



# Local Procurement Regulations for Extractive Industries in the SADC Region

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# Executive summary

In both the mining and petroleum sectors in Africa, regulations requiring companies to procure goods and services locally have proliferated over the past decade. These regulatory approaches come in many forms, ranging from requirements for extractive industry companies to create and execute local procurement plans to direct targets for particular goods and services. In order to inform policymakers and other stakeholders, this policy insight gives an overview of the different types of legislation and regulations in place across SADC. Finding information about existing regulations can be remarkably difficult, and it is hoped this policy insight provides a useful reference as many countries in the region and across Africa as a whole continue to implement new regulatory approaches for local procurement.

## Introduction

In extractive industries, the single largest economic impact of activity is in most cases the procurement of goods and services. For this reason, host country governments in Africa and beyond have been trying to create more backward or upstream linkages from extraction activities to the wider economy. In Africa, over the last decade in particular, there has been a common trend towards state interventions aimed at promoting such linkages. Recognising the lack of structural transformation that ultimately resulted from all the activity in the mining and petroleum sectors in the commodities boom of the 2000s, governments have been passing new legislation and regulations that require extractive industry companies to buy more goods and services locally. In the mining sector, such a focus on backward linkages was included in the [Africa Mining Vision](#), a continental framework for the mining sector's enhanced contribution to the region's development, which was agreed to by all African heads of state in 2008 and adopted in 2009.

Recognising the lack of structural transformation that ultimately resulted from all the activity in the mining and petroleum sectors in the commodities boom of the 2000s, governments require extractive industry companies to buy more goods and services locally

This policy insight focuses on one of the most active areas of the continent in this regard, giving an overview of the different types of policies that SADC member states have implemented. It is intended to provide a state of play for policymakers, industry,

civil society and other stakeholders, to better inform all actors working to increase local procurement.

## Approach

For each country in the SADC region, a brief overview summarises the types of policies that are in place for the mining and petroleum sectors, with a list of the relevant documents. For the most part, the laws described are demand-side policies. The Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development (IGF) provides a useful distinction between demand-side policies and supply-side interventions for local procurement:<sup>1</sup>

Demand-side policies refer to instruments aimed at encouraging mining companies to procure goods and services from local suppliers. Supply-side policies refer to measures aimed at supporting local suppliers, so they are able to access mining procurement markets and compete with global standards on the basis of price, quality, volume and reliability.

A useful summary of the different kinds of policies that governments have used to promote local procurement by the extractive industry, with examples from around the world, is included in the IGF's *Local Content Policies in the Mining Sector: Scaling Up Local Procurement*.<sup>2</sup>

With few exceptions, supply-side policies are not covered here unless they impose permanent requirements on governments. For example, Decree 86 of the Petroleum Activities Law in Angola establishes that the Ministry of Hydrocarbons is mandated to create and maintain a list of Angolan suppliers and their capacity.<sup>3</sup> Supply-side policies of a more general nature, such as a government funding a supplier development programme or investing in trade shows to connect suppliers to extractive industry customers, are not included. Such initiatives come in a multitude of forms and an assessment of these across the Southern African region is beyond the scope of this overview.

Also not covered are the direct regulations requiring companies to engage in local procurement efforts as part of the provisions in the contracts agreed to between states and extractive industry companies. Such contracts are usually confidential. In some countries, however, those contract provisions have been important. For example, in Angola in the 2000s the government and state petroleum company Sonangol were able to use contract provisions to require several international petroleum companies to create supplier

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1 Intergovernmental Forum on Mining, Minerals, Metals and Sustainable Development, *Local Content Policies in the Mining Sector: Scaling Up Procurement* (Winnipeg: International Institute for Sustainable Development, 2019), 12.

2 IGF, *Local Content Policies*, 12–13.

3 Angola, Presidential Decree 86/18, 2018, ch. 3, art. 15, s. (14).

development programmes.<sup>4</sup> As such, it is important for stakeholders examining a given country to determine if such regulatory approaches are being used.

