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

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.

Keywords: Regulation; law; local; content; reform; extractive; supply.

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
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 per cent of national GDP and 70 per cent 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 per cent of the non-agricultural labour force, despite contributing 5.5 per cent of Ghana’s GDP and 40 per cent 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 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 United National Development Programme (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

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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.
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, 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, p11) 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, 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 per cent. 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 foreigners, with the plan that Nigerians take over after a maximum of four years of apprenticeship under incumbent expatriates.
The Act also established the Nigerian Content Development and Monitoring Board, which is responsible for the implementation of the Act. Among its range of functions, the Board is required to “assist local contractors and Nigerian companies to develop their capabilities and capacities to further the attainment of the goal of developing Nigerian content in the Nigerian oil and gas industry” (S. 70(h)).

Modelled on Norwegian legislation, the Act makes it imperative that exclusive consideration be given to Nigerian indigenous service companies able to demonstrate ownership of equipment, Nigerian personnel and capacity. It presents a template for companies’ classification and a value matrix to measure local input, while spelling out the responsibility of the respective institutions charged with the effective delivery of the Nigerian content (Gbegi & Adebisi 2013). This law is said to enjoy general acceptability in the industry. However, in practice, limited infrastructure, a small industrial base, high project costs, a high interest rate, and skills shortages constrain local content levels. Gbegi and Adebisi (2013) argue that having industry-specific local content laws that target relatively few companies is insufficient. “Support for local content policies must be nation-wide. It must be accepted by all and should become embedded in every operator’s business philosophy” (p. 97).

2.2. Ghanaian local content policy development and reform

In Ghana, the national government pursued local content provisions through the Local Content and Local Participation in Petroleum Activities Policy Framework in 2010. This Framework focuses on “the level of use of Ghanaian local expertise, goods and services, people, businesses and financing in oil and gas activities” (p. 2). It sets out the obstacles in the sector, the vision, objectives, and goal of local content, and how local content fits into the larger national economic development agenda. It established an Oil and Gas Business Development and Local Content Fund to support the capacity development of local suppliers in the oil and gas industry. In 2011 the Petroleum Commission Act was passed without mention of local content, however, the Ghana Petroleum (Local Content and Local Participation in Petroleum Activities) Regulations were passed in 2013 (L.I.2204) providing preferences to indigenous Ghanaian companies. Petroleum companies must submit a local content plan to the commission, setting out the role of indigenous Ghanaian companies (Art. 4(7)): “A contractor, subcontractor, licensee or other allied entity shall before the commencement of petroleum activities submit a plan to the Commission specifying
(a) the role and responsibilities of the indigenous Ghanaian company; (b) the equity participation of the indigenous Ghanaian company; and (c) the strategy for the transfer of technology and know-how to the indigenous Ghanaian company”. Companies are required to submit an annual report specifying local content expenditure on a “current and cumulative cost basis” and show “the employment achievement in terms of hours worked by Ghanaians and foreigners as well as their job positions and remuneration” (Art. 34 (2)).

Kaplan (2013, p20) applauds the process undertaken by the Ghanaian government in establishing the local content framework, which was used to “build consensus and support across both public and private sectors”. However, in their assessment of the effectiveness of the policy framework, Senoo and Armah (2015, p54) found the Ghana case was rushed relative the introduction of the comparable Norwegian legislation, and concluded the Ghana regime is “almost impossible and impractical to achieve the levels of local content desired in the timeframes specified”. Local companies are not strategically positioned to take up the numerous opportunities arising in the oil and gas industry because they lack the financial and technical expertise to undertake such complex projects. Thus, the ambitions of the policy framework, and the instruments used to support the implementation of policy, do not appear to respond to the specific problems and challenges local suppliers face.

