



AN ASSESSMENT OF THE NATIONAL MINING LEGAL FRAMEWORKS AND POLICIES OF SADC COUNTRIES AGAINST THE AFRICA MINING VISION

(CLUSTER 1: MINING REVENUES AND MINERAL RENTS MANAGEMENT)



THE CASE OF MOZAMBIQUE

ABOUT AFRODAD

VISION

A prosperous Africa based on an equitable and sustainable development.

MISSION

To contribute to Africa's inclusive economic growth and sustainable development through influencing policy change on debt management and development finance anchored on a right based approach.

AFRODAD OVERALL STRATEGIC GOAL

The overall goal of AFRODAD is 'to influence African Governments to institute and implement policies and practices for sustainable development and eradication of poverty'.

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Thematic Goal: To contribute to the development and implementation of transparent, accountable and efficient mechanisms for mobilization and utilization of domestic resources in Africa.

THEMATIC FOCUS AREA 2: DEBT MANAGEMENT

Thematic Goal: To contribute to the development and implementation of sustainable debt policies and practices in Africa.

THEMATIC FOCUS AREA 3: INTERNATIONAL PUBLIC FINANCE

Thematic Goal: To influence the quality, impact and effectiveness of international public finance, in line with the agreed development cooperation effectiveness principles.

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ACRONYMS

AMV	Africa Mining Vision
AU	African Union
BIT	Bilateral Investment Treaty
CSR	Corporate Social Responsibility
DTA	Double Taxation Agreement
EITI	Extractive Industries Transparency Initiative
GDP	Gross Domestic Product
IFF	Illicit Financial Flows
MMCZ	Minerals Marketing Corporation of Zimbabwe
NGO	Non-Governmental Organisation
OECD	Organisation for Economic Cooperation and Development
SADC	Southern African Development Community
SARS	South African Revenue Service
SWF	Sovereign Wealth Fund
ZIMRA	Zimbabwe Revenue Authority

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THE CASE STUDY OF MOZAMBIQUE

This report is an assessment of the extent to which the mining policies and legal frameworks of Mozambique are in line with the aspirations of the 2009 adopted Africa Mining Vision (AMV), whose goal is to promote “transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development”. This national study contributes to a broader regional study focusing on eight SADC countries, i.e. Angola, Botswana, Malawi, Mozambique, South Africa, Tanzania, Zambia and Zimbabwe. Given the significant role of the mining sector in the economies of these countries, particularly mining exports and mining revenue contributions to total government tax revenue, the assessment was solely focused on the fiscal issues of mining as guided by the AMV Action Plan Cluster One on Mining Revenues and Mineral Rents Management. This cluster aims “to create a sustainable and well-governed mining sector that effectively garners and deploys resource rents”. It identifies a variety of activities and monitoring indicators for promoting two expected outcomes namely an enhanced share of mineral revenue accruing to African mining countries and improved management and use of mineral revenue. It is against these activities and/or monitoring indicators that the mining policies and legal frameworks of Mozambique are evaluated in this study.

The study used a qualitative analysis approach to address the objectives set out in the Terms of Reference. The main findings of the assessment for Mozambique are summarised below.

The Mozambican Government enacted a new Mining Law of 2014 which repealed the Mining Law of 2002 and a new Mining Tax Regime of 2014 which replaced the Mining Tax Regime of 2007. The new laws have provisions that stand out and conform with the aspiration of the AMV namely:

- The introduction of a resource rent tax of 20 percent, capital gains tax of 32 percent;
- The adoption of a strict ring fencing principle where tax obligations are assessed individually for each mining licence/concession such that companies can no longer claim losses in one mining concession against profits in another;
- The provision that Government may organize a public tender procedure for granting mineral rights;
- The mining contract that Government enters into with holders of mining concessions is specific on local employment and technical-professional training programmes, social responsibility activities to be developed by the mining holder and the way communities of the mining area are engaged and benefitted by the venture;
- A percentage of State revenues generated by mining activities be allocated to the development of the communities established in the areas where mining activities take place; and
- All mining companies in Mozambique to comply with the local transfer pricing rules.

The above provisions conform to the AMV aspirations to optimise mineral revenue and that there should be systems to auction mineral rights where applicable. Mozambique however has no Sovereign Wealth Fund in place and there also appears to be no specific entity solely responsible for auditing production and exports of minerals, regardless of the country being EITI compliant.