The following section explores the relevant local procurement legislation and regulations for extractive industries in each SADC country. It should be stressed that the purpose of this policy insight is to give an overview of the legislation and regulations in place. It does not examine how effectively such laws are being implemented. It is a common theme across the SADC region that many countries have policies that are what the IGF terms ‘best effort obligations’, where there is only vague language in law requiring extractive industry companies to give preference to domestic suppliers where possible. The challenge such provisions raise is that it is difficult, if not impossible, to enforce them effectively. In other cases, there may be provisions that are specific and measurable, such as a requirement for mining companies to submit local procurement plans, but these requirements may not be actively monitored and enforced by government authorities. As such, it is important for stakeholders to do further research to determine the level of actual implementation of the policies included here.

## Angola

### RELEVANT LAWS AND REGULATIONS

Petroleum Activities Law No. 10/04, 2004

Ministry of Petroleum Order No. 127/03, 2003

Republic of Angola, Presidential Decree 86/18, 2018

In the petroleum sector, the Petroleum Activities Law of 2004 requires companies to procure locally where possible, when the goods or services offered are comparable to those of foreign competitors. Local goods and services must be prioritised so long as local prices are not more than 10% above that offered by foreign competitors.<sup>5</sup>

The Ministry of Petroleum Order of 2003 outlines opportunities for Angolan companies to supply to the petroleum sector. The order includes a stipulation that certain services can only be procured from Angolan companies, such as transportation, catering, cleaning and quality inspection. The order also makes it mandatory for foreign-owned companies supplying specialised goods or services to partner with an Angolan company.<sup>6</sup>

Presidential Decree 86, issued in 2018, mandates the Ministry of Petroleum to create and maintain a list of Angolan suppliers and their capacity.<sup>7</sup>

4 Jesse Salah Ovidia, “Local Content and Natural Resource Governance: The Cases of Angola and Nigeria”, *The Extractive Industries and Society* 1, no. 2 (2014), 141.

5 Angola, Petroleum Activities Law No. 10/04 of 2004, art. 27.1, (a).

6 Angola, Order No. 127/03 of 2003, art. 2, sub-art. 1-2.

7 Angola, Presidential Decree 86/18, ch. 3, art. 15, s. 14. <http://www.lexlink.eu/conteudo/geral/ia-serie/3850008/decreto-presidencial-no-8618/14793/por-tipo-de-documentolegal>.

## Botswana

### RELEVANT LAWS AND REGULATIONS

Mines and Minerals Act, 1999

The Mines and Minerals Act of 1999 states that local procurement should be prioritised to the extent possible, with no further specifications.<sup>8</sup>

## Comoros

### RELEVANT LAWS AND REGULATIONS

Portant Code Pétrolier, 2002 (Loi N°12-19/AU)

The Petroleum Code of 2002 mentions local procurement, stating that contracts with local goods and service providers must be shown preference so long as all competitive factors are met.<sup>9</sup>

## Democratic Republic of Congo

### RELEVANT LAWS AND REGULATIONS

Modified Mining Code, 2018

Subcontracting Rules for the Private Sector, 2017

General Hydrocarbons Regime, 2015 (Law No. 15/012)

Hydrocarbon Regulations (Decree No. 16/010)

The DRC uses the term 'subcontracting' to refer to procurement. As this policy insight seeks to interpret and summarise legislation, it will use the term 'procurement' for the sake of consistency with the other country profiles.

The Modified Mining Code of 2018 states that mining companies have to show a strong preference for procurement from Congolese businesses wherever possible. Any service contract entered into with a foreign company is subject to a 14% tax on the amount of the total contract value.<sup>10</sup>

Furthermore, it requires mining companies to comply with Law No. 17/001 on Subcontracting (2017), which pertains to the private sector as a whole, stating that priority must be given to Congolese suppliers. The extent of local procurement expected is not defined.<sup>11</sup> The subcontracting law also limits the overall value of a contract that

<sup>8</sup> Botswana, Mines and Minerals Act of 1999, part III, s. 12.1.

<sup>9</sup> Comoros, Portant Code Pétrolier Loi No12-19 de 2001, title IV, ch. 1, art. 57.