2.3. South African local content policy development and reform

In South Africa, the government’s 2011 Beneficiation Strategy for the Minerals Industry seeks to advance development the mineral value chain and to ‘facilitate’ economic diversification, job creation, and industrialisation. It also aims to expedite progress towards a knowledge-based economy and contribute to incremental GDP growth in mineral value addition per capita. The purpose of the strategy is to provide a “framework that will enable an orderly development of the country’s mineral value chains, thus ensuring South Africa’s mineral wealth is developed to its full potential and to the benefit of the entire population” (Republic of South Africa 2011, pv). The strategy identifies a range of crosscutting constraints to local beneficiation and presents a series of policy, legal and regulatory mechanisms to address these. The major constraints include limited access to raw materials for local beneficiation, shortages of critical infrastructure, limited exposure to research and development, inadequate skills, and access to international markets.
The strategy is a framework in which a range of other policy, strategy and programme instruments feature. These include the Mineral and Petroleum Resources Development Act of 2002, the Broad-Based Socio-Economic Empowerment Charter for the Mining Industry, known as the Mining Charter of 2004 amended in 2010, and the Precious Metals Act of 2005. It also incorporates incentives through the Income Tax Act and industrial support programmes, such as the Industrial Policy Action Plan and the Manufacturing Investment Programme. Provisions are also made for a state-owned mining company, created to participate in and execute the developmental agenda of Government. This company "should provide competition for existing producers, helping to hold down prices for downstream activities, identify innovative activities and projects, and mobilise private as well as public resources to develop the mining value chain" (ibid., p11).

The concept of beneficiation is articulated within the Minerals and Mining Policy of 1998, which identified the need to adopt a policy that will create an enabling environment for the development of the country’s mineral wealth. In addition, the Mining Charter seeks to redress the results of discrimination based on race, sex and disability of historically disadvantage persons in the mineral and petroleum industry, related industries and value chains. It describes the transformation of industries to through a range of measures, including participation in procurement chains of operations. It defines “Black Economically Empowered Entities” as those where historically disadvantage persons hold a minimum of 25 per cent plus one vote of share capital, as measured in accordance with flow through principle. When dealing with local procurement, the charter require the mining industry to procure from BEE Entities according to set targets to be achieved by 2014 (S2.2).

While many of the Black ownership targets of the Charter appear to have been met, Moraka and van Rensburg (2015) describe the uncertainty around the interpretation of other targets. Indeed, the disjoint between different definitions across various legislations, frameworks and scorecards, is described as a frequently cited problem. More broadly, they suggest that while mining companies have bought-in and committed to transformation, “the complexity associated with transforming the mining industry requires effective collaboration between government and industry” (p667). Indeed, the requisite open dialogue and trust necessary for addressing current challenges and creating solutions to benefit not only individual stakeholders but the country as a whole appear to be lacking.
South Africa has developed a range of broad industry development strategies and frameworks, including the Industrial Policy Action Plan, the New Growth Path and the National Development Plan. These have been criticised for failing to present a coordinated and coherent strategy for beneficiation and industry support (Kaplan 2013).

2.4. Mozambican local content policy development and reform

In Mozambique, there is no current policy framework guiding local content requirement. Despite this, Mozambique is an interesting case to examine because of its growing reliance on the resource sector and its efforts to build on the resource sector to achieve broader development outcomes. There are important policy and legal structures that support local content development that form the broader development context. They include the Poverty Reduction Action Plan 2011-2014 (Republic of Mozambique 2011), which outlines the government’s vision for economic development and poverty reduction. This plan explicitly indicates pursuing a policy that promotes ‘broad-based’ growth, diversifying the economy, creating jobs, and linkages between foreign investment and the local economy. In addition, the government’s five-year plan speaks of crowding-in foreign direct investment to stimulate local economic growth.

Kaplan (2013) examines the policy framework for local content in Mozambique and finds conflicting definitions and requirements that create confusion and sometimes legally conflicting guidance. He also cites problems with insufficient dissemination and education on existing laws with key stakeholders, both public and private; and inconsistent and unfair enforcement. This has resulted in “confusion in the marketplace as to what rules firms are expected to follow and what the penalties are for non-compliance” (p15). Small and medium-sized enterprises (SMEs) are largely perplexed or incognizant of these existing requirements, and are frustrated with the government for not supporting local suppliers.