INTRODUCTION AND BACKGROUND

Given the huge mineral resource endowment of Sub-Saharan Africa, it is undisputable that revenue mobilisation from the mining sector is key in the ongoing domestic resource mobilisation efforts aimed at making the continent more self-reliant financing its own development. However, there are concerns that the legal and regulatory frameworks governing the exploitation and management of mineral resources in Sub-Saharan Africa are still poor and weak. These are mainly characterised by lack of independent enforcement and oversight bodies, lack of transparency which results in poorly negotiated mineral concessions with fiscal terms that are sub-optimal and do not maximise the revenues from mineral investments, weak accountability of resource revenue use, inequitable distribution of mineral revenue and neglect of local authorities and communities living near mining areas.

Substantial portions of mining revenue and benefits tend to accrue to privately owned foreign companies and a small subsection of local elites at the expense of broad based benefits such as employment creation, human and physical development, and overall economic transformation. Inevitably, resource wealth has in many cases resulted in increased income inequality and economic distortions, and even triggered social and political instability, a situation that has been widely described as the ‘resource curse’.

Recognising all these gaps and the need to improve mineral resource policies, legal, regulatory and administrative frameworks so as to maximise the development outcomes of mineral resources exploitation, in 2009, African Union Heads of State and Government adopted the Africa Mining Vision (AMV) whose goal is to promote **“transparent, equitable and optimal exploitation of mineral resources to underpin broad-based sustainable growth and socio-economic development”**.

To enable the attainment of the AMV goal, the African Union Heads of States and governments requested the AU Ministers in charge of mineral resources development to develop a concrete action plan for the realisation of the AMV. This culminated into an AMV Action Plan that was approved in 2011. The Action Plan comprises nine programme clusters of activities and indicators constructed around the following key pillars of the vision: Mining Revenues and Mineral Rents Management; Geological and Mining Information Systems; Building Human and Institutional Capacities; Artisanal and Small Scale Mining; Mineral Sector Governance; Research and Development; Environmental and Social issues; Linkages and Diversification; and Mobilising Mining and Infrastructure Investment.

1.1 Cluster 1 - Mining Revenues and Mineral Rents Management

Since the adoption of the AMV in 2009, there is need to assess the progress that African countries have made in aligning their mining policies and legal frameworks to the AMV. This study attempts to do this evaluation by focusing mainly on the “Mining Revenues and Mineral Rents Management” cluster whose main goal is **“to create a sustainable and well-governed mining sector that effectively garners and deploys resource rents”**.

This goal was driven by the vital need to address observed fiscal regime challenges along the entire mineral value chain such as lack of transparent and competitive allocation of concessions for known mineral assets, the spending of mineral revenues disproportionately on current consumption which compromises inter-generational equity, inequitable distribution of mineral revenue and neglect of local authorities and communities living near mining areas and widespread tax evasion and avoidance schemes such as transfer pricing (including over-invoicing of inputs costs).

The Mining Revenue and Mineral Rents Management cluster has two main expected accomplishments namely:

1. Enhanced share of mineral revenue accruing to African mining countries; and
2. Improved management and use of mineral revenue.

As shown in Table 1 below, each of the two expected accomplishments has a number of activities and indicators identified for tracking the achievement of the objectives and outcomes respectively. It is against these activities and indicators that the mining policies and legal frameworks of the four selected SADC countries will be assessed so as to determine the extent to which they are in line with the aspirations of the AMV.

Table 1: Mining Revenues and Mineral Rents Management Cluster – Expected Accomplishments, Activities and Monitoring Indicators.