<sup>10</sup> DLA Piper, "A New Mining Code for the DRC", August 10, 2018, <https://www.dlapiper.com/en/morocco/insights/publications/2018/08/democratic-republic-of-congo-mining-code/>.

<sup>11</sup> Joseph Yav Katshung, "New Law on Subcontracting in the Private Sector in the Democratic Republic of Congo", Yav and Associates, 2017, <https://www.hg.org/legal-articles/new-law-on-subcontracting-in-the-private-sector-in-the-democratic-republic-of-congo-42357>.

can be subcontracted to 40%, which, while not directly referring to local procurement, has an effect on what types of businesses are able to take part in supplying.<sup>12</sup> While the subcontracting law pertains to private industry as a whole and therefore should also apply to the petroleum industry, petroleum-related laws do not directly mention compliance with this law, as the mining code does.

In the petroleum sector, the DRC's 2015 General Hydrocarbon Regime mentions intent to strengthen local content to involve local businesses.<sup>13</sup> It establishes that companies are to give preference to local suppliers so long as they meet all qualifications.<sup>14</sup> No further specifications are given. In the subsequent 2016 regulation, Decree No. 16/010, a chapter on local content includes mention of annual local procurement plans that are to be made by petroleum companies.<sup>15</sup> The decree specifically mentions catering, laundry, industrial guards, firefighting, healthcare organisation and security services, stating that they are to be 'reserved in priority to nationals'.<sup>16</sup>

## eSwatini<sup>17</sup>

### RELEVANT LAWS AND REGULATIONS

Mines and Minerals Act, 2011 (Act No. 4)

Like many other countries, eSwatini states that preference must be given to local suppliers 'to the maximum extent possible', but no further details are included.<sup>18</sup> There is, however, an expectation that a licence application must include a proposal regarding procurement of local goods and services.<sup>19</sup>

## Lesotho

### RELEVANT LAWS AND REGULATIONS

Mines and Minerals Act, 2005

Lesotho's Mines and Minerals Act of 2005 mentions that mineral rights holders shall make use of products and equipment manufactured or produced in the country, but does not provide further specifications.<sup>20</sup>

12 McGuireWoods, "DRC: New Law on Subcontracting in the Private Sector Is Not Without Problems", July 19, 2017, <https://www.mcguirewoods.com/client-resources/Alerts/2017/7/DRC-New-Law-on-Subcontracting>.

13 Democratic Republic of Congo, General Hydrocarbons Regime 15/012 of 2015, Explanatory memorandum, 12.

14 DRC, General Hydrocarbons Regime, title 1, ch. 2, art. 5 and 7.

15 DRC, Decree n°16/010 of 2016, ch. III, art. 8.

16 DRC, Decree n°16/010, ch. III, art. 12.

17 eSwatini officially changed its name from Swaziland in 2018. Any laws and regulations prior to this are in the name of Swaziland.

18 Swaziland, Mines and Minerals Act No. 4 of 2011, part III, art. 29.

19 Swaziland, Mines and Minerals Act of 2011, part III, art. 36, 45, 56.

20 Lesotho, Mines and Minerals Act of 2005, part III, art. 11.

## Madagascar

### RELEVANT LAWS AND REGULATIONS

Modified Mining Code, 2018

Subcontracting Rules for the Private Sector, 2017

General Hydrocarbons Regime, 2015 (Law No. 15/012)

Hydrocarbon Regulations (Decree No. 16/010)

There is no public information on any legislation or regulation requiring local procurement by extractive industries in Madagascar.

## Malawi

### RELEVANT LAWS AND REGULATIONS

Mines and Minerals Act, 1981

Malawi's Mines and Minerals Act of 1981 directly mentions procurement of goods and services, but the language is vague. An application for a mining licence is required to include a report on what goods and services could be obtained within the country, with the approval of this report subject to being considered 'satisfactory' by those granting the licence.<sup>21</sup> Petroleum-related laws make no mention of local procurement.

## Mauritius

There is no public information on any legislation or regulation requiring local procurement by extractive industries in Mauritius.