3. Legal and regulatory regimes

While national policies establish a broad framework, the legal and regulatory framework for local content establishes an enforceable mechanism to which resource-based companies must comply. There is a growing range of examples of governments introducing legal and regulatory provisions designed to increase local content. The
governments of Angola, Tanzania, Guinea, and Mozambique (among others) have adopted new mining laws and regulations with provisions for “greater national participation, facilitation of mining activities, increase of fiscal revenue and local community development” (De Backer, 2012, p10). In Angola, legal and regulatory provisions for the promotion and enforcement of local content in extractive industries include the adoption of tax incentives for Angolan oil exploration and production companies, regulations requiring the use of Angolan banks and local currency, the coordination and promotion of investments in manufacturing and oil services, and efforts to build human capacity for the oil and oil services sectors (Ovadia, 2014).

Increasing international attention has been given to improving the legal and regulatory regimes in the resources sector, specifically for the improvement of governance, accountability, and transparency. Legal and regulatory frameworks provide a means through which local content policies are implemented. For example, the African Mining Vision highlights the importance of good governance as being “critical” to ensuring local content minimums in resource contracts and licenses and investing” (African Union 2009, p21). The Extractive Industries Transparency Initiative (EITI) is an international initiative designed to improve the governance of the extractive industry sector, requiring payment disclosures to allows citizens to interrogate their country’s natural resource revenue management. The importance of improved governance is echoed by Archine (2013) who says the two major issues impeding the maximization of benefits from natural resources for the sustained development of resource-rich developing countries are “the lack of transparency in contracts and the harmful effects of corruption” (p17). However, not all actors support the increasing regulation of the extractive industries. For example, Sejpal et.al. (2015) describe the enactment of local content laws governing different minerals and natural resources as “stringent”. Ovadia (2014) supports the view that strong state governance is required to promote local content because the higher costs associated with local procurement and the time and money spent on training and skills development may otherwise seem too burdensome for international companies involved in mineral extraction. Despite the long-term benefits, many multinational enterprises will not act to develop local content without strong regulation. According to Besada and Martin (2014), regulatory frameworks should establish minimum spending and investment requirements that “offset resource depletion, diversify the national economy and explicitly target job creation” (p16). This may involve direct equity holding by the
state or favourable loans to help foster linkages in the commodity value chain. Besada and Martin (2014) state the goal “should be to promote strong and transparent fiscal linkages between the extractive industries and the broader economy, by using taxes and royalties collected from extractive industries to promote economic development in sectors unrelated to commodities” (p16).

Land (2008) highlights the need for policies, laws, and regulations dealing with local content to be well coordinated and integrated with other policy domains. He stresses the need for governments to maximise the benefits of mining for economic and social development through the integration of fiscal policy measures across government institutions. This includes dealing with the availability of skills necessary to formulate fiscal policies, appropriate negotiating strategies, and sufficient capacity within the public sector to administer and enforce more sophisticated forms of taxation and contractual arrangements. For example, Graham (2013) describes how the duty free importation of mining inputs provides little incentive for firms to buy locally and places potential local producers and suppliers of such inputs at a disadvantage. This blunts the development of backward linkages and local procurement, and cites the Ghanaian example to illustrate the perverse effects of duty free importation by mining firms. Because local firms that supply mines do not enjoy the waiver and pay duties, the mines can import supplies at a lower cost and have no incentive to buy locally. Similarly, in Tanzania, Curtin and Lissu (2008) describe how mining companies enjoy special value-added tax relief on imports and local supplies of goods and services to mining companies and their subcontractors. On this basis, they propose a number of new tax laws, such as “windfall taxes, allowing the state, district councils and village governments to control a percentage of equity in the mines, and requiring a certain proportion of royalties to go directly to the mine areas” (p42). In contrast, Ernst & Young (2014) argue mining investors look for stability: “Any government promoting tax policy stability will be favoured as miners seek low-risk investments with minimal political uncertainty” (p19). Ernst & Young (2014) further argue it is “questionable” whether new jobs are created through policy instruments such as export levies or bans on unrefined ores designed to foster in-country beneficiation, “given technological advancements in downstream processing” (p19), and cite the example of Indonesia, which has proposed a new export levy of 25 per cent on mining exports, increasing annually, in the belief it will become a producer of higher-value finished goods.
In response to the increasing levels of complexity around the legal and regulatory provisions for local content, and the challenges experienced in implementation and enforcement of these regimes, it has been suggested that taxes and royalties may be a better mechanism to promote local content (White 2015). Thus, governments could simplify the regulatory regime and use tax and royalty revenues to finance supplier development programmes.