Expected Accomplishment	Activities	Time Frame	Monitoring Indicators	Responsible Bodies and Main Actors
Enhanced share of mineral revenue accruing to African mining countries	<p>At national level</p> <ul style="list-style-type: none"> Improve national capacity to physically audit mineral production and exports; Review mineral regimes in terms of optimising revenues; Build capacity and enhance skills of officials in negotiating fiscal issues and effectively monitoring compliance with taxation laws; Negotiate or renegotiate contracts to optimize revenues and to ensure fiscal space and responsiveness to windfalls; Develop systems to evaluate components of tax regimes for leakages, losses and tax avoidance and evasion (e.g. transfer pricing); Review terms of double taxation agreements and BITs with host countries of mining companies including the principle that minerals should be taxed at the point of extraction; and Build capacity & systems to auction mineral rights where applicable. <p>At sub regional and regional levels</p> <ul style="list-style-type: none"> Review the current fiscal environment in African mining countries to develop guidelines & standards for optimizing revenue (e.g. tax & dividends) packages in a manner that does not discourage mining investment; Develop mineral taxation guidelines for implementation at REC and national levels; and Develop typical financial models for mineral projects for member states and run training workshops at REC level. 	ST	<ul style="list-style-type: none"> Physical audit systems in place and implemented with trained inspectors; 	MS
		ST	<ul style="list-style-type: none"> Review of mineral regimes undertaken; 	WB
		ST-MT-LT	<ul style="list-style-type: none"> Level of improvement in fiscal revenue collected by African mining countries; 	NGOs
		ST-MT	<ul style="list-style-type: none"> Increase in numbers of policy makers and other stakeholders participating in capacity building initiatives; 	CSOs
		ST-MT	<ul style="list-style-type: none"> Degree of improvement in the design of fiscal terms; 	Bilateral
		ST-MT	<ul style="list-style-type: none"> Extent to which tax leakages are reduced by evaluation systems as determined by independent audits of tax compliance; 	AfDB
		ST	<ul style="list-style-type: none"> Number of double taxation agreements signed and implemented by member states; and 	ECA
		ST	<ul style="list-style-type: none"> Extent to which competitive and transparent mineral concession systems are implemented. 	
		ST	<ul style="list-style-type: none"> Guidelines, standards and toolkits completed and distributed to RECs & member states; 	
		ST	<ul style="list-style-type: none"> Degree to which guidelines are used by members states; 	
		ST	<ul style="list-style-type: none"> Guidelines, standards and toolkits completed and distributed to RECs and member states; 	
		ST	<ul style="list-style-type: none"> Degree to which guidelines are used by members states; and 	
		ST	<ul style="list-style-type: none"> Number of financing models that are developed and used by member states. 	

Table 1 Continued...

Expected Accomplishment	Activities	Time Frame	Monitoring Indicators	Responsible Bodies and Main Actors
Improved management and use of mineral revenue	<p>At national level</p> <ul style="list-style-type: none"> • Explore strategies for investing windfall earnings and mineral rent into sovereign wealth funds including stabilization funds and infrastructure funds; • Develop rent distribution systems for allocating part of mineral revenue to communities near mining areas and local authorities; • Develop mechanisms to facilitate local communities access to jobs, education, transport infrastructure, health services, water and sanitation; • Develop the capacity of local communities to negotiate partnership agreements; and • Develop systems for strengthening capacities for national and sub-national bodies for revenue management. <p>At sub regional and regional levels</p> <ul style="list-style-type: none"> • Compile best practice guidelines on mineral revenue management and deployment for implementation at the REC and national levels. 	<p>ST</p> <p>ST-MT</p> <p>MT</p> <p>MT</p>	<ul style="list-style-type: none"> • Number of SWFs established by African Mining countries, • Degree to which local authorities and communities improve their management of mineral revenues, • Best practice guidelines compiled, and • Extent to which guidelines are used by RECs and member states. 	

1.2 Snapshot of mining in SADC

The SADC region is home to a number of countries with a significant ownership of the world's major mineral resources. In terms of global reserves, over 90 percent of the platinum group of minerals (PGMs) are in South Africa and Zimbabwe, over 50 percent of diamond reserves are in Botswana, South Africa, DRC, Zimbabwe, Angola and Namibia and over 40 percent of chromite is in South Africa and Zimbabwe. Zambia and Mozambique are also known for their huge reserves of coal, with Zambia having rich deposits of copper and emeralds. Consequently, minerals together with other various commodities play a significant role in the economies of these countries.

As of 2014, mining revenue accounted for 37.4 percent of the government of Botswana's total tax revenue while mineral exports accounted for approximately 71.6 percent of total merchandise export receipts. In South Africa, mining also accounted for 26 percent and 20 percent of total merchandise exports and investment respectively. The same applies to Zimbabwe, where as of 2015, mining exports accounted for 50 percent of the total national exports. According to the 2013 and 2014 Mozambican Extractive Industries Transparency Initiative (MEITI) report, the extractive sector was the second sector that contributed most of the GDP growth in the order of 18 percent and 13 percent in 2013 and 2014 respectively.