## Mozambique

### RELEVANT LAWS AND REGULATIONS

Mining Law, 2014 (Law No. 20/2014)

Mining Regulations (Decree No. 31/2015)

Mozambican Petroleum Law, 2014

Policy for Corporate Social Responsibility for the Mineral Resources Extractives Industry, 2014 (Resolution No. 21/2014)

Mozambique's Mining Law of 2014 stipulates that mining companies must give preference to local goods and services, which may be further stipulated within the contracts awarded by the government to operating mining companies.<sup>22</sup> The Mining Regulations of 2015 establish that preference be given to local suppliers when all competitive factors are equal,

21 Malawi, Mines and Minerals Act of 1981, ch. 61:01, part 3, div. (1), s. (10) (c); div. (4), s. (37), sub-s. (3) (j); div. (4), s. (39), sub-s. (4) (e).

22 Mozambique, Mining Law No. 20/2014 of 2014, art. 22, s. 4; art. 8, s. (2) (b).

except where local costs exceed foreign alternatives by 10% or more.<sup>23</sup> For the petroleum industry, the 2014 Petroleum Law establishes that company procurement processes must show preference for local businesses when competitive factors are comparable, except where local costs exceed foreign alternatives by 10% or more.<sup>24</sup> Both the mining and petroleum laws require foreign companies seeking procurement contracts to ‘associate with’ Mozambican businesses in order to meet eligibility requirements.<sup>25</sup> The term ‘association’ is not defined, however.

Lastly, the Policy for Corporate Social Responsibility for the Mineral Resources Extractives Industry, 2014, aims to ensure that the benefits created by the mining industry contribute to the economic development of the host country. This policy includes requirements for companies to establish ‘agreements of local development’, which include local procurement. However, no further specifications are provided beyond this broad form of inclusion.<sup>26</sup>

## Namibia

### RELEVANT LAWS AND REGULATIONS

Minerals Act, 1992

Charter for Sustainable and Broad-Based Economic and Social Transformation in The Namibian Mining Sector 2014–2020 (‘Namibian Mining Charter’), 2014

Petroleum (Exploration and Production) Act, 1991

Namibia’s Minerals Act of 1992 states that any company granted a mineral licence shall procure goods and services from within Namibia provided these meet competitive standards.<sup>27</sup> This is further elaborated in the Namibian Mining Charter, which sets out local procurement targets that require 40% of ‘discretionary expenditure’ to be directed to Namibian-owned enterprises, provided they are cost and quality competitive. These targets have applied since 2016, before which targets were only 25%. During the construction phase of a mining project these requirements are reduced by 50%. Companies must report annually on how targets were met or give reasons why they were not met.<sup>28</sup>

The charter explains that the Chamber of Mines of Namibia, a private industry organisation representing mining companies, will use a scoring system for each report submitted, and present a yearly overview of its member companies to the Ministry of Mines and Energy.

23 Mozambique, Mining Regulations Decree No. 31/2015 of 2015, art. 19, sub-s. (3)

24 Mozambique, Mozambican Petroleum Law No. 21/2014 of 2014, art. 41, s. 4.

25 Evelyn Dietsche and Ana Maria Esteves, *What Are the Prospects for Mozambique to Diversify Its Economy on the Back of “Local Content”?* (Helsinki: UN University World Institute for Development Economics Research, 2018), 13.

26 Mozambique, Ministry of Natural Resources and Energy, *Policy for Corporate Social Responsibility for the Mineral Resources Extractives Industry* (Maputo: Ministry of Natural Resources and Energy, 2014), art. 6.

27 Namibia, Minerals Act of 1992, part VIII, art. 50 (d).

28 Emily Nickerson, Jeff Geipel and Harry James, *The Relationship Between Local Procurement Strategies of Mining Companies and their Regulatory Environments*, Research Report (Vancouver: Canadian International Resources and Development Institute, 2017), 30.

Table 1 shows the scores associated with local procurement.

