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Extractive Industries and Sustainable Job Creation

**Sustainable job creation in the extractive
industries – legal perspectives**

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Sustainable job creation in the extractive industries – legal perspectives

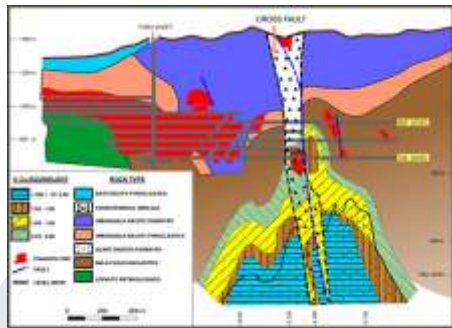
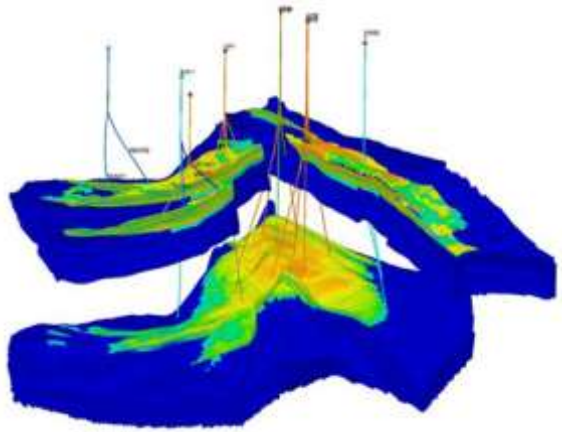
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Sustainability and extractive industry



Contradiction in terms?

Extractive industries are per definition not sustainable.

Asset or revenue?

Extraction of a non-renewable natural resource may, for the resource owner, be seen as the equivalent of conversion of a fixed asset into capital assets.

Variations on sustainability

- The value of the extractive resource may be converted into other assets providing lasting return from such assets or form the basis for other **sustainable** effects for the economy;
- Extractive activities are normally time limited but may be used to establish an industrial base and service sector which may be **sustained** also after the extractive activities have terminated.
- The extraction methods used may be **sustainable** in the sense the areas are restored for other use when extractive activities have terminated.

But also;

- In relation to, in particular petroleum, a phased approach and government controlled extraction rate may facilitate optimal depletion of the resources thus increasing the probability of **maintaining** production as long as possible with a view to maximise ultimate recovery of resource.

Norwegian policy aims – since 1965

- The property rights to petroleum resources on the Continental Shelf are vested in the State
- The petroleum resources are to be managed in a long term perspective to the *benefit of society* as a whole and *mitigating its impact on industry, trade and other interests*.
- No waste of petroleum, including prohibition against flaring
- **Development of national competence and expertise**
 - ✓ Norwegian (1971) "Oil Commandment" number 3 – "*Based on petroleum, develop new economic activity*"
 - Norway to be in the forefront regarding health, safety and the environment

Sustainable job creation as part of an overall, coherent policy

RESOURCE MANAGEMENT

LEGAL FRAMEWORK

FISCAL FRAMEWORK

APPROACH FOR AWARD OF EXCLUSIVE EXTRACTIVE RIGHTS

DEVELOPMENT OF INDUSTRY AND SERVICES IN COUNTRY

Tools available to government

- Legislation
- Contractual regulation (including governing law and conflict resolution)
- Use of future award rounds to incentivise local content
- Economic incentives
- Government – investor cooperation
- Government's education policy
- Research and development
- Assessing local competence and capacity
- Enabling commercial enterprises to become suppliers
- Training individuals, commercial enterprises and government