Despite these high economic contributions, there have been concerns that the mobilisation and utilisation of proceeds from the mining sector have not translated into meaningful and tangible benefits such as poverty eradication and improved livelihoods in these countries. In this regard, the mining policies and legal frameworks for Mozambique are assessed against the aspirations of the Mining Revenue and Mineral Management cluster of the AMV to determine the extent to which they are designed to effectively garner and deploy mining revenue for development purposes.

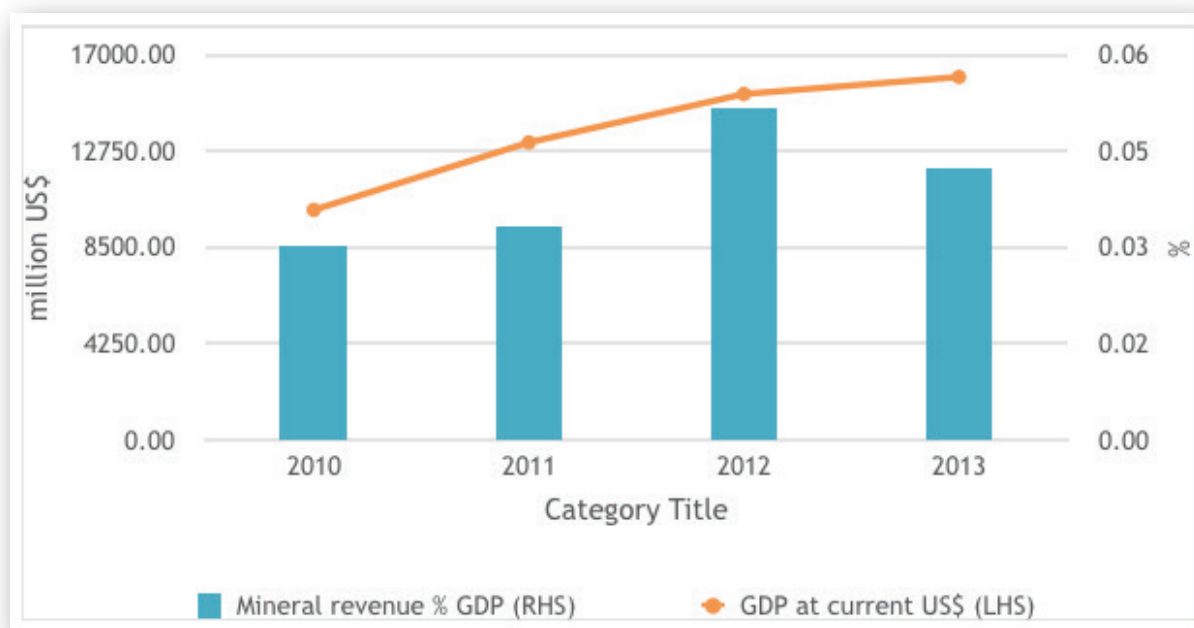
ASSESSMENT OF THE MINING POLICIES AND LEGAL FRAMEWORKS OF MOZAMBIQUE

2.1 Overview of the mining sector in the economy

The first two decades after the Mozambican civil war, the country depended mainly on Official Development Assistance (ODA) and donors to finance its development which ultimately resulted in the country's debt trap. The Mozambique economy has been on a positive trajectory since the mid-1990s but the economic growth is not trickling down to human development as the country is still ranked in the low human development category.² The Mozambique mining sector has been experiencing vast growth with coal discoveries in the Tete basin and the discovery of natural gas deposits in large commercial quantities, presenting more potential boom in the extractive industry. Mozambique has a relatively progressive law governing mining sector as compared to some of its SADC counterparts. The Mining Law of 2014 is quite progressive in terms of adopting the AMV and ensuring the most benefits for Mozambican citizens.