TABLE 1 BREAKDOWN OF LOCAL PROCUREMENT SPENDING REQUIREMENTS IN NAMIBIA		
Description	% Measure (percentage of total discretionary spend)	Score
Spend on Namibian suppliers	2014-2015 --> 25%	12
	2016-2020 --> 40%	
	Further points in proportion to further spending on Namibian-owned business suppliers, to a maximum of 60%	8 (max)
	Total	20

Source: adapted from Chamber of Mines of Namibia, "Charter for Sustainable and Broad-based Economic and Social Transformation in the Namibian Mining Sector 2014-2020" (Windhoek: Chamber of Mines of Namibia, 2014), 8.

The scoring system has five pillars, of which 'procurement and enterprise development' is one. Each pillar can earn a company up to 20 points. The charter states that the collective outcome of the reports is made available to the Ministry of Mines and Energy and other industry stakeholders each year. Individual company reports are only released upon request and with permission from the company. The charter also mentions value addition, with guidelines that advise Namibian-owned companies on what constitutes an acceptable amount of in-country value addition.<sup>29</sup> Lastly, the charter contains accessibility stipulations, stating that mining company procurement policies must not create unnecessary obstacles for Namibian or historically disadvantaged Namibian suppliers, and that information on the procurement requirements themselves must be accessible.<sup>30</sup>

The Petroleum (Exploration and Production) Act of 1991, which governs the petroleum sector, mentions local procurement only briefly and without setting any specific targets. It states that as a part of the licencing process, companies must make use of Namibian products, equipment and services so long as their quality meets that of their competition.<sup>31</sup>

## Seychelles

There is no public information on any legislation or regulations requiring local procurement by extractive industries in Seychelles.

29 Nickerson, Geipel and James, *The Relationship Between Local Procurement*, 7-8.

30 Nickerson, Geipel and James, *The Relationship Between Local Procurement*.

31 Namibia, Petroleum (Exploration and Production) Act of 1991, s. 14 (c).

## South Africa

### RELEVANT LAWS AND REGULATIONS

Broad-Based Black Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry ('Mining Charter'), 2018

Implementation Guidelines for the Broad-Based Black Socio-Economic Empowerment Charter for the South African Mining and Minerals Industry, 2018

Charter for the South African Petroleum and Liquid Fuels Industry, 2000

Petroleum Products Amendment Act, 2005

South Africa's 2018 Mining Charter requires a mandated percentage of locally procured goods and services in the mining sector. Within six months of the publication of the charter, mining companies had to submit a five-year plan outlining their implementation of the government's local procurement targets. A total of 70% of a mining company's procurement budget for goods must be spent on those manufactured in South Africa, while 80% of the service procurement budget must go to South African-based suppliers.

The targets are given a transitional window of five years for goods and two years for services, with interim targets for each year leading up to full implementation. Targets are then broken down into further sub-categories with certain percentages devoted to different groups, including historically disadvantaged persons, black economic empowerment (BEE) compliant companies, and women- or youth-owned companies.<sup>32</sup> The categories are defined using the Broad-Based BEE (B-BBEE) scoring system. Enforcement primarily comes through the Mining Charter Scorecard, where mining companies' B-BBEE scores are in part determined by the scores of their suppliers.<sup>33</sup>

For the petroleum industry, the 2005 Petroleum Products Amendment Act briefly states that licences shall be given in part to create opportunities for small businesses in the petroleum sector.<sup>34</sup> The Charter for the South African Petroleum and Liquid Fuels Industry has more substantial requirements on local procurement. It states that the private petroleum sector must adopt procurement policies that encourage and show preference to historically disadvantaged South African companies supplying goods and services. Although no specific efforts are stipulated, the charter does give an example of how this can be done – by developing criteria that favour local supplier bids, all else being equal.<sup>35</sup> While there are no specific targets for petroleum companies to meet, they are subject to any BEE targets that apply more generally to all private sector companies in South Africa.

32 South Africa, Department of Mineral Resources, *Broad-Based Socio-Economic Empowerment Charter for the Mining and Minerals Industry* (Pretoria: DMR, 2018), art. 2.2.1-2.2.2, 8.1-2.

33 Further information on local procurement requirements, including the calculations and scoring system used to verify the amount of local procurement claimed by a company, can be found in "Implementation Guidelines" in South Africa, DMR, *Broad-Based Socio-Economic Empowerment*, s. 5.

