

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

**STRENGTHENING DEVELOPMENT LINKAGES FROM THE
MINERAL RESOURCE SECTOR IN ECCAS COUNTRIES**

Regional Workshop
Brazzaville, Republic of the Congo
28 to 30 September 2016

Issues in developing a regulatory framework

by

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The opinions expressed in this document are those of the author and do not necessarily reflect the views of UNCTAD.

UNCTAD

Regional workshop on
strengthening development linkages from
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Economic Community of Central African States
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Session 4: Strengthening development linkages: Improving business climate

Issues in developing a regulatory framework

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Outline of discussion

- 1. State of the business climate in SSA**
- 2. Effects of a poor business climate**
- 3. Addressing the issues...**
 - A. Building institutions
 - B. Developing markets
 - C. Reducing the cost of doing business
 - D. Developing appropriate infrastructure
- 4. Concluding remarks**

1. State of the business climate in SSA

Key Questions

- Are there sufficient links between **institutions** responsible for mining and those for other sectors?
 - i.e. Education, infrastructure, financial resource mobilisation, R & D, agriculture, trade, industry, employment, environment, health, etc.
- Are **institutions** responsive to local needs?
 - E.g. Training, access to finance, the 3 freedoms, poverty alleviation, etc.

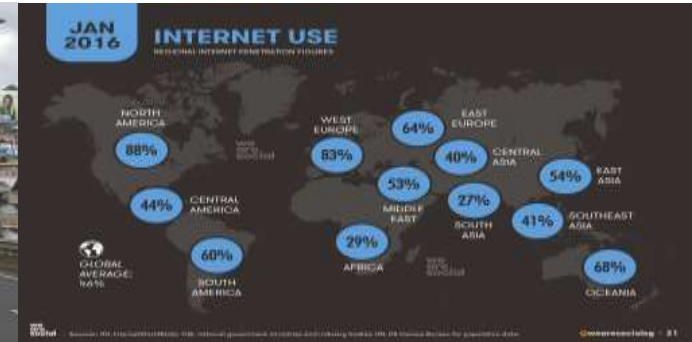
Key Questions

- Is there a **market** for inputs or minerals produced?
 - E.g. salt for oil & gas, phosphates for fertilizer, cement & stones for construction, oil and gas for electricity, labour, etc.
- Are inputs and minerals ‘freely’ supplied to **markets** in the region?
 - i.e. No tariffs and NTBs



Key Questions

- Is electricity available 24/7...accessible anywhere...and inexpensive?
- Is there an adequate network of good roads and other infrastructure?
- Is telecommunication (and internet) accessible...and inexpensive?



Key Questions

- Is it [easy][**inexpensive**] to:
 - establish a business?
 - obtain finance?
 - register property?
 - pay taxes?
 - obtain permits, enforce rights and contracts, etc.?

2. Effects of a poor business climate

- Suboptimal development of mineral resources
- High production costs
- No competitive advantage
- Loss of economies of scale
- Poverty
- Conflict

3. Addressing the issues...

A. Building institutions

- Caution in transplanting institutions
- Compare and adapt
- Consider realistic long term objectives as well (Adaptability)
- Capacity is key
- A key question is:

“Which institutions are appropriate in a particular context to achieve a certain goal and perform a particular function?”

- Mkandawire, 2009

A. Building institutions

- **Ghana's Minerals Commission**

- Need for a regulator

- Deficiencies of the existing system
 - Independent institution to advise Minister to promote mineral resources development

- The Minerals Commission

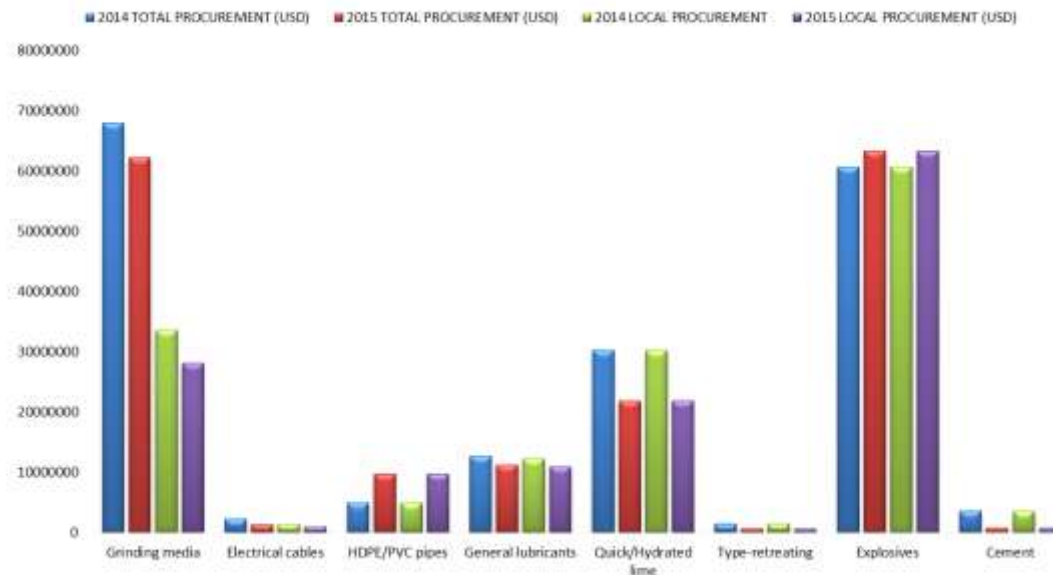
- **Constitutional mandate**
 - A legal entity with corporate legal personality
 - Board and CEO (Appointed by the President)
 - Professional and technical staff
 - Parliamentary 'oversight'