The mining sector's contribution to GDP in Mozambique is estimated to have increased from 1.6 percent in 2009 to 3.2 percent in 2013, reflecting the modest role of the mining sector in an economy where output is largely driven by the agriculture sector (estimated at 25 percent of GDP in 2012). However, mining revenue as a percentage of total government revenue is reported to have increased from 16.7 percent in 2013 to 20.6 percent in 2014. Coal and aluminium are the major minerals in addition to gas and hydrocarbons, which all make up the country's extractive sector. The opening of multiple new coal and aluminium mining concessions triggered a doubling of foreign direct investment (FDI) inflows in 2011, with most of this FDI originating from Brazil, Mauritius, South Africa and the European Union.

Fig 1: Evolution of Mining Revenue in Mozambique



Source: Author's calculations from the National data

2.2 Laws and Policies governing mining and management of mineral revenues

The main laws and policies that govern mining and mining revenue management in particular include:

The Mining Law of 2014

This is the main law that regulates the exploitation of minerals in Mozambique³. It vests all mineral rights in the state and repealed the Mining Law of 2002. The law establishes the general principles that govern the exercise of mining rights and obligations regarding the use and re-use of mineral resources, including mineral water but excluding oil and natural gas which are dealt with under the Petroleum Law. The need to raise revenues in favour of the State is included as part of the key objective of the Law. Among others, the Law:

- specifies all the taxes that mining holders are subject to pay and these include income tax, value added tax (VAT), production tax, surface tax, municipal taxes and other taxes established by law; and
- states that a percentage of state revenues generated by mining activities is allocated to the development of mining communities established in areas where mining activities take place.

The Law on the Specific Regime of Taxation and Fiscal Benefits for Mining Operations (Mining Tax Regime of 2014)

This law sets forth the applicable rules for the assessment and payment of taxes in the mining sector including the tax incentives, the definition of the taxable base, the applicable tax rates and the ancillary obligations to be complied by taxpayers involved in mining activities. It replaced the Mining Tax Regime of 2007 and paved way for the introduction of a resource rent tax of 20 percent so as to ensure that the government captures a higher share as mining projects become more profitable.

The Policy of Corporate Social Responsibility for the Mineral Resources Extractive Industry of 2014

This policy aims at promoting the establishment of mechanisms that ensure the existence of corporate social responsibility programmes within the extractive industry of mineral resources, in order to contribute effectively to the reduction of poverty and sustainable development of Mozambique.

Mineral Resources Policy and Strategy of 2013

The Mineral Resources Policy and Strategy seeks to turn the mineral resources into one of the main factors contributing to industrialization and development, diversification and economic transformation, and improvements in the country's balance of payments. This is in addition to improving knowledge of the mineral resources in the soil and sub-soil, in the inland waters, in the territorial sea, on the continental shelf, and in the Exclusive Economic Zone where, in accordance with international law, the state has sovereign rights and jurisdiction.

3. Petroleum and natural gas are regulated by the Petroleum Law of 2014. This study is only focusing on minerals and the mining law.

Extractive Industries Transparency Initiative (EITI)

Mozambique has been EITI compliant since 2012. EITI intends to improve transparency and responsible management of revenues from the extractive sector. Its major tools include verification and publication of payments made by companies and revenues collected by the State in the mining, oil and gas sectors, in addition to establishing a reliable forum for dialogue in which the Government, businesses and civil society may openly discuss revenues from the extractive industry.

2.3 Key institutions involved in the management of mining revenue in Mozambique

Institutions that have a role to play in mining, collection and management of mining revenue in Mozambique include:

The Ministry of Mineral Resources and Energy (MIREME)

MIREME is the parent ministry for Mozambique's extractive industry and is responsible for issuing reconnaissance licenses, prospecting and surveying licenses, mining concessions and mining certificates through its National Directorate of Mines (NDM), which is also responsible for administering the mining law and promoting the international exportation of minerals and metals from Mozambique.