34 South Africa, Petroleum Products Amendment Act of 2005, s.3, 2B (2) (c).

35 South Africa, *Charter for the South African Petroleum and Liquid Fuels Industry on Empowering Historically Disadvantaged South Africans in the Petroleum and Liquid Fuels Industry* (Pretoria: Government of South Africa, 2000), 4.

## Tanzania

### RELEVANT LAWS AND REGULATIONS

Model Production Sharing Agreement (MPSA), 2013

Mining Act, 2010

Written Laws (Miscellaneous Amendments) Act, 2017

Mining Commission (Guideline for Submission of Local Content Plan), 2018

Mining (Local Content) Regulations, 2018, amended in 2019

Petroleum Act, 2015

The Petroleum (Local Content) Regulations, 2017

Tanzania's 2010 Mining Act and 2017 amendments, along with the Petroleum Act of 2015, outline requirements for local procurement. A procurement plan must be submitted by those seeking a mining or petroleum licence, specifically detailing the use of Tanzanian insurance, financial, legal, accounts, security, cooking, and catering services and goods 'produced or available' in the country.<sup>36</sup> Reports should be filed by extractive industry companies at the end of each year outlining procurement undertaken during the course of the year. For both industries, non-indigenous Tanzanian goods or service providers must become part of a joint venture with an indigenous Tanzanian company and afforded at least 25% indigenous equity participation.<sup>37</sup> The Petroleum (Local Content) Regulations of 2017 do offer some flexibility on this, stating that in special circumstances the state can approve a level of local participation of 10% of shares in the joint venture supplier.<sup>38</sup>

The Mining (Local Content) Regulations of 2018 outline percentage targets categorised according to the number of years since a mining licence has been granted. For the first five years following the granting of a licence, 10% of total procurement spending must be local. After five years, local procurement should reach 50%. After 10 years, local procurement should reach 60–90% of total procurement.<sup>39</sup> In addition to these targets for all goods and services, there are a number of targets for specific services (eg, safety and environmental studies, pollution control and catering services).<sup>40</sup> However, the regulations contradict the Miscellaneous Amendments Act, in that the regulations require at least 20% indigenous equity share in a joint venture with a foreign supplier, instead of 25% as specified by the Mining Local Content Regulations.<sup>41</sup> The regulations also establish that a National Local Content Committee shall be established, which in part is mandated to further define the standards for local content plans, including procurement.<sup>42</sup> The Mining Commission

36 Tanzania, Mining Act of 2010, art. 49.2(h), 41(4)(g)), 42(1)(d), 44(d)-(v)), 34(1)(f); Tanzania, Written Laws (Miscellaneous Amendments) Act of 2017, part VIII, art. 1 O2 (8)(b); Tanzania, Petroleum Act of 2015, part III, sub part II. 67(m), part VIII, 219 (4).

37 Tanzania, Mining (Local Content) Regulations, 2018, part II, s. 8 sub-s.(6).

38 Tanzania, Petroleum (Local Content) Regulations, 2017, part IV, s. 15(4).

39 Tanzania, Mining (Local Content) Regulations, first schedule, 110.

40 Tanzania, Mining (Local Content) Regulations, first schedule, 111-113.

41 Tanzania, Written Laws (Miscellaneous Amendments) Act, part VIII, s. 102 (3); Tanzania, Mining (Local Content) Regulations, part II, s. 8 (6).

42 Tanzania, Mining (Local Content) Regulations, part II, s. 5-6.

Guideline for Submission of a Local Content Plan provides a template for companies to supply the required information in a structured manner.