The World Bank (2015) considers local content regulations are often “too vague to be workable” and regulators “often have no special insights into what is feasible” (p28). Besada and Martin (2014) find that progress in legal and regulatory enforcement remains limited by a lack of clarity over “who assumes the role of enforcement agent: the host state, with potentially ineffective political, institutional, and legal structures, or the country in which the corporation is permanently headquartered?” (p17). They argue that instead of a “proliferation of legal codes and regulations”, a “reimagining” of those already in place is required, and refocusing efforts to lever natural resources to create broad-based economic opportunities.

4. Institutional challenges and industry support programmes

Coordination between ministries is a perennial problem globally, and typically, the national ministry of minerals or mines is the key ministry responsible for the minerals sector. Local supplier development requires close cooperation and integration between the ‘mining ministry’ and the ‘industrial development’ ministry. White (2015) describes problems with the monitoring of local content agreements in which mining agreements have been formed between miners and host-country governments containing local content provisions. At the signing stage miners are eager to agree to these provisions, just as they are eager to begin their operations. However, once the agreement has been reached, the desire to track local content performance declines. The price and quality criteria for local suppliers are often used to argue that no local suppliers were able to meet these criteria. Increasingly, NGOs are becoming involved in scrutinising and monitoring mining agreements and bringing these issues to public attention. Doepel and Bolton (2013) describe problems with policy coordination and integration, and present the case for a closely integrated mining sector: “When mining is fully integrated into an economy and a skilled workforce is sourced locally with goods and services largely procured from within the jurisdiction, then the economic multipliers are very significant” (p13). However, the
potential returns to a national economy are greatly diminished when the majority of support services and goods are procured internationally and the labour workforce is also imported. Therefore, success in this field requires well-coordinated policies spanning a number of domains. Sadly, there are few successful examples of this in Africa. One is the Botswana Diamond Hub, which is responsible for the practical implementation of national policies across the sector, including: reduced corporate tax rate for the cutting and polishing firms; the fast tracking of Work Permits for skilled labour used to train locals and for labour visiting to maintain and repair their equipment; exemption from paying the economy wide training levy if firms have their own training programmes; exemption from paying taxes on polished diamond exports; and exemption on the import of technology required for cutting and polishing. Morris et.al. (2012) suggest that if government policy is to promote such broad-based linkages it needs to address their development from both the commodities sector and those that have an indirect effect on linkage development. This involves a process of strategic visioning and policy development drawing in a range of relevant stakeholders; support for the development of local supplier firms and processors, particularly second and third tier firms; skills development programmes to support both the lead commodity firms and their suppliers and customers; and hard infrastructure (e.g., roads, telecoms, utilities, etc.) and soft infrastructure (e.g., support businesses such as customs clearance and ease of entry and exit for firms). According to Morris et.al. (2012) underwriting each of these elements “is the capacity which government has to develop and effectively implement its policy towards linkage development” (p212). Business environment provisions for local content are located within a political, economic and social context, which, if they are not sensitive to, can undermine their success. This problem is highlighted in South Africa where Morrison-Saunders, et.al. (2015) claim the government has developed some “excellent legislation”, which, however, has failed to be implemented effectively in the diverse socio-political environment. Low levels of government-industry trust and a range of social and economic pressures facing government, industry, workers, and society in general have made implementation of a complex policy and programme framework difficult. Finally, there can be concerns with the impact local content provisions on subnational or regional development. While there may be some variation across countries, local content regulations tend to imply national, rather than local or subnational procurement. This can lead to situations in
which firms source the inputs nationally, benefiting the national economy, but with little local impact. Indeed, the local impact of a resource project may be negative: “if firms reduce output in response to the higher costs imposed on them they will reduce employment thereby hurting the local economy” (World Bank, 2015, p28).