A. Building institutions

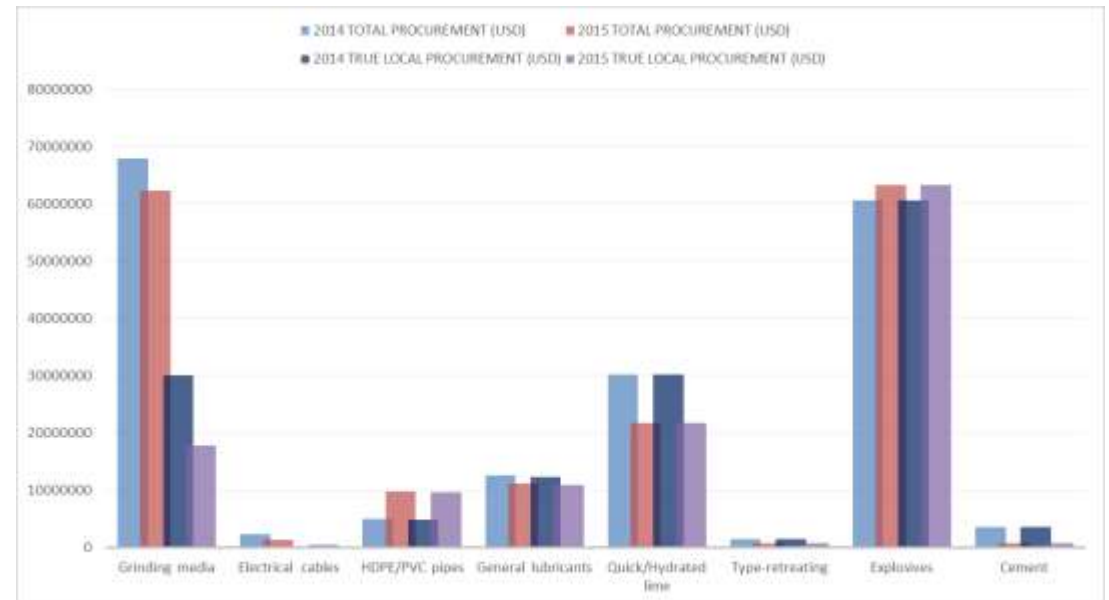
- Effecting the linkages objective
 - **Broad constitutional mandate**
 - Latitude to formulate and implement policies
 - Regulatory framework
 - **MOU with mining companies**
 - Regulations
- Challenges
 - **Developing effective links with relevant sectors**
 - Electricity
 - Increased taxes
 - Macro-economic issues
 - Price non-competitiveness

Ghana: Mining local content development

**Total Procurement v Local Procurement
2014 - 2015**



**Total Procurement v True Local Procurement
2014 - 2015**



Source: Minerals Commission (2016)

B. Developing Markets

- Identify the minerals with linkages potential
- Cooperate in formulating and implementing appropriate trade and investment policies
- Ensure that WTO, EPAs, FTAs, BITs and other international agreements do not constrain policy space
- Develop regional strategies to eliminate tariffs and non-tariff barriers

B. Developing Markets

- What mechanisms exist for developing a common market?
 - Cooperation treaties
 - EAC Treaty establishes a Customs Union and a Common Market
 - EAC harmonisation agenda (Also OHADA)
 - EAC organs have power to make laws and give directives
 - ECCAS Treaty provides for cooperation in resources development projects (But policies yet to be developed)
 - Joint developments
 - Special institutions or arrangements for joint regulation or for conducting commercial operations

B. Developing Markets

- Removal of tariffs and Non-Tariff Barriers
 - EAC **Customs Management Act** provides for elimination of all internal tariffs
 - Removal of all non-tariff barriers
 - No new non-tariff barriers to be imposed
 - Mechanism for identifying and monitoring the removal of non-tariff barriers
 - Comprehensive list of Common External Tariffs
- Joint EPA/WTO/ etc. negotiations

C. Reducing the cost of business

Laws and policies by themselves do not ensure reduction in costs

C. Reducing the cost of business

- Legal stipulations are [more] effective where:
 - Stakeholders participate in determining outcomes
 - Processes are simplified (including use of technology)
 - There is adequate capacity to administer processes
 - Human interface is minimised
 - Vested interests are managed effectively
 - Public utility/interest is upheld

D. Developing appropriate infrastructure

- Effects cannot be overstated
 - Impacts all the other issues
 - Double agony for landlocked countries (E.g. Chad)
- But a silver lining?
 - Resource contracts
 - Identify all critical resource linkages at the outset even if opportunities are not immediately realisable
 - Effective negotiations and mutually beneficial agreements are key
 - Cooperation with coastal countries

D. Developing appropriate infrastructure

- Other options
 - Regional infrastructure funds
 - Development institutions / Other countries
 - Commercial funds

Especially if optimisation of resource-based projects can be justified

- But note:
 - Risks of losing sight of linkages objectives
 - Potential tensions between investments in 'productive' and social sectors
 - Especially if social costs of mining or resource based projects are not properly accounted for, e.g. environmental costs, land, compensation, etc.

4. Concluding remarks

The place of legal instruments

- Minerals issues are complex and varied
 - E.g. What kind of institution(s) or legal instruments should regulate mining and linkages activities are influenced by whether the focus is on some or all minerals, capacity issues, type of minerals, location (e.g. across countries), etc.
- But:
 - Legal instruments must be applied with caution
 - Need for adequate capacity and “space”
 - Lawyers’ skills relevant to clarify objectives and guide implementation
 - In clear or settled cases, legal instruments will consolidate ‘agreements’ and ensure legitimacy, compliance, and stability

Thank you for your attention

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