Ministry of Economy and Finance (MEF)

MEF through the Mozambique Tax Authority, collects all revenue that comes from the mining industry through the General Directorate of Customs, responsible for fiscal measurement of the exported coal, and the General Tax Directorate (GTD) responsible for overseeing and receiving the payments made to the State, from the general to the specific regime, through its Tax Areas Department and Large Taxpayers Units. After collection, all funds are channelled to the Treasury Single Account. MEF is responsible for implementing the country's government five year programme adopted in 2015 with the goal of improving living standards by increasing investment in social sectors and infrastructure, diversification, job creation and the sustainable use of natural resources, thus promoting growth.⁴

The Institute for the Management of State Holdings (IGEPE)

IGEPE was created in December 2001 by Decree of the Government, with the aim of managing the State's shareholdings acquired through the process of restructuring the State's business sector. Thus IGEPE coordinates and controls the state shareholdings in companies operating in the extractive sector, ensuring good management practices and the necessary technical assistance. In particular, the Mozambican state holds shares in the mining sector through the Mozambican Mining Company (MMAS) while shares in the hydrocarbon sector projects are held through the National Hydrocarbon Company (ENH). The dividends that are under the management of IGEPE are required by law to be channelled to the Treasury Single Account.

4. <http://www.un.org/esa/ffd/ffd3/wp-content/uploads/sites/2/2015/07/Mozambique.pdf>

Mozambique Tax Authority

The Mozambique Tax Authority is responsible for implementing the mining tax policy and enforcing payment respectively. The Mozambique Tax Authority (Autoridade Tributária de Moçambique) was established in 2006 with the primary role to promote efficiency and fairness in the application of tax policy. The creation of the ATM came after the merging of the customs and the domestic tax administrations and laid the foundation for efficiency gains of the public administration in Mozambique. Though the ATM has generally managed to create a more professional and stable tax collection system, there are still concerns that tax fraud and evasion are still happening at a large scale, much is it through the extractive industry.⁵

Council of Ministers

This is responsible for creating primary legislation for the mining sector and is made up of the President, Prime Minister and other relevant Government Ministers. It is technically responsible for the granting of concessions and mining licenses, the process of which is run by the National Directorate of Mines (NDM).

District Secretariat

The Mining Law state that a percentage of the revenues generated in mining activities should be channelled towards the development of community areas where the respective projects are located. Accordingly, the District Secretariat is the body responsible for management and good utilization of the allocated resources along the following identified priorities - education (classrooms and their equipment); health (clinics, health centres and their equipment); agriculture (community irrigation schemes / dams); forestry (community forests); services (markets); roads and bridges of local interest; and water supply systems & sanitation.

2.4 Assessment of the mining policies and legal frameworks against the AMV Cluster 1

As shown above, the mining sector in Mozambique is governed by several laws, policies and institutions. In this section these laws and policies will be analysed against the activities and indicators of the mining revenues and mineral rents management cluster's two expected outcomes namely:

1. Enhanced share of mineral revenue accruing to African mining countries; and
2. Improved management and use of mineral revenue.

2.4.1 Enhanced share of mineral Revenue

Review mineral regimes in terms of optimising revenues

A new Mining Tax Regime (Law No. 28/2014) came into force on 1 January 2015 in replacement of the previous regime provided for by the 2007 Law. The new mining tax regime resulted in:

5. The tax systems in Mozambique, Tanzania and Zambia - Capacity and constraints (Odd-Helge Fjeldstad Kari K. Heggstad) 2011

- Improved fiscal regime progressivity through the introduction of a 20 percent resource rent tax (RRT), calculated over the net positive cash flows of the tax year;
- Adoption of a strict ring fencing principle where tax obligations are assessed individually for each mining licence/concession. Companies are no longer be able to claim losses in one concession against profits in another;
- Capital gains tax - mining rights are now considered as immovable property and all capital gains, arising from the direct or indirect transfer of mining rights, by non-resident entities with or without permanent establishment in Mozambique, are now taxable at a fixed rate of 32 percent; and
- Mining Production Tax – Royalty rates for diamonds were reduced from their 2007 law rates of 10 percent to 8 percent (draft law proposed a rate of 7-12 percent); precious metals remained at their 6 percent level (draft law proposed a rate of 6-10 percent); semi-precious metals declined from their 2007/08 rate of 5 percent to 3 percent (draft law proposed 5-10 percent) and coal remained at 3 percent (draft law proposed 5-10 percent).