It is common that business environment reforms designed to boost local content in extractive industries have been found to be insufficient. These failures have been largely attributed to a lack of capacity within the local industrial sector than to the enforcement of laws, regulations, and targets. The World Bank (2015) argues that most developing economies lack the capacity to provide local content in the oil and gas sector. Indeed, targets that do not reflect a realistic understanding of local capacities are “ignored, circumvented or, in the worst case, prohibitive, thus choking off the flow of foreign investment” (p28). UNCTAD (2007) argues policy, legal, and regulatory provisions are not enough to attract greater foreign direct investment into manufacturing. As a consequence, “it is important for host countries to adopt policies that help improve their local capacities, and in particular their labour skills and technological capacities” (p39). For example, UNCTAD supports the Government of Mozambique in the Business Linkages Programme designed to create an environment conducive to sustainable business linkages between local producers and larger corporations (Cole Baker Associates, 2013). In 2006, the International Finance Corporation launched Mozlink II, the second phase of the Mozambique SME Linkage Development Programme, to help SMEs gain the skills and technical capabilities they needed to compete effectively for large contracts in a number of important industries. The programme focussed on capital-intensive industrial projects in Mozambique committed to a long-term presence (i.e., 8-20 years) in various sectors, including mining and natural gas, and helped SMEs improve in areas of safety, quality, maintenance and management, identification of products and services required by industry and local procurement, increasing access to finance by participating SMEs, and linked SMEs to larger firms (International Finance Corporation 2010).

Many large mining companies have established local supplier development programs, often in response to government policy. For example, Vale’s global Inove program is a supplier development program that aims to contribute to the sustainable development of its suppliers and build a positive legacy in the regions where Vale operate. In line with Vale’s business strategy, Inove acts on three fronts: training, business fostering, and competitiveness. These activities are developed in partnership
with national, regional, and local institutions. Since its inception in 2010 it has trained about 700 companies and 4,000 users, overseen more than US$186 million in transactions of materials and supplier kit services, and financed more than US$800 million through its partners (Vale 2015). Similarly, in Chile BHP Billiton has established a local supplier development program to create lasting business and technological capabilities and increase suppliers’ economic value. The Cluster Program was launched in 2009 with funding from the Chilean Government, BHP Billiton and participating suppliers, and aims to develop 250 Chilean-based resource industry suppliers into ‘world-class’ global resource industry suppliers by 2020. BHP Billiton define ‘world-class’ suppliers as those that sell more than 30 per cent of their product internationally, have standards equal to the industry leader, and add a high level of value to their customers. The program engages local small-scale suppliers to develop innovative solutions to manage at least one aspect of mining identified as critical by BHP Billiton operations, such as water, energy, human capital, maintenance, air quality, acid mist control, or leaching. The program was born out of a broader initiative by the Chilean Government to improve local economic development and BHP Billiton was one of two resource companies to undertake the initiative (BHP Billiton 2012).