Like the country's mining policies, the Petroleum (Local Content) Regulations, 2017 set escalating percentage targets to be achieved at the start of activity, after five years, and meeting the final targets after 10 years. Unlike mining, petroleum companies do not have to meet a target percentage on total procurement spending for all goods and services they purchase. However, there is a much more extensive list of individual services with specific targets, and a small number of goods (eg, pipes, pumps and cement).<sup>43</sup>

The 2013 MPSA for the petroleum sector states that companies should procure locally where possible through measures that include scoping subcontracts to match the capacity level of local suppliers in order to promote their participation, and promptly paying suppliers. Tendering processes must be transparent and non-discriminatory with a scoring system that gives higher scores to suppliers that have higher local value-addition.<sup>44</sup> To tender supplying opportunities to firms outside Tanzania, a petroleum company must apply to the Tanzania Petroleum Development Corporation (TPDC).<sup>45</sup> Finally, petroleum companies are required to collaborate with the TPDC and/or any public authority responsible for local content promotion or other public body to identify a list of Tanzanian services and goods suppliers and contractors.<sup>46</sup>

## Zambia

### RELEVANT LAWS AND REGULATIONS

Mines and Minerals Development Act, 2015

Commercial, Trade and Industry Policy, 2015

Mines and Minerals Development (General) Regulations, 2016

The Mines and Minerals Development Act of 2015 states that consideration of a mining licence application will include the applicant's plans for the promotion of local business development.<sup>47</sup> The Mines and Minerals Development (General) Regulations, 2016 require that licence holders report annually on their compliance with the approved local business development programme. The Mines and Minerals Development (General) Regulations of 2016 also specify that a licence holder must show preference for products and services made locally.<sup>48</sup> Zambia committed, in its 2018 National Industrial Policy, to develop further legislation on local procurement.<sup>49</sup>

43 Tanzania, Petroleum (Local Content) Regulations, first schedule, 34-43.

44 Tanzania, Tanzania Petroleum Development Corporation, *Model Production Sharing Agreement (MPSA)* (Dodoma: TPDC, 2013), art. 20 (m).

45 Tanzania, *Model Production Sharing Agreement*, art. 20 (l).

46 Tanzania, *Model Production Sharing Agreement*, art. 20 (n).

47 Zambia, Mines and Minerals Development Act of 2015, div. 3, art. 31(1)(f)(ii), 32(2)(c).

48 Zambia, Mines and Minerals Development (General) Regulations, 2016, third schedule, s. A,1(p), B,1(h), C,1(f).

49 Zambia, *National Industrial Policy* (Lusaka: Government of Zambia, 2018), s. 8.3(ii).

### RELEVANT LAWS AND REGULATIONS

Mines and Minerals Act, 1961

The Mines and Minerals Act of 1961 states that applicants for special mining leases must include information on the extent to which they intend to procure locally. This plan must be considered 'satisfactory' by the Mining Affairs Board, which makes recommendations to the minister on the approval or refusal of a mining licence.<sup>50</sup> Special mining leases are not defined in the act itself.

## Conclusion

Extractive industry local procurement is addressed in legislation and regulations by virtually all of the countries in the SADC region that have some level of mining or petroleum activity. It is clear, however, that the DRC, Namibia, South Africa and Tanzania have more detailed approaches, while most of the other countries in the region have very little in place beyond best effort obligations. There are definite indications that countries with less comprehensive approaches will soon follow the lead of countries like Tanzania and the DRC and put in place more detailed requirements. Currently, countries in the region, including Zambia and Mozambique, are in the process of updating legislation and regulations on extractive industry local procurement. African countries beyond the SADC region are involved in similar processes, including Ghana, Burkina Faso and Nigeria. As noted earlier in this policy insight, the current mapping exercise has limitations in that it does not investigate contract-specific local content requirements, nor does it investigate the extent to which local content regulations are actively monitored and enforced by national authorities. Noting these limitations, this overview seeks to inform regional dialogue between governments, industry and other stakeholders around appropriate local content regulations to ensure that extractive industries contribute effectively to regional development, in line with the African Mining Vision.

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<sup>50</sup> Zimbabwe, Ministry of Mines and Development, Mines and Minerals Act of 1961, ch. 21:05, part IX, s. 159(3)(e)(xii), 160(2)(e).

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## **Cover image**

Oranjemund, June 25, 2017: A giant crawler machine used to dredge the seabed for diamonds is seen being pulled on board the diamond sea mining vessel, Mafuta, from Debmarine, a joint venture between diamond mining giant De Beers and the Namibian Government (Gianluigi Guercia/AFP via Getty Images)

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