Build capacity and enhance skills of officials in negotiating fiscal issues and effectively monitoring compliance with taxation laws

Mozambique was a recipient of the Extractive Industries-Technical Advisory Facility (EI-TAF), where between 2011 and 2014, officials (involved in managing mining and natural gas) attended technical training workshops hosted by the World Bank on:

- contract negotiation processes (including intergovernmental coordination & negotiations techniques); and
- the general terms and conditions related to mineral development agreements (including fiscal instruments, community development and local content)
- Negotiate or renegotiate contracts to optimize revenues and to ensure fiscal space and responsiveness to windfalls.

Before the adoption of the 2014 mining fiscal law, Mozambique offered mining companies a guarantee that the terms of their original contract would be honoured throughout. Under article 58 of the new fiscal law, terms are guaranteed for only the first ten years of production. Fiscal stability can be extended from year 11 through the lifetime of the contract for “payment of additional 2 percent of Mining Production Tax from the eleventh year of production.”

Develop systems to evaluate components of tax regimes for leakages, losses and tax avoidance and evasion (e.g. transfer pricing)

Mozambique has a basic regime on transfer pricing in the Corporate Income Tax Code (CIRPC), as amended in January 2014. This allows the tax administration authorities to make required corrections for determining taxable profit when the transactions between related parties are not at arm’s length. The new 2014 mining tax law requires all mining companies in Mozambique to comply with the local transfer pricing rules

Review terms of double taxation agreements and BITs with host countries of mining companies including the principle that minerals should be taxed at the point of extraction.

As of 2014, the major mining companies in Mozambique included:

- Rio Tinto Ltd – which is British-Australian multinational corporation, that held coal exploration and mining licences and managed the Zambezi Project (100 percent); Tete East Project (100 percent); Benga Mine (65 percent); and the Zululand Anthracite Colliery (74 percent) through Rio Tinto Coal Mozambique;⁶ and
- Vale SA– which is a Brazilian multinational corporation that owns 95 percent stake in Moatize Colliery⁷

As of 2016, Rio Tinto had however, sold the entirety of its coal interests in Mozambique to International Coal Ventures Private Limited, which is a consortium of Indian state companies.

It is important to note that Mozambique has no double taxation agreements (DTAs) with UK, Australia and Brazil (host countries of Rio Tinto and Vale SA respectively) which, holding all things constant, gives the country the flexibility to tax the mining companies of these countries at point of extraction or in line with the Mozambican tax laws without having to worry about the provisions of double taxation agreements. This can also be double taxing on the mining companies' side if they are taxed both in Mozambique and in their home countries.

On the other hand, the double taxation agreement between Mozambique and India was signed in September 2010 and came into force in February 2011. Article 6 of the DTA on Income from Immovable Property states that income derived by a resident of a Contracting State from immovable property situated in the other Contracting State may be taxed in that other State, where immovable property includes mineral deposits, sources and other natural resources. This also gives Mozambique the opportunity to tax the Indian miners at point of extraction. In addition to the DTA with India, as of August 2016, Mozambique had 8 other DTAs with Botswana, Italy, Macau, Mauritius, Portugal, South Africa, United Arab Emirates and Vietnam.

Build capacity & systems to auction mineral rights where applicable

Article 10 of the 2014 Mining Law is specifically on the public tender of mineral rights. It establishes that the Government may organize a public tender procedure for granting mineral rights in geologically studied areas, areas with mineral resources' potential, areas that have been subject to previous mining activity, areas declared reserved for mining activity and areas of partial or total protection. The National Institute of Mines (INM) is the entity responsible for holding these public tender processes. Whereas the new mining law states that the Government may organize a public tender, the old law stipulated that a tender process will only be opened if more than one entity submits an application in respect of the same area.

2.4.2 Improved management and use of mineral revenue

Explore strategies for investing windfall earnings and mineral rent into sovereign wealth funds including stabilization funds and infrastructure funds

The Mozambique Master Gas Plan of 2013 makes indications of the need to establish a sovereign wealth fund (SWF) for channelling mainly gas revenues (royalties and profits) to development. No specific mention of a fund for channelling mineral revenue has been made. Nevertheless, as of 2016 the SWF indicated in the Master Gas Plan was not yet in place.