Corporate social responsibility (CSR) can be a useful mechanism for mining companies to begin their outreach to local suppliers and to develop local supply networks and capacities. CSR is often used to promote local social and economic reforms in response to modern mining codes, rather than to promote small-scale suppliers to the industry. For example, AngloGold Ashanti in Mali had a policy to encourage local agricultural developments because they specifically did not want communities to become fully dependent on the mine. While it is commonly argued that CSR activities are typically removed from the core commercial operations of a mine and are trivialised in terms of the essential interests of the mine; it can be a good start. Indeed, companies that are well established at a site over many years can build long-term relationships with local communities and potential suppliers. CSR initiatives have often been used to establish local supplier development funds; where

2 For a further discussion on the links between mining and agriculture development see McHenry & Persley (2015).
one or more companies contribute to a basket of funds that are used to develop local supplier skills and capacities. In Peru, Ernst & Young (2015) suggest the extractive companies are attempting to implement systems to share and measure the benefit of their operations, and genuinely listening to and working with local communities on their preferences: “Community support for a project is partly dependent on its economic participation and local employment is an important element…” (p36).

Morris, et.al., (2012) argue that one of the failings in government efforts to promote linkages in the mining sector has been an absence of detailed dialogue and “the pervasive failure of private and public sector stakeholders to work together in the development of a collective vision, and mutually reinforcing and implemented policies” (p207). While mining representation is typically strong and well organized in the resources sector, (such as through a national chamber of mines), the same cannot be said for small-scale suppliers. While these firms may form part of a supplier network, they are not necessarily represented effectively or able to successfully advocate to government for reform (White 2015). Ernst & Young present the case for a multi-stakeholder approach encouraging companies to ensure governments, communities, shareholders, employees and suppliers have a common understanding of the challenges their projects face. This can be achieved through strong partnerships with these groups, while communicating their long-term value to shareholders and integrating themselves into the local and regional communities. The African Mining Vision even recommends active participation of small-scale miners in the planning, designing, implementation, and evaluation of policy is a crucial element for success, and that “…It is also important to identify and empower leaders in the mining communities who can be agents of the change process” (p29).

5. Conclusions

The use of local small-scale suppliers can make good business sense, however, there are many challenges experienced in this field to date. Some of these originate from the poor capacity of local suppliers, and overcoming these requires both government and private sector involvement. Some challenges emerge from a reluctance of multinational enterprises to engage new suppliers or to reconsider their business models. These challenges may require a policy, legal or regulatory response. McMahon and Moreira (2014) describe the failed experience of many import-substitution plans and argue local content cannot be forced upon the mining sector
without enabling business conditions. This includes better energy and transport infrastructure, adequate human capital, access to finance, economies of scale, and outreach or technical assistance programs. This view is supported by the World Bank (2015), which advises developing country governments should focus on developing the conditions for improved procurement than mandating it.

While on the one hand it is generally agreed that without policy or legal imperatives mining companies would have little regard for local content; on the other hand, the quality and price provisions contained in most policies and laws provide an excuse for non-compliance and render many provisions meaningless. With too many constraints to mining activities, it can scare investors away, especially in a competitive global investment market. Because extractive industries are long-term, high-cost ventures that are vulnerable to commodity price fluctuations, developing local content policy, legal, and regulatory frameworks requires a good understanding of the dynamics of the industry and the supply chain (both large and small suppliers). In the end, success in achieving local content aspirations is likely to involve a careful balancing of policy and legal prescripts, industrial development programs and services, and close interaction between governments, miners, and with current and potential local suppliers.
References


Ernst & Young (2014) *Business risks facing mining and metals 2014–2015*


McMahon, G. and S. Moreira “The Contribution of the Mining Sector to Socioeconomic and Human Development”, *Extractive Industries for Development Series* No. 30 April, World Bank Group, Washington DC


Morris, M., R. Kaplinsky, and D Kaplan (2012), *One Thing Leads To Another; Promoting Industrialisation by Making the Most of the Commodity Boom in Sub-Saharan Africa.*
Land, B. (2008) *Capturing a fair share of fiscal benefits in the extractive industry*