Considerations

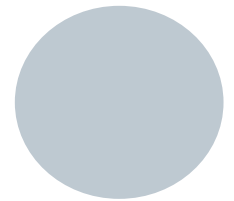
- Effect on investor decisions
 - Costs due to red tape, compliance, delays and activities outside of core business
- Effect on resource rent
 - Cost increases – public revenue reduced for the benefit of (national) private investors – typically consuming wealth in stead of value creation
- National content versus local content
 - Creation of value locally or national ownership and control?
- Reinforcement of national interests
 - Local presence of competent organisation (capable and authorized to make all decisions relevant to in country operations) of investor
- Health, Safety and Environment
 - Different standards? No - aim at best practice!
- Sustainability of local or national content requirements
 - Test is competitiveness versus permanent protection

Legal measures – local content related

- Requirements to locate activities within own jurisdiction, including supply and forward bases, in country organisation and transportation systems
- Requirements to extend construction or services needed for the extractive activities to also be accessible for third parties (construction roads, sick bays, landing strips, but not hospitals or libraries)
- Choice of law requirement for supply contracts
- Conflict resolution mechanisms
- Training and education requirements imposed on operators
- Procurement requirements
- National ownership rules
- Quotas
- Planning and reporting requirements

Business attractiveness and *national* content

- African rankings on ease of doing business:
 - Out of 189 countries ranked, 6 African countries are in the top half
- Corruption Perception index
 - Out of 175 countries ranked, 17 African countries are in the top half



Correlation between ease of doing business and national content?

Brazil 	Nigeria 	Norway 	Canada 
Doing business: 120 Corruption P.I: 69 National Cont: Strict Production start: 1939, major 1970+	Doing business: 170 Corruption P.I: 136 National Cont: Strict Production start: 1957	Doing business: 6 Corruption P.I: 5 National Cont: None Production start: 1971	Doing business: 14 Corruption P.I: 10 National Cont: Few Production start: 1858

Best practise – starting points

- Local content must be developed on the basis of existing and created capacities to provide materials, goods and services.
- Long term local content success is fundamentally dependent on skills, infrastructure and ease of doing business

Best practise

- Local content requirements should be focused on value addition and capacity building
- Local content supply chain must be competitive in terms of price, quality and timely availability ("golden rule")
- Legal regulation is not sufficient, capacity building is an important enabler for local content
- Local content for extractive industries cannot be considered apart from other measures government may take to attract business in general
- Costs due to local content requirements should be imposed to allow for establishment of local supply chain etc; i.e. temporary in nature
- Enforcement and monitoring, including investor planning requirements
- Procurement procedures must be transparent and promote competition
- Goals for local content should be realistic and include all types of labour
- Encouraging research and development, as well as cooperation

What to avoid

- Use of discriminate national ownership requirements
- Fixed quotas
- Sustained price discrimination, direct or indirect subsidies to the advantage of national persons or companies, reduced requirements to quality and safety or to timeliness
- Inflexible local content requirements not based on realistic capacity

Examples of local content provisions

- Example of Best Practise:

- ❖ A [right holder] as well as its subcontractors shall give priority to companies established in the country in the award of contracts for construction of a facility and the supply of material, goods and services related to [Extractive] Activities when terms and conditions offered by suppliers established locally are equal to their competitors.
- ❖ A [right holder] as well as its subcontractors shall employ qualified personnel permanently residing in [country] whenever available. The [right holder] shall also organise and fund the training of such personnel associated with [Extractive] Activities.

Examples of local content provisions

- Examples of What to avoid (excerpts):
 - ❖ Where the goods and services required by the contractor or licensee are not available in [country], they shall be provided by a company which has entered into a joint venture with a [national] company provided that the [national] company has a share capital of at least [x] percent in the joint venture.
 - ❖ the cost of such services does not exceed one hundred and ten per cent (110%) of the lowest acceptable cost of equivalent or similar services offered by or otherwise available from foreign individuals or Entities that are not majority-owned or controlled by [x] nationals

Summary

- Coherence – local content part of overall extractive industry policy
- Local content policies should be long-term and flexible while aiming at...
 - Increasing value added, not deter investments
 - Balancing industry and government needs
 - Building on existing capabilities, creating competitive, transparent and thus sustainable supply chains or industry
 - Encouraging establishment of international competent companies
- **Local content policies should be temporary in nature**