6. http://www.flandersinvestmentandtrade.com/export/sites/trade/files/market_studies/815140819105939/815140819105939_1.pdf

7. <https://www.kpmg.com/Global/en/IssuesAndInsights/ArticlesPublications/mining-country-guides/Documents/Mozambique-mining-country-guide.pdf>

Develop rent distribution systems for allocating part of mineral revenue to communities near mining areas and local authorities

Article 20 of the 2014 Mining Law is on Local Development and specifies that a percentage of State revenues generated by mining activities will be allocated to the development of the communities established in the areas where mining activities take place. However, the exact percentage is not established with indications that the mentioned percentage will be fixed in the State Budget Law, depending on the expected revenue for mining activity and that the revenue will be channelled through the annual budget.

Develop mechanisms to facilitate local communities' access to jobs, education, transport infrastructure, health services, water and sanitation

Article 8 of the new 2014 Mining Law states that the mining contract that the Government may enter into with the holder of a prospecting and research licence and mining concession, among other clauses, should contain the following:

- local employment and technical-professional training programmes;
- social responsibility activities to be developed by the mining holder;
- the way communities of the mining area are engaged and benefitted by the venture; and
- memorandum of understanding between the Government, the company and the community(ies);

Article 33 is also on workforce in mining activities and provides that:

- mining companies must assure the employment and professional training of Mozambican workers according to the applicable legislation; and
- workers' recruitment must be published in the major newspapers or broadcast on radio, television or published in the internet, specifying the nearest location for the submission of applications, the requirements and the ensuing publication of results.

Develop the capacity of local communities to negotiate partnership agreements

Article 32 of the 2014 Mining Law is on Involvement of Communities and states that:

- communities must be provided with prior information concerned with the beginning of the prospecting and research activities as well as the necessity of their temporary resettlement for this purpose;
- communities must be previously consulted before the granting of an authorization for the beginning of mining exploration;
- the Government shall create mechanisms in order to allow the engagement of communities in the mining projects located where they are settled; and
- the Government is responsible for assuring the organization of the communities in order to promote their engagement as mentioned above.

2.5 Conclusion

Mozambique has a modern mining legislation that largely speaks to the aspirations of the AMV particularly the:

- introduction of a resource rent tax to enable optimisation of mining revenues and responsiveness to windfalls;
- provisions for community participation in negotiations; and
- allocation of part of mineral revenue to communities near mining areas and local authorities, with the infrastructure priorities of how that revenue is to be used clearly spelt out for the districts secretariat.

However, given that both the mining law and mining fiscal regime are quite new, it is difficult to ascertain whether they are effectively being implemented and contributing to socio-economic development respectively. In this regard, it suffices to conclude that Mozambique is making considerable progress in harmonising its mining policies and legal frameworks with the aspirations of the AMV. The major drawback is the absence of the mining proceeds to effect development and reduce poverty levels in the country.

Recommendations

The government of Mozambique will need to consider the following recommendation to enhance its revenue benefits from the extractive industry and ensure Mozambican citizens benefit from the exploitation of their minerals.

- Mozambique should ensure that economic growth translates to development and poverty reduction by engaging in efficient utilisation of mining revenues and community development projects.
- There is need for the government to ensure effective and efficient implementation of the Mining Law of 2014 and ensure Mozambican citizens benefit more from the extractives in harmony with the AMV.
- There is need for effective oversight bodies that can monitor and enforce the implementation of the provisions of the country's new mining regime by both the government and the mining companies.
- The need to expedite the formulation of a Sovereign Wealth Fund is recommended given the growing importance of minerals such as coal in addition to huge gas reserves in the country.
- From the institutional analysis, there appears to be no specific entity in place for auditing production and export of minerals, regardless of the country being EITI compliant. In this regard, the setting up of an entity solely responsible for monitoring and auditing mineral production and export is also recommended.
- As recommended by the AMV, Mozambique needs to negotiate and sign DTAs especially with mother countries from which the biggest mining firms come from. This will also help mitigate cases where mining companies are taxed in both Mozambique and their home countries.
- There is need to strengthen the capacity of the Mozambique Tax Authority so that it is more efficient in enforcing tax laws and help mitigate incidences of tax fraud and evasion which are still rampant.

Bibliography

The Republic of Mozambique. Mineral Resources Policy and Strategy, 2013

The Republic of Mozambique. Mining Law, 2014

The Republic of Mozambique. Mining Tax Regime, 2014

The Republic of Mozambique. Policy of Corporate Social Responsibility for the Mineral Resources Extractive Industry, 2014



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