ventures and workforce. It defined Nigerian content as “the quantum of composite value added to, or created in, the Nigerian economy through the deliberate utilisation of Nigerian human and material resources and services in the Upstream Sector of the Nigerian Petroleum Industry” (S.106). This definition included all activities connected with the exploration, development, exploitation, transportation, and sale of oil and gas without compromising quality, health, safety, and environmental standards. The Act describes how Nigerian operators are given first consideration in the award of oil blocks, licences, shipping services, and all industry projects. It also provides a host of requirements designed to ensure workforce development of, and technology transfer to, Nigerians, requiring operators hire Nigerians whenever possible. In addition, the Act mandates that operators provide a succession plan for all positions filled by expatriates, except for five per cent of management positions, which may be permanently held by

Please cite this article in press as: S. White, Regulating for local content: Limitations of legal and regulatory instruments in promoting small scale suppliers in extractive industries in developing economies, Extr. Ind. Soc. (2016), http://dx.doi.org/10.1016/j.exis.2016.08.003